

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

OKLAHOMA ORDNANCE WORKS AUTHORITY, )  
a public trust, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
SHELTER RESOURCES CORPORATION, )  
et al., )  
 )  
Defendants. )

No. <sup>75</sup> ~~76~~-C-328-C ✓

FILE  
AUG 31 1976  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

JUDGMENT

The Defendants, Shelter Resources Corporation, Winston Delaware, Inc. and Winston Industries, Inc., and the Plaintiff, Oklahoma Ordnance Works Authority, have stipulated that a judgment may be entered against the Defendants, Shelter Resources Corporation, Winston Delaware, Inc. and Winston Industries, Inc., on the Plaintiff's First Cause of Action.

IT IS THEREFORE ORDERED that the Plaintiff, Oklahoma Ordnance Works Authority, a public trust, have judgment against the Defendants, Shelter Resources Corporation, Winston Delaware, Inc. and Winston Industries, Inc., and each of them, jointly and severally, in the amount of \$128,049.65 on the said First Cause of Action, plus interest at 10% per annum until paid for which execution shall issue. The Plaintiff dismisses all other claims in its Complaint, as amended, herein against Shelter Resources Corporation, Winston Delaware, Inc. and Winston Industries, Inc. without prejudice while retaining those claims against all other Defendants.

IT IS SO ORDERED this 31<sup>st</sup> day of August, 1976.



H. DALE COOK  
UNITED STATES DISTRICT JUDGE



~~FILED~~  
AUG 26 1976  
JAMES W. CLARK  
U. S. DISTRICT COURT

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ROBERT BRACKEN, )  
 )  
 Defendant. )

CIVIL ACTION NO. 75-C-502-B

~~FILED~~  
AUG 30 1976  
U. S. DISTRICT COURT

O R D E R

The Court has for consideration Plaintiff's Motion for Summary Judgment in its entirety and has carefully perused the entire file, the briefs and all recommendations concerning said motion, and being fully advised in the premises, finds that the Plaintiff's Motion for Summary Judgment should be sustained.

IT IS, THEREFORE, ORDERED that the motion of the United States of America, Plaintiff herein, should and is hereby sustained.

Dated this 30 day of August, 1976.

Allen E. Barrow  
CHIEF UNITED STATES DISTRICT JUDGE



Court having jurisdiction over the place of his incarceration, if his administrative remedies have been fully exhausted.

IT IS, THEREFORE, ORDERED that this second and subsequent motion pursuant to 28 U.S.C. § 2255 be and it is hereby overruled, without prejudice, and the case before this Court is dismissed.

Dated this 27<sup>th</sup> day of August, 1976, 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

JAMES R. MCKEE, PAUL SPESS, )  
ROBERT R. TAYLOR, RAYMOND K. )  
HOLMES, RAY SPESS, FRANK SPESS, )  
VIRGIL L. ATHENS, JAMES T. )  
COMPTON, CLARENCE GREEN, MERLE )  
A. COLLINS, RALPH BLOW, NOLAN )  
WILCOXSON, GILBERT A. MONFORTE, )  
GERTRUDE C. KINNEY, HUGH H. )  
INGALLS, ROBERT L. ROSIER, )  
W. GENE DOLL, EARL DOLL, BILL )  
JESTER, ALTA B. RYAN, HAROLD )  
HOLMES, JOHN BRICHACEK, )  
R. PAUL HENRY, CHRIS YARBROUGH, )  
Plaintiffs, )  
vs. )  
HOWARD CALLAWAY, SECRETARY OF )  
THE ARMY, WILLIAM C. GRIBBLE, )  
CHIEF OF ENGINEERS, U.S. ARMY, )

FILED

AUG 27 1976

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

NO. 75-C-35-B <sup>c</sup>

ORDER

The parties having agreed by stipulation that the above entitled action may be dismissed with prejudice in accordance with the terms of the settlement agreement filed herein, and the Stipulation for Dismissal filed together herewith, each party to bear his own costs, and the Court being fully advised, it is:

ORDERED that the above entitled cause is hereby dismissed with prejudice in accordance with the terms of the settlement agreement and the Stipulation for Dismissal filed herein, each party to bear his own costs.

DATED this 27<sup>th</sup> day of August, 1976.

W. Dale Book  
United States District Judge

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

JAMES R. MCKEE, PAUL SPESS, )  
ROBERT R. TAYLOR, RAYMOND K. )  
HOLMES, RAY SPESS, FRANK SPESS, )  
VIRGIL L. ATHENS, JAMES T. )  
COMPTON, CLARENCE GREEN, MERLE )  
A. COLLINS, RALPH BLOW, NOLAN )  
WILCOXSON, GILBERT A. MONFORTE, )  
GERTRUDE C. KINNEY, HUGH H. )  
INGALLS, ROBERT L. ROSIER, )  
W. GENE DOLL, EARL DOLL, BILL )  
JESTER, ALTA B. RYAN, HAROLD )  
HOLMES, JOHN BRICHACEK, )  
R. PAUL HENRY, CHRIS YARBROUGH, )  
Plaintiffs, )  
vs. )  
HOWARD CALLAWAY, SECRETARY OF )  
THE ARMY, WILLIAM C. GRIBBLE, )  
CHIEF OF ENGINEERS, U.S. ARMY, )  
AND COLONEL JOHN G. DRISKELL, )  
Defendants. )

FILED  
AUG 27 1976  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

No. 75-C-35-<sup>C</sup>~~B~~

STIPULATION FOR DISMISSAL

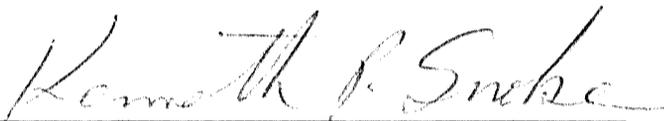
It is hereby stipulated by plaintiffs and defendants above named, that the above entitled action may be dismissed with prejudice in accordance with the terms of the settlement agreement filed herein, each party to bear his own costs.

It is further stipulated by plaintiffs and defendants that plaintiff, Alta B. Ryan, Deceased, died leaving no one in her stead who qualifies for a priority lease under the terms of the settlement agreement filed herein, and that tracts 4341 and 4342 shall therefore not be included under the terms of the settlement agreement.

It is further stipulated by plaintiffs and defendants that Hugh M. Thralls and Frances O. Thralls, although not plaintiffs in the above entitled cause have established their entitlement to priority leases under the terms of the settlement agreement filed herein and shall be accorded the same rights and responsibilities as plaintiffs and as parties to said settlement agreement, with regard to tracts 3101, 3112-1 and 3112-2 only.

It is further stipulated by plaintiffs and defendants that the chief of Real Estate Division, Tulsa District, U. S. Corps of Engineers, shall employ his best efforts to obtain from the office of the chief of engineers approval for a waiver of competition to lease tracts 3331, 3332 and 3333 directly to Mr. R. Paul Henry in accordance with a memorandum of meeting between Messrs. Jack E. Shields, Charles Borchardt, R. Paul Henry and Richard W. Schelin, dated July 22, 1976.

DATED this 27<sup>th</sup> day of August, 1976.

  
\_\_\_\_\_  
Kenneth Snoke  
U. S. Attorney  
Attorney for defendants

  
\_\_\_\_\_  
Richard W. Schelin  
Attorney for plaintiffs

KEYSTONE LAKE, OK; James R. McKee,  
et al., vs. Howard Callaway, Secy  
of Army, et al., - Civil 75-C-35  
USDC/ND of Oklahoma

The File

Memorandum of Meeting

22 July 1976

On July 20, 1976, Messrs. Jack E. Shields and Charles A. Borchardt met with Messrs. Richard W. Schelin and R. Paul Henry. Mr. Henry is one of the plaintiffs in the subject litigation. The purpose of the meeting was to answer questions from Mr. Henry, to obtain certain information from him, and to assure him that he will be treated fairly by the Government in settling the subject litigation.

In order to understand Mr. Henry's position completely it is necessary to know the history of his involvement with certain lands in the Keystone Lake area. Mr. Henry was not the owner or tenant of any lands initially purchased for the Keystone Lake project. In 1966, he purchased certain property from Mrs. Jettie S. Mullins, who was an owner of lands purchased for Keystone Lake. Mrs. Mullins held a priority lease over certain property formerly owned by her but acquired by the Government for the project. When he acquired her property, Mrs. Mullins assigned her priority lease to Mr. Henry, and the lease assignment was approved on 22 June 1966, by David A. Helms, Chief of Real Estate Division of the Corps of Engineers. The lease stated that Mrs. Mullins conveyed all of her rights in the lease except the priority leasing rights as a former owner which by law are not assignable.

In 1967 Mr. Henry advised the Corps that a 10 acre tract of land later described as Tract 3330 was misdescribed by the corps in the original taking. Consequently, the Government had intermittently been flooding property which it did not own. The Government therefore purchased Tract 3330 from Mr. Henry and sold him the 10 acre tract taken in error. In 1969, when Mrs. Mullin's assigned lease expired, Mr. Henry was given a priority lease over all of Mrs. Mullin's former holdings as well as over Tract 3330. When his lease expired on 31 December

1974, Mr. Henry joined the other named plaintiffs in suing the Government and enjoining the Corps of Engineers from leasing certain real property for agricultural and grazing purposes on a competitive bid basis.

Hopefully the subject litigation has been settled. It was agreed that the named plaintiffs would have to establish their entitlement to a priority lease. Mr. Henry has not been able to establish his entitlement to a priority lease covering all the former holdings of Mrs. Mullins. However, Mr. Henry has established an entitlement to a priority lease over Tract 3330, which is surrounded on three sides by the former holdings of Mrs. Mullins.

At the meeting on 20 July, Mr. Shields assured Mr. Henry that he was entitled to a priority lease covering the 10 acre tract designated as Tract 3330. The administering of the lease would be in accordance with the terms of the settlement agreement to be filed in the subject litigation. Mr. Shields also told Mr. Henry that we would seek from the Office of the Chief of Engineers approval for a waiver of competition to lease the former holdings of Mrs. Mullins to Mr. Henry directly without seeking competitive bids from the public during the 15 year settlement agreement period beginning 1975.

Mr. Shields stated that because (1) the former holdings of Mrs. Mullins are not readily accessible to the general public (2) most all of the Tract is subject to severe flooding and only the owner of the surrounding property has higher ground to which cattle can be readily moved and (3) the surrounding property is owned by Mr. Henry and is not separated by fences, the request might be approved. Mr. Shields also stated that there is a possibility the request would not be approved. If the request for waiver of competition to lease is approved for first five year period beginning 1/1/75 it should not prove difficult to secure such waiver for the five year lease periods beginning 1/1/80 and 1/1/85, providing there has been no breach of the conditions of the lease and the land is not required by the Government for other project purposes.

Mr. Shields asked Mr. Henry if he had been using the property, and Mr. Henry stated that he had been using it. He had not repaired fences, and he had also not sprayed the area

for cuckleburrs or treated it as he would have had he been assured of a five-year lease. Mr. Shields stated that Mr. Henry would owe the Government a fair market rental for the limited use of the property for the years 1975-1976, treating him the same as any lessee not a party to the law-suit. Therefore, the request for a waiver of competitive bids would be for a five-year period, 1975-1979, and, in accordance with paragraph 6 of the settlement agreement, for the next two five-year leases. The request for the waiver would cover the former holdings of Mrs. Mullins and other small tracts that were included in the priority lease given to Mr. Henry in 1970. However, should the request for a waiver of competition be denied, the area would be publicly advertised for lease by bid, and Mr. Henry could bid for it. The ten-acre tract, designated as Tract 3330, would not be included because of Mr. Henry's entitlement to a priority lease over it as a former owner.

Mr. Henry requested Tract 3334 be included in the leasehold, but Mr. Shields stated that it would not be possible. However, Mr. Henry could continue to bid on it. The primary reason for keeping Tract 3334 available for leasing by competitive bid is the fact that it is bisected by an elevated public road and is readily accessible to other possible lessees and is only bounded on two sides by Mr. Henry's land.

The meeting was then concluded.

  
ATTORNEY FOR R. PAUL HENRY

Jack E. Shields  
Chief, Real Estate Division  
Corps of Engineers  
Tulsa District

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

A. L. CAPPS, )  
 )  
 Petitioner, )  
 )  
 vs. ) No. 75-C-329-C  
 )  
 RICHARD A. CRISP, Warden, )  
 and the STATE OF )  
 OKLAHOMA, )  
 )  
 Respondents. )

FILED  
AUG 27 1976  
Jack C. Silver, Clerk  
U.S. DISTRICT COURT

ORDER DISMISSING MOTION  
PURSUANT TO TITLE 28 U.S.C. § 2254

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 rendered and imposed by the District Court in and for the County of Tulsa, Oklahoma, wherein after waiving trial by jury, the petitioner was found guilty by the court of Robbery with Firearm (21 Okla. Stat. § 21-801) and sentenced to a term of imprisonment in the Oklahoma State Penitentiary for a period of seven (7) to twenty-one (21) years, in Case No. CRF 73-1376.

