

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FEB 16 2017

RICK WARREN
COURT CLERK

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CHARLES LANGHAM,)
)
 Petitioner,)
)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Respondent.)

Case No. CRF-1986-6674

AGREED ORDER GRANTING POST-CONVICTION RELIEF

This matter comes on before the undersigned Judge of the District Court for consideration of Petitioner’s Application for Post-Conviction Relief. The Court, being fully advised, makes the following findings of fact and conclusions of law:

PROCEDURAL HISTORY

On December 16, 1986, Petitioner was charged by Information with the following crimes in Oklahoma County Case No. CRF-1986-6674: Count 1, Possession of a Controlled Dangerous Substance (Cocaine) With Intent to Distribute; Count 2, Possession of a Weapon While Committing a Felony; and Count 3, Maintaining a Dwelling Where Controlled Dangerous Substances are Kept. On September 22, 1987, Petitioner, represented by counsel, was tried in a non-jury trial for the crimes as charged, the Honorable James B. Blevins presiding. Following a stipulation from the parties as to the facts of the case, the Court found Petitioner guilty of each offense. On October 2, 1987, the Court sentenced Petitioner to ten (10) years in the custody of the Department of Corrections (DOC) for Count 1.¹ Petitioner was released on an appeal bond pending his direct appeal.

¹ The trial transcript in this matter indicates that the Court found Petitioner guilty in Counts 1, 2, and 3. (Trial Tr. at 18) However, at the time of sentencing, the Court sentenced Petitioner in Count 1 only (Trial Tr. at 22), and the

Petitioner, by and through counsel, perfected a direct appeal to the Court of Criminal Appeals. In his sole proposition of error, he contended that the trial court erred in overruling his motion to suppress the evidence. On February 22, 1990, the appellate court rejected this claim and affirmed Petitioner's Judgment and Sentence in Case No. F-88-231. *Langham v. State*, 1990 OK CR 9, 787 P.2d 1279. Mandate was issued March 21, 1990, and filed in the District Court on March 27, 1990. Petitioner filed a motion for rehearing, which the Court denied on April 5, 1990. On May 31, 1990, the District Court issued an alias warrant for Petitioner's arrest.

On May 14, 1990, while Petitioner was out of custody on appeal bond, he was charged by Information under the name "Charles Williams" with the crime of Attempting to Obtain a Controlled Dangerous Substance by Forged Prescription in Tulsa County Case No. CF-1990-2140. He was arraigned for that charge in November 1990 and held in custody in Tulsa County until his jury trial on January 11-15, 1991. On January 18, 1991, Petitioner was sentenced in Tulsa County District Court to four (4) years in the custody of DOC; he was also sentenced to six (6) months in the Tulsa County Jail for direct contempt of court. Petitioner was received by DOC on September 20, 1991.

While he was serving his Tulsa County sentence, Petitioner was brought before the United States District Court for the Northern District of Oklahoma on a Writ of Habeas Corpus ad Prosequendum to answer to a federal indictment filed against him in Case No. 90-CR-103-5-JED. On July 25, 1991, he was sentenced to life imprisonment for Conspiracy to Possess and Distribute 50 Grams or More of Cocaine Base. Petitioner was returned to DOC custody. On October 30, 1992, he was paroled on his Tulsa County case and transported to the U.S. Bureau of Prisons (BOP) to begin serving his federal sentence. His Tulsa County sentence was discharged

Summary of Facts and Judgment and Sentence reflect only that Petitioner was convicted in Count 1. Nothing in the record explains why judgment and sentence was not entered as to Counts 2 and 3.

on June 12, 1994. In 2015, the federal district court reduced Petitioner's sentence from life to 360 months imprisonment. He is presently serving his federal sentence in the custody of BOP and is scheduled to be released on July 12, 2017.

Petitioner has never served time for the sentence he received in this case. He has long had a detainer lodged against him in Oklahoma County to have him returned to this jurisdiction after he has satisfied his federal sentence so that he may be transported to DOC to commence his ten-year sentence in this matter. A letter contained in the district court file for this case reflects that on October 31, 1991, while Petitioner was still in DOC custody for his Tulsa County case, DOC sent a letter to the Oklahoma County Court Clerk requesting that a certified copy of Petitioner's Judgment and Sentence (J&S) in this matter be forwarded to DOC. On December 12, 1991, the Court Clerk's Office inexplicably responded by letter that no J&S had been filed. As a consequence, it appears DOC had no reason to know of Petitioner's sentence in this case when it paroled him to the custody of BOP in 1992.

On December 13, 1995, Petitioner, *pro se*, filed a pleading styled as "Motion Requesting Sentence to be Ran Concurrent." In support of his motion, he contended that federal law prohibited his federal sentence from being ordered to run concurrently with his state sentence; thus, he requested that this Court modify his sentence in this matter to be served concurrently with his federal sentence. On December 18, 1995, the Honorable James B. Blevins summarily denied the motion.

