No. _____

In The
Supreme Court of the United States

LAWRENCE JAMIR TAYLOR,

Petitioner,

v.

TERRY MARTIN, WARDEN,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

M. MICHAEL ARNETT
Counsel of Record
JOHN THOMAS HALL
ARNETT LAW FIRM
3133 N.W. 63rd Street
Oklahoma City, OK 73116
Telephone: (405) 767-0522
Facsimile: (405) 767-0529
Email: mikearnett1@juno.com
john_hall70@yahoo.com
Attorneys for Petitioner

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

1. In this case, is the date the Petitioner received the affidavit of Mr. Cheatham repudiating his trial testimony, or the date of the actual trial testimony, the critical date for beginning the statute of limitations in 18 U.S.C. § 2244(D)?

2. If a state provides for post-conviction relief, should they provide substantive federal due process in applying its post-conviction procedures?

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PETITION FOR WRIT OF CERTIORARI

Lawrence Jamir Taylor, respectfully petitions for a Writ of Certiorari to review the Opinion and Judgment of the United States Court of Appeals – Tenth Circuit which sustained the Order and Opinion of the United States District Court for the Northern District of Oklahoma, denying my Petition for Writ of *Habeas Corpus* and Certificate of Appeal (COA).

OPINION BELOW

The opinion of the Tenth Circuit Court of Appeals is published and cited in the Tenth Circuit as *Taylor v. Martin* (10th Cir. 2014), Case No. 14-5030. The Petitioner could find no current Federal Reporter citation. The decision of the District was not published, but the ruling is attached as Appendix pg. 9. The Opinion and Judgment of the Tenth Circuit are attached as Appendix pg. 1 and pg. 8.

JURISDICTION

The Tenth Circuit filed its decision on July 8, 2014, and entered an order denying the petitioner a COA and dismissing the appeal. On July 21, 2014, the petitioner filed a motion for an *en banc* hearing, and the court denied that on August 6, 2014. The Court has jurisdiction to review the Circuit Court's decision pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2244(D)(1) and 28 U.S.C. § 2254

Pursuant to the AEDPA, a person in state custody has one (1) year to file a Petition pursuant to § 2254. The relevant portion of § 2244 places the following time limit on that year:

> "(a) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review. . . . or
>
> (d) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence."

28 U.S.C. § 2254 provides in part:

> "(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.
>
> . . .
>
> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

STATEMENT OF FACTS

On May 19, 2009, the Petitioner was convicted of Murder in the First Degree and Shooting with Intent to Kill. He was sentenced to life without parole on the first charge and life with the possibility of parole on the second, to run consecutively. The judgments and sentences were affirmed by the Oklahoma Court of Appeals on February 16, 2011.

The Petitioner filed an Application for Post-Conviction Relief (PCR) on September 15, 2011. The Petitioner had obtained an affidavit from Jason Cheatham, dated July 31, 2011, and received by the Petitioner around the middle of August. (See Appendix pg. 31) The District Court held a hearing on December 16, 2011, and denied the Application.

Cheatham did not appear at the hearing, and there was discussion that the State would file perjury charges against Cheatham if he testified to the contents of the affidavit. The Petitioner requested

additional time to subpoena Cheatham, and the court's assistance to do so. The court refused the request.

The Assistant District Attorney gave rank hearsay testimony to what Cheatham stated to him during the investigation. He further gave testimony that he believed what Cheatham said to him in the investigation, and not what he said in the affidavit. He verified the truth and veracity of Cheatham's testimony at trial. It was an abuse of discretion by the court to use this testimony to deny the Application for PCR.

The Petitioner appealed the District Court's decision to the Oklahoma Court of Criminal Appeals (OCCA), PC-2012-84, and the OCCA summarily affirmed the denial of the PCR, without discussing any federal constitutional issues.

The Petitioner filed a Petition pursuant to 28 U.S.C. § 2254 with the United States District Court for the Northern District of Oklahoma, on June 19, 2013. The court refused to issue a COA, and dismissed the appeal. The court found that the petition was time barred because Cheatham's lying in court was the crucial fact giving rise to § 2244(D), not the affidavit, which recanted the testimony.

The court further found that federal courts do not review procedural errors in post-conviction cases because post-conviction review was not a constitutional guarantee.

The Petitioner appealed the District Court Decision to the Tenth Circuit on July 8, 2014, and the Tenth Circuit agreed with the District Court that the § 2254 Petition was time barred because the critical fact which triggered the § 2244(D) time limitation was Cheatham's lying in trial court, and not the receipt of the affidavit.

The Petitioner requested an *en banc* hearing which was denied without comment on August 6, 2014.

REASONS FOR GRANTING THE WRIT

1. THE COURT SHOULD FIND THAT THE CRUCIAL FACT WHICH GIVES RISE TO THE USE OF § 2244(D) IS THE AFFIDAVIT OF MR. CHEATHAM, NOT MR. CHEATHAM'S PERJURY AT TRIAL

The Petitioner knew at trial that Cheatham had lied about the fact that the Petitioner confessed to him. However, there was no evidence at the time of trial to use to cross-examine Cheatham, and prove that he was lying.

The Petitioner did not know the specifics of the Cheatham Affidavit (See Appendix pg. 31) until he received it. The Petitioner did not know that Cheatham was out of town in Missouri on the day Cheatham testified to having heard Petitioner's confession. The fact that the Tulsa Police Department threatened Cheatham with a charge of Accessory to

Murder obviously does not appear in any discovery, provided to the defense prior to trial.

The Court cites the case of *Craft v. Jones*, 435 F. App'x 789 (10th Cir. 2011), an unpublished opinion. In that case, the Petitioner provided an affidavit from a **person present at the scene of the alleged crime**. The affiant stated that he was present, and that the Petitioner acted in self-defense.

