

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

GENERAL AMERICAN LIFE INSURANCE COMPANY, )

Plaintiff, )

vs. )

LYLIE GUESS, Administratrix of the )  
Estate of Charles Sequoyah Guess, )

Defendant. )

74-C-267 ✓

E I L E D

AUG 30 1974 *am*

Jack C. Silver, Clerk:  
U. S. DISTRICT COURT

ORDER OVERRULING DEFENDANT'S MOTION TO  
DISMISS

The Court has for consideration the Motion to Dismiss  
filed by the defendant, the briefs in support and opposition  
thereto, and, being fully advised in the premises, finds:

That said Motion to Dismiss should be overruled.

IT IS, THEREFORE, ORDERED that the Defendant's Motion  
to Dismiss be and the same is hereby overruled.

ENTERED this 30 day of August, 1974.

*Wm. E. ...*  
\_\_\_\_\_  
CHIEF UNITED STATES DISTRICT JUDGE

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

WILLIE E. BURNETT, as Administrator )  
of the Estate of Arlie J. Burnett, )  
Deceased, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TRANSWORLD AIRLINES, INC., a )  
corporation; and JOHN DOE )  
HILTON, )  
 )  
Defendants. )

74-C-307 ✓

FILED  
AUG 30 1974  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER OVERRULING PLAINTIFF'S MOTION  
TO REMAND

The Court has for consideration the Plaintiff's Motion to Remand, the briefs in support and opposition thereto, and, being fully advised in the premises, finds:

That said Motion should be overruled because the requisite diversity jurisdiction is present.

IT IS, THEREFORE, ORDERED that Plaintiff's Motion to Remand be and the same is hereby overruled.

ENTERED this 30 day of August, 1974.

  
\_\_\_\_\_  
CHIEF UNITED STATES DISTRICT JUDGE



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

HERMAN EUGENE MACK, )  
 )  
 Petitioner, )  
 )  
 v. ) Case No. 74-C-139  
 )  
 STATE OF OKLAHOMA, et al., )  
 )  
 Respondents. )

**E I L E D**  
AUG 29 1974

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

The petitioner herein seeks a writ of habeas corpus discharging him from custody because of the alleged invalidity of his convictions in the District Court of Tulsa County, Oklahoma in the following cases:

- (1) Case No. 22715, Robbery With Firearms After Former Conviction of a Felony, sentence of twenty-five (25) to seventy-five (75) years imprisonment;
- (2) Case No. 22716, First Degree Rape After Former Conviction of a Felony, sentence of life imprisonment;
- (3) Case No. 22717, Kidnapping After Former Conviction of a Felony, sentence of ten (10) years imprisonment;
- (4) Case No. 22718, Kidnapping After Former Conviction of a Felony, Sentence of ten (10) years imprisonment;
- (5) Case NO. 22719, Robbery With Firearms After Former Conviction of a Felony, sentence of twenty-five (25) to seventy-five (75) years;
- (6) Case No. 22721, Crime of Carrying Firearm After Conviction of a Felony, sentence of ten (10) years imprisonment;
- (7) Case No. 22722, Kidnapping After Former Conviction of a Felony, sentence of ten (10) years imprisonment;
- (8) Case NO. 22723, Robbery With Firearms After Former Conviction of a Felony, sentence of twenty-five (25) to seventy-five (75) years imprisonment;
- (9) Case No. 22761, Unauthorized Use of a Motor Vehicle After Former Conviction of a Felony, sentence of five (5) years imprisonment; and

- (10) Case No. 22762, Larceny of an Automobile  
After Former Conviction of a Felony, sentence  
of three (3) years imprisonment.

As grounds for relief he contends that:

- (1) The record does not affirmatively reflect that he changed his pleas to guilty in Cases numbered 22719, 22722 and 22761;
- (2) His pleas of guilty in said 10 cases are void for the reason that the pleas were the result of invalid plea-bargaining.

The court has examined the files and records herein, which include the Casemade for said cases and the transcript of the hearing on petitioner's motion to withdraw his pleas of guilty. It appears that all of the charges in these cases arose out of the same transaction or series of events. The petitioner was first tried by a jury on the rape charge (No. 22716) and received a sentence of ninety-nine (99) years imprisonment. An appeal was taken in this case to the Oklahoma Court of Criminal Appeals. While this appeal was pending a plea bargain was reached between the defense and the prosecution with the approval and agreement of the court that the defendant would change his pleas to guilty in the other cases and receive the same sentences which three of his co-defendants who were convicted had received. This was contingent upon the petitioner dismissing his appeal in the rape case and the district court granting a new trial therein so that the petitioner could plead guilty to that charge and receive a sentence of life imprisonment. All sentences were to run concurrently. In accordance with this agreement, the petitioner appeared in court on September 18, 1968, with his three attorneys, Mr. Richard K. McGee, Mr. Ronald H. Mook and Mr. James N. Khourie to change his pleas to guilty in the other cases. The petitioner's attorney, Mr. McGee, made the announcement to the court that after "extensive conferences" on these matters the petitioner wished to withdraw his pleas of not guilty and enter pleas of guilty. (C.M. 23). The court carefully explained to the petitioner the bargain. (C.M. 23-28). The petitioner acknowledged that he understood the agreement and advised the court that he wished to enter pleas of guilty in all cases then before the court. (C.M. 26).

The petitioner further stipulated that he had been represented from the time of his arrest by experienced able counsel and he felt that he had been properly advised and represented. (C.M. 27). He informed the court that he had many days and weeks to consider the matter and that he wished the court to dispose of his cases in this manner. (C.M. 27). He disavowed any other promises or consideration than the described bargain. (C.M. 32). His counsel advised the court that they knew of no reason why the court should not accept these pleas of guilty. (C.M. 24). The court deferred sentencing in these cases until the rape case appeal could be dismissed and the district court had reacquired jurisdiction of that case. This was necessary under the Oklahoma law in order that all sentences could be made to run concurrently. (C.M. 34, 35). If this could not be accomplished, the court assured the petitioner that it would vacate his guilty pleas and grant him a jury trial in these cases, if he so desired. (C.M. 27).

Thereafter, and before sentencing, the petitioner on November 19, 1968, moved the court to withdraw his plea in each of these cases for the reason "that at the time said plea was entered the defendant was under a mental aberration directly resulting from a beating administered by a jailer in the Tulsa County Jail and that the plea of guilty was entered as a result of this aberration and without due deliberation or understanding of the consequences of his act." (C.M. 37). The court conducted an evidentiary hearing on this motion on November 20, and 21, 1968. Appearing for the defendant in this proceeding also were Mr. Khourie, Mr. McGee and Mr. Mook. It was the defendant's contention that he was struck on the head by a jailer on September 7, 1968, and that he suffered a loss of memory for events subsequent to the blow until sometime after his court appearance on September 18th. In response to a question by the court he stated that he had no recollection of being in the court on September 18th. At the conclusion of the hearing the court found that the petitioner's story of memory loss was fictitious and that petitioner was in fact "in complete control of

his faculties at the time he entered these pleas". (Tr. 198-200).  
The motion was therefore denied. (Tr. 202).

On December 10, 1968, after the Court of Criminal Appeals had dismissed the petitioner's appeal in the rape case and the district court had granted a new trial, the petitioner appeared before the district judge with three attorneys. The petitioner first withdrew his plea of not guilty in the rape case and then plead guilty to that offense. (C.M. 40). After being advised by the petitioner that he did not desire to delay his sentencing further, the court imposed a life sentence in that case and nine concurrent sentences in the other cases in accordance with the plea bargain. The petitioner then appealed to the Oklahoma Court of Criminal Appeals in case No. A-15,385 urging that his pleas were not knowingly, understandingly and voluntarily entered, the trial court did not meet the standards of Boykin v. Alabama, supra, and error of the trial court in not permitting him to withdraw his guilty pleas. The appeals court, on March 11, 1970, determined these issues adversely to the petitioner and affirmed the judgments and sentences of the trial court.

The petitioner subsequently filed an application for post conviction relief in the District Court of Tulsa County, Oklahoma, which denied him relief. He again appealed to the Oklahoma Court of Criminal Appeals, Case No. PC-74-46 which court affirmed the trial court. The respondents confess that the petitioner has exhausted his state remedies.

The petitioner's first contention is without merit. It is not supported by the record. The petitioner relies upon only a portion of the record. He cites page 28 of the Casemade as the basis for his claim that he did not plead guilty in Case No. 22719. However, lines 10 - 18 on said page reflect this dialogue between petitioner and the court:

"THE COURT: Mr. Mack, fully understanding and realizing your rights, and having told me that you feel that you have been well and ably represented and that your attorneys are acting in your best interest, do you still tell me that you desire to enter a plea of guilty to the armed robbery charge in 22,719?"

MR. MACK: Yes.

THE COURT: You are guilty and you want to plead guilty?

MR. MACK: Yes."

He cites the lack of affirmative response by him concerning cases numbered 22722 and 22761 appearing at pages 29 and 31 of the Casemade as establishing his contention. He ignores all that has transpired before. At page 26 of the Casemade this exchange took place after the court had reviewed the bargain:

"MR. MCGEE. If the Court please, that is exactly what the court has stated prior to this time, and what I have conveyed to you, is that correct, Herman?

MR. MACK: Yes.

MR. MCGEE: With this knowledge, at this time do you tell the Court you wish to enter pleas of guilty?

MR. MACK: Yes."

MR. MCGEE: In each and all of these cases, in these circumstances?

MR. MACK: Yes, under these circumstances."

At page 27 of the Casemade after further probing the petitioner's understanding and his satisfaction with counsel:

"THE COURT: Now, do you tell me that you want to dispose of your cases in that manner?

MR. MACK: Yes.

THE COURT: So obviously the only thing we can do today is accept your pleas in the eight cases that are now before the District Court, and I will defer sentencing until such time as I have acquired jurisdiction of the rape case."

At the time of sentencing this occurred:

"THE COURT: All sentences imposed today shall run concurrent with 22,716 and with each other.

The next case will be 22,719 the charge being Robbery with Firearms After Former Conviction of a Felony. Again I must inquire whether there is any legal reason why I should not now pronounce judgment and sentence in that case at this time?

MR. MACK: No, sir." (C.M. 46).

"THE COURT: . . . In 22,722, the charge is Kidnapping After Former Conviction of a Felony. In that case do you know of any legal reason why the Court should not now pronounce judgment and sentence?

MR. MACK: No, sir.

. . . .  
(C.M. 47).

"THE COURT: . . . 22761 the charge is Unauthorized Use of Motor Vehicle after Former Conviction of a Felony and in that case, do you know of any legal reason why the Court should not now pronounce judgment and sentence?

MR. MACK: No Sir."  
(C.M. 48)

The record taken as a whole shows that the petitioner intended to and did plead guilty in each of the cases against him.

The petitioner claims that his pleas of guilty were the product of an illegal plea bargain apparently proceeds upon three theories. He complains first that it was invalid because the trial judge made a promise which he did not keep. The particular statement of the court relied upon appears at page 27 of the Casemade:

"THE COURT: . . . If anything should happen that that did not come to pass, I assure you that I would vacate your pleas of guilty in these cases if you so desired, and give you a trial by a jury in each of these eight cases, you understand that?"

The petitioner attempts to infer from this a promise that he could later withdraw his guilty pleas if he wanted to do so. He then asserts this promise was unfulfilled because the court later refused to permit him to withdraw his guilty pleas upon his claimed "mental aberration". In context, however, it is plain that the court was assuring the petitioner that he would not be bound by his pleas if the District Court did not reacquire jurisdiction in the rape case (Case No. 22,716) so that all sentences could be made to run concurrently. The key provision of the bargain from the defendant's standpoint was that all sentences would be concurrent. In order for this to be accomplished it was essential that the District Court again acquire jurisdiction of the rape case which was then pending on appeal. In the event that this could not be done then obviously it would be unfair to hold the petitioner to his guilty pleas in the other cases. It was this possibility which the court was considering and from which it wished to protect the petitioner. See C.M. 25, 26. The record completely refutes any unqualified promise by the court to the petitioner that he could change his pleas if he simply changed his mind. Plea bargaining is not an illegal procedure. Tuggle v. State of Oklahoma, 275 F.Supp. 653 (E.D. Okla. 1967). The fact that plea

bargaining was involved in petitioner's case does not in itself furnish a reason for finding the pleas were impermissibly induced. Lesley v. State of Oklahoma, 407 F.2d 543 (CA10 1969). Plea bargaining is not per se unconstitutional so long as the inducement or consideration is fulfilled. Santobello v. United States, 404 U.S. 257 (1971). Here there can be no question that the inducement was fulfilled. The petitioner got exactly what he bargained for.

