



ORIGINAL

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

VICTOR MANUEL CASTRO-HUERTA,)
)
 Appellant,)
 v.)
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)
)

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
SEP 14 2021
JOHN D. HADDEN
CLERK

Case No. F-2017-1203

MOTION TO LIFT STAY AND ISSUE MANDATE

Appellant, Victor Castro-Huerta, through his attorney of record, Danny Joseph, of the Oklahoma Indigent Defense System, requests that this Court lift its stay and issue the mandate in *Victor Manuel Castro-Huerta v. State of Oklahoma*, Oklahoma Court of Criminal Appeals Case No. F-2017-1203.

Appellant was convicted of neglecting his adopted daughter A.C. and was given a sentence of 35 years' imprisonment. A.C., however, was Indian and the crimes occurred within the borders of the Cherokee Nation. Because of this, this Court held that the State of Oklahoma had no jurisdiction to prosecute Appellant. Accordingly, on April 29, 2021, this Court remanded the conviction to the district court with instructions to dismiss. The mandate was to issue 20 days from the filing of the decision.

On April 29, 2021, the State moved to stay the mandate based on 4 factors. 1) This Court had stayed the mandate in *Bosse v. State*, 2021 OK CR 3, 2) The State had filed an application in the Supreme Court to further stay the mandate in *Bosse*, 3) The State alleged that its arguments in *Bosse* merit

Supreme Court review; and 4) The State alleged that it will file a certiorari petition with the same questions presented in Castro-Huerta.¹

Before this Court ruled on that motion, the State filed an additional motion on May 27, 2021 to stay the mandate indefinitely based on the fact that the United States Supreme Court granted a stay in *Bosse*.

This Court then granted both stays. The first stay expired on June 1, 2021, the only remaining stay is the indefinite stay filed June 2, 2021. This Court predicated the indefinite stay exclusively on the fact that a stay was granted in the United States Supreme Court in *Bosse*.

However, on August 12, 2021, this Court published the opinion of *State ex rel. Matloff v. Wallace*, 2021 OK CR 21. This case held that convictions that were final before McGirt cannot be challenged on post-conviction review. Thereafter, on August 31, 2021, citing *Matloff*, this Court withdrew the opinion in *Bosse*.²

The decision being vacated, the parties filed a joint stipulation to dismiss the Supreme Court appeal.³ Accordingly, on September 10, 2021, the petition for a writ of Certiori was dismissed⁴ pursuant to Supreme Court Rule 46.⁵

¹ As of the date of filing of this motion, Appellant has received no notice of the filing of a petition of a writ of certiorari to the United States' Supreme Court and believes such a petition has not been filed.

² A copy of the order withdrawing is attached as Exhibit 1

³ A copy of the stipulation is attached as Exhibit 2

⁴ A copy of the docket sheet showing dismissal is attached as Exhibit 3

⁵ Rule 46 allows the clerk of the court to issue an order of dismissal without any further reference to the court. *U.S. Sup. Ct. R. 46*

This Court's rules state that, "The mandate shall not be recalled, nor stayed pending an appeal to any other court...unless a majority of the Court, for good cause shown, recalls or stays the mandate." Rule 3.15(B), *Rules of the Oklahoma Court of Criminal Appeals*.

Appellant's case was dismissed more than four months ago. This Court has already determined that Appellant is entitled to relief, but due to this Court's stay, he is being deprived of that relief. This Court stayed the mandate in Appellant's case due to the Supreme Court's stay of the mandate in *Oklahoma v. Bosse*. Since *Bosse* has been dismissed, there are no longer any grounds to keep the stay in Appellant's case in place. Therefore, Appellant asks this Court to lift the stay in his case and issue the mandate.

Respectfully submitted,

VICTOR MANUEL CASTRO-HUERTA

By:



Danny Joseph
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General Appeals Division
Oklahoma Indigent Defense System
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ATTORNEY FOR APPELLANT

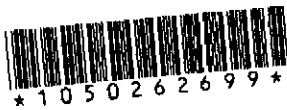
CERTIFICATE OF SERVICE

This is to certify that on September 14, 2021, a true and correct copy of the foregoing Notice of Assignment was caused to be mailed via United States Postal Service, postage pre-paid, to Appellant at the last-known address, and a copy was served upon the Attorney General by leaving a copy with the Clerk of the Court of Criminal Appeals for submission to the Attorney General.

Victor Manuel Castro-Huerta, No. 775868
North Fork Correctional Facility
1605 East Main Street
Sayre OK 73662



Danny Joseph



ORIGINAL

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

AUG 31 2021

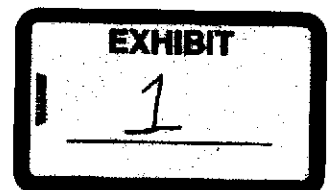
2021 OK CR 23
IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

JOHN D. HADDEN
CLERK

SHAUN MICHAEL BOSSE,)	<u>FOR PUBLICATION</u>
)	
Petitioner,)	
)	
v.)	Case No. PCD-2019-124
)	
THE STATE OF OKLAHOMA,)	
)	
Respondent.)	