The Petitioner's case is clearly distinguishable from *Craft, supra.* The distinguishing characteristic between the cases is bound in the logical proposition of trying to prove a positive and proving a negative. In the case of *Craft, supra*, the Petitioner knew the affiant was present, and could have called him as a witness, or if the affiant testified, he could have been cross examined. Craft had positive facts to assist him. In the Petitioner's case, Mr. Cheatham testified that he was present, and the fact that Mr. Cheatham was lying about being there at the alleged confession is basically impossible to prove, because the Petitioner had no evidence of his absence, and the Petitioner could prove Mr. Cheatham was in Missouri, until Cheatham admitted that fact in his affidavit.

Further, any questioning of Cheatham at trial would have been based on non-relevant, non-admissible, evidence, before the affidavit was obtained. Strangely enough, the rule on relevant evidence in Oklahoma can be found in *Taylor v. State*, 248 P.3d 362, 2011 OK CR 8 (Okla. Crim. App. 2011), which was the Petitioner's direct appeal in this

matter, where the Petitioner challenged the admission of certain photographs. The court found:

> "Relevant evidence is defined as evidence having any tendency to make the existence of a fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. 12 O.S.2001, § 2401. Relevant evidence need not conclusively, or even directly, establish the defendant's guilt; it is admissible if, when taken with other evidence in the case, it tends to establish a material fact in issue. Relevancy and materiality of evidence Aare matters within the sound discretion of the trial court absent an abuse thereof. *Patton v. State*, 1998 OK CR 66, ¶ 73, 973 P.2d 270, 293-94, *citing Robedeaux v. State,* 1993 OK CR 57, ¶ 60, 866 P.2d 417, 432."

In this case, the Petitioner had no evidence, in trial or appeal, which would "when taken with other evidence in the case, tends to establish a material fact in issue." Without the affidavit which negates Cheatham's trial testimony, there is no other sufficient evidence to prove that Cheatham lied at trial.

The question here is what is the critical issue with regards to due diligence? In *Johnson v. United States*, 544 U.S. 295 (2005), the Court held:

> "The Court's job here is to find a sensible way to apply paragraph four when AEDPA's drafters probably never thought about the present situation. The answer to the question of how to implement the statutory mandate

> that a petitioner act with "due diligence" in discovering the crucial fact of a vacatur order that he himself seeks is that he take prompt action as soon as he is in a position to realize that he has an interest in challenging the prior conviction with its potential to enhance the later sentence."

In this case, the critical fact is the contents of the affidavit of Cheatham, not his testimony at trial. Without the affidavit, there are no critical facts to establish the Petitioner's case, and discredit Cheatham's trial testimony.

Therefore, the Court should reverse the ruling of the Court of Appeals, and the Federal District Court, and allow the time pursuant to § 2244(D) to run from the receipt of the affidavit from Cheatham by the Petitioner, which would have, as set out in the District Court decision, constituted timely filing of the Writ.

2. IF A STATE PROVIDES FOR POST-CONVICTION RELIEF, THE COURTS SHOULD ABIDE BY THE FEDERAL STANDARD OF DUE PROCESS AND EQUAL PROTECTION

The Federal District Court opined that federal courts could not consider procedure in state post-conviction relief applications because a person is not constitutionally guaranteed post-conviction relief.

The Court cites *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987) and *Sellers v. Ward,* 135 F. 3d 1333, 1339 (10th Cir. 1998). *Sellers, supra,* states that a challenge on post-conviction procedures on their face fail to state a cognizable federal constitutional claim. The Tenth Circuit stated that there was no reason to address the claim, since they denied the COA on other issues.

The Petitioner is not challenging the post-conviction procedures on their face, but on their application to him. This is a substantive due process federal constitutional claim.

The words "due process" suggest a concern with procedure, and that is how the Due Process Clause is generally understood. The due process clause of the Fourteenth Amendment clause also promises that before depriving a citizen of life, liberty or property, the government must follow fair procedures. Citizens are also entitled to have the government observe or offer fair procedures, whether or not those procedures have been provided for in the law on the basis of which it is acting. Action denying the process that is "due" would be unconstitutional.

This is well explained in *McDonald v. City of Chicago*, 130 S. Ct. 3020, 177 L.Ed.2d 894 (2010), where the court held:

> "(2) Justice Black championed the alternative theory that § 1 of the Fourteenth Amendment totally incorporated all of the Bill of Rights' provisions, see, *e.g., Adamson v. California,* 332 U.S. 46, 71-72, 67 S.Ct.

1672, 91 L.Ed. 1903 (Black, J., dissenting), but the Court never has embraced that theory. Pp. 3032-3033.

(3) The Court eventually moved in the direction advocated by Justice Black, by adopting a theory of selective incorporation by which the Due Process Clause incorporates particular rights contained in the first eight Amendments. See, *e.g., Gideon v. Wainwright,* 372 U.S. 335, 341, 83 S.Ct. 792, 9 L.Ed.2d 799. These decisions abandoned three of the characteristics of the earlier period. The Court clarified that the governing standard is whether a particular Bill of Rights protection is fundamental to our Nation's particular scheme of ordered liberty and system of justice. *Duncan, supra,* at 149, n. 14, 88 S.Ct. 1444. The Court eventually held that almost all of the Bill of Rights' guarantees met the requirements for protection under the Due Process Clause. The Court also held that Bill of Rights protections [130 S.Ct. 3023] must "all . . . be enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment." *Malloy v. Hogan,* 378 U.S. 1, 10, 84 S.Ct. 1489, 12 L.Ed.2d 653. Under this approach, the Court overruled earlier decisions holding that particular Bill of Rights guarantees or remedies did not apply to the States. See, *e.g., Gideon, supra,* which overruled *Betts v. Brady,* 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595. Pp. 3034-3036."

In this case, the Petitioner's substantive rights to a fair and impartial hearing were violated, by denying him federal due process of law. The state law was misapplied which denied the Petitioner substantive federal constitutional due process. Regardless of whether post-conviction relief is federally guaranteed; substantive federal due process is. The Federal District Court and the Tenth Circuit should address these issues and modify *Finley*, *Sellers*, *supra.*

CONCLUSION

The Supreme Court should reverse the decision of the Tenth Circuit, and find that the "critical factor" which gives rise to § 2244(D) should be the Petitioner's receipt of the affidavit of Cheatham, which discredited his trial testimony, and not his trial testimony itself, for all of the argument given above.