Nor are we persuaded by his argument that the bargain was invalid because the trial judge had discussed with counsel for the defense and the prosecution the bargain and given his advance approval. He attempts to borrow from the reasoning of United States v. Gilligan, 256 F.Supp. 244(S.D. N.Y. 1966). The court there indicated it considered any plea involuntary where the judge makes known to the defendant the sentence he will receive if he pleads guilty. The basic assumption of the court's view is that the judge in every instance fixes the sentence and therefore "his awesome power to impose a substantially longer or even maximum sentence in excess of that imposed is present whether referred to or not. A defendant needs no reminder that if he rejects the proposal, stands upon his right to trial and is convicted, he faces a significantly longer sentence." 256 F.Supp. at 254. This assumption, while perhaps valid in New York is not true in Oklahoma. In Oklahoma ordinarily the jury assesses the sentence and if requested by the defendant must do so. 22 O.S.A. § 919. In petitioner's case, if he had desired to do so he could have plead not guilty and the jury would have fixed the punishment if found guilty. There would have been no specter of a vindictive judge imposing "a significantly longer sentence" because the defendant had turned down the bargain and exercised his right to a jury trial.

The petitioner's final argument that the bargain was invalid because Oklahoma sentencing laws are unconstitutional, since they impose an impermissible burden on the accused's right to exercise his right to plead not guilty, contrary to the principle of Jackson v. United States, 390 U.S. 570 (1968), is likewise unsound. Under Oklahoma law a person cannot receive a concurrent sentence on a subsequent

conviction if sentence has already been adjudged in the first or prior case before the subsequent conviction has been obtained. 22 O.S.A. § 976; 21 O.S.A. § 61; and Capps v. Page, 435 P.2d 185 (Okla. Crml. 1967). See also Handley v. Page, 398 F.2d 351 (CA10 1968), cert. denied 394 U.S. 935. The statutory rule applies regardless of the type of plea entered in the subsequent conviction. This distinguishes it from the Jackson situation in which the court held unconstitutional the capital punishment provision of the federal anti-kidnapping law because the accused who plead not guilty exposed himself to the possibility by virtue of the statute of a more severe penalty.

In this case the petitioner had a choice. If he was unsuccessful in his appeal and if he stood trial in the pending cases and was convicted in any of them it was certain that his total time to be served would be greater. The bargain gave him the assurance that his time to be served would be no greater than the time he had already received from a jury. The only way he could ultimately have been better off would have required reversal of his rape conviction and then acquittal or aggregate sentences totaling less than 99 years in the ten cases. The prospects for such a series of events to occur would not appear promising in light of the petitioner's first trial and the disposition of his co-defendants cases. The bargain was not invalid because petitioner had to make a difficult choice and his circumstances may have had a discouraging effect on the assertion of his trial rights. Brady v. United States, 397 U.S. 742 (1970). As stated by the Supreme Court in Chaffin v. Stynchcombe, 412 U.S. 17, 30 (1973):

"Jackson did not hold, as subsequent decisions have made clear, that the Constitution forbids every government imposed choice in the criminal process that has the effect of discouraging the exercise of constitutional rights."

Accordingly, since the files and records examined by the court conclusively show that the petitioner is not entitled to relief and there are no material issues of fact which require an

evidentiary hearing, the Petition for Writ of Habeas Corpus will be denied.

IT IS SO ORDERED.

Dated this 21<sup>st</sup> day of August, 1974.

Luther Bohanon  
LUTHER BOHANON  
UNITED STATES DISTRICT JUDGE

E I L E D

AUG 28 1974

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

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

MARK B. RIPIN,  
Plaintiff,

vs.

RICHARD L. WILLFORD,  
Defendant.

)  
)  
) 74-C-17  
)  
)  
)  
)  
)  
)

ORDER OVERRULING PLAINTIFF'S MOTION FOR  
NEW TRIAL

THE Court has for consideration the plaintiff's motion for new trial, the defendant's response thereto, and, being fully advised in the premises, finds:

That said motion should be overruled.

IT IS, THEREFORE, ORDERED that the plaintiff's motion for new trial be and the same is hereby overruled.

ENTERED this 28th day of August, 1974.

*Allen E. Dawson*

CHIEF UNITED STATES DISTRICT JUDGE

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

REYCO INDUSTRIES, INC., )  
a corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CLARK EQUIPMENT & CONSTRUCTION, INC., )  
a corporation, )  
 )  
Defendant. )

Civil Action

No. 74-C-280

**E I L E D**

AUG 27 1974

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

J U D G M E N T

NOW, on this 26th day of August, 1974, there came for hearing before the undersigned Judge of the United States District Court for the Northern District of Oklahoma, the plaintiff Motion for Judgment; the plaintiff appearing by its attorney, Alan L. Jackere, and the defendant appearing not and making default. Thereupon, the Court found that it had jurisdiction in the premises and that the defendant had been duly and properly served with Summons and had wholly failed, refused and neglected to plead, answer or otherwise defend. The Court thereupon found that the defendant, Clark Equipment & Construction, Inc., a corporation was in default and ordered that the allegations of the plaintiff's Complaint be taken as true and confessed as against the defendant and that the plaintiff's Motion for Judgment by Default be sustained. Thereupon, this cause proceeded to trial; the court waived trial by jury and the Court having heard the testimony of witnesses duly sworn and examined herein and being fully advised in the premises found that the allegations of the plaintiff's Complaint are true. That the defendant is indebted to the plaintiff herein on account of certain goods, ware and merchandise sold, shipped and delivered to the defendant by the plaintiff at the defendant's special instance and request in the sum of \$15,166.80 with interest thereon at the rate of 9% per annum from the 1st day of April, 1974, and a reasonable attorney's fee in the sum of \$3,500.00.

NOW THEREFORE, IT IS BY THE COURT ORDERED, ADJUGED AND DECREED that the plaintiff have and is hereby granted a judgment as against the defendant, Clark Equipment & Construction, Inc., a corporation, in the principal sum of \$15,166.80, with interest thereon at the rate of 9% per annum from the 1st day of April, 1974, until paid, together with an attorney's fee of \$3,500.00 to be taxed as cost and all the costs of this action for all of which let execution issue.

*Luther Bohannon*

JUDGE



single act may be an offense against two statutes, and if each statute requires proof of an additional fact which the others do not, an acquittal or conviction under either statute does not exempt the defendant from prosecution or conviction under the other. The law of the State of Oklahoma is in accord as reflected in Ryan v. State, Okl. Cr., 473 P.2d 322 (1970); Tucker v. State, Okl. Cr., 481 P.2d 167 (1971); Buchanon v. State, Okl. Cr., 490 P.2d 1127 (1971); Jennings v. State, Okl. Cr., 506 P.2d 931 (1973).

However, even though Petitioner's allegation appears to lack merit, this should first be decided by the Courts of the State, and by his own admission in Item 16, Page 5, of his petition, the Petitioner has not presented this issue to the State Courts of Oklahoma for determination. Thus, Petitioner has failed to exhaust adequate and available State remedies provided by 22 O.S.A. § 1080 et seq., and 12 O.S.A. § 1331 et seq. Further, it does not appear that he has followed the procedure approved in Starr v. State, Okl. Cr., 478 P.2d 1003 (1970) by request to the State Courts to withdraw his plea. Therefore, the petition on this issue should be denied for failure to exhaust adequate and available State remedies.

Petitioner's second allegation was determined adversely to him on the merits as reflected by this Court's Order, dated the 19th day of February, 1974, in Case No. 74-C-12. It is deemed that the ends of justice do not require additional consideration of this allegation, and the petition now under consideration should be denied and dismissed as successive on this issue. Sanders v. United States, 373 U. S. 1 (1963); Walker v. Taylor, 338 F.2d 945 (10th Cir. 1964).

The files and records in Cases Nos. CRF-73-400 and CRF-73-401 in the District Court in and for Tulsa County, Oklahoma, examined by this Court, conclusively show that Petitioner is not entitled to relief. Therefore, there is no necessity for the Court to appoint counsel for the Petitioner or conduct an evidentiary hearing. Ortiz v. Baker, 411 F.2d 263 (10th Cir. 1969) cert. denied 396 U. S. 935.

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of Orville Larry Kaemper be and it is hereby denied and the cause is dismissed.

Dated this 26<sup>th</sup> day of August, 1974, at Tulsa, Oklahoma.



---

CHIEF JUDGE, UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT OF  
OKLAHOMA

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

UNITED STATES OF AMERICA, )  
 )  
 ) Plaintiff, )  
 )  
 vs. )  
 )  
 )  
 )  
 JOHN KINSER, et al., )  
 )  
 )  
 )  
 Defendants. )

FILED

AUG 27 1974

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

Civil Action No. 74-C-82

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 26 day  
of August, 1974, the plaintiff appearing by Robert P.  
Santee, Assistant United States Attorney, and the defendants,  
Tulsa County Treasurer and the Board of County Commissioners, Tulsa  
County, appearing by their attorney, Gary J. Summerfield, and the  
defendants, Joyce Rene Kinser and John Kinser, appearing not.

The Court being fully advised and having examined the  
file herein finds that the defendants, John Kinser and Joyce Rene  
Kinser were served by publication as appears from the Proof of  
Publication filed herein on July 22, 1974; that the defendants  
County Treasurer, Tulsa County and the Board of County Commissioners,  
Tulsa County, were served with Summons and Complaint on February 7,  
1974.

It appearing that the defendants, County Treasurer and  
Board of County Commissioners, Tulsa County, have filed their  
Answers herein on February 27, 1974; that the defendants John  
Kinser and Joyce Rene Kinser have failed to answer herein and  
that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a  
mortgage note and foreclosure on a real property mortgage securing  
said mortgage note and that the following described real property  
is located in Tulsa County, Oklahoma, within the Northern  
Judicial District of Oklahoma:

Lot Fifty-three, Block Eight (8),  
NORTHGATE THIRD ADDITION to the City  
of Tulsa, Tulsa County, Oklahoma,  
according to the recorded plat thereof.

THAT the defendants, John Kinser and Joyce Rene Kinser, did, on the 11th day of August, 1972, execute and deliver to Diversified Mortgage & Investment Company their mortgage and mortgage note in the sum of \$15,400.00, with 7 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

That by Assignment of Mortgage of Real Estate dated September 5, 1972, filed in Tulsa County, Oklahoma, and recorded in Book 4033, Page 73, Diversified Mortgage & Investment Company assigned said note and mortgage to Government National Mortgage Association; that by Assignment of Mortgage of Real Estate dated December 28, 1972, filed in Tulsa County, Oklahoma, and recorded in Book 4054, Page 1750, Government National Mortgage Association assigned said note and mortgage to The Lomas & Nettleton Co., A Conn, Corp. New Haven, Conn.; that by Assignment of Mortgage of Real Estate dated June 26, 1973, filed in Tulsa County, Oklahoma, and recorded in Book 4080, Page 411, The Lomas & Nettleton Co. assigned said note and mortgage to the Secretary of Housing and Urban Development, Washington, D. C.