ORDER VACATING PREVIOUS ORDER AND JUDGMENT
GRANTING POST-CONVICTION RELIEF
AND WITHDRAWING OPINION FROM PUBLICATION

¶1 Based on the Court's decision in *State ex rel. Matloff v. Wallace*, 2021 OK CR 21, ___ P.3d ___, the previous order and judgment granting post-conviction relief in this case are hereby **VACATED** and **SET ASIDE**. The issuance of the mandate in this case was previously stayed by this Court on April 15, 2021, and no mandate has issued. The opinion in *Bosse v. State*, 2021 OK CR 3, 484 P.3d 286 is **WITHDRAWN**. The Court will issue a separate order addressing Petitioner's claims for post-conviction relief at a later time.



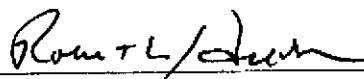
¶2 IT IS SO ORDERED.

¶3 WITNESS OUR HANDS AND THE SEAL OF THIS COURT

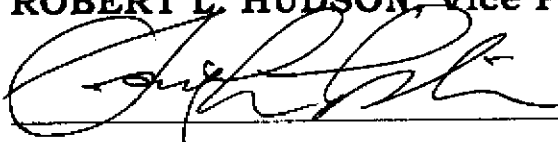
this 31st day of August, 2021.



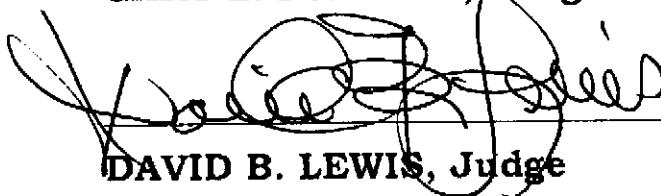
SCOTT ROWLAND, Presiding Judge



ROBERT L. HUDSON, Vice Presiding Judge

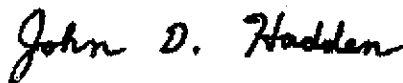


GARY L. LUMPKIN, Judge



DAVID B. LEWIS, Judge

ATTEST:



Clerk

IN THE SUPREME COURT OF THE UNITED STATES

No. 21-186

STATE OF OKLAHOMA, PETITIONER

v.

SHAWN MICHAEL BOSSE

JOINT STIPULATION TO DISMISS

Pursuant to Rule 46.1 of the Rules of this Court, all parties stipulate that this case be dismissed. No fees are due to the Clerk, and each party will bear its own costs.

Respectfully submitted.

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September 3, 2021



51 = Search documents in this case: Search

No. 21-186 * CAPITAL CASE *****

Title: **Oklahoma, Petitioner**
v.
Shaun Michael Bosse

Docketed: August 10, 2021

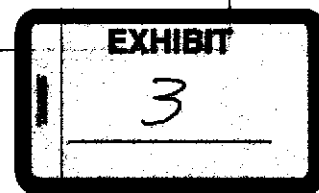
Linked with 20A161

Lower Ct: Court of Criminal Appeals of Oklahoma

Case Numbers: (PCD-2019-124)

Decision Date: March 11, 2021

DATE	PROCEEDINGS AND ORDERS
Apr 26 2021	Application (20A161) for a stay of mandate, submitted to Justice Gorsuch. Main Document Proof of Service
Apr 27 2021	Response to application (20A161) requested by Justice Gorsuch, due Friday, May 7, by 3 p.m. ET.
May 07 2021	Response to application from respondent Shaun Michael Bosse filed. Main Document Proof of Service
May 07 2021	Motion for leave to file amicus brief and motion for leave to file brief in compliance with Rule 33.2 filed by Chickasaw Nation. Main Document Other Proof of Service
May 12 2021	Reply of applicant Oklahoma filed. Reply Proof of Service
May 17 2021	Motion for leave to file amicus brief filed by United States. Proof of Service Main Document



May 21 2021	Supplemental brief of applicant Oklahoma filed. Main Document Proof of Service
May 26 2021	Application (20A161) referred to the Court.
May 26 2021	Application (20A161) granted by the Court. The application to stay the mandate of the Court of Criminal Appeals of Oklahoma, case No. PCD-2019-124, presented to Justice Gorsuch and by him referred to the Court is granted pending the timely filing and disposition of a petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court. Justice Breyer, Justice Sotomayor, and Justice Kagan would deny the application.
Aug 06 2021	Petition for a writ of certiorari filed. (Response due September 9, 2021) Petition Appendix Certificate of Word Count Proof of Service
Aug 17 2021	Blanket Consent filed by Petitioner, Oklahoma Blanket Consent
Sep 03 2021	Joint stipulation for dismissal pursuant Rule 46.1 filed. Main Document Proof of Service
Sep 10 2021	Petition Dismissed - Rule 46.

NAME	ADDRESS	PHONE
Attorneys for Petitioner		
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Party name: Oklahoma		