Further, the Court should remand this case to the Federal District Court, or the Tenth Circuit Court, to rule on the issue of the violation of the Petitioner's substantive procedural due process rights by the Oklahoma Courts during his post-conviction proceedings. The Petitioner would ask the Supreme Court to

modify *Finley, Sellers, supra*, to reflect this change in constitutional law.

Respectfully submitted,

M. MICHAEL ARNETT
Counsel of Record
JOHN THOMAS HALL
ARNETT LAW FIRM
3133 N.W. 63rd Street
Oklahoma City, OK 73116
Telephone: (405) 767-0522
Facsimile: (405) 767-0529
Email: mikearnett1@juno.com
john_hall70@yahoo.com
Attorneys for Petitioner

PUBLISH

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

LAWRENCE JAMIR TAYLOR, Petitioner-Appellant, v. TERRY MARTIN, Warden, Respondent-Appellee.	No. 14-5030

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA (D.C. No. 13-CV-00363-TCK-FHM)

(Filed Jul. 8, 2014)

Submitted on the briefs:*

M. Michael Arnett of Arnett Law Firm, Oklahoma City, Oklahoma, for Petitioner-Appellant.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The cause therefore is ordered submitted without oral argument.

Joshua L. Lockett of Office of the Attorney General for the State of Oklahoma, Oklahoma City, Oklahoma, for Respondent-Appellee (did not file a brief in this proceeding pursuant to 10th Cir. R.22.1(B).)

Before **KELLY**, **BALDOCK**, and **BACHARACH**, Circuit Judges.

KELLY, Circuit Judge.

Petitioner-Appellant Lawrence Jamir Taylor seeks a certificate of appealability (COA) to appeal the district court's dismissal of his petition for writ of habeas corpus under 28 U.S.C. § 2254. *Taylor v. Martin,* No. 13-cv-363-TCK-FHM, 2014 WL 357083 (N.D. Okla Jan. 31, 2014). We deny his request and dismiss his appeal.

Background

On May 19, 2009, an Oklahoma jury found Mr. Taylor guilty of first degree murder and shooting with intent to kill. App. 6; *Taylor,* 2014 WL 357083, at *1. He was sentenced to consecutive life terms of imprisonment. *Taylor,* 2014 WL 357083, at *1. On February 16, 2011, the Oklahoma Court of Criminal Appeals (OCCA) affirmed his convictions and sentences. *Taylor v. State,* 248 P.3d 362, 380 (Okla. Crim. App. 2011). He did not seek a writ of certiorari from the

United States Supreme Court. *Taylor,* 2014 WL 357083, at *3.

On September 16, 2011, Mr. Taylor filed an application for post-conviction relief in state district court. *Id.* at *4. The focus of his claim was that a government witness, Jason Cheatham, lied at trial when he testified that Mr. Taylor had confessed that he shot the two victims. *Id.* To back up this claim, Mr. Taylor offered an affidavit executed by Mr. Cheatham, in which Mr. Cheatham recanted his testimony that Mr. Taylor had confessed to him. *Id.* On December 29, 2011, the state district court denied post-conviction relief. *Id.* Mr. Taylor appealed to the OCCA, alleging that procedural inadequacies and evidentiary rulings in the post-conviction proceedings violated his constitutional rights. *Id.* The OCCA affirmed the denial of post-conviction relief. *Id.*

On June 19, 2013, Mr. Taylor filed a petition under 28 U.S.C. § 2254 in federal district court. *Id.* The government responded with a motion to dismiss Mr. Taylor's petition as time barred. *Id.* The district court agreed and dismissed Mr. Taylor's petition with prejudice and denied a certificate of appealability. *Id.* at *9. Mr. Taylor appealed to this court.

Discussion

A COA requires that an applicant make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where, as here, the district court denied a § 2254 petition on procedural

grounds, the petitioner must demonstrate that it is reasonably debatable whether (1) the petition states a valid claim of the denial of a constitutional right and (2) the district court's procedural ruling in correct. *Slack v. McDaniel,* 529 U.S. 473, 484 (2000). Without both showings, no appeal is warranted.

The Antiterrorism and Effective Death Penalty Act imposes a one-year limitation period on petitions filed under 28 U.S.C. § 2254. 28 U.S.C. § 2244(d)(1). Relevant here, the limitation period runs from the later of:

> (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review; . . . or
>
> (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

Id. § 2244(d)(1)(A), (D). The district court found that Mr. Taylor's petition was time barred under either of these provisions. *Taylor,* 2014 WL 357083, at *5. First, it found that under § 2244(d)(1)(A), Mr. Taylor's convictions became final on May 17, 2011, after the OCCA concluded its direct review and after the 90-day period for petitioning the United States Supreme Court for a writ of certiorari had lapsed. *Id.* Given statutory tolling for his post-conviction proceedings – which lasted from September 16, 2011, to August 3, 2012 – Mr. Taylor had until April 5, 2013, to file his

petition; he filed it on June 19, 2013, more than two months too late. *Id.* at *6.

Second, the court found that Mr. Taylor did not benefit from a later accrual date under § 2244(d)(1)(D). *Id.* at *5. The "factual predicate" underlying his claim – that Mr. Cheatham perjured himself at trial – was discovered, or could have been discovered, on May 6, 2009, the day Mr. Cheatham testified. *Id.* That is, Mr. Taylor knew or should have known that Mr. Cheatham's testimony was false when he heard Mr. Cheatham testify to something Mr. Taylor knew to be untrue. *See id.* The fact that Mr. Taylor first obtained an affidavit from Mr. Cheatham to this effect in August 2011 did not change this conclusion. *Id.*

On appeal, Mr. Taylor, through his attorney, only challenges the second of these holdings. Aplt. Br. 7. Mr. Taylor argues that Mr. Cheatham's affidavit was "newly discovered evidence," and, "even though he knew that Mr. Cheatham lied at trial," he needed an affidavit saying that to avail himself of post-conviction relief. *Id.* at 10. He also invokes Mr. Cheatham's "Fifth Amendment right to remain silent," *id.* at 8, and "the state rules of evidence," *id.* at 10.