The Court further finds that the defendants, John Kinser and Joyce Rene Kinser, made default under the terms of the afore-said mortgage note by reason of their failure to make monthly installments due thereon for more than 11 months last past, which default has continued and that by reason thereof the above-named defendants are now indebted to the Plaintiff in the sum of \$15,348.64, as unpaid principal, with interest thereon at the rate of 7 percent per annum from September 1, 1973, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from John Kinser and

Joyce Rene Kinser, the sum of \$166.99, for valorem taxes for the year 1973, and that Tulsa County should have judgment for said amount.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from John Kinser and Joyce Rene Kinser, the sum of \$10.41, for personal property taxes for the year 1973, and that Tulsa County should have judgment for said amount but that such judgment is subject to and inferior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants, John Kinser and Joyce Rene Kinser, in rem, for the sum of \$15,348.64, with interest thereon at the rate of 7 percent per annum from September 1, 1973, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa have and recover judgment against the defendants, John Kinser and Joyce Rene Kinser, for the sum of \$166.99, as of the date of this judgment plus interest thereafter according to law, and that such judgment is superior to the first mortgage lien of the plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the County of Tulsa have and recover judgment against the defendants, John Kinser and Joyce Rene Kinser, <sup>For</sup> ~~from~~ the sum of \$10.41, as of the date of this judgment plus interest thereafter according to law, but that such judgment is subject to and inferior to the first mortgage lien of the plaintiff herein.

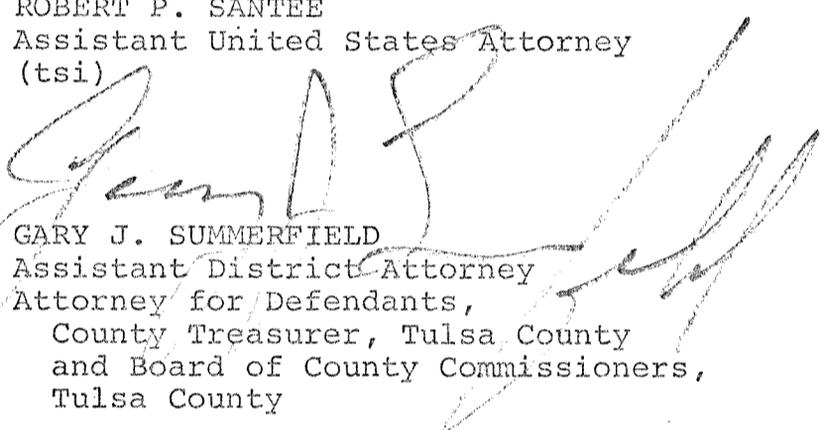
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of plaintiff's judgment, which sale shall be subject to the tax judgment of Tulsa County, supra. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

  
UNITED STATES DISTRICT JUDGE

APPROVED.

  
ROBERT P. SANTEE  
Assistant United States Attorney  
(tsi)

  
GARY J. SUMMERFIELD  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer, Tulsa County  
and Board of County Commissioners,  
Tulsa County

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 )  
 DANNY G. CAVIN, et al., )  
 )  
 Defendants. )

FILED

AUG 27 1974

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

Civil Action No. 74-C-83

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 26 day  
of ~~May~~ <sup>August</sup> 1974, the plaintiff appearing by Robert P. Santee,  
Assistant United States Attorney, the defendants, County Treasurer,  
Tulsa County, and the Board of County Commissioners, Tulsa County,  
appearing by their Attorney, Gary J. Summerfield, Assistant  
District Attorney, and the defendants, Danny G. Cavin and Debbie  
Cavin, appearing not.

The Court being fully advised and having examined the  
file herein finds that Danny G. Cavin and Debbie Cavin were served  
by publication, as appears from the Proof of Publication filed  
herein on May 15, 1974; that the County Treasurer, Tulsa County,  
and the Board of County Commissioners, Tulsa County were served  
with Summons and Complaint on February 7, 1974.

It appearing that the County Treasurer, Tulsa County,  
and the Board of County Commissioners have duly filed their Answer  
herein on February 27, 1974; and that Danny G. Cavin and Debbie  
Cavin have failed to answer herein and that default has been  
entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a  
mortgage note and foreclosure on a real property mortgage securing  
said mortgage note and that the following described real property  
is located in Tulsa County, Oklahoma, within the Northern District  
of Oklahoma:

Lot Twelve (12), Block Four (4),  
GARNETT PARK ADDITION, an Addition  
to the City of Tulsa, County of  
Tulsa, State of Oklahoma, according  
to the recorded Plat thereof.

THAT, the defendants, Danny G. Cavin and Debbie Cavin, did on the 7th day of April, 1972, execute and deliver to Hall Investment Company, A Corporation, their mortgage and mortgage note in the sum of \$17,500.00, with 7 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

That by Assignment of Mortgage of Real Estate dated May 3, 1972, filed in Tulsa County, Oklahoma, and recorded in Book 4015, Page 133, Hall Investment Company assigned said note and mortgage to Federal National Mortgage Association; that by Assignment of Mortgage of Real Estate dated October 24, 1972, filed in Tulsa County, Oklahoma, and recorded in Book 4044, Page 1114, Federal National Mortgage Association assigned said note and mortgage to Mortgage Associates, Inc.; that by Assignment of Mortgage of Real Estate dated November 22, 1972, filed in Tulsa County, Oklahoma, and recorded in Book 4046, Page 1073, Mortgage Associates, Inc. assigned said note and mortgage to Oneonta Savings and Loan Association; that by Assignment of Mortgage of Real Estate dated May 30, 1973, filed in Tulsa County, Oklahoma, and recorded in Book 4074, Page 2020, Oneonta Savings and Loan Association assigned said note and mortgage to the Secretary of Housing and Urban Development, Washington, D. C.

The Court further finds that the defendants, Danny G. Cavin and Debbie Cavin, made default under the terms of the afore-said mortgage note by reason of their failure to make monthly installments due thereon for more than 11 months last past, which default has continued and that by reason thereof the above-named defendants are now indebted to the Plaintiff in the sum of \$17,381.87, as unpaid principal, with interest thereon at the rate of 7 percent per annum from October 1, 1973, until paid, plus the cost of this action accrued and accruing.

The Court further finds that there is due and owing to the County of Tulsa, State of Oklahoma, from Danny G. Cavin and Debbie Cavin, the sum of \$380.59, plus interest according to law, for ad valorem taxes for the year 1973 and that Tulsa County should have judgment for said amount.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants, Danny G. Cavin and Debbie Cavin, in rem, for the sum of \$17,381.87, with interest thereon at the rate of 7 percent per annum from October 1, 1973, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED ADJUDGED, AND DECREED that the County of Tulsa have and recover judgment against the defendants, Danny G. Cavin and Debbie Cavin, for the sum of \$380.59, as of the date of this judgment plus interest thereafter according to law, and that such judgment is superior to the first mortgage lien of the plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisalment the real property and apply the proceeds thereof in satisfaction of plaintiff's judgment, which sale shall be subject to the tax judgment of Tulsa County, supra. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the defendants and each of them and all persons claiming under them since the filing of the complaint

herein be and they are forever barred and foreclosed of any right, title, interest, or claim in or to the real property or any part thereof.

  
UNITED STATES DISTRICT JUDGE

APPROVED.

  
ROBERT P. SANTEE  
Assistant United States Attorney  
(tsi)

  
GARY J. SUMMERFIELD  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer, Tulsa County  
and Board of County Commissioners,  
Tulsa County

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

ELMER ROBERT THOMPSON, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF OKLAHOMA, ET AL., )  
 )  
 Respondents. )

74-C-335

**E I L E D**

AUG 26 1974

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER

This is a proceeding brought pursuant to the provisions of Title 28 U.S.C. §2254 by a state prisoner confined in the Oklahoma State Penitentiary at McAlester, Oklahoma. Petitioner attacks the validity of the judgment and sentence imposed on the 1st day of March, 1971 in Case No. CRF-70-1891 in the District Court in and for Tulsa County, Oklahoma. After a plea of guilty petitioner was, by the Court, found guilty of the crime of first degree murder and sentenced to life imprisonment. The file reflects and petitioner states that all state remedies available to petitioner have been exhausted.

In this proceeding petitioner contends that the judgment and sentence should be voided for the following reasons:

- 1) The form of the plea is challenged, in that, petitioner offered to enter a plea but the trial court did not say "What is your plea" and the defendant himself did not say "I plead guilty".
- 2) Petitioner was not advised that the state was prohibited from forcing him to incriminate himself.
- 3) Petitioner was not advised that he had the absolute right to confront the state's witnesses.
- 4) Petitioner was not advised that he had the right to compulsory process for obtaining witnesses on his behalf.

At the time of entering his plea of guilty, the petitioner was represented by counsel and at said hearing the following questions were asked by the Court and the petitioner answered as follows:

THE COURT: Case No. CRF-70-1891, State of Oklahoma vs. Elmer Robert Thompson.

Show the defendant is present in person and represented by Mr. James Langley. The state is represented by Mr. J. P. Thompson, Assistant District Attorney.

THE COURT: This case was set for trial this morning.

MR. LANGLEY: At this time, Your Honor, Mr. Thompson wishes to waive jury trial and enter a plea of guilty.

THE COURT: Mr. Thompson, you have heard your attorney, Mr. Langley, advise the court that you wish to waive your right to a jury trial. Is this correct?

(Answers by the defendant, Elmer Thompson, and questions by the Court)

ANSWER: Yes.

QUESTION: You understand we have a jury panel upstairs in the court house ready to give you a fair trial today, if you wish to have a jury trial.

ANSWER: Yes.

QUESTION: You understand under the laws of the State of Oklahoma you have the right to a jury trial, that is to have a jury of twelve citizens selected and seated in the jury box. You have the right to require the state to present their witnesses' testimony to the jury, and you have the right to subpoena any witness you may have in your own defense, and let them testify before the jury, and let the jury determine your guilt or innocence. Do you understand this?

ANSWER: Yes.

QUESTION: You understand that in the event you elect to have a jury trial that the jury after hearing the evidence and instructions of the Court, in the event they found you guilty of the

crime of murder, they would fix the punishment in this case. Do you understand this?

ANSWER: Yes.

QUESTION: In other words you would let the jury in the event they returned a guilty verdict fix the punishment in this case?

ANSWER: Yes.

QUESTION: Do you tell me you wish to waive your right to a jury trial?

ANSWER: Yes.

QUESTION: Are you telling you are waiving your right to a jury trial voluntarily and of your own free will?

ANSWER: Yes.

QUESTION: You will have to speak up so the court reporter can hear your answers. Is this correct, you are waiving your right to a jury trial voluntarily and of your own free will?

ANSWER: Yes.

QUESTION: Have you been promised anything or induced in any way to get you to waive your right to a jury trial?

ANSWER: No.

QUESTION: Have you been threatened or coerced in any way to get you to waive trial by jury?

ANSWER: No.

QUESTION: I believe you are in custody at this time. Is this correct?

ANSWER: Yes, Sir.

QUESTION: Have you been mistreated or abused by any of the law enforcement officials while you have been in custody?

ANSWER: No.

QUESTION: And you are not under the influence of drugs, alcohol, or medication at this time?

ANSWER: No, Sir, I am not.

QUESTION: Do you fully understand the charges that are brought against you?

ANSWER: Yes.

QUESTION: In other words, you are charged with the crime of murder because of the death of a person by the name of Cordell Miller. You understand this?

ANSWER: Yes.

QUESTION: Have you been advised by your attorney the punishment this crime carried?

ANSWER: Yes, Sir.

QUESTION: In other words, this is a capital offense, carrying life imprisonment or death in the electric chair. Do you understand?

ANSWER: Yes.

QUESTION: And knowing this you tell me you wish to waive your right to a jury trial?

ANSWER: Yes, Sir.

QUESTION: How old are you, Mr. Thompson?

ANSWER: 21.

QUESTION: Have you discussed this thoroughly with your attorney, Mr. Langley? Is this correct?

ANSWER: Yes.

QUESTION: Were you afforded the right -- I believe you had a preliminary hearing in this case. Is this correct?

ANSWER: Yes.