Petitioner demands his release from custody and as grounds therefor claims that he is being deprived of his liberty in violation of his constitutional rights under the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States. In particular the petitioner alleges that:

- 1.) Illegally obtained evidence was used to secure his conviction;
- 2.) He was deprived of his right to trial by jury because of ineffective counsel;
- 3.) He was denied the right to a period of observation prior to trial;
- 4.) The sentence imposed by the trial court was improper;
- 5.) He was denied a fair hearing on his application for post-conviction relief in the District Court in and for Tulsa County, Oklahoma.

The record contains documents which show that petitioner appealed his original judgment and sentence to the Court of Criminal Appeals of the State of Oklahoma and that said court affirmed the judgment and sentence in Case No. F-74-260 by order dated August 21, 1974.

Petitioner filed an Application for Post-Conviction Relief in the District Court of Tulsa County which was denied on November 22, 1974. Petitioner appealed this denial to the Court of Criminal Appeals of the State of Oklahoma. On December 31, 1974 in Case No. H-74-829 the Court of Criminal Appeals considered the Petition for Writ of Habeas Corpus filed in that court as an appeal from the denial of post-conviction relief and entered its order dismissing the Petition for Writ of Habeas Corpus and affirming the denial of post-conviction relief.

#### Exclusion of Evidence

Petitioner contends that evidence was introduced at the time of trial which was obtained in violation of his Fourth Amendment right to be protected from an unreasonable search and seizure.

The trial court conducted an evidentiary hearing prior to trial on petitioner's Motion to Suppress all evidence which was obtained from his motel room at the time of his arrest on July 26, 1973. (Tr. 6-58). The trial court found that the search of petitioner's motel room was conducted pursuant to a lawful arrest and overruled petitioner's Motion to Suppress the gun and clothing seized from the motel room. (Tr. 64).

After the trial by jury had begun and a substantial amount of testimony had been presented, the petitioner waived trial by jury and submitted the case to the trial court for a verdict. (Tr. 287). The trial court then sustained petitioner's Motion to Suppress State's Exhibits 1, 2, 3 and 4 (Tr. 291) which consisted of the items taken from the motel room at the time of arrest and found petitioner guilty of Robbery with Firearm. (Tr. 292).

In the recent case of Stone v. Powell, 44 U.S.L.W. 5313

(Decided July 6, 1976) the United States Supreme Court held that:

"where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, the Constitution does not require that a state prisoner be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial."

Stone 44 U.S.L.W. at 5317.

The circumstances surrounding the seizure of the gun and clothing introduced at trial were fully presented to the trial court whereupon the trial court ruled it to be admissible. The Fourth Amendment grounds have been determined.

"In sum, we conclude that where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, (Footnote Omitted) a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial. (Footnote Omitted)." Stone 44 U.S.L.W. at 5321. See Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975; 26 L.Ed.2d 419 (1970).

The positive identification of the petitioner as the perpetrator of the crime by the eye witness Loren Druley (Tr. 192, 212) is sufficient evidence to support the conviction. White v. State, 509 P.2d 182 (Okla. 1973); Hunnicuttt v. State, 281 P.2d 767 (Okla. 1955); Sinclair v. Turner, 447 F.2d 1158 (10th Cir. 1971). The record shows that the petitioner's claim of Fourth Amendment error is without merit.

#### Ineffective Counsel

Petitioner contends that his counsel from the Public Defender's Office of Tulsa County was ineffective in that counsel induced petitioner to waive his right to trial by jury while petitioner was under medication designed to reduce hypertension.

The guidelines for determining when defense counsel was ineffective or incompetent were set forth in Ellis v. State, 430 F.2d 1352, 1356 (10th Cir. 1970).

"It is the general rule that relief from a final conviction on the ground of incompetent or ineffective counsel will be

granted only when the trial was a farce, or a mockery of justice, or was shocking to the conscience of the reviewing court, or the purported representation was only perfunctory, in bad faith, a sham, a pretense, or without adequate opportunity for conference and preparation. Goforth v. United States (10th Cir. 1963), 314 F.2d 868 \*\*\*. Williams v. Beto, 354 F.2d 698, 704 (5th Cir. 1965). And this test is applicable to cases in which counsel is retained by or for an accused as well as to cases in which counsel is appointed to represent an indigent defendant. Bell v. State of Alabama, 367 F.2d 243 (5th Cir. 1966)."

The record clearly shows that defense counsel Mr. Leslie Earl announced to the trial court that petitioner desired to waive his right to a jury trial and to present the case to the court for a verdict. Earl also announced that the court could consider all of the evidence that had been presented and the evidence to which he was about to stipulate. (Tr. 284). In response to the court's question of whether he had heard the announcements of his counsel, the petitioner answered in the affirmative. The trial court informed petitioner that he had a right to trial by jury and conducted the following dialogue:

"Q. Knowing this, you still desire to waive this right to a jury trial?

A. Yes.

Q. You want the Court to consider this evidence, plus the stipulated testimony that your counsel has mentioned, to make a determination at this time?

A. Yes.

Q. Have you been represented throughout the course of these proceedings by counsel?

A. Yes sir.

Q. Are you satisfied with the representation you have received in this case?

A. Yes.

Q. Now, are you under the influence of drugs, or medication of anything at the present time?

A. No. Well, medication, yes.

Q. What type of medication?

A. High blood pressure.

Q. Very well. Does that medication in any way affect your judgment?

A. No sir, it doesn't.

Q. In other words, you fully understand what you are doing at the present time, is that correct?

A. Yes." (Tr. 285-286).

The petitioner's statements clearly indicate that he understood the waiver of trial by jury and that he was satisfied with the representation provided by his counsel. Petitioner further stated that the medication which he was taking for his high blood pressure did not impair his ability to understand the proceedings. Trial by jury may be waived. Adams v. United States, 317 U.S. 269, 63 S.Ct. 236, 87 L.Ed. 268 (1942); Yates v. United States, 316 F.2d 718 (10th Cir. 1963). Petitioner waived trial by jury and acknowledged that he was satisfied with the representation provided by Earl. In applying the standard announced in Ellis v. State, supra, the record shows that petitioner's counsel was not ineffective or incompetent. To the contrary, the record shows that defense counsel provided effective legal assistance to the petitioner.

The claims of ineffective counsel and unknowing waiver of trial by jury are without merit.

#### Period of Observation.

Petitioner contends that he has been denied due process of the law under the Fourteenth Amendment because he has never been committed to Eastern State Hospital in Vinita, Oklahoma for a period of observation to determine his mental competency.

The record reflects that petitioner was found guilty by the trial court and sentenced to a period of seven (7) to twenty-one (21) years in the Department of Corrections, State of Oklahoma on October 23, 1973. At the time petitioner waived trial

by jury which was the same day on which the court found petitioner guilty and imposed sentence, the court asked of the petitioner the following:

Q. In other words, you fully understand what you are doing at the present time, is that correct?

A. Yes.

Q. You have not ever been committed to a State Mental Institution, have you, sir?

A. No.

Q. Never have been adjudicated insane?

A. No.

Q. You feel that you are doing this today, and this is what you want to do, and for no other reason, is that correct?

A. Yes.

Q. You do this voluntarily?

A. Right.

Q. You know what voluntarily means?

A. Yes I do.

Q. What does it mean, sir?

A. It means I am doing this of my own free will." (Tr. 286-287).

On November 6, 1973, petitioner by and through his attorney of record, Mr. Leslie R. Earl filed an "Application For Commitment of Defendant to Eastern State Hospital At Vinita Oklahoma. . . ." In this "Application" the petitioner states that he was awaiting commitment to the Oklahoma State Penitentiary. The Appearance Docket of the trial court shows that on November 5, 1973 the trial court entered an order directing that petitioner be "committed to Eastern State Hospital for 60 days observation. The former Judgment & Sentence to remain intact." (Appeal Record F-73-160 p. 5).

It is uncontested that petitioner was not transferred to Eastern State Hospital pursuant to the order of November 5, 1973. By order of this Court, Mr. Eric Anderson, attorney, was appointed

to prepare Interrogatories which were submitted to various persons who might be familiar with the circumstances surrounding the order of observation. On April 13, 1976 the Honorable Jay Dalton who presided at the trial of petitioner filed the following sworn Answers to the Interrogatories submitted to him by Court-appointed counsel, Mr. Anderson:

"INTERROGATORY NO. 19: Did you preside at the hearing on defendant's Motion to Amend Judgment and Sentence held November 5, 1973?

ANSWER: Yes.

INTERROGATORY NO. 20: Did you order the defendant committed to Eastern State Hospital for 60 day observation on November 5, 1973?

ANSWER: Yes.

INTERROGATORY NO. 21: Did you order the observation stated in No. 20 because there was question as to defendant's competency to waive his right to jury trial?

ANSWER: No, if I can remember correctly, he wanted some treatment and so I Ordered it.

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INTERROGATORY NO. 26: Were you at any time prior to defendant's request for commitment for observation on November 5, 1973, in the process of amending defendant's sentence?

ANSWER: No.

INTERROGATORY NO. 27: Did you ever state to the defendant or his attorney that he would not be sentenced or that no sentence would be imposed until after he had been observed at Eastern State Hospital?

ANSWER: No.

INTERROGATORY NO. 28: Why was your order for commitment to Eastern State Hospital never carried out?

ANSWER: Defendant was transported before the order reached the sheriff.

INTERROGATORY NO. 29: Did you ever revoke or amend your order to have the defendant committed to Eastern State Hospital for observation?

ANSWER: Yes, when he appeared for hearing

on November 8, 1974, it was rescinded.  
Defendant didn't want to go.

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INTERROGATORY NO. 31: What was your determination as to defendant's claim that he had been denied the right to observation at Eastern State Hospital at the November 8, 1974, hearing?

ANSWER: I didn't think he was in need of treatment, he didn't want to be examined then."

On May 6, 1976, Mr. Leslie Ray Earl, Jr., petitioner's trial counsel filed his sworn Answers to the Interrogatories submitted to him by Mr. Anderson. Mr. Earl states that the application for a period of observation was made at the request of the petitioner.

"INTERROGATORY NO. 19: Was the Court's order to commit the defendant for observation a result of whether the defendant may have been competent to waive his right to a jury trial?

ANSWER: No, I don't think so. If I can remember correctly the application was based on question of defendant's competency to serve the sentence and he asked for that commitment primarily as a delay tactic to negotiate an appeal bond with bondswoman Anita Long. He wanted some time before he went to the penitentiary to get the money together to pay her to make his bond pending an appeal."

The record shows that petitioner both initiated and rejected the opportunity to a period of observation. At the time of his waiver of jury trial, conviction and sentencing, petitioner stated that he understood the proceedings and was not suffering from mental illness.

Petitioner raised the question of a period of observation in the trial court in his Application for Post-Conviction Relief. The trial court in overruling the Application for Post-Conviction Relief on November 22, 1974 found that petitioner had shown no cause to order a mental observation.

"Whether the guilty plea was coerced and involuntary is ordinarily a question of fact, and the trial court's findings are not to be disturbed unless they are clearly erroneous or without support in the record. Ridge v. Turner, 444 F.2d 3 (10th Cir)[1971];

Crail v. United States, 430 F.2d 459 (10th Cir.) [1970]." Gurule v. Turner, 461 F.2d 1083 (10th Cir. 1972).

While due process prohibits the conviction of an accused while he is legally incompetent, Pate v. Robinson, 383 U.S. 375, 378, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966) the record is clear in this case that petitioner was given an opportunity to assert any claim of insanity at the time of his trial and conviction and that no such claim was raised. Subsequent to the trial petitioner raised a question of sanity. The trial court responded by ordering a period of observation and later rescinded the order on petitioner's own determination that he no longer desired a period of observation. The contention that petitioner was insane at the time of his trial and sentencing is without merit.

Petitioner appears to have raised a question of his incompetency to serve the sentence imposed. See 22 Okla. Stat. § 1161 (Amended 1975). This contention has not been presented to the courts of the State of Oklahoma.

For the reasons stated herein it is the finding and conclusion of the Court that petitioner's due process guarantees under the Fifth and Fourteenth Amendments have not been denied for failure to provide a mental examination.

#### Improper Sentence

Petitioner contends that his waiver of jury trial was involuntary because he had been promised a sentence of seven (7) years in exchange for such waiver. Petitioner was sentenced to a period of seven (7) to twenty-one (21) years in the Oklahoma Department of Corrections. Petitioner contends that his sentence is improper and contrary to the bargain made with him in return for his waiver of trial by jury.

The waiver of trial by jury must be made voluntarily. Voluntariness may be contingent upon the penalty which is likely to be imposed. Brady v. United States, 404 F.2d 601 (10th Cir. 1968), aff'd 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970).

The Court must look to the circumstances of the case to determine if the waiver was coerced. Hopkins v. Anderson, 507 F.2d 530 (10th Cir. 1974) cert. denied, 421 U.S. 920, 95 S.Ct. 1586, (1975).

At the time petitioner waived his trial by jury the court asked whether he voluntarily waived his right to jury trial. The petitioner answered in the affirmative. (Tr. 287). The court asked the following:

"Q. . . . Let me ask you one further question: Have you been coerced in any way to waive this right to jury trial?