Our unpublished case, *Craft v. Jones,* 435 F. App'x 789 (10th Cir. 2011) (unpublished),[1] is persuasive. There, the petitioner sought to avail himself of

[1] This unpublished opinion is cited for its persuasive value only. 10th Cir. R. 32.1(A).

§ 2244(d)(1)(D) because he had "new evidence in the form of an affidavit." *Id.* at 791. The affiant claimed that he was present during the stabbing for which the petitioner was convicted, and that the petitioner had committed the stabbing in self-defense. *Id.* This court held that the "date on which the factual predicate of the claim . . . could have been discovered" was the date of the stabbing, not the date of the affidavit. *Id.* (quoting 28 U.S.C. § 2244(d)(1)(D)). If the affiant was present at the stabbing, as he claimed, then the petitioner would have been aware that the affiant was a witness to the event long before the affidavit. *Id.*

The same is true here. The "factual predicate" of Mr. Taylor's claim is that Mr. Cheatham lied when he testified on May 6, 2009, not that he swore out an affidavit to that effect in August 2011. This fact was apparent much sooner than May 17, 2011 – the date on which Mr. Taylor's convictions became final. Mr. Taylor's assertion that "he was dependant [sic] on Chatham's [sic] decision to waive his Fifth Amendment Rights and prepare an affidavit," Aplt. Br. 8, is without support. *See United States v. Wong,* 431 U.S. 174, 178 (1977) ("[T]he Fifth Amendment privilege does not condone perjury."); *Bellis v. United States,* 417 U.S. 85, 90 (1974) ("[T]he Fifth Amendment privilege is a purely personal one."). Mr. Taylor's assertion that "[w]ith no affidavit, no cause would have been available under the state law," Aplt. Br. 9, is unavailing absent a demonstration of what state law requires. The same goes for his assertion that he

"could not have complied with the state rules of evidence without" an affidavit, *id.* at 10; Mr. Taylor leaves us guessing as to how the evidence rules barred him from pursuing his claim absent sworn testimony from Mr. Cheatham.

We are persuaded that reasonable jurists would not debate whether Mr. Taylor's § 2254 petition was time barred. He has not made a substantial showing that the district court erred by finding that "the date on which the factual predicate of the claim . . . could have been discovered" was earlier than May 17, 2011, "the date on which the judgment became final." 28 U.S.C. § 2244(d)(1)(A), (D). We need not reach the district court's alternative holding concerning the availability of a federal right to state post-conviction review. *See Taylor,* 2014 WL 357083, at *8.

We DENY a COA and DISMISS this appeal.

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LAWRENCE JAMIR TAYLOR, Petitioner-Appellant, v. TERRY MARTIN, Warden, Respondent-Appellee.	No. 14-5030 (D.C. No. 4: 13-CV-00363-TCK-FHM)

JUDGMENT

(Filed Jul. 8, 2014)

Before **KELLY**, **BALDOCK**, and **BACHARACH**, Circuit Judges.

This case originated in the Northern District of Oklahoma and was submitted on the briefs at the direction of the court.

The appeal is dismissed.

Entered for the Court

/s/ Elisabeth A. Shumaker

ELISABETH A. SHUMAKER, Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

LAWRENCE JAMIR TAYLOR,	)	
Petitioner,	)	
vs.	)	**Case No. 13-CV-363-TCK-FHM**
TERRY MARTIN, Warden,	)	
Respondent.	)	

OPINION AND ORDER

This is a 28 U.S.C. § 2254 habeas corpus action. Petitioner is a state inmate and is represented by counsel. In response to the petition, Respondent filed a motion to dismiss petition for writ of habeas corpus as time barred by the statute of limitations (Dkt. # 5), along with a supporting brief (Dkt. # 6). Petitioner filed a response (Dkt. # 9) to the motion to dismiss. Respondent filed a reply (Dkt. # 10). Petitioner filed a reply (Dkt. # 11) to Respondent's reply. For the reasons discussed below, Respondent's motion to dismiss is granted and the petition is dismissed with prejudice as time barred.

BACKGROUND

The record reflects that at the conclusion of a jury trial, held in Tulsa County District Court, Case No. CF-2008-2033, Petitioner Lawrence Jamir Taylor was convicted of First Degree Murder (Count 1), and Shooting With Intent to Kill (Count 2). *See* Dkt. # 2.

In accordance with the jury's recommendation, the trial judge sentenced Petitioner to life imprisonment without the possibility of parole on Count 1 and life imprisonment on Count 2, with the sentences to be served consecutively. *Id.* Petitioner was represented at trial by attorney Richard Couch.

Represented by attorney Stuart Southerland, Petitioner appealed his convictions to the Oklahoma Court of Criminal Appeals (OCCA). In a published Opinion, filed February 16, 2011, in Case No. F-2009-486, the OCCA affirmed the Judgments and Sentences of the trial court. *See* Dkt. # 6-2; *Taylor v. State,* 248 P.3d 362 (Okla. Crim. App. 2011). The OCCA summarized the facts resulting in Petitioner's convictions,[1] as follows:

> Sometime in mid-April, 2008, Anthony Baltazar bought a stereo from the Appellant's brother, Joekele Venson. Baltazar met the Appellant for the first time at Big Joe's stereo shop, where the sound system was being installed. Baltazar later discovered that the stereo would not work. He was able to make contact with Appellant, and through him, tried to make arrangements for Joekele Venson to return the money paid for the stereo.

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[1] A state court's findings of fact are entitled to a presumption of correctness. *See* 28 U.S.C. § 2254(e)(1). A habeas petitioner has the burden of rebutting the presumption with clear and convincing evidence. *Id.*

The State presented evidence that Appellant and Baltazar exchanged a series of text messages and phone calls to arrange a meeting near the Ashley Park apartment complex, between Sheridan and Yale Avenues on 71st Street in Tulsa. Appellant actually lived approximately two hundred yards from the site of the meeting, in the Eagle Point Apartments. Anthony Baltazar and his brother-in-law, Joe Gomez, arrived at the meeting place between 10:00 and 10:30 p.m., on April 28, 2008.