QUESTION: That is before Judge Hays on October 22, 1970. You have any questions in your mind about what you are doing when you waived your right to a jury trial?

ANSWER: No, Sir.

QUESTION: In other words by waiving your right to a jury trial, you take the matter out of the hands of the jury and leave it up to the court to find guilt or innocence and to fix punishment. You understand this?

ANSWER: Yes.

QUESTION: You tell me you wish to waive your right to a jury trial?

ANSWER: Yes.

QUESTION: I will ask that you sign a jury waiver form that the Clerk has there before you, and ask your attorney sign it also. (Waiver form signed by the defendant and Mr. Langley)

QUESTION: Mr. Thompson, having waived your right to a jury trial and signing the jury waiver form, you heard your attorney, Mr. Langley, advise the court you wish to enter your plea of guilty to the crime of murder alleged in the Information. Is this correct?

ANSWER: Yes.

QUESTION: You tell the court that you enter your plea of guilty to the crime of murder because you did on August 3, 1970, cause the death willfully and maliciously and intentionally of a Cordell Miller by shooting this individual?

ANSWER: Yes.

QUESTION: Are you pleading guilty to that crime for any other reason other than the fact that you are guilty of that crime?

ANSWER: Yes.

QUESTION: What is this other reason you are pleading guilty?

ANSWER: I don't understand you.

QUESTION: Did you misunderstand my question?

ANSWER: I didn't understand the question.

QUESTION: You are entering your plea of guilty to this crime because you did on October 3, 1970 murder an individual by the name of Cordell Miller, is that correct?

ANSWER: Yes.

QUESTION: And you are pleading guilty for no other reason than the fact you did commit this crime? Is there any other reason you are pleading guilty?

ANSWER: No, Sir.

QUESTION: Are you pleading guilty to this crime voluntarily and of your own free will?

ANSWER: Yes.

QUESTION: Do you know what I mean by voluntary?

ANSWER: I understand.

QUESTION: In other words there have been no promises or inducements made to you to get you to plead guilty?

ANSWER: No, Sir.

QUESTION: And you haven't been threatened in any way to get you to plead guilty?

ANSWER: No, Sir.

QUESTION: And you haven't been threatened in any way to get you to plead guilty.

ANSWER: No, Sir.

QUESTION: You are pleading solely for the reason you are guilty of that crime?

ANSWER: Yes, Sir.

QUESTION: And I believe I mentioned it before, I inquired, you have been represented throughout all the proceedings by Mr. Landley. Is this correct?

ANSWER: That is correct.

QUESTION: Are you satisfied with the representation that Mr. Langley has given you?

ANSWER: Yes, Sir.

QUESTION: Do you have any questions about what is transpiring here today.

ANSWER: No.

QUESTION: You understand if I accept your plea it will be my duty to fix some punishment set out under the laws of the State of Oklahoma, and that is life imprisonment or death in the electric chair. You understand this?

ANSWER: Yes.

QUESTION: In other words you are leaving it up to the Court to fix the punishment in this case if I accept your plea of guilty?

ANSWER: Yes.

QUESTION: I believe I asked if you are under the influence of any medication, or any drug, or alcohol?

ANSWER: No.

QUESTION: You fully understand what you are doing today?

ANSWER: Yes.

QUESTION: And there have been no promises of any kind made to you?

ANSWER: No, Sir.

QUESTION: You again ask me to accept your plea of guilty to the crime of murder:

ANSWER: Yes.

QUESTION: Very well, Elmer Robert Thompson, the Court will accept your plea of guilty to the crime of murder and find you guilty of the crime of murder as set out in the Information in this case, and advise you that you have a period of 48 hours pass before formal sentencing.

MR. LANGLEY: Your Honor, we would request the 48 hours. We request sentencing on Monday.

THE COURT: This is Thursday. It will be necessary we pass it until Monday.

THE COURT: I will pass sentencing in this case, Mr. Thompson, until Monday, March 1, 1971 at 9:30 o'clock A.M.

You will be held without bond, of course. So, if you will, Mr. Langley, you will be here at 9:30. We will take care of this the first thing Monday morning.

The record in this case clearly shows that petitioner's allegations are without merit and should be denied. A state prisoner's valid voluntary plea of guilty while represented by counsel constitutes a waiver of all non-jurisdictional defects in the proceedings. Smith vs. Veto, C.A. Tex. 1972, 453 F.2d 402. The allegations of petitioner in this instance are directed to form and not substance and do not constitute constitutional error. Shaw vs. Pitchess, 440 F.2d 412, Cert. Den. 92 S. Ct. 702, 404 U. S. 1037, 30 L. Ed. 2d 729.

Where the evidence in habeas corpus case discloses that petitioner's counsel adequately represented him in discussions concerning sentence to be recommended on plea of guilty, and that petitioner fully understood what he was doing and voluntarily entered his plea of guilty, request for writ of habeas corpus should be denied. Corn vs. State of Oklahoma, 394 F.2d 478, Cert. Den. 89 S. Ct. 245, 393 U. S. 917, 21 L. Ed. 2d 203.

The transcript of the record in Case CRF-70-1891, in the District Court of Tulsa County, Oklahoma, examined by the Court, conclusively shows that petitioner is not entitled to relief. Therefore, there is no necessity for this Court to conduct an evidentiary hearing. Ortiz vs. Baker, 411 F.2d 9 (Tenth Cir. 1969).

Petitioner is granted leave to proceed herein without prepayment of costs and the Clerk of this Court is directed to file the petition presented.

IT IS, THEREFORE, ORDERED that the petition be denied and  
the case dismissed.

Dated this 23<sup>rd</sup> day of August, 1974.

Arthur Robinson  
UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA, )  
 )  
 ) Plaintiff, )  
 vs. ) CIVIL ACTION NO. 74-C-44  
 )  
 )  
 FRANKLIN D. POWELL, RUBY E. )  
 POWELL a/k/a RUBY POWELL, COUNTY )  
 TREASURER, Tulsa County, and )  
 BOARD OF COUNTY COMMISSIONERS, )  
 Tulsa County, )  
 )  
 ) Defendants. )

**FILED**  
AUG 26 1974  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 26th  
day of August, 1974, the plaintiff appearing by Robert  
P. Santee, Assistant United States Attorney; the defendants,  
County Treasurer, Tulsa County, and Board of County Commissioners,  
Tulsa County, appearing by Gary J. Summerfield, Assistant District  
Attorney; and the defendants, Franklin D. Powell and Ruby E.  
Powell a/k/a Ruby Powell, appearing not.

The Court being fully advised and having examined  
the file herein finds that Franklin D. Powell and Ruby E. Powell  
were served by publication, as appears from the Proof of Publi-  
cation filed herein, and that County Treasurer, Tulsa County,  
and Board of County Commissioners, Tulsa County, were served  
with Summons, Complaint, and Amendment to Complaint on February 11,  
1974, as appears from the Marshal's Return of Service herein.

It appearing that County Treasurer, Tulsa County, and  
Board of County Commissioners, Tulsa County, have duly filed  
their Answers herein on February 11, 1974, that Franklin D. Powell  
and Ruby E. Powell have failed to answer herein and that default  
has been entered by the Clerk of this Court.

The Court further finds that this is a suit based  
upon a mortgage note and foreclosure on a real property mortgage  
securing said mortgage note and that the following described  
real property is located in Tulsa County, Oklahoma, within the  
Northern Judicial District of Oklahoma:

Lot Twenty-three (23), Block Two (2), RESERVOIR VIEW ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the defendants, Franklin D. Powell and Ruby E. Powell, did, on the 30th day of July, 1971, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$9,000.00 with 7 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants, Franklin D. Powell and Ruby E. Powell, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued and that by reason thereof the above-named defendants are now indebted to the plaintiff in the sum of \$8,889.06 as unpaid principal, with interest thereon at the rate of 7 1/2 percent interest per annum from December 1, 1972, until paid, plus the cost of this action accrued and accruing.

The Court further finds that the County of Tulsa, State of Oklahoma, is entitled to judgment, in rem, against Ruby E. Powell in the amount of \$20.00 court costs, plus interest according to law, but that such judgment would be subject to and inferior to the first mortgage lien of the plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants, Franklin D. Powell and Ruby E. Powell, in rem, for the sum of \$8,889.06 with interest thereon at the rate of 7 1/2 percent per annum from December 1, 1972, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County of Tulsa, State of Oklahoma, have and recover judgment against the defendant, Ruby E. Powell, in rem, in the amount of

\$20.00 court costs, plus interest according to law, but that such judgment is subject to and inferior to the first mortgage lien of the plaintiff herein.

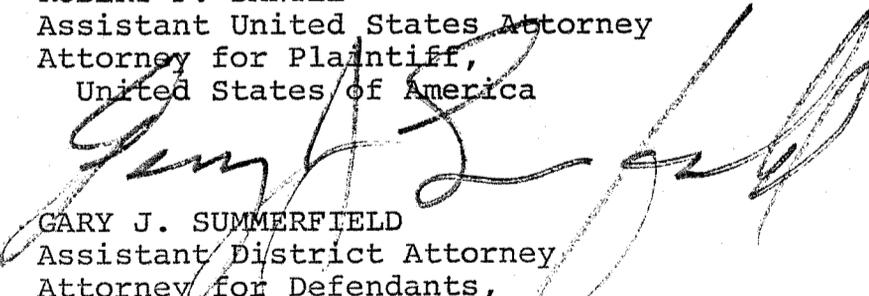
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of plaintiff's judgment. The residue, if any, to be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

  
United States District Judge

APPROVED.

  
ROBERT P. SANTEE  
Assistant United States Attorney  
Attorney for Plaintiff,  
United States of America

  
GARY J. SUMMERFIELD  
Assistant District Attorney  
Attorney for Defendants,  
County Treasurer and Board of  
County Commissioners, Tulsa  
County

bcs

E I L E D  
AUG 22 1974

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

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

IN THE MATTER OF THE PETITION OF )  
 )  
HYE SUK THOMPSON ) 74-C-312 ✓  
 )  
TO BE ADMITTED A CITIZEN OF THE )  
UNITED STATES OF AMERICA. )

ORDER DENYING MOTION TO REOPEN ORDER AND  
JUDGMENT OF NATURALIZATION

This matter came on for hearing July 26, 1974, on the Motion of the United States of America, through the Immigration and Naturalization Service, Department of Justice, and by the District Director of said Service, to reopen the order and judgment of naturalization of Hye Suk Thompson entered April 26, 1973. The motion was filed March 14, 1974.

Hye Suk Thompson was present in person and by her attorney, Joseph Best. The Immigration and Naturalization Service was represented by Kendall Warren. The Court heard arguments of counsel; testimony of one witness---the ex-husband of Hye Suk Thompson and complainant to the Immigration and Naturalization Service (hereinafter referred to as the INS); received 10 exhibits introduced by the Government; two affidavits filed on behalf of Hye Suk Thompson; the Court's Exhibit #1, and took the matter under advisement.

The Court has carefully and fully considered the arguments presented, the exhibits, affidavits, and the Interrogatories in the Deposition of Mr. Curry, a witness for the Government, and having carefully perused the entire file, and having conducted its own independent legal research, being fully advised in the premises, finds:

The Government, in its motion, alleges that since the entry of this Court's order and judgment naturalizing Mrs. Thompson, it has come to the attention of the INS that at the time the petitioner filed her petition for naturalization, and at the time she was naturalized, she was aware that certain alleged false statements had been made and certain alleged facts concealed from the naturalization examiner with reference to her petition for naturalization.

The newly discovered evidence that concerns the INS (and which apparently is based on the sole information of what this Court will describe as "an angered, disgruntled ex-husband) is failure to list some former addresses; the length of time witnesses to the petition for naturalization had known the applicant; alleged marital difficulties; an alleged move to California where applicant was supposed to have been employed at a candy factory; and an allegation that she had engaged in prostitution while in Korea.