A. No, I haven't.

Q. No one has coerced or influenced you to to [sic] this, this is of your own volition, is that correct?

A. Yes." (Tr. 287).

The Court appointed Mr. Anderson to formulate Interrogatories in an effort to more fully supplement the record in regard to petitioner's contention that he had been promised a less severe sentence than that which he received. The sworn Answers of the Honorable Jay Dalton show that he did not participate in any plea bargaining with the petitioner and that petitioner raised no objection to the sentence at the time it was imposed. (Answers of Judge Dalton to Interrogatories Nos. 6 - 17 filed April 13, 1976). The sworn Answers of Mr. F. L. Dunn, III, Assistant District Attorney, show that petitioner requested a twenty-one (21) year sentence with seven (7) years to be served and the remaining fourteen (14) to be suspended and that this request was rejected. Mr. Dunn states that the State would recommend an indeterminate sentence of not less than seven (7) years nor more than twenty-one (21) years. Mr. Dunn further states that he informed the petitioner that his requested sentence was not possible because petitioner had two previous felony convictions. (Dunn's Answer to Interrogatory No. 8, filed April 13, 1976). Mr. Dunn further states that petitioner

exhibited no surprise at the time of sentencing. (Dunn's Answer to Interrogatory No. 13, filed April 13, 1976). The sworn Answers of Mr. Leslie Ray Earl, Jr., defense counsel, show that petitioner was advised of the waiver arrangement between Mr. Earl and the District Attorney's Office and that they had agreed upon a seven (7) to twenty-one (21) year sentence. According to Earl, petitioner accepted this arrangement. (Earl's Answers to Interrogatories Nos. 6 - 12 filed May 6, 1976).

These Answers to the Interrogatories conclusively show that petitioner was not coerced into waiver of trial by jury through a promise of a more lenient sentence than that which he received. These Answers adequately supplement the trial record wherein the petitioner stated that his waiver was made voluntarily and without coercion. Where the record is clear as to a question of fact no evidentiary hearing is required. Webb v. Crouse, 359 F.2d 394 (10th Cir. 1966); Putnam v. United States, 337 F.2d 313 (10th Cir. 1964). It is the finding and conclusion of the Court based on the trial record and Answers to Interrogatories that petitioner's waiver of trial by jury was voluntarily and knowingly entered and that his rights under the Sixth and Fourteenth Amendments were not violated.

#### Post-Conviction Hearing

Petitioner contends that he was denied a fair hearing on his Application for Post-Conviction Relief. In part this contention is premised on the allegations of a promise of a seven (7) year sentence and a period of observation which the Court has examined above and to which the Court has found no merit. The unfairness contention is also premised on the alleged request of petitioner that Judge Dalton disqualify himself from presiding at the Post-Conviction Hearing.

In his Answers to Supplementary Interrogatory Nos. 1 and 2 filed April 13, 1976 Judge Dalton states that he was not requested by petitioner to disqualify himself as the presiding

judge at the Post-Conviction Hearing and further that he was not requested by petitioner to appear as a witness.

The petitioner finally contends that his Post-Conviction Hearing was unfair because he was under a threat of being cited for contempt. The record contains no support for the assertion that the Post-Conviction Hearing was unfair because of such a threat. In the sworn Answer of Elmer W. Shaw, counsel for petitioner at the Post-Conviction Hearing it is stated that the trial court did admonish petitioner that he could be cited for contempt and that this admonishment resulted from the attitude displayed by the petitioner in his response to a question of the court. (Shaw's Answer No. 5 filed May 13, 1976).

The contention that the Post-Conviction Hearing was unfair is without merit.

In view of the entire record before this Court it is the finding and conclusion of the Court that the rights guaranteed to the petitioner under the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States were protected and that no Constitutional error occurred. Therefore petitioner's Motion for Writ of Habeas Corpus filed pursuant to Title 28 U.S.C. § 2254 is hereby dismissed.

It is so Ordered this 27<sup>th</sup> day of August, 1976.

  
\_\_\_\_\_  
H. DALE COOK  
United States District Judge





IT IS, THEREFORE, ORDERED that the abatement heretofore entered on March 20, 1976, be and the same is hereby lifted and the case reinstated for the purposes of decision on the agreed pre-trial order.

Under the Social Security Act, as amended, a legitimate child is entitled to benefits even if he was not living with, or supported by, his wage-earning parent. The relevant part of Section 202(a) of the Act (42 U.S.C. §402(d)) provides:

"(d)(1) Every child \*\*\* of an individual who dies a fully or currently insured individual if such child

(A) has filed application for child's insurance benefits.

(B) at the time such application was filed was unmarried and \*\*\* has not attained the age of 18 \*\*\* and

(C) was dependent upon such individual \*\*\* (i) if such individual is living, at the time such application was filed \*\*\* shall be entitled to child's insurance benefits \*\*\*.

(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1) (C) unless, at such time, such individual was not living with or contributing to the support of such child and \*\*\*

(A) such child is neither the legitimate nor adopted child of such individual, \*\*\*.

For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to \*\*\* Section 216(h)(3) shall be deemed to be the legitimate child of such individual."

Section 216(h)(3) of the Act (42 U.S.C. §416(h)(3)) provides that an illegitimate child shall be deemed "legitimate", and thus eligible for benefits, in one of two ways. First, benefits will be paid if the insured is shown to be the parent by one of three kinds of formal documents, to-wit:

"(I) had acknowledged in writing that the applicant is his son or daughter,

(II) had been decreed by a court to be the father of the applicant, or

(III) had been ordered by a court to contribute to the support of the applicant because the applicant was his son or daughter, and such acknowledgement, court decree, or court order was made before the death of such insured individual."

Alternatively, the illegitimate child will eligible for benefits, if the parent was living with, or supporting the child at the time of death \*\*\* thar is, if:

"such insured individual is shown by evidence satisfactory to the Secretary to have been the father of the applicant, and such insured individual was living with or contributing to the support of the applicant at the time such insured individual died." 42 U.S.C. §416 (h)(3)(C) (ii)."

The evidence shows that the deceased wage earner filed an Application for Disability Insurance Benefits on October 6, 1971, claiming he became disabled on September 16, 1971. On said application (which is Exhibit 1 to the transcript) he indicated he was married and that his wife's maiden name was Artentry Walker and that he married her in June of 1945 and that he had one child, to-wit: Michael Howard Mosley. He indicated he had previoulsey been married to Elizabeth Jimerson.

Exhibit 2 reflects that Artentry Mosley filed an Application for Wife's Insurance Benefits on October 8, 1971, reflecting the wage earner as Robert E. Mosley and the child as Michael Howard Mosley.

Exhibit 3 reflects that the wage earner, Robert E. Mosley, filed an Application for Child's Insurance Benefits on October 6, 1971, claiming Michael Howard Mosley as his son.

Exhibit 8 is a Statement of Death by Funeral Director by Jackson Furneral Home, Inc., reflecting that Robert E. Mosley departed this life on August 18, 1972, and that his next ofkin was Artentry Mosley (wife).

Exhibit 10, State of Claimant or Other Person, reflects the following statement by Artentry Mosley:

"I would like the lump sum death payment sent to me. Mr. Mosley and I were living together at the same address when he died (on 8/19/72).

"I am also applying to be payee for our son, Michael H. Mosley.

"I am still working and estimate I'll earn about \$4,500.00 in 1972."

Exhibit 12 reflects that on March 9, 1973, Lillian Howard filed an Application for Surviving Child's Insurance Benefits based on the wage earner, Robert E. Mosley. The application reflects that she is the natural mother of the three children listed in said application, to-wit: Vorcie Ro Howard, born on August 1, 1958; Phyllis A. Howard born on November 27, 1960; and Tarita G. Howard, born May 16, 1963. In said application the following statement is made by Lillian Howard:

"Mr. Mosley and I were never married."

On July 3, 1974 (TR-30) Lillian R. Howard filed a Request for Hearing, and a hearing was ultimately had on November 26, 1974. On February 10, 1975, the Administrative Law Judge rendered his "Hearing Decision", and on June 17, 1975, the Appeals Council sustained such decision.

Thereafter the present litigation was commenced. Lillian R. Howard was represented at the hearing by counsel as well as counsel in the institution of this litigation.

At page 39 of the transcript, counsel for Lillian R. Howard made the following statement:

"If the court please, before we proceed here, I would like for the record to reflect that we are here making our claim on the basis that these are the children of the deceased wage earner. And although I think -- I want Mrs. Howard to understand now that you have set out the requirements of the State of Oklahoma; that is, in terms of whether or not these children should be recognized, and different ways which Oklahoma says it can be done. This is by acknowledgement in writing, that is by living in the home with the person, or by adoption. And -- we admitted this before -- that none of those things occurred -- that is, there was no living in the home, there was no form of adoption, there was no acknowledgement in writing -- if that's what the law requires.

"But we do feel as though there is enough evidence to show that these are the wage earners children, and they should not be discriminated against. And we call the court's attention that, since we first filed this claim, there have been two -- or several different rulings -- by the Supreme Court of the United States in reference to children.

"And one of these is in the case of Hernandez (phoenetic), I believe it is, versus Weinberger. And the other ones prior to that was -- I think -- Perez -- no, Gomez versus Perez.

"Both of these cases deal with the Equal Protection Clause of the United States Constitution, in terms of the treatment of legitimate children, and the treatment of illegitimate children.

"ADM. LAW JUDGE: Right.

"MR. LATIMER: And for that -- That's our main reason for being here today. We feel as though that our testimony and our evidence would be to cut across the statutes of the State of Oklahoma, which is, or may be applicable here, or under these recent Supreme Court decisions."

The Administrative Law Judge basically found the facts to be as follows: The deceased wage earner married his surviving wife on June 25, 1965, and lived with her from that date until his death; he was determined to have become disabled on September 16, 1971, by a determination dated December 22, 1971; the wage earner expired on August 18, 1972, a fully insured individual; the claimant, Lillian R. Howard, married Nathaniel Jones in 1954 and obtained a divorce from Mr. Jones in 1960; Vorcie and Phyllis were born or conceived during the claimant's marriage to Mr. Jones, and there has been no evidence offered, except the mother's own denial of paternity, which suggests that they are illegitimate children, and nothing to suggest that they could be declared illegitimate. Certainly under intestate succession in the State of Oklahoma they would be the children of Nathaniel Jones. Tarita, however, was born in 1963, several years after the divorce decree became final.

The Administrative Law Judge further found that the facts and evidence established that the deceased wage earner did visit with claimant, and perhaps engaged in some intimacies. At least, when confronted with the proposition that the various children were his, he appears to have conceded to the State Welfare Office, at least insofar as some of the children were concerned, that he might be a responsible party, and made a rather minor contribution in order to satisfy the Welfare Department and resolve the threat of a bastardy proceeding. At no time did the deceased wage earner ever acknowledge in writing that he was the father of the claimant's children, nor is there any evidence that he lived with claimant as the phrase "lived with" could reasonably be interpreted, but he did visit with her.

The Administrative Law Judge found that the wage earner always made his home with Mrs. Mosley, his surviving wife, but appears to have taken advantage of her adherence to the work ethic to make the acquaintance of a female friend.

The Administrative Law Judge found that there was some showing of somewhat irregular payments of small sums of money. But, there was no evidence to suggest that the wage earner had an irregular or limited income which would have affected his payments to claimant.

The Administrative Law Judge observed the claimant's children and noted "there were significant differentiations in their facial characteristics, height and build". He stated that if this were evidence, it would establish that they are the issue of one couple.

The Administrative Law Judge found:

1. Robert E. Mosley died August 18, 1972, a fully insured individual.
2. The wage earner was survived by his wife, Artertry Mosley, and son, Mitchell Howard Mosley.
3. The wage earner was not living with or supporting any other individuals at the time of his death.

The Administrative Law Judge thus denied benefits to claimant.

The Court has carefully examined the file in this litigation, the transcript and exhibits submitted and the determination here involved.

The findings and the inferences to be drawn therefrom are not to be disturbed by the Courts if there is substantial evidence to support them. *Atteberry v. Finch*, 424 F.2d 36 (10th CCA, 1970).

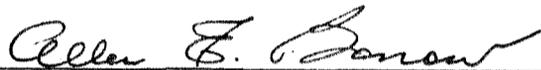
It must be (discussing substantial evidence) enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. *Atteberry v. Finch*, supra; *Haley v. Celebrezze*, 351 F.2d 516 (10th CCA, 1965); *Folsom v. O'Neal*, 250 F.2d 946 (10th CCA, 1957).

The Court's review is limited to a consideration of the pleadings and the transcript filed by the Secretary as required by 42 U.S.C. §405(g). It is not a trial de novo. *Atteberry v. Finch*, supra; *Hobby v. Hodges*, 215 F.2d 745 (10th CCA, 1954). However, the Court should not abdicate its function to carefully scrutinize the entire record in conducting the review. *Klug v. Weingerger*, 514 F.2d 423 (C.A. Minn. 1975).

The Court, finds, based on the above delineated guidelines, that the findings are supported by substantial evidence and are not clearly erroneous, and are supported by the law.

IT IS, THEREFORE, ordered that judgment be entered in favor of the defendant and against the plaintiff.

ENTERED this 27<sup>th</sup> day of August, 1976.