According to Baltazar's testimony at trial, Appellant opened the rear door of Baltazar's car and got inside. He then told Baltazar to drive to the other side of the street because it was closer to his girlfriend's apartment. As Baltazar was driving to the other side of the street, he heard a shot. Baltazar remembered falling over the center console of the car. He felt his spirit ascend from his body. He asked God for a second chance, and then regained consciousness. The car had come to a stop in the parking lot. Baltazar began honking on the horn. He had been shot in the back of the head.

Baltazar's honking attracted the attention of a young woman in the apartments. From her second floor apartment she could see him sitting in the car, with the door open and one leg on the ground. Baltazar told her he had been shot and asked her to call 911. Baltazar's girlfriend happened to call him on the cell phone at some point. He told her he

had been shot by "Joe's little brother." Tulsa Police Officer Jeff Oloman responded to the scene, finding Baltazar still sitting in his vehicle and conscious, but covered in blood. Joe Gomez was in the passenger seat, apparently dead from a gunshot wound to the head. Police recovered what proved to be the murder weapon, a .38 Special caliber revolver, lying on the rear floorboard near the front passenger seat.

Police traced Appellant's residence to the nearby Eagle Point Apartments, where he lived with his grandmother. The morning after the shooting, a police detective interviewed Appellant's grandmother. She told the detective that she had seen Appellant around 10:30 p.m. the night before. He ran into her apartment, sweating, and hid in a bedroom closet. When she asked him what was wrong, he said "Nothing." He then washed his hands in the bathroom, made a phone call, and left the apartment. She heard a car door slam and a car speeding away. She had not seen him since.

Appellant's grandmother was not the only person to see him after the crimes. Appellant called one of his friends, Cheatham, for a ride on the day after the shootings. Cheatham testified he picked up Appellant at Promenade Mall. Appellant was upset and nervous. Cheatham asked him what was wrong. Appellant replied that he had "messed up." Cheatham picked up Appellant again the following day. Appellant was still

agitated. He told Cheatham he believed he had killed two Mexicans over a debt owed by him and another person. Appellant stated that he had arranged to meet the men near the Ashley Park apartments, at which point he had shot the driver and passenger from the back seat. Appellant also told Cheatham he believed he had dropped his gun. Cheatham identified the pistol recovered from Baltazar's car as Appellant's. Appellant also confessed the shooting to Cheatham's mother, Ms. Basham. She testified that Appellant told her he "shot two Mexicans," over money that he owed them. Appellant asked Ms. Basham for money to buy a bus ticket, but she offered only to help him turn himself in to police. Cheatham and Appellant then left her house.

Appellant also contacted another friend after the shootings, Ms. Vanco. She testified that Appellant texted her, said he needed to talk, and asked if he could come over to her house. When she asked why, he refused to tell her. He then asked if she had watched the news. She asked Appellant if he was talking about a murder at Observation Point. Appellant told her it was not that murder. Vanco then asked if it was the murder where one Mexican had been killed and another shot. Appellant said, "Yes." Appellant and Cheatham visited Vanco's house on May 1, 2008, three days after the shootings. Appellant brought a bag into the house. He stated to Vanco that someone had set him up, leaving his gun at the crime scene. He also stated

that the victims had been looking for him over a problem with his brother. Appellant said he was leaving for Cleveland, Ohio, to live with his aunt. Police arrested Appellant at Vanco's apartment.

Police recovered Appellant's bag from Vanco's apartment. Inside they found a cell phone bill in Appellant's name and a spent .38 caliber cartridge. Ballistics analysis of this shell casing matched it to the pistol recovered in Baltazar's car. A search of the apartment where Appellant lived with his grandmother recovered a box of Independence brand .38 Special caliber ammunition in the same closet where Appellant had hidden the night of the shooting. These cartridges were the same brand and shared the same markings as the cartridges recovered from the pistol in Baltazar's car and the spent casing found in Appellant's bag. Investigators also recovered Appellant's fingerprints from the exterior of the left rear door of Baltazar's vehicle, the interior driver's door handle and the left rear passenger door handle. Investigators found a blood transfer stain in the rear seat, probably the result of the shooter's contact with the victims as he reached into the front of the vehicle to put the transmission in park or unlock the rear doors.

The medical examiner testified that Joe Gomez died from a single gunshot wound to the head. The projectile recovered from Mr. Gomez was .38 caliber in size, and traveled through the brain from left to right, slightly

> downward, stopping in his right cheek. The bullet severed the brain stem and caused instant death. The bullet recovered from Mr. Baltazar's head was a .22 caliber bullet.
>
> The defense called witnesses who testified to inconsistent statements by Mr. Baltazar concerning the identification of the shooter. He told a nurse at St. Francis Hospital that he was shot by a stranger. He told a detective that he did not know who shot him, only that the shooter was a black male. A physician's assistant testified that Baltazar was unable, or possibly unwilling, to identify the shooter. Appellant did not testify.

Taylor, 248 P.3d at 366-68; Dkt. # 6-2 at 1-6. In affirming Petitioner's Judgment and Sentence on direct appeal, the OCCA adjudicated the following claims: (1) insufficient evidence supported the conviction for Shooting With Intent to Kill, (2) the district court erred by failing to give an instruction that each count should be considered separately, (3) extrajudicial statements by Petitioner's grandmother were admitted in violation of the rule against hearsay and Petitioner's right to confront his accusers, (4) photographs of the shooting victims were improperly admitted, (5) the prosecutor engaged in improper conduct, and (6) cumulative error. *See* Dkt. # 6-2. The OCCA found the trial court erred in admitting the statements of Petitioner's grandmother, but that the error was harmless. *Id.* at 10-24. In addition, the OCCA found that the prosecutor made erroneous statements about the 85% Rule, but that the statements had no substantial

influence on the outcome of the trial and were, therefore, harmless. *Id.* at 29-33. After the OCCA affirmed his Judgment and Sentence on direct appeal, Petitioner did not seek certiorari review in the United States Supreme Court.