The Government moves to reopen under Title 8 U.S.C.A. §1451(j) and Rule 60(b) of the Federal Rules of Civil Procedure. They allege newly discovered evidence and misrepresentation and/or

fraud perpetrated upon this Court. This motion was timely filed within the statutory one year period provided by Rule 60(b).

The Second Circuit Court of Appeals said in Re Campbell's Petition (2nd CCA, 1964) 326 F.2d 101, 102:

"Section 340(j) is a grant of power to the court, to reopen its naturalization judgments and is stated in permissive terms. It is well settled that motions for relief under Rule 60(b) are addressed to the sound discretion of the court." (Emphasis supplied) See also In Re Bortle (USDC, Dist. of Columbia, 1965) 244 F.Supp. 319.

The Circuit Court, in the Campbell case, supra, went on to state:

"Because he believed that the value of American citizenship should not be debased by summary suspension, the district judge concluded that the Government should normally seek cancellation of citizenship in a plenary suit---at least in the absence of a showing of circumstances making summary relief necessary to protect particular Government rights.

"Section 340(j) is a grant of power to the court to reopen its naturalization judgments and is stated in permissive terms. It is well settled that motions for relief under rule 60(b) are addressed to the sound discretion of the court (citing cases). We think that although the matters discussed by Judge Mishler did not require denial of the motion, it was appropriate for the district judge to consider them in the exercise of his discretion." (Emphasis supplied)

In the case of Petition of Cardines (D.C. Guam, 1973) 366 F.Supp. 700, the Court said:

"Just as Rule 60(b) alone has been applied to challenges to denaturalization decree (citing cases), so also the same rationale supports recourse to the rule in challenging a naturalization decree under Rule 60(b) and Section 340(j)."

Having determined that this Court does have jurisdiction under Section 340(j) and Rule 60(b), the Court will then face the uniqueness of the instant case in its present posture before the Court.

At the outset, the Court will commend for consideration the fact that research has failed to disclose a reported case in point on "all fours" with this one. In fact, the Court is of the opinion that this case is readily distinguishable.

It is apparent that the alleged newly discovered evidence and the alleged misrepresentation and/or fraud grow out of a complaint made by Mr. Oval Ray Thompson, the ex-husband of Mrs. Thompson.

When interrogated concerning the petition for naturalization, he stated that he found the forms confusing. Upon questioning by the Court, he stated that an accountant friend of his family helped them fill out the application---that Mr. Thompson would answer some of the questions and would ask his wife some of the questions, and that sometimes she indicated she did not understand the import of the question, but he testified that he "would make her understand". Mr. Thompson speaks Korean and acted somewhat as an interpreter for words and questions his wife did not understand. He would then give Mr. Tolleson (see quote from Government's Exhibit #4 below) the alleged answers of Mrs. Thompson.

In Government's Exhibit #4, the affidavit of Mr. Dick Tolleson, the family accountant, dated October 26, 1973, he stated in part:

"The way that this was done, is we sat down at the table in their home. Mr. Thompson sat next to me, she sat there part of the time and stood around, getting us coffee and so forth, part of the time. Now, I would read the question to her, and most of the time she did not know exactly what I was saying or something and Oval Thompson (the husband) would give me the information. I took all this information down in rough form. \*\*\* I took the forms and notes home and typed up the application there. Later I returned to the Thompson home and let her look it over. I do not know if she understood the contents but as best I can remember she looked the 4 pages of the application over before she signed it. During the whole thing it seemed to me that Oval was eager to help and I noted no animosity, it was almost like a 'joint' application."  
(Emphasis supplied)

Additionally, he admitted, under oath that he (Mr. Thompson) gave no thought to the statements in his wife's application until after the divorce. In answer to questions propounded to him by the Court concerning his bringing these alleged facts to the attention of the INS at this time, Mr. Thompson stated it was because he thought those persons who aided Mrs. Thompson should be brought to the attention of the INS.

Mr. Thompson also testified that he had been married five (5) times, each time resulting in a divorce. In one of the marriages, divorce proceedings were instituted seven (7) times, and in another, two (2) times.

He further testified that Mrs. Thompson had been introduced to him as a prostitute in Korea by a friend (present whereabouts unknown to him). She became pregnant by Mr. Thompson and he stated that he decided to go back to Korea and return her to the United States.

The Court notes that the testimony of Mr. Thompson in many instances is in direct conflict with statements contained in Court's Exhibit #1, and various exhibits on file, and, indeed, his own testimony from the witness stand.

Throughout this proceeding, including an examination of the exhibits, affidavits, Court's Exhibit #1, and the testimony of Mr. Thompson himself, the only person whose credibility and moral integrity became questionable, was his own.

At the time the naturalization petition was completed, it is apparent to the Court that Mr. Thompson knew whether the contents of the petition were correct.

The Court additionally finds that since English is a foreign language to Mrs. Thompson (although she speaks and writes it) she possibly misinterpreted some of the questions. Even her then husband testified that he found them confusing, and, therefore sought help from his accountant. The Court does not feel that there were any purposeful evasions to questions or intentional mistaken facts stated, but, at the most, some harmless errors might have occurred due to the lack of understanding and communication between the parties as to the meaning of the questions themselves, as well as the answers.

The matter that concerns the Court the most at this juncture is that the most damaging allegations in the motion to reopen is the allegation by the divorced husband, Oval Thompson that the naturalized citizen, Hye Suk Thompson, his former wife, was a prostitute in Korea. Such testimony is uncorroborated.

He, and he alone, if it is true, and this Court does not so believe, knew if she were a prostitute. He married her; he went through the proper channels to secure permission for such marriage (as will be hereinafter reflected); she is the mother of his son; he brought her to the United States; he knew who appeared in support of her petition for naturalization and the length of time they knew her; he knew their various addresses; he knew of their marital difficulties, if any; he aided her in securing her citizenship (served as an interpreter in filling out her application) --- that citizenship which he now seeks, through the INS, to have revoked. The action on the part of Mr. Thompson appears to be that of an unhappy, disgruntled and vengeful husband seeking to impose what unhappiness and humiliation he can upon his former wife (and a son as well) because of an unsuccessful marriage.

As to the other allegations raised by the motion of the INS, they too stand upon the complaints of Mr. Thompson.

Delving further into the matter, the Court finds that when Mrs. Thompson appeared before the examiner, Mr. Curry, eight (8) changes were made to the previous answers in the petition. The Court notes in this connection that she admitted to adultery, which the Hearing Examiner dismissed with the notation "Adultery before stat. period". In his deposition by interrogatories, Mr. Curry testified as to the procedure followed in examining applicants for citizenship and it is apparent that he went thoroughly into each and every question with the

applicant, as he was required to do.

The Court's Exhibit #1 is a xerox copy of a report of the Juvenile Bureau of the District Court, Tulsa County, Oklahoma, dated December 7, 1973, which was made to the Honorable Ed Glass, Special District Judge, concerning the custody of the minor child, Robert Thompson, in the Thompson divorce case, number JFD73-2125. The report is quite extensive, but the Court will quote a paragraph with reference to a conversation the investigator had with Mr. Kendall Warren, U. S. Immigration Service.

"Mr. Kendall Warren, U.S. Immigration Service, said that certain aspects of the information for naturalization by Hyesuk were not correct. Therefore, he is filing a motion to reopen the case. He said that even if she loses her citizenship, she probably could still live here and could reapply for citizenship at a later date. Even if it could be proved she was a prostitute, which he doubts, she probably would not be deported because her child is a U.S. citizen. Contrary to what Mr. Thompson thinks, the child would not have to remain in the United States with the father, if the mother were deported to Korea. Mr. Warren felt that in any case, there was very little likelihood that the mother would be deported." (Emphasis supplied)

The Court notes that this statement was not made under oath and is merely a recitation of what the investigator states was said, but it does show the lack of credence given by the INS itself to the allegations made by Mr. Thompson.

Further, the Court has considered the two affidavits filed after the hearing, both affidavits setting forth the procedure followed when a person in the armed services intends to marry a citizen of Korea. The procedure is as follows from the affidavit of Lloyd Avery, a former serviceman, having served in Korea and having married a Korean girl:

"The soldier submits his application to his commanding officer and the Korean National Police conduct one investigation into the background of the Korean girl, and the American Government, under the office of Special Investigation, likewise conducts an investigation into the girl's background. This check is made as to the fact that the girl is not a communist, is of good moral character and it also contains her occupation. I specifically remember on some of the papers that there is a finding that she is not engaged in nor has been engaged in prostitution. After these investigations are completed, the girl is then given a very thorough medical examination. The commanding officer then gives his consent, copies of the investigation are presented to the American Embassy, all documents are checked and double-checked to make certain that the investigations are complete and the records are (sic) married at the American Embassy. Following the marriage they can then obtain their visa."

All the evidence before the Court sustains the conclusion that Mrs. Thompson is a moral person; a good mother; a religious woman; and one who does not want to be dependent but wants to make her own way and her home in this Country.

The other allegations made by the INS and/or Mr. Thompson, in and of themselves, under this Court's interpretation of the law, are not fatally detrimental to Mrs. Thompson's citizenship.

The Court will advise, at the outset, that after reviewing all the reported cases construing Section 340(j), it will rely heavily on the case of *Petition of Arevalo* (U.S.D.C., D. Hawaii, 1972) 352 F.Supp. 215. There the Court said of the summary proceedings under 370(j) and Rule 60(b):

"Bearing in mind, we note that the INS has not even attempted a showing which would justify employment of a summary remedy in the present case. There is no claim that important government interests are in jeopardy, or that any situation exists which might compel the United States to seek immediate relief.

"On the other hand, if we were to reopen the order on this summary basis, restoring Arevalo to pending status, the effects on him would be drastic. He would be automatically deprived of his American Citizenship. The burden of proof would shift from the government to Arevalo, and he would have to prove his fitness for citizenship. Thus the clear mandate of the Supreme Court would be evaded, in a case where the government's proof is in serious question, rather than 'clear, unequivocal and convincing.' He would be denied the opportunity to challenge the adequacy of the evidence against him before an impartial tribunal. Instead, he would have to press his case before the administrative agency which has already accepted the reliability of hearsay accusations against him.

"Congress has specifically provided, in the Act, a means by which the government can move to revoke citizenship once granted. 8 U.S.C. Section 1451(a). The statute requires the United States attorneys (rather than counsel for the INS), upon showing of good cause, to institute a plenary court action for the purpose of revoking and cancelling citizenship unlawfully obtained. This method does not contemplate a 'reopening' for the purpose of restoring the petitioner to pending status, so that his case may then be dealt with administratively." (Emphasis supplied)

The case of *Petition of Cardines* (DC, Guam, 1973) 366 F.Supp. 700, involved a motion to reopen. The Government asserted that newly discovered evidence had come to its attention; that petitioner had concealed from naturalization officers the fact that he had married his second wife without first legally terminating a prior marriage, and the Government was entitled to proceed under the statute providing for reopening within one year and the holding of the same in abeyance pending further determination, and that the petitioner, once the case was reopened, had the burden of proof. In that case the Court referred to both the *Campbell* case, supra, and the *Arevalo* case, supra. Concerning the standard of proof, the

Court stated:

"Concerning the standard of proof required on the moving party under Rule 60(b), a distinction is drawn between the standard required under (2) thereof as in the instant case and under (3) thereof as in the Arevalo and England cases. In this case, unlike the Arevalo and England cases, the INS is not proceeding under (3) on the basis of fraud but under (2) on the basis of 'newly discovered evidence'.

"Under (2) of Rule 60(b) all that is required on the part of the moving party is that there must be a showing that the alleged newly discovered evidence was discovered since the trial; facts from which the court may infer reasonable diligence on the part of the moving party; that the evidence is not merely cumulative or impeaching; that the evidence is material; and the evidence is of such a character that on a new trial it will probably produce a different result. (cites to cases, among others, of McCullough Tool Company v. Wells Surveys, Inc. (10th CCA) 343 F.2d 381; Crow v. Dumke (10th CCA) 142 F.2d 635; Valmont Industries, Inc. v. Enresco (10th CCA, 1971) 446 F.2d 1193).