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CHIEF UNITED STATES DISTRICT JUDGE

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

FILED *g*

AUG 26 1976

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

GARLAND REX BRINLEE, JR., )  
Petitioner, )  
vs. )  
STATE OF OKLAHOMA, ET AL., )  
Respondents. )

NO. 75-C-366 ✓

O R D E R

This is a proceeding brought pursuant to the provisions of Title 28 U.S.C., §2254 by a state prisoner presently confined in the Oklahoma State Penitentiary by virtue of the judgment and sentence rendered in the District Court of Tulsa County, Oklahoma in Case No. CRF-70-23. After a plea of not guilty to the charge of larceny of an automobile, petitioner was tried by a jury and upon a finding of guilty he was, on the 30th day of April, 1971 sentenced to a term of not less than four years nor more than 12 years in the custody of the State Department of Corrections of the State of Oklahoma.

A direct appeal was perfected to the Oklahoma Court of Criminal Appeals of the State of Oklahoma and on the 19th day of July, 1972 the judgment and sentence was affirmed. Brinlee v. State, Okl. Cr., 499 P.2d 1397 (1972).

Petitioner then sought post-conviction relief in the District Court of Tulsa County, Oklahoma. The request for relief was denied by Order entered on March 24, 1975. Petitioner appealed the Order of the District Court of Tulsa County, Oklahoma denying relief to the Court of Criminal Appeals of the State of Oklahoma, which affirmed the District Court Order in Case No. PC-75-193 by Order entered on May 28, 1975.

By Order of the Court made and entered on the 31st day of December, 1975, the respondents were ordered to show cause why the Writ of Habeas Corpus sought by petitioner herein should not be granted. This Order was complied with by the filing of a response by the Attorney General of the State of Oklahoma on the 19th day of February, 1976. Accompanying the response were the case files, records and trial transcript.

The file reflects that petitioner has exhausted those remedies available to him in the courts of the State of Oklahoma.

Petitioner, represented by counsel, demands his release from custody and as grounds therefor alleges:

- 1) He did not have effective assistance of counsel at time of trial;

- 2) He was tried on improper charge and information for which a witness in another trial, under oath, admits guilt;
- 3) Instructions of the trial court were improper and prejudicial;
- 4) Adverse publicity prior to trial resulted in denial of a fair and impartial trial; and
- 5) His prosecution was based on hearsay.

Petitioner's first allegation is without merit. It is the general rule that relief from a final conviction on grounds of incompetent and ineffective counsel will be granted only when the trial was a farce, or a mockery of justice, or was shocking to the conscience of the reviewing court, or the purported representation was only perfunctory, in bad faith, a sham, a pretense, or without adequate opportunity for conference and preparation. Ellis v. State of Oklahoma, 430 F.2d 1352 (10th Cir. 1970), cert. denied 401 U.S. 1010 (1971); Goforth v. United States, 314 F.2d 868 (10th Cir. 1963). A thorough examination of the trial proceedings and all other proceedings in this case conclusively shows that the services of petitioner's attorneys were not substandard to a level that would make the trial a mockery or farcical. The trial record shows active and effective participation in the trial by both of petitioner's attorneys, Mr. Robert G. Brown and Mr. Thomas Hanlon. There is abundant, if not overwhelming, evidence to support petitioner's conviction and nothing to indicate that his rights were abridged by his employment of Mr. Brown just prior to trial. United States v. Waters, 461 F.2d 248 (10th Cir.), cert. denied 409 U.S. 880 (1972); Goforth, supra.

Petitioner's second allegation is without merit. The guilt or innocence for the crime charged is not such an issue that is properly cognizable in a habeas corpus proceeding. In Sinclair v. Turner, 447 F.2d 1158 (10th Cir. 1971), the court stated:

"Federal habeas corpus does not serve as an additional appeal from State court conviction. Fay v. Noia, 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963). Sufficiency of evidence to support a State conviction raises no Federal constitutional question, and cannot be considered in Federal habeas proceedings by State prisoners. Linebarger v. State of Oklahoma, 404 F.2d 1092 (10th Cir. 1968), cert. denied 394 U.S. 938, 89 S.Ct. 1218, 22 L.Ed.2d 470 (1969); Williams v. Wainright, 414 F.2d 806 (5th Cir. 1969). The guilt or innocence of an accused person when determined by a State court is not subject to review by Federal Courts in habeas corpus proceedings." 447 F.2d at 1161.

A review of the transcript of the other trial petitioner refers to reveals that subsequent to petitioner's conviction in the instant case, he was tried on

another charge in the United States District Court for the District of North Dakota, Southwestern Division. At that trial, one Ralph Lee Hinkle testified as to his own participation in the car theft that had formed the basis of the charge in the instant case. Petitioner's second allegation relies on excerpts from the transcript of Hinkle's testimony which, presented out of context, appear to exonerate petitioner from guilt in the instant case. A more complete review of Hinkle's testimony reveals that rather than exonerating petitioner, Hinkle's testimony was to the effect that petitioner masterminded the car theft. Petitioner's reliance on Hinkle's confession is, therefore, totally misplaced. (See portion of transcript attached.)

Petitioner's third allegation is without merit. The matter of erroneous instructions by the trial court is ordinarily only a trial error and of no constitutional significance so as to entitle a petitioner to habeas corpus relief. Maxwell v. Hudspeth, 175 F.2d 318 (10th Cir.), cert. denied 338 U.S. 834 (1949); McInnes v. Anderson, 366 F.Supp. 983 (E.D. Okl. 1973). Collateral relief is not available to set aside a conviction on the basis of erroneous jury instructions unless the error has such an effect on the trial as to render it so fundamentally unfair that it deprived the convicted defendant of a fair trial in a constitutional sense. Joe v. United States, 510 F.2d 1038 (10th Cir. 1974); Lorraine v. United States, 444 F.2d 1 (10th Cir. 1971). The record in the instant case clearly shows that the instructions given by the trial court were permissible and did not render the trial fundamentally unfair.

Petitioner's fourth allegation is without merit. A close review of the voir dire transcript (T. 3-146) clearly shows that the jury selected fully conforms to constitutional requirements of being fair and impartial triers of the facts. The allegation that petitioner received an unfair trial because of prejudicial pretrial publicity provides an inadequate basis to merit habeas corpus relief since for that contention to be of merit, it would be necessary to conclude that jurors were both exposed to alleged adverse publicity and were prejudiced thereby. Durham v. Paderick, 368 F.Supp. 342 (D.C. W.D.Va. 1973). The record in this case does not so show.

The Supreme Court of the United States of America in Irvin v. Dowd, 366 U.S. 717 (1961) stated:

"It is not required, however, that the jurors be totally ignorant of the facts and issues involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse

the interest of the public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. Spies v. Illinois, 123 U.S. 131; Holt v. United States, 218 U.S. 245; Reynolds v. United States, supra [98 U.S. 145 (1878)]." at 722-723.

Petitioner's final allegation is without merit. Petitioner's contention is that the testimony of the witness Wallace Watkins (T. 198-202) admitted in evidence over his objection violated his constitutional rights to confrontation of witnesses and against self-incrimination. The trial transcript does not disclose that petitioner's counsel objected to the testimony of the witness Watkins on the ground that it was hearsay. The transcript clearly shows that the testimony now complained of related to a telephone conversation between Watkins and a person who he identified at trial as being petitioner. The statements of petitioner testified to by Watkins constituted admissions against interest by a party and, as such, were admissible under the hearsay rule. Carpenter v. United States, 463 F.2d 397 (10th Cir.), cert denied 409 U.S. 985 (1972).

Further, even if error somehow could be found in the admission of this testimony, the transcript of trial proceedings clearly shows that at the time of the testimony such would have been harmless error in view of the fact that the evidence against petitioner at that point of the trial was overwhelming.

The records and files show conclusively that the petitioner is entitled to no relief. Therefore dismissal of this \$2254 petition without a hearing is warranted. Hernandez v. Schneckloth, 425 F.2d 89 (9th Cir. 1970). An evidentiary hearing is unnecessary in view of the lack of apparent substance in the petition. Moore v. Anderson, 474 F.2d 1118 (10th Cir. 1973).

Moreover, when a State Supreme Court fully and adequately considered a State prisoner's Federal claims on appeal and in post-conviction proceedings, no further evidentiary hearing is necessary in Federal habeas corpus proceedings. Dhaemers v. State of Minnesota, 456 F.2d 1291 (8th Cir. 1972). The Oklahoma Court of Criminal Appeals has fully, adequately, and accurately considered petitioner's propositions and Federal claims, and the record reveals that no further evidentiary hearing in this matter is necessary and that

petitioner is not entitled to relief. Putnam v. United States, 337 F.2d 313 (10th Cir. 1964); Maxwell v. Turner, 411 F.2d 805 (10th Cir. 1969); Cranford v. Rodriguez, 512 F.2d 860 (10th Cir. 1975).

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

Dated this 26<sup>th</sup> day of August, 1976.

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

1 Q Not for three days thereafter?

2 A Yes.

3 Q Where was that statement made?

4 A At the Ramada Inn in Tulsa.

5 Q Did you sign it?

6 A No.

7 Q Now you said that you drove over -- in your testi-  
8 mony this morning -- you drove over to Bristow in a Mustang.  
9 Had you ever driven that Mustang before?

10 A Yes.

11 Q Where did that Mustang come from?

12 A Would you please repeat the question?

13 Q Where did the Mustang come from?

14 A It come from Tulsa.

15 Q Where did it come from when you first saw it?

16 A It come from a -- parked on a car lot in Tulsa.

17 Q Parked in a used-car lot in Tulsa?

18 A When I first saw the Mustang, ever?

19 Q Yeah.

20 A In a car lot in Tulsa.

21 Q Is that when you first drove it?

22 A Brinlee drove it the first time.

23 Q When did you first drive it?

24 A One night, three days after the first time I saw  
25 it.

1 Q Isn't it true, Ralph, that you drove that Mustang  
2 off of the parking lot, yourself, in Tulsa?

3 A Yes.

4 Q And who owned the Mustang at the time you drove  
5 it off?

6 A Fred Jones Ford.

7 Q And you testified to that later, did you not?

8 A Yes.

9 Q You testified to that in court, didn't you?

10 A Yes.

11 Q Were you ever charged with that theft?

12 A No.

13 Q And that was in Tulsa, Oklahoma; right?

14 A Yes.

15 Q When was that when you testified?

16 A Sir?

17 Q When was that when you testified?

18 A A few weeks ago -- oh -- no. It was in October,  
19 I believe, of '72.

20 Q That was sometime after you had testified to the  
21 Grand Jury in these proceedings; right?

22 A Yes.

23 Q You were never charged with that theft; right?

24 A No, sir -- that's right.

25 Q Mr. Brinlee was charged, wasn't he?

1 A. Yes, sir.

2 Q. And those charges were finally dismissed, were  
3 they not?

4 MR. BAKER: Objected to, if Your Honor please, as  
5 not the best evidence.

6 THE COURT: I'll sustain that objection. I think  
7 we're getting pretty far afield here. I don't want to  
8 interfere with your cross-examination.

9 Q. (Mr. Wolf continuing) Ralph, do you know if the  
10 charges were dismissed against Mr. Brinlee on that auto  
11 theft charge of the Mustang?

12 MR. BAKER: To which we further object, if Your  
13 Honor please, on the first ground that it's not the best  
14 evidence; the second ground that it's incompetent, irrele-  
15 vant and immaterial; it's outside the scope of the direct  
16 examination.

17 MR. WOLF: Well, Your Honor, I think it has a  
18 very important bearing on this man's testimony. He's  
19 offered himself here to testify against this Defendant.  
20 I am bringing this matter out to point out testimony this  
21 man has given concerning his own involvement in matters  
22 and implication of this Defendant; and the results of that  
23 proceeding, I think they're proper for this jury to know.

24 THE COURT: Well, my concern is whether this man  
25 is in a position to give any authoritative information.

1 The disposition of the case is not anything that this man  
2 would be in a position to testify to with any accuracy. I  
3 sustain the objection as outside the area -- or I sustain  
4 the objection because the best evidence would be the record  
5 of the conviction or dismissal, or whatever it might be.  
6 The man has testified that he testified adversely to your  
7 Defendant, which, I believe, is the point you're making.

8 Q (Mr. Wolf continuing) Now, Ralph, isn't it true  
9 that that was not the first time that you were engaged in  
10 that kind of activity in Tulsa?

11 MR. BAKER: To which we'll object, if Your Honor  
12 please, to the form of this question. I don't know what  
13 specific activity Counsel is inquiring about.

14 THE COURT: Well, the objection that the question  
15 is vague is sustained.

16 Q (Mr. Wolf continuing) All right. Ralph, isn't  
17 it true that on a prior occasion you also stole a vehicle  
18 off of a parking lot in the City of Tulsa?

19 MR. BAKER: To which we'll object as outside the  
20 scope of the direct examination and, further, on the  
21 grounds that what he may have been charged with is not  
22 material to this proceeding.

23 MR. WOLF: I think it is, Your Honor, since it  
24 again involves this Defendant and that this man's involve-  
25 ment in that matter and the disposition and the fact that

1 he was again not charged, but the Defendant was, I think it  
2 shows a continuing disposition that this man's testimony  
3 has followed in regard to this Defendant's activities.

