



ORIGINAL

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

DANIEL K. HOLTZCLAW,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

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Case No. F-2016-62

SEP 20 2016

MICHAEL S. RICHIE
CLERK

APPLICATION FOR EXTENSION OF TIME (90 DAYS) BEYOND FINAL DEADLINE TO FILE BRIEF OF APPELLANT

Appellant, Daniel K. Holtzclaw, by and through his appellate counsel and pursuant to Rule 3.4(D), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2011), respectfully applies to the Court for an additional ninety (90) days (or until December 19, 2016) to file his brief in chief. In support of his application, Appellant states:

1. This is Appellant's third request for additional time to file the brief. The Court previously granted a request, extending the time for filing the brief to September 20, 2016. It is impossible for Appellant's counsel to meet the August 21, 2016, briefing deadline for the reasons stated herein and in the Affidavit of Appellate Counsel, attached and marked Exhibit "A".

2. Appellant was tried by the Honorable Timothy Henderson in Oklahoma County Case No. CF-2014-5869. He was convicted of four counts of First Degree Rape, one count of Second Degree Rape, six counts of Sexual Battery, four counts of Forcible Oral Sodomy, and three counts of Procuring Lewd Exhibition. The jury assessed punishment at thirty years on each of the first degree rape counts, twelve years on the second degree rape count, eight years on each of the sexual battery counts, sixteen years on each of the sodomy counts, and five years on each of the procuring counts. The trial court ordered all sentences to be served consecutively to each other.

3. Judgment and Sentence was imposed by the trial court on January 21, 2016.

4. Written Notice of Intent to Appeal, together with a written Designation of Record on Appeal, were filed in the District Court on January 27, 2016, and in this Court on February 1, 2016.

5. On May 23, 2016, the Clerk of the District Court of Oklahoma County filed in this Court a Notice of Completion of Record. That same day, the Clerk of this Court issued a request to transmit. The filing of the request began Appellant's briefing time, making his Brief of Appellant due on or before July 22, 2016. On July 28, 2016, this Court granted Appellant's first extension request until August 21, 2016.

6. Undersigned counsel received the record and transcripts on or about May 26, 2016. The original record in this case comprises four volumes for a total of 737 pages; the Preliminary Hearing transcript comprises two volumes totalling 458 pages; various pre-trial hearings comprise four volumes totalling 27 pages; the transcripts of the jury trial comprise nineteen volumes for a total of 4337 pages; and the motion for new trial and sentencing hearing comprises one volume of 50 pages. Additionally, Counsel has obtained trial counsel's files, comprising 7 CDs and 25 DVDs, totalling over 19 gigabytes of data, including reports, pleadings, and digital media files.

7. Since the Court granted Appellant's last extension request, Counsel has diligently continued to review the record, transcripts, and trial files in this case. Counsel has also identified numerous legal issues for investigation and research. However, due to the sheer enormity of the record and complexity of issues in this case, Counsel has been unable to complete that review, investigation, and research in order to prepare the Brief of Appellant. Additionally, Counsel has identified a need for additional testing and/or consultation with experts, which will

also require additional time. Accordingly, as explained more fully in the attached affidavit, it is impossible for Counsel to complete the brief in chief by the September 20, 2016, deadline.

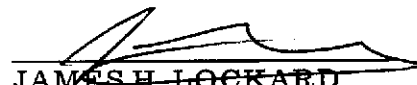
8. For the reasons set forth more fully in the attached Affidavit of Appellate Counsel, Counsel respectfully asks the Court to grant the additional ninety (90) days requested in which to complete Appellant's brief in chief.

9. This application is made for good cause and not for purposes of delay. Appellant's case has errors in the proceedings below that must be fully investigated, researched, presented, and preserved on direct appeal. *Evitts v. Lucey*, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985); *United States v. Cronin*, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984).

UPON THE FOREGOING and for just cause, Appellant asks the court to grant him an additional ninety (90) days, or until December 19, 2016, to file his brief in chief.

Respectfully submitted,
DANIEL K. HOLTZCLAW

By:


JAMES H. LOCKARD
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Deputy Division Chief
Capital Direct Appeals Division
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ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I certify that on the date of filing of the above and foregoing instrument, a true and correct copy of the same was delivered to the Clerk of this Court with instructions to deliver said copy to the Office of the Attorney General of the State of Oklahoma.