The Valmont Industries, Inc., case, supra, stands for the proposition that to prevail on the motion, the moving party must show that the failure to discover the new evidence during or preceding the trial was not due to his lack of diligence. With reference to fraud, in Arevalo, supra, the Court stated that "the moving party must bear the burden of establishing fraud by clear and convincing evidence."

Under the Arevalo case, supra, the Court feels that the moving party has not established fraud by clear and convincing evidence under Rule 60(b)(3). The Court further finds, based upon the evidence, and in its sound discretion that said motion should be denied under Rule 60(b)(2).

The Court further finds that there is no claim that important government interests are in jeopardy, or that any

situation exists which might compel the United States to seek immediate relief under a summary proceeding.

The Court is aware of the desire of Mrs. Thompson to be a United States citizen and to make a new life for herself in this country. This is understandable. Her young son is a United States citizen.

Based on all the evidence before the Court, and, particularly as to the testimony of the husband, the Court likens this situation to the one quoted by John, Chapter 8, Verse 7, wherein Jesus said to the Scribes and Pharisees, regarding the woman taken in the very act of adultery,

"He that is without sin among you, let him first cast a stone at her."

The Court recognizes that the Government is proceeding under Rule 60(b) and Section 1451(j) on the basis of newly discovered evidence and misrepresentations and/or fraud.

The Court feels that once citizenship has been granted, the naturalized American may not ordinarily be deprived of his status without being afforded his statutory right to due process. Congress has provided for a plenary action in a court of law. This is the procedure which should normally be followed by the government, absent some special necessity which might justify a summary hearing under Sec. 1451(j). Arevalo, supra; Campbell, supra.

United States citizenship is a high privilege. It is also a priceless treasure that makes life worth living. A naturalized citizen is not a second-class citizen. He enjoys all the rights and privileges of a natural born citizen, including the right of due process.

This Court feels, in a review of the reported case law, that each case turns on its own merits, situation, and evidence.

The Court concludes, from all that has been adduced that Mrs. Thompson is a law-abiding, religious, pious and compassionate individual who wants to care for her young son, be a productive individual in our society, and enjoy the rights of citizenship that so many of us enjoy.

The Court acknowledges to the INS, that when complaints are made it is their duty to investigate; but, the actual granting or denial of citizenship is not an administrative function, but a judicial one.

The Court can only conclude, with the evidence before it, that if one is to place blame, if in truth and fact blame must be placed, then Mr. Thompson, the husband must bear the blame, and this Court will not condone any punishment to Mrs. Thompson for something not of her own doing; and further that this Court will not be used to further vengeance building up from an unhappy marriage.

IT IS, THEREFORE, ORDERED that the Government's motion be and the same is hereby denied.

IT IS FURTHER ORDERED that the exhibits and affidavits entered in this case be placed in a sealed envelope by the Clerk of this Court, not to be opened unless so ordered by this Court.

ENTERED this 27th day of August, 1974.



---

CHIEF UNITED STATES DISTRICT JUDGE

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

ALVIN LEE JENKINS, )  
 )  
 ) Petitioner, )  
vs. ) NO. 74-C-217  
 )  
 )  
SAM C. JOHNSTON, Warden, )  
State of Oklahoma, )  
 )  
 ) Respondent. )

FILED  
AUG 22 1974

O R D E R

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

This is a proceeding brought pursuant to the provisions of Title 28 U.S.C. §2254 by a state prisoner confined in the Oklahoma State Penitentiary at McAlester, Oklahoma. Petitioner attacks the validity of the judgment and sentence imposed on March 6, 1972, by the District Court in and for Tulsa County, Oklahoma, in Case No. CRF-71-1142. After a plea of not guilty of the crime of shooting with intent to kill (21 O.S. 1971 §652) the petitioner was tried by a jury and found guilty of the charge and his punishment was fixed at confinement in the Oklahoma State Penitentiary for an indeterminate term of 15 to 20 years. The judgment and sentence was affirmed on direct appeal, Jenkins vs. State of Oklahoma, Okl. Cr. 1972, 501 P.2d 508.

Petitioner's application for leave to file his petition for writ of habeas corpus in forma pauperis was granted by Order made and entered on the 17th day of May, 1974, by the Honorable Joseph W. Morris, Judge of the United States District Court for the Eastern District of Oklahoma.

The petitioner alleges that he has exhausted those remedies available to him in the courts of the State of Oklahoma. However, the file does not reflect such action on the part of the petitioner.

Petitioner contends that the judgment and sentence imposed should be vacated for the following reasons:

- 1) The trial court erred in not affording petitioner a preliminary hearing.
- 2) Petitioner was deprived of his right to effective assistance of counsel.
- 3) The punishment was excessive, appearing to have been given under the influence of passion and prejudice.

The petitioner's first allegation is without merit. The right to a preliminary examination is not itself a constitutional right, and be-

comes one only through the application of the Fourteenth Amendment to the Constitution of the United States of America. Gurra vs. Rodriguez, 372 F.2d 472 (10th Cir. 1967). Miller vs. Anderson, 352 F.Supp. 1263 (N.D. Okla. 1972). When questioned by the Court prior to trial the petitioner was asked the following question and gave the stated answer:

"QUESTION: The Judge didn't ask you if you knew what you were doing?

ANSWER: Yes, and I told him I thought that well, Mr. Naifeh, I thought he knows what he was doing, so I went along with it."

Habeas corpus petitioner's contention that he had been denied a preliminary hearing did not raise federal constitutional issue cognizable in the federal court. Stanfield vs. Swenson, D.C. Mo. 1969, 332 F.Supp. 497. The Federal Constitution does not secure to a state court defendant a right to a preliminary hearing. Ramirez vs. State of Arizona, 437 F.2d 119 (9th Cir. 1971).

The record and pleadings in this case do not disclose that petitioner has exhausted his state remedies to a second allegation for relief. Federal court may not grant habeas corpus in behalf of a person in custody pursuant to state judgment unless it appears that applicant has exhausted remedies available in courts of state or that there is either an absence of available state corrective process or existence of circumstances rendering process ineffective to protect rights of prisoner. 28 U.S.C.A. § 2254. Litchfield vs. Tinsley, 281 F.2d 486 (10th Cir. 1960). Unless petitioner for federal habeas corpus undertook in good faith through applicable and existent provisions of state law, to have adjudicated on their merits his claim that his detention was result of violation of his federally guaranteed constitutional rights, federal district court must deny his petition, discharge writ and remand him to custody for failure to exhaust his available state remedies. Carpenter vs. Crouse, D.C.Kan. 1967, 279 F.Supp. 275, affirmed 389 F.2d 43, Cert. Den. 88 S.Ct. 1648, 390 U.S. 1048, 20 L.Ed.2d 308. The file reflects that petitioner filed application for post-conviction relief in the District Court in and for Tulsa County, Oklahoma, and this request for relief was denied and no

appeal from the ruling of the District Court of Tulsa County appears to have been prosecuted.

Petitioner's final allegation is without merit. The petitioner was tried and convicted of violation of Title 21 O.S. 1971 §652 which provides:

"Every person who intentionally and wrongfully shoots, shoots at, or attempts to shoot at, another with any kind of firearm, air gun or other means whatsoever, with intent to kill any person, or who commits any assault and battery upon another by means of any deadly weapon, or by such other means or force as is likely to produce death, or in any manner attempts to kill another, or in resisting the execution of any legal process, is punishable by imprisonment in the penitentiary not exceeding twenty (20) years."

Where sentence is within the limit set by law, its severity would not be grounds for relief on habeas corpus. U. S. ex rel Marcial vs. Fay, 267 F.2d 507 (2d Cir. 1959). The severity of sentence alone constitutes no ground for habeas corpus relief. U. S. ex rel Jackson vs. Myers, 374 F.2d 707 (3rd Cir. 1967).

The files and records in this case examined by the Court, conclusively show that petitioner is not entitled to relief. Therefore, there is no necessity for this Court to hold an evidentiary hearing. Ortiz vs. Baker, 411 F.2d 90 (10th Cir. 1969).

IT IS, THEREFORE, ORDERED that the petition herein be and it is hereby denied and this cause dismissed.

Dated this 27<sup>th</sup> day of August, 1974, at Tulsa, Oklahoma.

  
CHIEF JUDGE, UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT OF  
OKLAHOMA

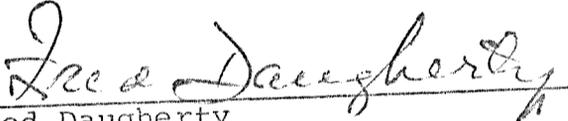


Court. Such resident attorney shall sign the first pleading filed and shall continue in the case unless other resident counsel be substituted. Any notice, pleading or other paper may be served upon the resident attorney with the same effect as if personally made on such non-resident attorney within this state."

An examination of the roll of attorneys of this Court reveals that local counsel, Mr. Donald L. O'Bryan, engaged as such by out-of-state counsel for Plaintiff, has not been admitted to practice in this Court.

In the foregoing circumstances, the Court dismisses this action with prejudice for failure of Plaintiff to prosecute the same and for failure of Plaintiff to comply with the Order of this Court to attend the Pretrial Conference scheduled herein as aforesaid and for failure to comply with the requirements of Local Rule 5(h). Link v. Wabash R. Co., 370 U.S. 626 (1962); Shotkin v. Westinghouse Electric & Mfg. Co., 169 F. 2d 825 (Tenth Cir. 1948); Food Basket, Inc. v. Albertson's, Inc., 416 F. 2d 937 (Tenth Cir. 1969).

It is so ordered this 21 day of August, 1974.

  
Fred Daugherty  
United States District Judge



to take the necessary steps to enforce the judgment.

ORDERED this 21 day of August, 1974.

  
\_\_\_\_\_  
JUDGE FRED DAUGHERTY

APPROVED:

  
\_\_\_\_\_  
Irvine E. Ungerman,  
Attorney for Plaintiff

  
\_\_\_\_\_  
Truman B. Rucker,  
Attorney for Defendant

ba

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

RAMONA L. PALMER,

Plaintiff,

vs.

CONTINENTAL CASUALTY COMPANY,  
a foreign corporation,

Defendant.

Case No. 74-C-241

**FILED**

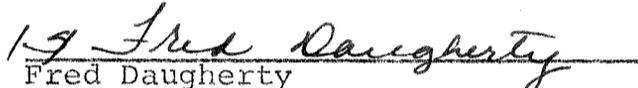
AUG 21 1974

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

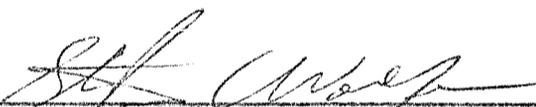
ORDER

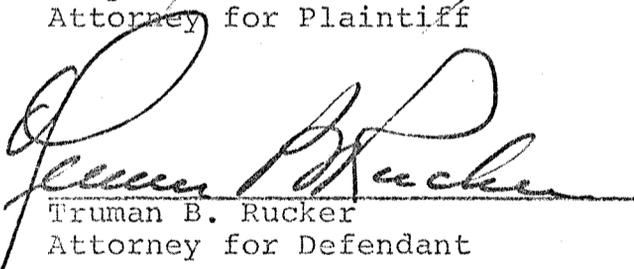
It is hereby ordered that this case is remanded to State  
Court.

Dated this 21 day of August, 1974.

  
Fred Daugherty  
United States District Judge

APPROVED:

  
Stephen C. Wolfe  
Attorney for Plaintiff

  
Truman B. Rucker  
Attorney for Defendant

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 -v- )  
 )  
 FLOYD HENRY WHITFIELD, et al, )  
 )  
 Defendants. )

**E I L E D**

AUG 20 1974

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

Civil Action No. 74-C-85

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 17<sup>th</sup> day of August, 1974, the plaintiff appearing by Robert P. Santee, Assistant United States Attorney, the defendant Lomas & Nettleton appearing by its attorney, Kenneth C. Dippel, and the defendants Floyd Henry Whitfield, Julieatt Whitfield, and Housing Authority of the City of Tulsa appearing not.