4 MR. BAKER: We withdraw the Government's objection,  
5 Your Honor.

6 THE WITNESS: Please repeat the question.

7 THE COURT: Well, I have a record to clean up  
8 here. The objection having been withdrawn, the question  
9 is permitted. Do you recall the question?

10 THE WITNESS: No.

11 THE COURT: Will you please read the question?

12 (The last question was read by the Reporter.)

13 THE WITNESS: Yes.

14 Q. (Mr. Wolf continuing) And that was a gold pickup,  
15 was it not?

16 A. Yes.

17 Q. And you drove it off the lot and you drove it  
18 back to Tahlequah, did you not?

19 A. No.

20 Q. And did you drive it after that?

21 A. Once or twice; yes.

22 Q. But it was you that drove the pickup off of the  
23 parking lot and not Mr. Brinlee; isn't that correct?

24 A. That's correct.

25 Q. But it was Mr. Brinlee who was convicted of that

1 theft, wasn't it?

2 A. That's correct.

3 Q. And you were not?

4 A. That's correct.

5 Q. You were not charged?

6 A. No.

7 Q. As to the Mustang charge, you were also granted  
8 immunity, were you not, in your testimony?

9 A. Yes.

10 Q. By the Government?

11 A. Yes.

12 Q. To testify against Mr. Brinlee?

13 A. Yes.

14 Q. Did you ever see Rex Brinlee on that lot -- that  
15 used-car lot where the gold pickup was stolen from?

16 A. No.

17 Q. Now you testified this morning, Ralph, that you  
18 lived at Apartment No. -- what was it?

19 A. 10.

20 Q. -- 10 in this apartment house by yourself; is  
21 that right -- at that time?

22 A. Yes.

23 Q. Isn't it true there was a girl living with you  
24 at that time?

25 A. No.

1 Q. That isn't true?

2 A. That isn't true.

3 Q. Did you have a girl friend then?

4 A. No steady.

5 Q. Now, Ralph, you know who I am, do you not?

6 A. Yes, sir.

7 Q. I'm an attorney from Bismarck and you have known  
8 that for about four months; right?

9 A. Yes.

10 Q. I told you that in Tulsa four months ago, didn't  
11 I?

12 A. Yes.

13 Q. In the Tulsa County Jail?

14 A. Yes.

15 Q. And you refused to talk to me about this case,  
16 didn't you?

17 A. Yes.

18 Q. And I told you yesterday evening at the Burleigh  
19 County Jail who I was, did I not?

20 A. Yes.

21 Q. And you refused to talk to me at that time?

22 A. Yes.

23 Q. And you indicated the only way you would talk to  
24 me would be if Mr. Ben Baker ordered you to talk to me;  
25 right?

1 A. No.

2 Q. What did you say?

3 A. The only way I wanted to talk to you was with Mr.  
4 Ben Baker present.

5 Q. I see. All right. And back in May 1972 you  
6 refused to talk to Mr. Brinlee's attorney, Mr. Frazer, did  
7 you not, in Tulsa?

8 A. Yes.

9 Q. Did you know from your own knowledge what -- or  
10 do you now know from your own knowledge what explosives  
11 look like -- this C-4?

12 A. Yes.

13 Q. How did you learn that?

14 A. By observing them when Mr. Brinlee brought them  
15 to my apartment.

16 Q. Other than somebody telling you what they might  
17 be, you didn't know from your own knowledge, did you?

18 A. No.

19 Q. All right. And you still don't know from your  
20 own knowledge, other than what somebody may have told you?

21 A. That's true.

22 Q. You didn't have any experience with this type of  
23 material before this, did you?

24 A. No.

25 Q. Ralph, you testified that you did not pay any tax

1 on these -- this material that was brought in the paper bag;  
2 right?

3 A. That's true.

4 Q. Did you know whether anyone else had paid a tax  
5 on it?

6 A. No.

7 Q. You didn't know that at the time?

8 A. No.

9 Q. And you still don't know, do you?

10 A. No.

11 Q. You said that you did not register that shotgun  
12 with anyone; right?

13 A. Right.

14 Q. Did you know whether anyone else had registered  
15 that shotgun?

16 A. No.

17 Q. And you still don't know, do you?

18 A. No.

19 Q. So far as you knew on January 15th through  
20 February 2nd, 1971, you didn't conspire with anyone to  
21 fail to pay taxes on any explosives or shotgun, did you?

22 MR. BAKER: Just a moment. To which we're going  
23 to object, if Your Honor please. This question invades the  
24 province of the jury.

25 THE COURT: Will you reread the question to me,

1 Mr. Emineth?

2 (The last question was read by the Reporter.)

3 THE COURT: Well, it's in the nature of asking a  
4 person whether he has performed a criminal act. I overrule.

5 MR. WOLF: You may answer.

6 THE WITNESS: No.

7 MR. WOLF: That's all the questions I have.

8 THE COURT: Now, Mr. Baker, I'm going to declare  
9 a recess. Do you have any redirect at this time on this  
10 portion of the cross?

11 MR. BAKER: Yes, Your Honor; I do.

12 THE COURT: Well, then at this time we will stand  
13 in recess until 3:40, at which time we'll proceed with  
14 redirect as to this witness. Correction: 3:20.

15 (Recessed at 3:00 P.M. until 3:27 P.M., the same  
16 day, at which time the following proceedings were continued  
17 in open court, in the presence of the jury, the Defendant  
18 being present with Counsel:)

19 THE COURT: Mr. Baker.

20  
21 REDIRECT EXAMINATION

22 BY MR. BAKER:

23 Q Mr. Hinkle, you responded to Mr. Wolf's inquiries  
24 about interviews with him at Tulsa County Jail in Oklahoma;  
25 is that correct?

1 A. Yes.

2 Q. And he also inquired about your refusal, as he  
3 puts it, to talk with him here in Bismarck at a jail.

4 A. Yes.

5 Q. Have I discussed with you the matter of talking  
6 with Mr. Wolf?

7 A. Yes.

8 Q. What did I tell you?

9 A. That I could talk to him, if I wanted to.

10 Q. Did I ever tell you who you could or could not  
11 talk to?

12 A. No.

13 Q. I've discussed this case with you on more than one  
14 occasion, have I not, Ralph?

15 A. Yes.

16 Q. Have I told you what your testimony should be?

17 A. No.

18 Q. Now Counsel inquired of you about the Mustang  
19 automobile. You tell us it was taken from the Fred Jones  
20 Ford lot in Tulsa; is that correct?

21 A. Yes.

22 Q. Was this the Mustang automobile used on the trip  
23 from Tahlequah to Bristow?

24 A. Yes.

25 Q. Would you explain for the Court and jury, please,

1 the circumstance of that Mustang being taken off that lot.

2 A. Mr. Brinlee wanted it so that he could replace a  
3 '65 Mustang that he had, so his wife could drive it on the  
4 ranch. He took me to Tulsa and let me out half a block  
5 down the street and followed me all the way to Tahlequah  
6 the night the Mustang was taken.

7 Q. Was it your idea to take the Mustang?

8 A. No.

9 Q. Were you told to take it or asked to take it?

10 A. Yes.

11 Q. By who?

12 A. Mr. Brinlee.

13 Q. With regard to the gold pickup truck, Ralph, I'm  
14 not sure that I heard your answers as to the origin of that  
15 gold pickup. Where was it taken from?

16 A. It was taken from the Chevrolet Company. It's  
17 on South Cincinnati.

18 Q. In what city?

19 A. Tulsa, Oklahoma.

20 Q. Explain the circumstances of the taking of that  
21 vehicle.

22 A. Mr. Brinlee came to me in the club one night and  
23 says, "We've got something to do." I says, "What's that?"  
24 and he says -- and he holds up a key, and Mr. Brinlee took  
25 me to Tulsa. We circled the block once, he dropped me off

1 in front of the place, circled the block and stopped across  
2 the street, waited for me to drive it off the lot, and  
3 followed me, and we drove it to his ranch. He followed me  
4 all the way to his ranch.

5 MR. BAKER: That's all I have on redirect, Your  
6 Honor.

7 THE COURT: Any further recross at this time, Mr.  
8 Wolf?

9 MR. WOLF: I just have two questions, Your Honor  
10 -- two or three.

11  
12 RECROSS-EXAMINATION

13 BY MR. WOLF:

14 Q In fact, Ralph, how did you get to Bismarck?

15 A Marshals.

16 Q And with who? Who was with you in the car?

17 A Mr. Carl Gardner is a Marshal. There's Fred, the  
18 Marshal, and Mr. Ben Baker.

19 Q So you were in the same vehicle with Mr. Baker all  
20 the way from Tulsa to Bismarck; right?

21 A Yes, sir.

22 Q When was the last time that you talked to Mr.  
23 Ferguson?

24 A April 5th, or somewhere around April 5th, a year  
25 ago. I said "Hello" to him a while ago.

1 Q And this gold pickup that you have testified  
2 about, you drove that off of the Swenson car lot in Tulsa;  
3 is that correct?

4 A Yes.

5 Q And that was located where, did you say?

6 A It's downtown. It's South Cincinnati. I believe  
7 it's on South Cincinnati, in Tulsa.

8 Q And it's on that auto theft charge that Mr.  
9 Brinlee was sentenced to four to twelve years; isn't that  
10 right?

11 A I -- I suppose so.

12 Q But you weren't even charged, were you?

13 A No.

14 MR. WOLF: That's all the questions.

15 MR. BAKER: Would Your Honor indulge a few addi-  
16 tional questions by the Government?

17 THE COURT: Yes. You may proceed.

18

19

REDIRECT EXAMINATION

20 BY MR. BAKER:

21 Q How long did it take you to drive up here from  
22 Tulsa with the Marshals and with me?

23 A Two days.

24 Q You say Marshal Carl Gardner. Is that the gentle-  
25 man seated over here?

**United States of America**

DISTRICT OF NORTH DAKOTA

} ss:

I, **CLETUS J. SCHMIDT**, Clerk of the United States District Court for the \_\_\_\_\_ District of **NORTH DAKOTA**, do hereby certify that the annexed and foregoing is a true and full copy of the original **COURT REPORTER'S TRANSCRIPT OF TRIAL**, pages Nos. 150 thru 163, inclusive, as to Criminal Case No. 655, United States of America, Plaintiff, vs. Garland Rex Brinlee, Jr., Defendant.

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at **Bismarck, North Dakota** this **20th** day of **August**, A. D. 19 **76**.

**CLETUS J. SCHMIDT**

*Clerk.*



2



FILED

AUG 26 1976

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

76-C-233-B

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

HAZEL S. MEDEARIS,  
Plaintiff,

vs.

DR. DAVID MATTHEWS, Secretary  
of Health, Education and Welfare  
of the United States of America,  
Defendant.

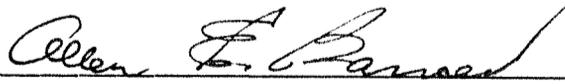
ORDER REMANDING

The Court has for consideration the plaintiff's Motion to Remand and the response of the defendant that "he neither opposes nor urges the granting of Plaintiff's Motion to Remand", and the Court having carefully perused the entire file, and, being fully advised in the premises, finds:

That said Motion should be sustained.

IT IS, THEREFORE, ORDERED that Plaintiff's Motion to Remand be and the same is hereby sustained and the case is remanded to Dr. David Matthews, Secretary of Health, Education and Welfare for further proceedings.

ENTERED this 26<sup>th</sup> day of August, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BIGHEART PIPELINE CORPORATION, )  
 )  
 Defendant. )

CIVIL ACTION NO. 76-C-197-C

FILED

AUG 26 1976

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

J U D G M E N T

This matter comes on for consideration by the Court upon the application of the parties hereto for entry of judgment. Having considered the written stipulation filed herein by the parties and having reviewed the pleadings filed herein the Court finds that:

This is an action for a money judgment.

The parties have agreed that a money judgment should be entered in this action, have agreed upon the amount thereof, and have filed their written stipulation to that effect.

The parties' agreement should be confirmed by the Court.

It is therefore ORDERED, ADJUDGED and AGREED that the Plaintiff have judgment against the Defendant, Bigheart Pipe Line Corporation, in the amount of \$1,440.00.



UNITED STATES DISTRICT JUDGE

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

ROPER CORPORATION, a Delaware )  
corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PHILLIPS MACHINERY COMPANY, an )  
Oklahoma Corporation, )  
 )  
Defendant. )

CASE NO. 76-C-399-C ✓

FILED

AUG 25 1976 ph

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

*Notice of* DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Roper Corporation, and would show to the Court that the Plaintiff and Defendant, Phillips Machinery Company, have entered into an agreement whereby Roper has released its claims against Phillips Machinery Company for and in consideration of the payment of the sum of \$25,311.65, a copy of which release is attached hereto and made a part hereof.

THEREFORE, Plaintiff dismisses its Complaint in the above entitled and numbered cause with prejudice to the bringing of another action based on the claims stated therein.

ROPER CORPORATION

BY:

*John T. Spradling, Jr.*  
John T. Spradling, Jr.  
its attorney.