On September 16, 2011, Petitioner, represented by attorney M. Michael Arnett, filed an application for post-conviction relief. *See* Dkt. # 6-3. He raised one proposition of error, as follows:

> The petitioner was denied due process of law by being denied a fair and impartial trial, in violation of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America and the Constitution and laws of the State of Oklahoma.

See Dkt. # 6-3 at 2. The focus of Petitioner's post-conviction claim was that a witness for the State, Jason Cheatham, lied when he testified during Petitioner's trial that, two days after the shootings, Petitioner had confessed that he shot the two victims. *Id.* In support of his claim, Petitioner provided the affidavit of Cheatham, executed on July 31, 2011. By order filed December 29, 2011, the state district court denied post-conviction relief. *See* Dkt. # 6-4. Petitioner appealed. In his brief in chief, Petitioner raised two claims, both challenging the state district court's post-conviction rulings, as follows:

Proposition One: The court should have given the petitioner additional time to subpoena Cheatham to testify and the court should have assisted petitioner

in getting Cheatham to the hearing and is an abuse of discretion by the court and violative of the Petitioner's rights a[s] guaranteed by Article 2, Section 20 of the Oklahoma Constitution and the Sixth and Fourteenth Amendments to the Constitution of the United States of America.

Proposition Two: The admission of the testimony of Rush concerning the truth and veracity of the facts stated by Cheatham to Rush in an unsworn statement should not have been considered because it is violative of the Oklahoma Rules of Evidence and is an abuse of the discretion of the court and violative of the petitioner's right of due process pursuant to Article 2, Section 7 of the Oklahoma Constitution and the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

On August 3, 2012, in Case No. PC-2012-84, the OCCA affirmed the denial of post-conviction relief. *See* Dkt. # 6-6.

On June 19, 2013, Petitioner, represented by attorneys John Thomas Hall and M. Michael Arnett, filed his federal petition for writ of habeas corpus (Dkt. # 2). In his petition, Petitioner challenges only the post-conviction rulings made by the state district court. He claims that the state district court erred in

denying his application for post-conviction relief because (1) the court allowed the prosecutor "to vouch for the credibility of Mr. Cheatham's unsworn statements," and (2) the court abused its discretion "by not allowing the Petitioner additional time to locate Mr. Cheatham, and have him at the PCR hearing." *See* Dkt. # 2 at 10. Petitioner again relies on the affidavit of Jason Cheatham, executed on July 31, 2011. *See* Dkt. # 2-1. In response to the petition, Respondent filed a motion to dismiss (Dkt. # 5), arguing that the petition is time barred.

ANALYSIS

A. Any challenge to the judgment of conviction is time-barred

To the extent Petitioner's claims could be construed as a challenge to the validity of his convictions,[2] his claims are time barred. The Antiterrorism and Effective Death Penalty Act (AEDPA), enacted April 24, 1996, established a one-year limitations period for habeas corpus petitions as follows:

> (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to

[2] Significantly, Petitioner is represented by counsel in this case. Therefore, the Court is not obligated to construe his pleadings liberally. *See Haines v. Kerner,* 404 U.S. 519, 520 (1972) (stating that "the allegations of the pro se complaint [are held] to less stringent standards that formal pleadings drafted by lawyers").

the judgment of a State court. The limitation period shall run from the latest of –

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State actions;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d). In general, the limitations period begins to run from the date on which a prisoner's conviction becomes final, but can also commence under the terms of § 2244(d)(1)(B), (C), and (D). In addition, the limitations period is tolled or suspended during the pendency of a state application for post-conviction relief properly filed during the limitations period. § 2244(d)(2).

Application of either 28 U.S.C. § 2244(d)(1)(A) or § 2244(d)(1)(D) leads to the conclusion that Petitioner filed his habeas petition after expiration of the one-year limitations period. For purposes of § 2244(d)(1)(A), Petitioner's convictions became final on May 17, 2011, after the OCCA concluded direct review on February 16, 2011, and the 90 day time period for filing a petition for writ of certiorari in the United States Supreme Court had lapsed. *See Locke v. Saffle,* 237 F.3d 1269, 1273 (10th Cir. 2001). As a result, Petitioner's one-year limitations clock began to run on May 18, 2011, *see Harris v. Dinwiddie,* 642 F.3d 902, 907 n.6 (10th Cir. 2011), and, absent a tolling event, a federal petition for writ of habeas corpus filed after May 18, 2012, would be untimely. *See United States v. Hurst,* 322 F.3d 1256 (10th Cir. 2003) (applying Fed. R. Civ. P. 6(a) to calculate AEDPA deadline).

Similarly, under § 2244(d)(1)(D), the "factual predicate" underlying Petitioner's habeas claims is that one of the State's witnesses, Jason Cheatham, lied at trial when he testified that Petitioner told him, on April 30, 2008, that Petitioner had "killed two people." If the information contained in Cheatham's

affidavit is true, making his trial testimony false, then Petitioner knew or should have known that Cheatham's trial testimony was false when he heard the testimony on May 6, 2009. The fact that Petitioner did not obtain an affidavit from Cheatham until sometime in August 2011, or more than two years later, does not reflect diligence, as required to extend the limitations deadline under § 2244(d)(1)(D). *See Craft v. Jones,* 435 F. App'x 789, 791 (10th Cir. 2011) (unpublished).[3] Therefore, § 2244(d)(1)(D) does not apply to trigger the running of the limitations period when Petitioner obtained Cheatham's affidavit, as argued by Petitioner. As Petitioner gains no benefit from § 2244(d)(1)(D), the one-year limitations period in this case began to run when Petitioner's conviction became final, as discussed above.

The limitations period was tolled, or suspended, during the pendency of a "properly filed" post-conviction proceeding. 28 U.S.C. § 2244(d)(2); *Hoggro v. Boone,* 150 F.3d 1223, 1226 (10th Cir. 1998). On September 16, 2011, or with 245 days remaining in the one-year limitations period, Petitioner filed his application for post-conviction relief. On August 3, 2012, the OCCA affirmed the state district court's denial of post-conviction relief. Therefore, the one-year limitations period was tolled from September 16, 2011, through August 3, 2012. Once the OCCA entered its post-conviction ruling on August 3, 2012,

[3] This and other unpublished opinions are cited herein for persuasive value. *See* 10th Cir. R. 32.1(A).