The Court, being fully advised and having examined the file herein, finds that Floyd Henry Whitfield was served by publication, as appears from the Proof of Publication filed herein; that Julieatt Whitfield was served with Summons and Complaint on February 11, 1974, and with Summons and Amendment to Complaint on March 1, 1974; that Lomas & Nettleton Company was served with Summons and Complaint on February 11, 1974, and with Summons and Amendment to Complaint on February 26, 1974; and that Housing Authority of the City of Tulsa was served with Summons, Complaint, and Amendment to Complaint on March 1, 1974; all as appears from the Marshal's Returns of Service filed herein.

It appears that Lomas & Nettleton Company has filed its Disclaimer on March 5, 1974, and that Floyd Henry Whitfield, Julieatt Whitfield, and Housing Authority of the City of Tulsa have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note covering the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirty-Nine (39), Block Three (3),  
Suburban Acres Addition, in the City of Tulsa,  
Tulsa County, State of Oklahoma, according to  
the recorded plat thereof,

That the defendants Floyd Henry Whitfield and Julieatt Whitfield did, on the 11th day of September, 1971, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$10,000.00, with interest thereon at the rate of 7-1/2 percent per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants Floyd Henry Whitfield and Julieatt Whitfield made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 12 months last past, which default has continued, and that by reason thereof, the above-named defendants are now indebted to the plaintiff in the sum of \$10,025.14, with interest thereon at the rate of 7-1/2 percent per annum from April 1, 1973, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendant Floyd Henry Whitfield, in rem, and against defendant Julieatt Whitfield, in personna, for the sum of \$10,025.14, with interest thereon at the rate of 7-1/2 percent per annum from April 1, 1973, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment, in rem, against the defendant, Housing Authority of the City of Tulsa.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisal the real property and apply the proceeds thereof in satisfaction of plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the defendants, and each of them, and all persons claiming under them since the filing of the complaint herein, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

*Luther Bohanon*  
\_\_\_\_\_  
United States District Judge

APPROVED:

*Robert P. Santee*  
\_\_\_\_\_  
ROBERT P. SANTEE, Asst. U.S. Attorney  
Attorney for Plaintiff,  
United States of America

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

UNITED STATES OF AMERICA, )  
 )  
 ) Plaintiff, )  
 vs. ) CIVIL ACTION NO. 74-C-195  
 )  
 )  
 HARVEY O. BOURLAND, if living, )  
 or if not, his unknown heirs, )  
 assigns, executors and admini- )  
 strators, EMMA E. BOURLAND, )  
 JAMES EDWARD HENDERSON a/k/a )  
 JAMES E. HENDERSON a/k/a JAMES )  
 ED HENDERSON, HATTIE MAE COTTON )  
 HENDERSON, LOCAL FINANCE COMPANY, )  
 PATTON LOANS OF TULSA, INC., )  
 CHARLES BOURLAND, and ELLEN )  
 GROUNDS, )  
 )  
 ) Defendants. )

**E I L E D**  
AUG 20 1974  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 17<sup>th</sup>  
day of August, 1974, the plaintiff appearing by Robert P. Santee,  
Assistant United States Attorney, the defendant, Local Finance  
Company, appearing by its attorney, Troy Kennon, and the defendants,  
Harvey O. Bourland, if living, or if not, his unknown heirs, as-  
signs, executors and administrators, Emma E. Bourland, James  
Edward Henderson a/k/a James E. Henderson a/k/a James Ed Henderson,  
Hattie Mae Cotton Henderson, Patton Loans of Tulsa, Inc., Charles  
Bourland, and Ellen Grounds, appearing not.

The Court being fully advised and having examined  
the file herein finds that Harvey O. Bourland, if living, or if  
not, his unknown heirs, assigns, executors and administrators,  
was served by publication, as appears from the Proof of Publica-  
tion filed herein; that Emma E. Bourland, Patton Loans of Tulsa,  
Inc., Ellen Grounds, and Local Finance Company were served with  
Summons and Complaint on May 1, 1974; and that James Edward  
Henderson a/k/a James E. Henderson a/k/a James Ed Henderson,  
Hattie Mae Cotton Henderson, and Charles Bourland were served  
with Summons and Complaint on May 2, 1974, all as appears from  
the Marshal's Return of Service herein.

It appearing that Local Finance Company has duly filed its Disclaimer herein on May 8, 1974, that Harvey O. Bourland, if living, or if not, his unknown heirs, assigns, executors and administrators, Emma E. Bourland, James Edward Henderson a/k/a James E. Henderson a/k/a James Ed Henderson, Hattie Mae Cotton Henderson, Patton Loans of Tulsa, Inc., Charles Bourland, and Ellen Grounds, have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note and that the following described real property is located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eighteen (18), Block Eleven (11), SUBURBAN ACRES SECOND ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the recorded plat thereof.

THAT the defendants, Harvey O. Bourland and Emma E. Bourland, did, on the 8th day of July, 1964, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$9,100.00 with 5 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that the defendants, James Edward Henderson and Hattie Mae Cotton Henderson, were the grantees in a deed from Emma E. Bourland, dated April 19, 1971, and filed April 20, 1971, in Book 3964, Page 1743, records of Tulsa County, wherein James Edward Henderson and Hattie Mae Cotton Henderson assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that the defendants, Harvey O. Bourland, Emma E. Bourland, James Edward Henderson, and Hattie Mae Cotton Henderson, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon for more than 11 months last past, which default has continued and that by reason thereof the above-named defendants are now indebted to the plaintiff in the sum

of \$7,789.60 as unpaid principal, with interest thereon at the rate of 5 1/2 percent interest per annum from September 1, 1973, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants, Harvey O. Bourland, in rem, Emma E. Bourland, James Edward Henderson, and Hattie Mae Cotton Henderson, in personam, for the sum of \$7,789.60 with interest thereon at the rate of 5 1/2 percent per annum from September 1, 1973, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment, in rem, against the defendants, Patton Loans of Tulsa, Inc., Charles Bourland, and Ellen Grounds.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds thereof in satisfaction of plaintiff's judgment. The residue, if any, to be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

*Luther Bohanon*

United States District Judge

APPROVED.



ROBERT P. SANTEE  
Assistant United States Attorney



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

ROGER C. MYERS,  
Plaintiff,

vs.

CONNIE S. MYERS, et al.,  
Defendants.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

74-C-117  
**FILED**  
AUG 15 1974  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER DENYING APPLICATION FOR LEAVE TO PROCEED  
IN FORMA PAUPERIS

The Court has for consideration the Application for Leave to Proceed in Forma Pauperis, filed August 15, 1974, and being fully advised in the premises, finds:

That pursuant to Title 28 U.S.C.A. Section 1915(a), said appeal is not taken in good faith, is without merit and is frivolous, and this Court will not grant leave to appeal in Forma Pauperis to the Supreme Court of the United States.

IT IS, THEREFORE, ORDERED that the Application for leave to Proceed in Forma Pauperis be and the same is hereby denied.

ENTERED this 15th day of August, 1974.



CHIEF UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,

Plaintiff,

-v-

KENNETH L. NICHOLS and  
LINDA L. NICHOLS,

Defendants.

FILED

AUG 15 1974

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

Civil Action No. 74-C-132

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 15<sup>th</sup>  
day of August, 1974, the plaintiff appearing by Robert P. Santee,  
Assistant United States Attorney, and the defendants, Kenneth L.  
Nichols and Linda L. Nichols, appearing not.

The Court, being fully advised and having examined the  
file herein, finds that the defendants, Kenneth L. Nichols and  
Linda L. Nichols, were served with Summons and Complaint on  
March 15, 1974, and with Summons and Amendment to Complaint on  
April 19, 1974, as appears from Marshal's Returns of Service  
filed herein.

It appears that the said defendants have failed to  
answer herein and that default has been entered by the Clerk of  
this Court.

The Court further finds that this is a suit based upon  
a mortgage note and foreclosure on a real property mortgage  
securing said mortgage note and that the following described  
real property is located in Ottawa County, Oklahoma, within the  
Northern Judicial District of Oklahoma:

Lot One (1) and the North Half (N/2) of  
Lot Two (2) in Block Twenty-four (24), of  
the Shapp-Whitebird Addition to the Town  
of Quapaw, Ottawa County, State of Oklahoma.

That the defendants, Kenneth L. Nichols and Linda L.  
Nichols, did, on the 19th day of January, 1971, execute and  
deliver to the United States of America, acting through the

Farmers Home Administration, their promissory note in the amount of \$8,600.00, payable in 34 annual installments, with interest thereon at the rate of 7-1/4 percent per annum; and

The Court further finds that the defendants, Kenneth L. Nichols and Linda L. Nichols, made default under the terms of the aforesaid mortgage note by reason of their failure to make installment due thereon for more than seven months last past, which default has continued, and that by reason thereof, the above-named defendants are now indebted to the plaintiff in the sum of \$10,036.13, plus interest from June 7, 1974, at the rate of 7-1/4 percent per annum, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff have and recover judgment against defendants, Kenneth L. Nichols and Linda L. Nichols, in personna, for the sum of \$10,036.13 with interest thereon at the rate of 7-1/4 percent per annum from June 7, 1974, plus the cost of this ~~action~~ accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure to said defendants to satisfy plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, with appraisement, the real property and apply the proceeds thereof in satisfaction of plaintiff's judgment. The residue, if any, is to be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the defendants and each of them, and

all persons claiming under them since the filing of the complaint herein, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

15/ Allen E. Barrow  
United States District Judge

APPROVED:

15/ Robert P. Santee  
ROBERT P. SANTEE  
Assistant United States Attorney



the State of Oklahoma, many thousands of qualified and mostly registered voters will be barred and prevented from voting for candidates and constitutional amendment questions because of being institutionalized, although being wholly competent to vote.

He further alleges that the 1974 Amendment to the Election Laws of the State of Oklahoma provide for nursing home residents or patients to vote, and has the provision for hundreds of new Election Board Registrars to go into the Nursing Homes to register voters-residents, and for Voting Officials to go in on Election Day with paper ballots and to assist residents-patients in voting, which he alleges denies equal protection of the laws to those qualified voters with no means to vote. (Emphasis supplied)

Plaintiff further alleges that the picking out of Nursing Home residents, and exclusion by oversight and inaction of the 1974 Oklahoma Legislature of the much larger block of voter-citizens in hospitals of all types is unconstitutionally discriminatory and lacks constitutional due process protection, and is a denial of equal protection of the laws.

Plaintiff states that rather than ask the Court to declare void and unconstitutional the 1974 legislation he requests the Court to construe the omission as merely an unintentional oversight by the Legislature. Plaintiff requests the Court to issue a writ of mandamus to the Tulsa County Election Board to enter hospitals for purposes of registration and voting and also a writ of mandamus to the Election Board of Craig County to go into all hospitals, including the State Mental Hospital at Vinita for such purpose. (Emphasis supplied)

Plaintiff alleges that unless restrained by this Court, grievous harm will be done to the federal rights the plaintiff and other candidates in the upcoming elections and to the huge class of citizen-voters in the various hospitals in violation of 42 U.S.C.A. §1983 and in violation of the 15th Amendment to the Constitution of the United States and the Voting Rights Act of 1965.

Plaintiff further alleges that the two Election Boards sued be made representative of the entire class of Election Boards in the State of Oklahoma. No money relief is sought, only injunctive relief.

Rule 81(b) of the Federal Rules of Civil Procedure provides:

"The writs of scire facias and mandamus are abolished.  
\*\*\*."

Plaintiff is, therefore, not entitled to the extraordinary writ of mandamus from this Court, in the instant case.