Of Counsel:

SPRADLING, STAGNER, ALPERN & FRIOT  
801 Philtower Bldg.  
Tulsa, Oklahoma 74103  
583-6292

RELEASE

This Release is executed on the 25<sup>th</sup> day of August, 1976, between ROPER CORPORATION ("Roper"), and PHILLIPS MACHINERY COMPANY ("Phillips").

R E C I T A L S:

1. Roper has filed a civil action against Phillips in the United States District Court for the Northern District of Oklahoma, Case No. 76-C-399-C.

2. Roper and Phillips have agreed to execute this Release in settlement of any and all disputes and differences between them.

In consideration of the payment by Phillips to Roper of the sum of \$25,311.65, the receipt and sufficiency of which is hereby acknowledged, Roper agrees to release Phillips, its assigns and successors, of any and all claims, liabilities or actions which Roper presently has or has ever had against Phillips as of the date of the execution of this Release.

The undersigned warrants and represents that he is authorized to execute this Release and, by executing this Release, binds the legal representatives, successors and assigns of Roper forever.

Several counterparts of this Release will be signed and each such copy shall constitute an original and have equal force and effect.

John T. Smadling Jr  
For Roper Corporation

STATE OF OKLAHOMA     )  
                                  )     ss.  
COUNTY OF TULSA     )

Before me, the undersigned, a Notary Public in and for said County and State, on this 25<sup>th</sup> day of August, 1976, personally appeared JOHN T. SPRADLING, JR., to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year hereinabove written.

Beveta Brewen  
Notary Public

My commission expires:

7-9-77

(SEAL)

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

ROBERT LEON HARRELL, )  
#87276-132, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
UNITED STATES OF AMERICA, )  
 )  
Respondent. )

No. 76-C-414 **FILED**

AUG 25 1976

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

O R D E R

This is a proceeding brought pursuant to Title 28, U.S.C.A. § 2255 in which the petitioner, a federal prisoner at the Federal Correctional Institution at El Reno, Oklahoma attacks the validity of the sentence imposed May 30, 1972 by this Court in case No. 72-CR-72. Therein, the petitioner pled guilty to two counts of violating 18 U.S.C.A. § 641 (theft and sale of government property) and the Court imposed a sentence of five years in the custody of the Attorney General for each count to run concurrently. Prior to sentencing, the Court after determining that the petitioner had been represented by counsel in each case, gave explicit consideration to a misdemeanor conviction in 1961 for auto theft with a six month sentence; a felony conviction in 1962 for burglary, second degree, with a two year sentence; a felony conviction for auto theft in 1963 with a three year sentence; a felony conviction in 1965 for attempted burglary with a fourteen month sentence; a felony conviction for burglary in 1967 with a three year sentence. All were State of Oklahoma convictions. The Court specifically declared that other arrests and convictions shown in the presentence report would be disregarded by the Court in the imposition of sentence. (Tr. 5-8)

Petitioner now contends that because he was tried without certification as an adult under the Oklahoma Juvenile Law, his convictions in 1961 and 1962 are constitutionally void under Lamb v. Brown, 456 F.2d 18 (CA 10 1972) and Radcliff v. Anderson,

509 F.2d 1093 (CA 10 1975). On this basis he claims that he is entitled to be resentenced under United States v. Tucker, 404 U.S. 443 (1972).

In Tucker, the Supreme Court held that a defendant was entitled to have his sentence reconsidered where the sentencing Judge gave explicit consideration to two convictions which were constitutionally invalid because they had been obtained in violation of Gideon v. Wainwright, 372 U.S. 335 (1963). Tucker is distinguishable from petitioner's situation in at least two respects. First, when Tucker's § 2255 application was considered it had been conclusively determined by collateral proceedings that such former convictions were constitutionally invalid. In this case there has been no judicial determination that the Oklahoma convictions challenged by petitioner are in fact constitutionally void. In Lamb v. Brown, supra, decided March 16, 1972, the Court declared void as violative of the Equal Protection Clause of the Fourteenth Amendment, 10 O.S. 1101a (1969 Supplement) enacted January 13, 1969, which provided in pertinent part:

"The term 'child' means any male person under the age of 16 years and any female person under the age of 18 years."

Radcliff v. Anderson, supra, decided that the decision in Lamb should be applied retroactively. Neither Lamb nor Radcliff mandate that every 16 or 17 year old male convicted as if an adult prior to March 16, 1972 is now entitled to an automatic reversal of his conviction. Second, the constitutional violation in Tucker was the denial of counsel. The Supreme Court has said that the principle established in Gideon v. Wainwright, supra, goes to "the very integrity of the fact finding process" in criminal trials, and that a conviction obtained after a trial in which the defendant was denied the assistance of a lawyer "lacked reliability". Linkletter v. Walker, 381 U.S. 618, 639 & n.20 (1965). To the contrary, Radcliff recognized that the Lamb decision raised no question of the accuracy of the fact finding process. The adult proceedings to which the petitioner was subjected resulted in the

determination of the truth. The petitioner, whatever else may be said, had on those two occasions which resulted in his questionable convictions, been guilty of antisocial criminal behavior. Under the circumstances it cannot realistically be said that the sentence by this Court was pronounced on the basis of an "extremely and materially false" foundation. See Townsend v. Burke, 334 U.S. 736, 741 (1948).

In any event, the petitioner had three unchallenged and presumptively valid felony convictions. The maximum penalty which the Court could have imposed for each violation to which the petitioner pled guilty was ten years imprisonment or \$10,000 fine or both such fine and imprisonment. The sentence which the petitioner received was far below the maximum which he could have received. The sentence was fair and not unduly harsh. The Court can truthfully say that the convictions challenged by the petitioner were not determinative factors in the imposition of sentence and that upon present reconsideration of all relevant and proper information and circumstances, and without consideration of the convictions objected to by the petitioner, the sentence was appropriate and should stand. Therefore an evidentiary hearing is not required and the petitioner is not entitled to have his sentence vacated. Hampton v. United States, 504 F.2d 600 (CA 10 1974).

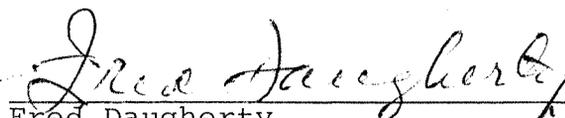
Accordingly, it is ordered:

1. The Motion pursuant to § 2255, Title 28, U.S.C.A., to vacate the judgment and sentence of this Court in case No. 72-CR-72 is denied.

2. That a copy of this Order be mailed by the Clerk of this Court to the petitioner.

3. That the Clerk of this Court furnish the respondent a copy of this Order by mailing the same to the United States Attorney for the Northern District of Oklahoma.

Dated this 25 day of August, 1976.

  
Fred Daugherty  
United States District Judge

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

ROYCE H. SAVAGE, Trustee in )  
Bankruptcy of HOME-STAKE )  
PRODUCTION COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
FIRST NATIONAL BANK AND TRUST )  
COMPANY OF TULSA, a National )  
Banking Association, )  
 )  
Defendant. )

No. 75-C-426 ✓

FILED

AUG 23 1976 *ph*

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

ORDER GRANTING MOTION FOR  
SUMMARY JUDGMENT  
AND JUDGMENT

---

On this 13th day of August, 1976, a hearing was held by the Court on the motion filed herein by The First National Bank and Trust Company of Tulsa (herein the "Bank"), To Dismiss Plaintiff's Amended Complaint, or in the Alternative, to Grant Summary Judgment for the Defendant.

Plaintiff is present by its counsel, Kenneth M. Smith, and the Bank is present by its counsel, James R. Ryan.

Based upon the matters set forth in the Bank's motion, the affidavit filed herein by the Bank with its brief in support of the motion, the matters of record in this action and the admissions of counsel at the hearing this date the Court finds that there is no genuine issue as to any material fact and that the Bank is entitled to judgment as a matter of law.

The Court specifically finds that it has jurisdiction to hear and determine the controversy between Plaintiff and the Bank raised by the First Amended Complaint of Plaintiff and further finds:

1. Plaintiff's First Amended Complaint seeks an order granting it possession for \$200,000.00 certificates of deposit issued by the Bank representing collateral pledged by Home-Stake

Production Company and related corporate entities to the Bank to secure Home-Stake's obligation to reimburse the Bank for drafts drawn and presented under a letter of credit issued by the Bank to Chevron Oil Company of Venezuela (herein "Chevron") on the application of Home-Stake.

2. Plaintiff does not allege that it is entitled to set aside the Bank's security interest as pledgee of the certificates of deposit because the pledge represents a preference, fraudulent conveyance or otherwise voidable transfer and seek to recover possession of the certificates solely by reason of Plaintiff's status as trustee of a debtor in reorganization.

3. Plaintiff has admitted it cannot at this time present any evidence of the likelihood of a successful reorganization and does not propose to offer any evidence concerning the likelihood of loss to the Bank if it were to surrender its collateral to the Plaintiff trustee or the probability of injury to the Bank, all of which are matters with respect to which the Plaintiff trustee has a burden of proof.

ACCORDINGLY, The First National Bank and Trust Company of Tulsa is entitled as a matter of law to an order of summary judgment in its favor and against the Plaintiff trustee and it is

ORDERED, ADJUDGED AND DECREED that the First Amended Complaint of Plaintiff in this action be dismissed and judgment be, and is hereby entered in favor of the defendant, The First National Bank and Trust Company of Tulsa against the Plaintiff with costs and disbursements to be taxed by the clerk in favor of The First National Bank and Trust Company against Plaintiff.

August 23, 1976

W. Dale Book  
United States District Judge

APPROVED AS TO FORM:

Kenneth M. Smith  
Attorney for Plaintiff

James R. Ryan  
Attorney for The First National  
Bank and Trust Company of Tulsa

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

JAMES A. HENLEY, )  
)  
Plaintiff,) )  
)  
v. )  
)  
SEARS ROEBUCK AND CO., a foreign )  
corporation, )  
)  
Defendant.)

No. 76-C-44

FILED

AUG 20 1976

JUDGMENT

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

This cause came on regularly for trial before the Court sitting without a jury, Honorable H. Dale Cook, District Judge, presiding. The issues having been tried, and a decision having been rendered,

IT IS ORDERED AND ADJUDGED that plaintiff recover from defendant, Sears Roebuck and Co., the sum of Seven Thousand Nine Hundred Ninety-Four Dollars (\$7,994.00) damages together with interest at the rate of 6 percent per annum from February 5, 1976, to August 17, 1976, and at the rate of 10 percent per annum thereafter until paid, together with costs.

Dated August 17, 1976.



H. DALE COOK  
UNITED STATES DISTRICT JUDGE

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

FILED

AUG 18 1976

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

DAVID C. REIF, JOE STEPHEN )  
INGLE and ERIC W. NASH, )  
 )  
 ) Plaintiffs )  
 )  
vs. )  
 )  
MERRILL LYNCH, PIERCE, FENNER )  
& SMITH, INC., )  
 )  
 ) Defendant. )

No. 76-C-73-B

J U D G M E N T

The Plaintiffs and Defendant having agreed upon a basis for the adjustment of the matters alleged in the Complaint and all other disputes between them, and the entry of a judgment in this action, now on motion of counsel for both parties, it is

ORDERED, ADJUDGED AND DECREED, that the Settlement Agreement, dated July 30, 1976, executed by the parties, a copy of which is attached hereto, marked Exhibit A and made a part hereof, is hereby approved and that all issues between the parties be and they are hereby resolved in accordance therewith.

DATED this 18th day of August, 1976.

*Allen E. Barnard*

United States District Judge

APPROVED:

*Frederic A. Dorwart*

Frederic A. Dorwart  
Attorney for Plaintiffs

*John S. Athens*

John S. Athens  
Attorney for Defendant

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT, made and entered into this 30th day of July, 1976, by and between MERRILL LYNCH, PIERCE, FENNER & SMITH, INC. ("Merrill Lynch") and DAVID C. REIF ("Reif"), JOE STEPHEN INGLE ("Ingle") and ERIC W. NASH ("Nash"),

WITNESSETH, THAT:

WHEREAS, prior to January 23, 1976, Reif, Ingle and Nash were employed by Merrill Lynch as account executives in the Tulsa, Oklahoma office of Merrill Lynch and, on January 23, 1976, Reif, Ingle and Nash terminated their employment with Merrill Lynch and became account executives of Blyth Eastman Dillon & Co. Incorporated ("Blyth") in Blyth's Tulsa, Oklahoma office; and

WHEREAS, on or about February 4, 1976, Merrill Lynch commenced the following captioned actions (the "State Court Actions"):

(a) Merrill Lynch, Pierce, Fenner & Smith, Incorporated, v. Joe Stephen Ingle and David C. Reif, In The District Court Within and for Tulsa County, State of Oklahoma, Cause No. C-76-241; and

(b) Merrill Lynch, Pierce, Fenner & Smith, Incorporated, v. Eric W. Nash, In The District Court Within and for Tulsa County, State of Oklahoma, No. C-76-260; and

WHEREAS, on February 19, 1976, Reif, Ingle and Nash commenced the following captioned action (the "Federal Court Action"):

(a) David C. Reif, Joe Stephen Ingle and Eric W. Nash, v. Merrill Lynch, Pierce, Fenner & Smith, Inc., In The United States District Court for the Northern District of Oklahoma, No. 76-C-73-B; and

WHEREAS, the parties hereto desire to compromise, settle and release the following claims:

(a) All claims of Merrill Lynch against Reif, Ingle and Nash which were asserted in the State Court Actions;

(b) All claims of Reif, Ingle and Nash against Merrill Lynch which were described in the Federal Court Action;

(c) All other claims of Merrill Lynch against Reif, Ingle and Nash existing from the beginning of time to the date hereof, whether known or unknown, fixed or contingent;

(d) All other claims of Reif, Ingle and Nash against Merrill Lynch existing from the beginning of time to the date hereof, whether known or unknown, fixed or contingent; and

(e) All claims of Merrill Lynch against Blyth arising out of the matters which are the subject of the State Court Actions or arising out of the employment or termination of employment of Reif, Ingle and Nash by Merrill Lynch or Blyth.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do agree as follows:

1. Release of Claims by Merrill Lynch against Reif, Ingle and Nash. Merrill Lynch does hereby, for itself and its successors and assigns, irrevocably and forever release and surrender Reif, Ingle and Nash, and their heirs, executors, administrators, successors and assigns, from any and all claims, causes, debts, obligations and actions of whatsoever nature (whether known or unknown, fixed or contingent) which Merrill Lynch has or may have existing from the beginning of time to the date hereof, including (but not by way of limitation) the claims asserted by Merrill Lynch in the State Court Actions.