Petitioner had to file his habeas petition within the 245 days remaining in his one-year period, or by April 5, 2013. Petitioner filed his petition on June 19, 2013, or more than two months after expiration of the one-year limitations period. Therefore, unless Petitioner demonstrates that he is entitled to other statutory or equitable tolling, his petition is clearly untimely.

In response to the motion to dismiss, *see* Dkt. # 9, Petitioner cites 28 U.S.C. § 2244(d)(1)(D) and argues that his one-year limitations period should not begin to run until "early August, 2011," when he purports to have received Cheatham's affidavit. However, the Court has determined above that, under § 2244(d)(1)(D), the "factual predicate" of Petitioner's habeas claims arose during Petitioner's trial when Cheatham allegedly gave false testimony. Therefore, § 2244(d)(1)(D) does not serve to extend the limitations period.

Next, Petitioner incorrectly asserts that, after the state district court denied his application for post-conviction relief, he is entitled to "90 days tolling to appeal." *See* Dkt. # 9 at 4. Following denial of post-conviction relief by an Oklahoma district court, a petitioner is entitled to tolling of 30 days, the time during which he may perfect a timely post-conviction appeal to the OCCA. *Gibson v. Klinger,* 232 F.3d 799, 804 (10th Cir. 2000) (holding that for a post-conviction appeal, regardless of whether a petitioner actually appeals, the limitations period is tolled for thirty (30) days, the period in which the petitioner could have sought a post-conviction appeal under state law). The only 90 day time period relevant to

the § 2244(d)(1)(A) limitations period is the 90 day time period following conclusion of a state direct appeal when a petitioner may seek certiorari review at the United States Supreme Court. *Locke,* 237 F.3d at 1273. In this case, Petitioner is not entitled to an additional 90 days of tolling following the state district court's denial of his application for post-conviction relief.

Petitioner also argues that he is entitled to the benefit of the prison "mail box rule" for determining when the one-year period began to run. *See* Dkt. # 11 (citing *Houston v. Lack,* 487 U.S. 266, 275-76 (1988) (finding that a "pro se prisoner's [filing] will be considered timely if given to prison official for mailing prior to the filing deadline, regardless of when the court itself receives the documents")). Apparently, Cheatham was in prison when he executed the affidavit. *See id.* at 1 (stating that "Cheatham and the Petitioner are not in the same prison"). However, the prison "mail box rule" specifically applies to mailings from prisoners to courts. This Court is unaware of any authority applying the prison "mail box rule" to mailings from one prisoner to another. Even if the prison "mail box rule" were applicable under the facts of this case, nowhere in the record is there any evidence demonstrating when Cheatham placed his affidavit in the mail to Petitioner or when Petitioner received the affidavit from Cheatham. Of greater significance, the prison "mail box rule" does not help Petitioner since, as determined above, the "factual

predicate" of his claim arose at trial, not when he received the affidavit from Cheatham.

The statute of limitations defined in 28 U.S.C. § 2244(d) is subject to equitable tolling. *Holland v. Florida,* 560 U.S. 631, 645, 649 (2010); *Miller v. Marr,* 141 F.3d 976, 978 (10th Cir. 1998). Equitable tolling applies only in "rare and exceptional circumstances." *Gibson,* 232 F.3d at 808 (citing *Davis v. Johnson,* 158 F.3d 806, 811 (5th Cir. 1998)). A petitioner is entitled to equitable tolling "only if he shows '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' and prevented timely filing." *Holland,* 560 U.S. at 649 (quoting *Pace v. DiGuglielmo,* 544 U.S. 408, 418 (2005)). A petitioner's burden in making this demonstration is a heavy one: a court will apply equitable tolling only if a petitioner is able to "'show specific facts to support his claim of extraordinary circumstances and due diligence.'" *Yang v. Archuleta,* 525 F.3d 925, 928 (10th Cir. 2008) (quoting *Brown v. Barrow,* 512 F.3d 1304, 1307 (11th Cir. 2008)).

Petitioner does not argue that he is entitled to equitable tolling and nothing in the record suggests a basis for equitable tolling. The Court recognizes that, in his petition, Petitioner makes the somewhat cryptic statement that he "makes some claim to actual innocence of the charges." *See* Dkt. # 2 at 8. As a result, Petitioner may argue that Cheatham's affidavit could overcome the timeliness bar by supporting a claim of actual innocence. *See McQuiggin v. Perkins,* 133 S. Ct. 1924, 1931 (2013); *Laurson v.*

Leyba, 507 F.3d 1230, 1232 (10th Cir. 2007) ("A claim of actual innocence may toll the AEDPA statute of limitations."). The Tenth Circuit has "stress [ed] that this actual innocence exception is rare and will only be applied in the extraordinary case." *Lopez v. Trani*, 628 F.3d 1228, 1231 (10th Cir. 2010) (internal quotation marks omitted). "[P]risoners asserting innocence as a gateway to defaulted claims must establish that, in light of new evidence, it is more likely than not that no reasonable juror would have found [the prisoner] guilty beyond a reasonable doubt." *House v. Bell,* 547 U.S. 518, 536-37 (2006) (internal quotation marks omitted). Although Petitioner states that he "makes some claim" of actual innocence, his alleged "new evidence," the Cheatham affidavit, serves only as a recantation of Cheatham's trial testimony that Petitioner confessed to him. In and of itself, the affidavit does not support a claim of Petitioner's actual innocence. Furthermore, Petitioner is represented by counsel in this case. Therefore, as stated above, the Court is not obligated to construe his pleadings liberally. *Haines,* 404 U.S. at 520. Petitioner has failed to meet "the demanding standard for establishing actual innocence." *Woodward v. Cline,* 693 F.3d 1289, 1294 (10th Cir. 2012). He has not demonstrated entitlement to equitable tolling. The petition for writ of habeas corpus is time barred.