On October 17, 2008, Petitioner, *pro se*, filed a petition for writ of mandamus or prohibition in the Court of Criminal Appeals complaining that he was improperly paroled into federal custody in 1992 from his Oklahoma County and Tulsa County cases. The Court dismissed the petition on November 25, 2008, in Case No. MA-2008-977, because Petitioner

failed to demonstrate that his claim had been first presented to and denied by the district court and his certificate of service did not indicate notice was given to the adverse party.

On December 15, 2008, Petitioner filed a motion, styled as “Defendant’s Motion to Recall Warrant for His Arrest Due to Sentence Being Expired,” arguing that he was erroneously released from DOC before serving his sentence in this case. He requested the District Court find that he had satisfied his sentence in this matter and dismiss the detainer lodged against him by the Oklahoma County Sheriff’s Office. The Honorable Jerry D. Bass denied the motion on December 18, 2008, finding: “The docket sheet for the Oklahoma County Court Clerk as well as the records for the Oklahoma County Sheriff’s Office reveals no outstanding warrant exists in the above styled case.”² Petitioner did not appeal that order.

On January 17, 2017, Petitioner, by and through his assistant federal public defender, Barry L. Derryberry, filed the instant Application for Post-Conviction Relief and supporting brief. Therein, he requests that his J&S be amended to reflect that his sentence is satisfied or, alternatively, be amended to direct that the sentence be run concurrently with his federal sentence.


FINDINGS OF FACT & CONCLUSIONS OF LAW

The Court finds that although he was sentenced to ten years imprisonment in this matter and the Court of Criminal Appeals affirmed his judgment and sentence in 1990, Petitioner has never served any time on his sentence in this matter. Petitioner does not challenge the validity of his judgment or sentence. To be sure, the record reveals that the judgment and sentence was perfectly lawful at the time it was imposed. Nevertheless, through an unfortunate series of errors, most of which are not attributable to Petitioner, he has been unable to serve his sentence in this case or otherwise obtain relief. He has been incarcerated in either state or federal custody since

² It should be noted that the original paper docket in this case does reflect an outstanding warrant for Petitioner’s arrest, which was issued May 31, 1990. However, the warrant does not appear on the computerized docket on OSCN, which does not include entries for the time period between October 2, 1987, and February 15, 2000.

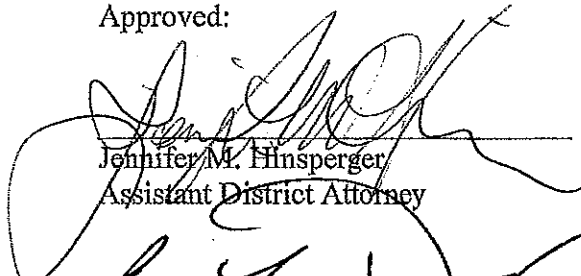
his arrest in Tulsa County in 1990. The Petitioner is now 60 years old and reported to be in very poor health. The Court finds, and the parties agree, that as a matter of equity and in the interests of justice, Petitioner's ten-year sentence of imprisonment should be modified to a ten-year suspended sentence. 22 O.S. § 1085.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Petitioner's Application for Post-Conviction Relief is **GRANTED**. Petitioner's Judgment and Sentence is hereby **MODIFIED** to reflect that his ten-year sentence is suspended in full.

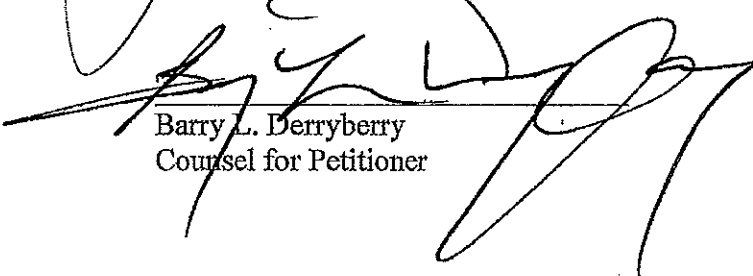


RAY C. ELLIOTT
JUDGE OF THE DISTRICT COURT

Approved:



Jennifer M. Hinsperger
Assistant District Attorney



Barry L. Derryberry
Counsel for Petitioner

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

FEB 16 2017

RICK WARREN COURT CLERK
Oklahoma County


CERTIFICATE OF SERVICE

I hereby certify that, on the 16th day of February, 2017, I mailed a certified copy of the above and foregoing order, with postage thereon fully prepaid, to Barry L. Derryberry, Office of the Federal Public Defender, Northern District of Oklahoma, One West Third St., Suite 1225, Tulsa, OK 74103; and that a copy of the same was hand-delivered to Jennifer M. Hinsperger, Assistant District Attorney, Oklahoma County District Attorney's Office.



Deputy Court Clerk