2. Release of Claims by Merrill Lynch against Blyth. Merrill Lynch does hereby, for itself and its successors and assigns, irrevocably and forever release and surrender any and all claims,

causes, debts, obligations and actions of whatsoever nature (whether known or unknown, fixed or contingent) which Merrill Lynch has or may have arising out of the matters which are the subject of the State Court Actions or the Federal Court Action or arising out of the employment or termination of employment of Reif, Ingle and Nash by Merrill Lynch or Blyth. This Settlement Agreement is made for the specific benefit of Blyth and may be enforced by Blyth.

3. Release of Merrill Lynch and its Representatives by Reif, Ingle and Nash. Reif, Ingle and Nash do hereby, for themselves and for their respective heirs, executors, administrators, successors and assigns, irrevocably and forever release and surrender Merrill Lynch, and its successors and assigns, and its agents, representatives and employees, from any and all claims, causes, debts, obligations and actions of whatsoever nature (whether known or unknown fixed or contingent) which Reif, Ingle, or Nash have or may have existing from the beginning of time to the date hereof, including (but not by way of limitation) the claims of Reif, Ingle and Nash against Merrill Lynch described in the Federal Court Action.

4. Representations of Reif, Ingle and Nash:

(a) Reif, Ingle and Nash each represents to Merrill Lynch that, between the date of service of the Temporary Restraining Orders issued in the State Court Actions and the date hereof, none of them has solicited clients of Merrill Lynch who were serviced by Reif, Ingle or Nash during their employment with Merrill Lynch other than those clients of Merrill Lynch whose accounts have heretofore been transferred to Blyth as of the date hereof.

(b) Reif, Ingle and Nash each represents to Merrill Lynch that none of them nor Blyth nor any agent, representative or employee of Blyth has in his, its or their possession or control any

list (whether original or copy) of clients or prospective clients of Merrill Lynch furnished by Merrill Lynch to Reif, Ingle or Nash or compiled by Reif, Ingle or Nash during their employment with Merrill Lynch, or compiled from the foregoing information or the information listed in Paragraph 4(c) below, whether during or subsequent to the period of their employment with Merrill Lynch. The compilation after termination of the employment of Reif, Ingle and Nash with Merrill Lynch of a list of those clients of Merrill Lynch whose accounts have been transferred to Blyth as of the date hereof shall not be deemed to be prohibited by this Paragraph 4(b).

(c) Reif, Ingle and Nash each represents to Merrill Lynch that none of them, nor to the best of their knowledge Blyth or any agent, representative or employee of Blyth, has in his, its or their possession or control any statement, ledger sheet, or other writing (whether original or copy) relating to the account of any person who was a client of Reif, Ingle or Nash or any agent, representative or employee of Merrill Lynch (other than Reif, Ingle and Nash) at any time during the period of employment of Reif, Ingle or Nash with Merrill Lynch, regardless of who prepared or compiled such writing, and whether such writing was prepared or compiled during said employment or subsequently, including, but not limited to, the following writings:

Monthly Statements of Security Account (Code 7076)

Holdings Sheets (Code 5-R)

Customer Ledger sheets (Code 4-R)

Confirmation Slips (Code 3000)

Records of open orders and accounts

Merrill Lynch prospects information sheets

Copies of option contracts

Personal ledgers, books memos, files  
and address books

except

(i) those writings respecting its customers compiled by Blyth, or any agent, representative, or employee of Blyth, prior to the termination of the employment of Reif, Ingle and Nash with Merrill Lynch;

(ii) those writings relating to any account which has been transferred to Blyth as of the date hereof, and compiled by any of the aforesaid after termination of the employment of Reif, Ingle and Nash with Merrill Lynch; and

(iii) those writings which are being delivered to and receipted by Merrill Lynch contemporaneously herewith.

5. Agreements of Reif, Ingle and Nash in Respect of Certain Clients of Merrill Lynch.

(a) Reif, Ingle and Nash each agrees that, from the date hereof to October 25, 1976, none of them nor any agent, representative or employee of Blyth working in concert with or otherwise assisted by any of them, will solicit the brokerage business of any person (not having at the date hereof an account with Blyth) who was a client of Reif, Ingle or Nash while Reif, Ingle or Nash were employed by Merrill Lynch.

(b) Reif, Ingle and Nash each agrees that, from the date hereof to October 25, 1976, none of them nor any agent, representative, or employee of Blyth working in concert with or otherwise assisted by any of them, will solicit the brokerage business of any person whose account was serviced out of

the Tulsa office of Merrill Lynch who engaged in, as a customer of any agent, representative or employee of Merrill Lynch (other than Reif, Ingle and Nash), the purchase or sale of any securities while any of Reif, Ingle or Nash were employed by Merrill Lynch; provided that in the event of a question as to whether a person in fact engaged in the purchase or sale of any securities as aforesaid while Reif, Ingle or Nash were employed by Merrill Lynch, such question may be resolved by inquiry to Mr. Benjamin C. Harned, of Merrill Lynch's Tulsa office, or his successor, who shall promptly advise whether such person in fact engaged in such purchases or sales while Reif, Ingle or Nash were employed by Merrill Lynch.

(c) Nothing herein shall be construed to restrict the right of Reif, Ingle and Nash to do business with any person who initiates such business without solicitation by Reif, Ingle or Nash.

(d) The obligations of this Paragraph 5 shall automatically terminate at October 25, 1976, but nothing herein shall be construed to extinguish any claim for breach hereof which shall have accrued on such date, it being expressly understood that any such accrued claim for breach hereof shall survive such date.

6. Required Notice of Breach. Merrill Lynch shall, on or before April 24, 1977, as a condition precedent to any action for breach of the representations and obligations of Reif, Ingle and Nash described in Paragraphs 4 and 5, give Reif, Ingle or Nash, as the case may be, written notice of any alleged breach of the representations and obligations set forth in Paragraphs 4

and 5. No action shall be maintained by Merrill Lynch for breach of such representations or obligations unless such notice shall first be given prior to such date. Any claims, controversy or dispute arising out of this agreement shall be enforceable at law or in equity without resort to arbitration by either party.

7. Dismissal of State Court Actions. Contemporaneously herewith, Merrill Lynch shall dismiss the State Court Actions with prejudice.

8. Entry of Judgment in Federal Court Action. Contemporaneously herewith, the parties shall submit to the Court for entry in the Federal Court Action a judgment in the form heretofore approved by counsel for the parties, to which there shall be attached a copy of this agreement, marked Exhibit A and made a part thereof.

9. Applicable Law. This Settlement Agreement shall be governed by the law of the State of Oklahoma.

10. Binding Effect. This Settlement Agreement shall be binding upon, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement in multiple counterparts as of the date hereof.

MERRILL LYNCH, PIERCE, FENNER &  
SMITH, INC.

WITNESSED:

John S. Athens  
John S. Athens, Attorney  
for MERRILL LYNCH

Frederic Dorwart  
Frederic Dorwart,  
Attorney for REIF,  
INGLE AND NASH

By [Signature]  
Vice President

[Signature]  
David C. Reif

[Signature]  
Joe Stephen Ingle

[Signature]  
Eric W. Nash

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

UNITED STATES OF AMERICA, )  
 )  
 ) Plaintiff, )  
 vs. ) CIVIL ACTION NO. 76-C-140-B  
 )  
 )  
 ) CLAUDE ROBBINS, a/k/a CLAUDE )  
 ) ROBBINS, JR., JACKIE ROBBINS, )  
 ) JACK LIGON, OKLAHOMA OSTEOPATHIC )  
 ) FOUNDERS ASSOCIATION, INC., a )  
 ) corporation, d/b/a OKLAHOMA )  
 ) OSTEOPATHIC HOSPITAL, CHARLES B. )  
 ) FOWLER, and PAMALA FOWLER, )  
 )  
 ) Defendants. )

FILED

AUG 17 1976

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, 1976, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; the Defendant, Oklahoma Osteopathic Founders Association, Inc., a corporation, d/b/a Oklahoma Osteopathic Hospital, appearing by its attorney, Harry A. Lentz, Jr.; and the Defendants, Claude Robbins, a/k/a Claude Robbins, Jr., Jackie Robbins, Jack Ligon, Charles B. Fowler, and Pamala Fowler, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Claude Robbins and Jackie Robbins, were served with Summons and Complaint on April 6, 1976; that Defendants, Jack Ligon and Oklahoma Osteopathic Founders Association, Inc., d/b/a Oklahoma Osteopathic Hospital, were served with Summons and Complaint on April 2, 1976, all as appears from the U.S. Marshals Service herein; and that Defendants, Charles B. Fowler and Pamala Fowler, were served by publication, both as appears from the Proof of Publication filed herein.

It appearing that Defendant, Oklahoma Osteopathic Founders Association, Inc., d/b/a Oklahoma Osteopathic Hospital, has duly filed its Answer and Cross-Complaint herein on April 19,

1976, and that Defendants, Claude Robbins, Jackie Robbins, Jack Ligon, Charles B. Fowler, and Pamala Fowler, 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 Five (5), Block Three (3), CHANDLER FRATES FOURTH ADDITION, a Subdivision of Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Claude Robbins and Jackie Robbins, did, on the 9th day of November, 1974, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$10,000.00 with 9 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Claude Robbins and Jackie Robbins, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$10,005.97 as unpaid principal with interest thereon at the rate of 9 1/2 percent per annum from May 1, 1975, until paid, plus the cost of this action accrued and accruing.

The Court further finds that Defendant, Oklahoma Osteopathic Founders Association, Inc., d/b/a Oklahoma Osteopathic Hospital, is entitled to judgment against Defendant, Claude Robbins, Jr., in the amount of \$482.30, plus \$3.00 costs, plus interest according to law, plus accrued court costs, 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, Claude Robbins and Jackie Robbins, in personam, for the sum of \$10,005.97 with interest thereon at the rate of 9 1/2 percent per annum from May 1, 1975, 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 Defendant, Oklahoma Osteopathic Founders Association, Inc., d/b/a Oklahoma Osteopathic Hospital, have and recover judgment, in personam, against the Defendant, Claude Robbins, Jr., in the amount of \$482.30, plus \$3.00 costs, plus accrued court costs 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 the Plaintiff have and recover judgment, in rem, against Defendants, Jack Ligon, Charles B. Fowler, and Pamala Fowler.

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, 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

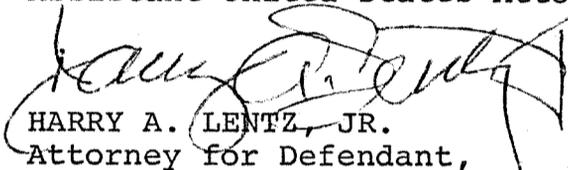
foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

15/ Allen C. Barrow  
UNITED STATES DISTRICT JUDGE

APPROVED



ROBERT P. SANTEE  
Assistant United States Attorney



HARRY A. LENTZ, JR.  
Attorney for Defendant,  
Oklahoma Osteopathic Founders  
Association, Inc., d/b/a  
Oklahoma Osteopathic Hospital

bcs

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

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

CIVIL ACTION NO. 76-C-156-B

WILLIAM KURSH, if living, or )  
if not, his unknown heirs, )  
assigns, executors and admini- )  
strators, ORA LEE KURSH, widow )  
of William Kursh, LULA HAYES, )  
heir of William Kursh, FBS )  
FINANCIAL OF OKLAHOMA, INC., )  
HERMAN GIBSON d/b/a NORTHSIDE )  
MOTORS, FLOYD LOUSER d/b/a )  
TULSA AUTO SALES, COUNTY )  
TREASURER, Tulsa County, and )  
BOARD OF COUNTY COMMISSIONERS, )  
Tulsa County, )

Defendants. )

FILED

AUG 17 1976

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 17th  
day of August, 1976, the Plaintiff appearing by Robert P. Santee,  
Assistant United States Attorney; the Defendant, Floyd Louser  
d/b/a Tulsa Auto Sales, appearing by his attorney, William B.  
Lee; the Defendants, County Treasurer, Tulsa County, and Board  
of County Commissioners, Tulsa County, appearing by Gary J.  
Summerfield, Assistant District Attorney; and the Defendants,  
William Kursh, if living, or if not, his unknown heirs, assigns,  
executors and administrators, Ora Lee Kursh, Lula Hayes a/k/a  
Lula Haynes, FBS Financial of Oklahoma, Inc., and Herman Gibson  
d/b/a Northside Motors, appearing not.