B. Challenges to post-conviction rulings are not cognizable

Assuming, without finding, that the one-year limitations period began to run under § 2244(d)(1)(D), from the date Cheatham executed his affidavit, then this petition was timely filed.[4] Nonetheless, the Court finds that the claims raised in this petition do not raise cognizable federal constitutional issues. Petitioner challenges only rulings entered by the state district court in his post-conviction proceeding rather than the judgment of conviction. However, there is no federal constitutional right to post-conviction review in the state courts. *See Pennsylvania v. Finley,* 481 U.S. 551, 557 (1987). Therefore, a claim of constitutional error that "focuses only on the State's post-conviction remedy and not the judgment which provides the basis for [the applicant's] incarceration . . . states no cognizable federal habeas claim." *Sellers v. Ward,* 135 F.3d 1333, 1339 (10th Cir. 1998); *see also*

[4] The Cheatham affidavit was executed July 31, 2011. *See* Dkt. # 2-1. Applying Fed. R. Civ. P. 6(a)(1)(A), "the day of the event that triggers the period," July 31, 2011, is excluded and the one-year period began to run on August 1, 2011. *See Harris v. Dinwiddie,* 642 F.3d 902, 907 n.6 (10th Cir. 2011). In the absence of tolling, the one-year period expired August 1, 2012. Petitioner is entitled to 322 days of tolling for the time his post-conviction proceeding was pending. Thus, the limitations deadline was extended 322 days beyond the original deadline of August 1, 2012, or to June 19, 2013. Petitioner filed his petition on June 19, 2013, the last day of the limitations period, if the one-year period commenced when Cheatham executed his affidavit.

Steele v. Young, 11 F.3d 1518, 1524 (10th Cir. 1993) (noting that petitioner's challenge to state "post-conviction procedures on their face and as applied to him would fail to state a federal constitutional claim cognizable in a federal habeas proceeding"); *Hopkinson v. Shillinger,* 866 F.2d 1185, 1219-20 (10th Cir. 1989) (stating that "a claim that procedural errors occurred during the state post-conviction proceedings would not rise to the level of a federal constitutional claim cognizable in habeas corpus"), *overruled on other grounds, Sawyer v. Smith,* 497 U.S. 227 (1990). As a result, Petitioner's habeas claims, even if timely, would be dismissed for failure to raise a cognizable federal constitutional claim.

CONCLUSION

Petitioner failed to file his petition for writ of habeas corpus within the one-year limitations period. Respondent's motion to dismiss shall be granted and the petition shall be dismissed with prejudice as barred by the statute of limitations.

Certificate of Appealability

Rule 11, *Rules Governing Section 2254 Cases in the United States District Courts,* instructs that "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Pursuant to 28 U.S.C. § 2253, the court may issue a certificate of appealability "only if the applicant has made a substantial showing of the

denial of a constitutional right," and the court "indicates which specific issue or issues satisfy [that] showing." A petitioner can satisfy that standard by demonstrating that the issues raised are debatable among jurists, that a court could resolve the issues differently, or that the questions deserve further proceedings. *Slack v. McDaniel,* 529 U.S. 473 (2000) (citing *Barefoot v. Estelle,* 463 U.S. 880, 893 (1983)). In addition, when the Court's ruling is based on procedural grounds, a petitioner must demonstrate that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484.

In this case, the Court concludes that a certificate of appealability should not issue. Nothing suggests that the Court's procedural ruling resulting in the dismissal of the petition as time barred is debatable or incorrect. The record is devoid of any authority suggesting that the Tenth Circuit Court of Appeals would resolve the issues in this case differently. A certificate of appealability shall be denied.

ACCORDINGLY, IT IS HEREBY ORDERED that:

1. Respondent's motion to dismiss petition for writ of habeas corpus as time barred by the statute of limitations (Dkt. # 5) is **granted**.

2. The petition for writ of habeas corpus (Dkt. # 2) is **dismissed with prejudice**.

3. A certificate of appealability is **denied**.

4. A separate Judgment shall be entered in this matter.

DATED this 31st day of January, 2014.

/s/ Terence Kern
TERENCE KERN
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LAWRENCE JAMIR TAYLOR, Petitioner-Appellant, v. TERRY MARTIN, Warden, Respondent-Appellee.	No. 14-5030

ORDER

(Filed Aug. 6, 2014)

Before **KELLY**, **BALDOCK**, and **BACHARACH**, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

/s/ Elisabeth A. Shumaker

ELISABETH A. SHUMAKER, Clerk

AFFIDAVIT

COUNTY OF Tulsa)
) ss.
STATE OF Oklahoma)

I, Jason Cheatham, of lawful age, after first being put under oath, hereby swear and affirm:

1. I testified in the Trial of Lawrence ~~James~~ Jamere Taylor, CF-08-2033 in Tulsa County, Oklahoma.

2. I testified that on April 29 and 30, 2008 that I was 'hanging out" with Lawrence Taylor.

3. I testified that Mr. Taylor confessed to me to the murder for which he was charged on April 30, 2008.

4. I was out of town that day in Missouri.

5. The Tulsa Police threatened me with arresting me for Accessory to Murder if I did not testify falsely, and they threatened my family; they coerced me into testifying as I did..

6. I therefore testified that Mr. Taylor confessed to me when he did not.

7. Mr. Taylor and I "hung out" shortly after the alleged murder, smoking dope and drinking, but he never confessed to me.

AFFIANT SAITH NOTHING FURTHER.

/s/ Jason Cheatham
Jason Cheatham, Affiant

Dated: Jul/31/11

VERIFICATION

On this 31 day of July, 2011, personally appeared the above Affiant know to me to be Jason Cheatham and he stated to me that he signed the above and foregoing Affidavit of his own free will, that the statements are true and correct to the best of his knowledge, and he signed said Affidavit for the purposes stated therein

/s/ A. Chaudhry
Notary Public

My Commission expires; 9-2-12 Cert. NO. 08009106

[Notary Stamp]