JAMES H. LOCKARD

Exhibit A

AFFIDAVIT OF APPELLATE COUNSEL

STATE OF OKLAHOMA)
) ss
COUNTY OF CLEVELAND)

James H. Lockard, upon his oath, states the following:

1. I am an attorney at law admitted to practice before the courts of the State of Oklahoma. My Oklahoma Bar Association number is 18099. I have personal knowledge of the facts stated in this affidavit.
2. I am presently employed by the Oklahoma Indigent Defense System as a Deputy Division Chief in the Capital Direct Appeals Division. I currently represent, as lead appellate counsel, one client under a sentence of death and seven clients under sentences ranging from ten years to life without the possibility of parole.
3. On January 21, 2016, Appellant was formally sentenced on four counts of First Degree Rape, one count of Second Degree Rape, six counts of Sexual Battery, four counts of Forcible Oral Sodomy, and three counts of Procuring Lewd Exhibition. Written Notice of Intent to Appeal, together with a written Designation of Record on Appeal, were filed in the District Court on January 27, 2016, and in this Court on February 1, 2016. A Petition in Error was filed in this Court on February 24, 2016. This affidavit is filed in accordance with Court rule and in support of a request for additional time to file Mr. Holtzclaw's brief in chief.
4. The Request to Transmit Appeal Records in Mr. Holtzclaw's case was filed in the Court of Criminal Appeals on May 23, 2016. Under Rules 1.5 & 3.4(B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2014 Supp.), and pursuant to this Court's August 25, 2016, order granting my second extension request, Mr. Holtzclaw's Brief of Appellant is due on or before September 20, 2016.
5. Mr. Holtzclaw was represented at trial by Messrs. Scott Adams and Robert Gray, of Oklahoma City. On January 21, 2016, the General Appeals Division of the Oklahoma Indigent Defense System was appointed by the District Court of Oklahoma County to represent Daniel K. Holtzclaw on appeal to the Oklahoma Court of Criminal Appeals, Case No. F-2016-62. Due to the enormity of the record, the case was transferred to the Homicide Direct Appeals Division and assigned to me. I filed my Notice of Assignment in this Court on February 23, 2016.
6. The original record in this case comprises four volumes for a total of 737 pages; the Preliminary Hearing transcript comprises two volumes totalling 458 pages; various pre-trial hearings comprise four volumes totalling 27 pages; the transcripts of the jury trial comprise nineteen volumes for a total of 4337 pages; and the motion for new trial and sentencing hearing comprises one volume of 50 pages. Additionally, Counsel has obtained trial counsel's files, comprising 7 CDs and 25 DVDs, totalling over 19 gigabytes of data,

including reports, pleadings, and digital media files.

7. I have very nearly completed my review of the record, transcripts, and trial files in this case. I have also brought in another attorney from this division, Michael D. Morehead, to review specific portions of the record and assist me in extra-record investigation and in preparation of the Brief of Appellant. However, this case is both abnormally long (as large as, or larger than, many capital cases) and unusually complex (18 convictions out of 36 counts involving 13 different alleged victims). Much of the evidence presented at trial to support the testimony of the alleged victims is highly technical and detailed, including DNA evidence, police procedures, Auto Vehicle Locator data, police dispatch activity and activity logs, and phone records. Accordingly, my efforts to complete my review and understanding of what was presented in the trial court has been difficult and time consuming.
8. Additionally, we have identified a specific need to have the DNA evidence in this case subjected to review and potential additional testing by our own experts. While trial counsel effectively cross-examined the State's expert as to the nature of the DNA evidence and how it was deposited on Officer Holtzclaw's pants, it appears that he missed significant issues with the State's conclusions and failed to do any additional testing that could have refuted those conclusions. More specifically, during closing argument, the prosecutor argued that the DNA evidence came from vaginal cells transferred via vaginal fluid onto Appellant's pants, even though the State's expert could only conclude that the DNA involved skin cells and admitted that no testing was done to verify the presence of vaginal fluid on the pants. Further, in two areas that were tested, the DNA was a mixture of at least three different people, at least one of whom was an unknown male, not Appellant. The significance of this information seems to have been lost on the parties below. Accordingly, it is vital that we consult our own experts to explain the significance of the evidence in this case, as well as to do additional testing on the pants.
9. I have been in continual contact and consultation with Mr. Holtzclaw and his family, and they are all agreed that the additional expert review and testing is vitally necessary. Because this cannot be completed by the September 20, 2016, deadline, Mr. Holtzclaw specifically agrees with my requesting additional time.
10. In addition to this and my other cases, I have a continuing obligation to assist all Division attorneys with proof-reading other briefs in chief and to attend all briefing conferences and moot oral arguments. Additionally, as Deputy Division Chief I have administrative duties to attend to, including the supervision of the Division's investigators and investigative resources.
11. Under these circumstances, it is impossible for me to address, adequately and thoroughly, the issues on behalf of Mr. Holtzclaw without an extension of time for filing his Brief of Appellant.

12. These events are beyond my control and not the fault of Mr. Holtzclaw. In that regard, and for the other reasons stated, I respectfully ask that the deadline for filing Mr. Holtzclaw's Brief of Appellant be extended beyond September 20, 2016.

FURTHER, AFFIANT SAYETH NOT.


JAMES H. LOCKARD

Subscribed and sworn to before me this 20 day of September 2016.


NOTARY PUBLIC

My Commission expires _____ Commission No. _____
(Seal)