Section 20 of Chapter 75 of the Laws of the Thirty-Fourth Legislature of the State of Oklahoma, provides:

"The registration of any registered voter may be cancelled only for one of the following reasons:  
\*\*\*; commitment to an institution for mental illness; \*\*\*." (Emphasis supplied)

Section 15 of Chapter 201 of the Laws of the Thirty-Fourth Legislature sets up a procedure for voters confined to nursing homes or convalescent hospitals within the county. There is no directive contained therein for the Election Board to go to said institutions to register voters. It does provide in subsection 2 as follows:

"2. On the Friday, Saturday or Monday, preceding the election, said absentee voting board shall deliver to each registered voter who is confined to a nursing home or convalescent hospital and who requested ballots

and materials as may be necessary to vote same."

Section 15 goes on to provide the procedure of marking ballots, returning ballots to the election board, manner of opening and the like.

Plaintiff claims a civil rights violation under Section 1938 of the Civil Rights Act as to himself and that class of persons hospitalized and in mental institutions. The Court finds no violation as to plaintiff; plaintiff does not maintain that he is a member of the hospitalized class; and that class, from a perusal of the complaint, is not a party to the instant litigation.

Amendment 15 to the United States Constitution, Section 1, provides:

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude."

Amendment 19 of the United States Constitution, Section 1, provides:

"The right of citizens of the United States to vote shall not be abridged by the United States or by any State on account of sex."

By the statements made as to the applicable law hereinabove, this Court does not intimate that it has anything but the greatest regard to that inalienable right bestowed upon the citizens of this great country to exercise their rightful and constitutionally guaranteed franchise to vote.

If persons not legitimately entitled to vote are permitted to do so, the legal voter is denied his adequate, proportionate share of influence, and, the result is that the election, as to him is unequal; that is, he is denied the equal influence to which he is entitled with all other qualified electors. The guaranty, therefore means that every qualified voter may freely

exercise the right to cast his vote and that his vote, when cast, shall have the same influence as that of any other voter. An election is free and equal within the meaning of the constitution when it is public and open to all qualified voters, when every voter has the same right as to any other qualified voter.

The franchise bestowed is a cornerstone of our government and is jealously guarded by its citizens and this nation.

The Court finds, in viewing the entire complaint of the plaintiff, that he has failed to state a cause of action upon which relief can be granted.

Having thus determined the case on the failure to state a claim, this finding being dispositive of the litigation, the Court feels no need to go into the question of propriety of class action.

IT IS, THEREFORE, ORDERED that the complaint and cause of action be and the same are hereby dismissed for failure to state a cause of action upon which relief may be granted.

ENTERED this 15<sup>th</sup> day of August, 1974.



---

CHIEF UNITED STATES DISTRICT JUDGE

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

MARK B. RIPIN,  
Plaintiff,  
vs.  
RICHARD L. WILLFORD,  
Defendant.

No. 74-C-17

FILED

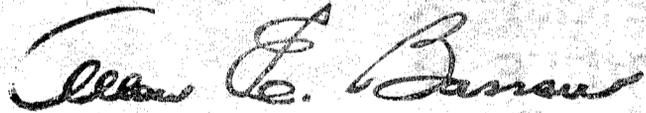
AUG 15 1974

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT

On July 29, 1974, the above captioned case came on for trial. The plaintiff announced ready by his attorney, Kainor Carson, and the defendant announced ready by his attorney, Joseph F. Glass. Thereupon a jury of six people were duly empanelled and sworn to try the case. Thereafter, evidence was presented by the plaintiff and by the defendant. Thereafter, the case was submitted to the jury on July 31, 1974 and after due deliberation the jury returned a verdict in favor of the defendant on his Cross-Petition and fixed the amount of his recovery at \$1,349.86 and further found that the plaintiff should have no judgment by way of his Petition.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff make no recovery by way of his Petition and that the defendant have judgment against the plaintiff in the amount of \$1,349.86.



JUDGE

APPROVED AS TO FORM:

Kainor Carson, Attorney for Plaintiff

Joseph F. Glass, Attorney for Defendant

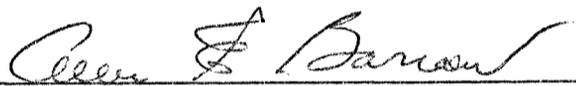


In her response to the Motion to Dismiss, plaintiff admits that her petition for habeas corpus, attached to the complaint is moot. She further admits that the cause of action did arise in California. She avers that in order to be paroled she "had to go as far away as possible" from California, at the Board's request.

The Court finds that it lacks jurisdiction over the person of the moving defendants and venue is improper.

IT IS, THEREFORE, ORDERED that the complaint and cause of action as to the moving defendants be and the same is hereby overruled for lack of personal jurisdiction and improper venue.

ENTERED this 13<sup>th</sup> day of August, 1974.



---

CHIEF UNITED STATES DISTRICT JUDGE

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

HELEN MARIE JONES,

Plaintiff,

vs.

VIRGINIA CARLSON, SUPERINTENDENT,  
et al.,

Defendants.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

74-C-263

**FILED**

AUG 13 1974

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER DISMISSING CAUSE OF ACTION AND COMPLAINT  
AS AGAINST THE DEFENDANT JOHN  
BUELER

The Court has for consideration the Complaint of the plaintiff and the answer of the defendant, John Bueler (sued as John Bueller), wherein he prays that he be dismissed, and, being fully advised in the premises, finds:

That the only allegation contained in the complaint is that John Bueler allegedly appeared before the parole board for approximately 2 hours when plaintiff was being considered for parole.

The Court finds that such allegation does not state a cause of action against the defendant, John Bueler.

SUA SPONTE, IT IS, THEREFORE, ORDERED that the cause of action and complaint against the defendant, John Bueler (sued as John Bueller) be and the same is hereby dismissed.

ENTERED this 13<sup>th</sup> day of August, 1974.

*Allen E. Barrow*

CHIEF UNITED STATES DISTRICT JUDGE

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

HELEN MARIE JONES,

Plaintiff,

vs.

VIRGINIA L. CARLSON, Superintendent,  
et al.,

Defendants.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

74-C-263✓

**FILED**

AUG 13 1974

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER DENYING APPOINTMENT OF  
COUNSEL

Contained in the petition of plaintiff is a request  
for the appointment of counsel by the plaintiff.

There is no right to appointment of counsel in a civil  
case. *Bethea v. Crouse* (10th CCA, 1969) 417 F.2d 504; *Christian*  
*v. Park J. Warden, etc.* (10th CCA, dedided August 9, 1974) #74-  
1213.

IT IS THEREFORE ORDERED that plaintiff's request for  
appointment of counsel be and the same is hereby denied.

ENTERED this 13<sup>th</sup> day of August, 1974.

*Allen F. Cannon*

CHIEF UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
RUTH A. MATTHEWS,  
Defendant.

)  
)  
)  
)  
)  
)  
)

CIVIL ACTION NO. 74-C-160

**FILED**

AUG 8 1974 *pm*

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

NOTICE OF DISMISSAL

Comes now the United States of America, plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of dismissal, without prejudice, of the above-captioned action.

Dated this 8th day of August, 1974.

UNITED STATES OF AMERICA

NATHAN G. GRAHAM  
United States Attorney



ROBERT P. SANTEE  
Assistant United States Attorney

**E I L E D**

AUG 8 1974

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

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

BERNICE and WINFREY A. SMITH,

Plaintiffs

vs

RICHARD MICHAEL PHILLIPS  
and RICHARD ROMANS,

Defendants

NO. 73-C-60

ORDER

Now, on this 25th day of July, 1974, comes on for trial before this court, the case pending herein, plaintiffs' appear by their attorney, Dale Warner, and the defendant Richard Michael Phillips appears personally pro se. Upon stipulation of the parties hereto, the case pending herein can be dismissed without prejudice to further proceedings in a companion case hereto, styled: Bert E. Tucker and Carolyn Sue Tucker, Plaintiffs vs. Richard Michael Phillips and Richard Romans, now pending in the District Court in and for Tulsa County, State of Oklahoma, in Case No. CT-73-81.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that the cause of action pending herein is dismissed without prejudice to further proceedings in the companion case now pending in State Court, styled Tucker vs. Phillips et al.

*Luther Bohanon*

\_\_\_\_\_  
Judge Luther Bohanon

ws

E I L E D

AUG 6 1974

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

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

NATIONAL BANK OF TULSA,  
TRUSTEE OF THE J. A. CHAPMAN  
AND LETA M. CHAPMAN TRUST,  
National Bank of Tulsa Building  
Tulsa, Oklahoma

Plaintiff,

Vs.

UNITED STATES OF AMERICA

Defendant.

Civil No. 69-C-210

STIPULATION OF DISMISSAL

The parties to this action, by and through their undersigned counsel, hereby stipulate and agree that the above entitled action be dismissed with prejudice, each party to bear its own costs.

WILLIAM H. BELL

\_\_\_\_\_  
(William H. Bell)  
Rogers, Bell & Robinson  
P. O. Box 3209  
Tulsa, Oklahoma 74101  
Telephone: 918-582-5201  
Attorney for Plaintiff

Nathan G. Graham  
United States Attorney

By s/Robert P. Santee  
(Robert P. Santee)  
Northern District of Oklahoma  
Federal Building  
Tulsa, Oklahoma  
Attorney for Defendant

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

A. C. HOYLE COMPANY, a )  
corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
SUPERIOR WELDING, INC., a )  
corporation, )  
 )  
Defendant, )  
 )  
INTERSTATE TOOL AND )  
MANUFACTURING COMPANY, INC., )  
 )  
Third Party Defendant, )  
 )  
UNIVERSAL STEEL CORPORATION, )  
 )  
Additional Third Party Defendant. )

NO. 72-C-366 ✓

**FILED**

AUG 2 1974

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

K

ORDER OF DISMISSAL

NOW on this 17th day of June, 1974, the above cause comes on for non-jury trial and plaintiff appears by and through its attorneys D. Kent Meyers and Roger Brown, defendant Superior Welding, Inc. appears by and through its attorney James W. Connor, third party defendant Interstate Tool and Manufacturing Company, Inc. appears by and through its attorney Craig Blackstock and third party defendant Universal Steel Corporation appears by and through its attorney Phillips Breckinridge.

The Court finds through an announcement of counsel that the parties have agreed to settle the controversy existing between them which is the subject matter of this lawsuit by each dismissing its cause of action, if any, against the other with prejudice. In addition, Superior Welding, Inc. agrees to pay plaintiff \$6,000.00. Interstate Tool and Manufacturing Company agrees to pay plaintiff \$1,000.00. Universal Steel Corporation agrees to pay plaintiff \$1,000.00. Plaintiff shall be allowed to retain the \$10,619.00

now in its possession free of any claim of any of the other parties to this action.

In addition, plaintiff shall agree to indemnify and hold harmless all of the defendants herein of and from any future claim made by Lykes Brothers Steamship Company or Equitable Equipment Company arising from the costs of replacement of "D" ring and cup assemblies. The indemnification agreement shall not apply to tort claims arising, in favor of or asserted by a third party.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. All actions asserted in this case are dismissed with prejudice.
2. Plaintiff is allowed to retain the \$10,619.00 now in its possession.
3. Plaintiff shall receive from defendant Superior the sum of \$6,000.00, defendant Interstate \$1,000.00 and defendant Universal \$1,000.00, all to be paid within ten (10) days or such other time as may be extended by the Court.
4. Plaintiff shall execute a satisfactory indemnification agreement consistent with the agreement of the parties made in open court.
5. Plaintiff shall furnish to defendant Superior a copy of the settlement agreement existing between plaintiff and Lykes Brothers Steamship Company.

Victor Bohannon  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Roger Brown  
Roger Brown, Attorney for  
A. C. Hoyle Company

D. Kent Meyers  
D. Kent Meyers, Attorney for  
A. C. Hoyle Company

James W. Connor  
James W. Connor, Attorney for  
Superior Welding, Inc.

Craig Blackstock  
Craig Blackstock, Attorney  
for Interstate Tool and  
Manufacturing Company, Inc.

Phillips Breckinridge  
Phillips Breckinridge, Attorney  
for Universal Steel Corporation