The Court being fully advised and having examined  
the file herein finds that Defendants, Floyd Louser d/b/a Tulsa  
Auto Sales, Herman Gibson d/b/a Northside Motors, Ora Lee Kursh,  
County Treasurer, Tulsa County, and Board of County Commissioners,  
Tulsa County, were served with Summons and Complaint on April 9,  
1976; that Defendant, Lula Hayes a/k/a Lula Haynes, was served  
with Summons and Complaint on April 15, 1976; that Defendant,

FBS Financial of Oklahoma, Inc., was served with Summons and Complaint on April 12, 1976, all as appears from the U.S. Marshals Service herein; and that Defendant, William Kursh, if living, or if not, his unknown heirs, assigns, executors and administrators, was served by publication, as appears from the Proof of Publication filed herein.

It appearing that Defendant, Floyd Louser d/b/a Tulsa Auto Sales, has duly filed his Disclaimer herein on April 22, 1976; that Defendants, County Treasurer, Tulsa County, and Board of County Commissioners, Tulsa County, have duly filed their Answers herein on April 22, 1976; and that Defendants, William Kursh, if living, or if not, his unknown heirs, assigns, executors and administrators, Ora Lee Kursh, Lula Hayes a/k/a Lula Haynes, FBS Financial of Oklahoma, Inc., and Herman Gibson d/b/a Northside Motors, 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 Nineteen (19), Block Three (3), CHANDLER-FRATES FOURTH ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the Defendant, William Kursh, did, on the 24th day of August, 1972, execute and deliver to the Administrator of Veterans Affairs, his mortgage and mortgage note in the sum of \$10,500.00 with 4 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendant, William Kursh, made default under the terms of the aforesaid mortgage note by reason of his failure to make monthly installments due thereon, which default has continued and that by reason thereof the

above-named Defendant is now indebted to the Plaintiff in the sum of \$10,133.96 as unpaid principal with interest thereon at the rate of 4 1/2 percent per annum from May 24, 1975, 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 Louis L. and Carol Hopkins, former owners, the sum of \$ none plus interest according to law for personal property taxes for the year(s) \_\_\_\_\_ and that Tulsa County should have judgment, in rem, 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 Defendant, William Kursh, if living, or if not, his unknown heirs, assigns, executors and administrators, in rem, for the sum of \$10,133.96 with interest thereon at the rate of 4 1/2 percent per annum from May 24, 1975, 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, in rem, against Louis L. and Carol Hopkins, former owners, for the sum of \$ none as of the date of this judgment plus interest thereafter according to law for personal property taxes, 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 the Plaintiff have and recover judgment, in rem, against Defendants, Ora Lee Kursh, Lula Hayes a/k/a Lula Haynes, FBS Financial of Oklahoma, Inc., and Herman Gibson d/b/a Northside Motors.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendant 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. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

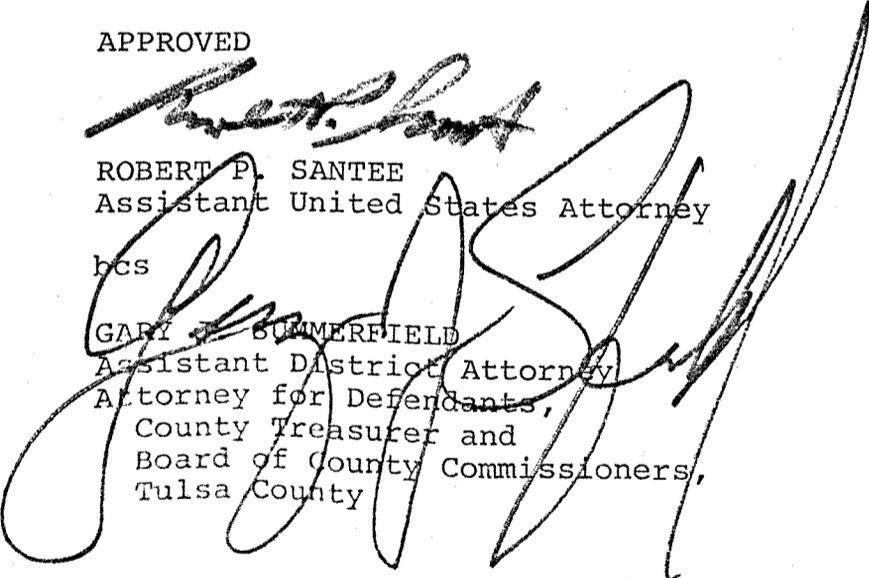
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the Complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

*15/ Allen E. Barrow*  
UNITED STATES DISTRICT JUDGE

APPROVED

  
ROBERT P. SANTEE  
Assistant United States Attorney

bcs

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

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

BOARD OF TRUSTEES, PIPELINE	)
INDUSTRY BENEFIT FUND,	)
	)
Plaintiff,	)
	)
vs.	)
	)
U. & I. CONSTRUCTION COMPANY,	)
	)
Defendant.	)
_____	)

**FILED**  
IN OPEN COURT  
AUG 17 1976  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

No. 76-C-181-C

ORDER FOR SUMMARY JUDGMENT  
AND JUDGMENT

This cause comes on to be heard on Motion of the Plaintiff for a Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure; and the Court, having considered the pleadings in the action; the affidavit of Charles A. Balch, dated July 14, 1976, in support of the motion; the letter of Robert J. Moskal, attorney for Defendant, dated August 4, 1976, and having found that there is no genuine issue of fact to be submitted to the trial court and having concluded that Plaintiff is entitled to judgment as a matter of law,

IT IS HEREBY ORDERED, that Plaintiff's Motion for Summary Judgment is in all respects granted, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Plaintiff, Board of Trustees, Pipeline Industry Benefit Fund, recover of the Defendant, U. & I. Construction Company, the sum of \$5,922.54 with interest thereon at the rate of 10% per annum as provided by law, and its costs of action, plus a reasonable attorney fee in the amount of \$1,750.00.

Dated at Tulsa, Oklahoma, this 17<sup>th</sup> day of August, 1976.

J. A. H. Dale Cook  
JUDGE OF THE UNITED STATES DISTRICT COURT

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROY A. TEEL,  
DOROTHY A. TEEL,  
COUNTY TREASURER, TULSA  
COUNTY, and BOARD OF  
COUNTY COMMISSIONERS,  
TULSA COUNTY,

Defendants.

CIVIL ACTION NO. 76-C-136-B

FILED

AUG 17 1976

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, 1976, 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, Roy A. Teel and Dorothy A. Teel, appearing  
not.

The Court being fully advised and having examined  
the file herein finds that Defendants, Roy A. Teel and Dorothy A.  
Teel, were served by publication, as appears from the Proof of  
Publication filed herein, and Defendants, County Treasurer,  
Tulsa County, and Board of County Commissioners, Tulsa County,  
were served with Summons and Complaint on April 2, 1976, as  
appears from the U.S. Marshals Service herein.

It appearing that Defendants, County Treasurer, Tulsa  
County, and Board of County Commissioners, Tulsa County, have  
duly filed their Answers herein on April 22, 1976, and that De-  
fendants, Roy A. Teel and Dorothy A. Teel, 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 Four (4), Block Two (2), TOMMY'S ADDITION, an addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Roy A. Teel and Dorothy A. Teel, did, on the 22nd day of November, 1974, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$11,000.00 with 9 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Roy A. Teel and Dorothy A. Teel, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$11,010.24 as unpaid principal with interest thereon at the rate of 9 1/2 percent per annum from August 1, 1975, 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 Defendants, Roy A. Teel and Dorothy A. Teel, the sum of \$ none plus interest according to law for personal property taxes for the year(s) \_\_\_\_\_ and that Tulsa County should have judgment, in rem, 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, Roy A. Teel and Dorothy A. Teel, in rem, for the sum of \$11,010.24 with interest thereon at the rate of 9 1/2 percent per annum from August 1, 1975, 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, in rem, against Defendants, Roy A. Teel and Dorothy A. Teel, for the sum of \$ none as of the date of this judgment plus interest thereafter according to law for personal property taxes, 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, shall be deposited with the Clerk of the Court to await further order of the Court.

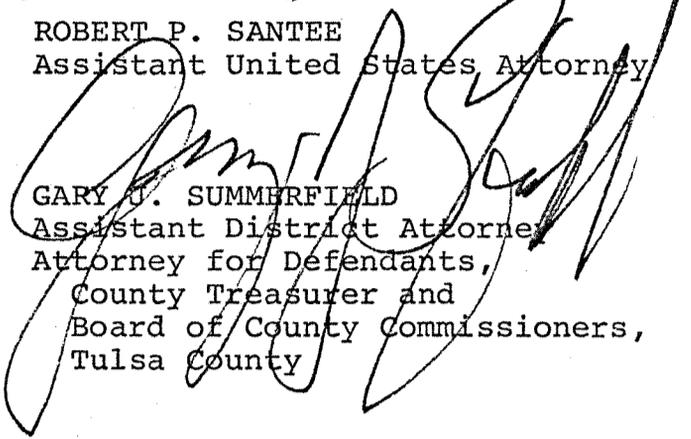
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

  
United States District Judge

APPROVED



ROBERT P. SANTEE  
Assistant United States Attorney



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



action in State Court, various motions were filed, and according to the copy of a portion of the transcript attached to the complaint in this action, the District Court had a hearing on October 8, 1975, at which time it sustained the defendant's Motion in Limine, precluding direct "evidence to the jury concerning mental anguish including loss of consortium with respect to the plaintiff's petition as alleged in the second cause of action."

(TR-8)

Plaintiffs, in their complaint filed in this Court, seek recovery of funeral expenses; loss of the motorcycle; loss of anticipated services and support; loss of companionship and love of their son; destruction of the parent-child relationship.

There is no diversity jurisdiction in the present litigation as plaintiffs and defendant are citizens of the State of Oklahoma. Plaintiffs allege jurisdiction pursuant to Title 28 U.S.C. §1343(3) for redress of the deprivation of rights, privileges and immunities secured to them by virtue of the Fifth and Fourteenth Amendments to the Constitution of the United States and by the provisions of 28 U.S.C. §1331(a) as the alleged amount in controversy exceeds the sum of \$10,000.00, exclusive of interest and costs and arises under the laws and Constitution of the United States.

Defendant has filed a Motion to Dismiss and/or Motion for Summary Judgment, pursuant to Rule 12(b) and Rule 56, respectively. In said Motion, defendant contends:

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.
2. That the Court lacks jurisdiction because the controversy does not involve a federal question.

In response to said Motions, the plaintiffs have propounded the following propositions:

1. To deny a parent a cause of action to recover for loss of love and companionship and destruction of the parent-child relationship resulting from the wrongful death of their child

denies the parents' rights guaranteed by the Constitution of the United States.

2. Plaintiffs should be entitled to the benefit of 12 O.S. (Supp.) §1055, which is merely a procedural clarification of rights guaranteed by the Oklahoma Constitution.

3. That 12 O.S. (Supp. 1975) §1055 creates an arbitrary and unreasonable classification which invidiously discriminates against plaintiffs without any rational basis.

PERTINENT STATUTES INVOLVED:

Article II, Section 6, of the Oklahoma Constitution, provides:

"The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice."

Title 12 O.S. §1053 provides, in pertinent part:

"When the death of one is caused by the wrongful act or omission of another, the personal representative of the former may maintain an action therefor against the latter, or his personal representative, for an injury for the same act or omission. \*\*\* The damages must inure to the exclusive benefit of the surviving spouse and children, if any, or next of kin; to be distributed in the same manner as personal property of the deceased." (Emphasis supplied)

Title 12 O.S. (Supp. 1975) §1055, which became effective October 1, 1975, provides:

"In all actions hereinafter brought to recover damages for the death of an unmarried, unemancipated minor child, the damages recoverable shall include medical and burial expense, loss of anticipated services and support, loss of companionship and love of the child, destruction of parent-child relationship and loss of monies expended by parents or guardian in support, maintenance and education of such minor child, in such amount as, under all circumstances of the case may be just." (Emphasis supplied)

Title 15 O.S. §13 provides:

"Minor, except as otherwise provided by law, are persons under eighteen (18) years of age. \*\*\*." (Effective Aug. 1, 1972)

Title 15 O.S. §14 provides:

"All other persons are adults."

OPINION AND ORDER:

At common law, the death of a human being, although clearly involving pecuniary loss, was not the ground of an action for

damages. Hale v. Hale, 426 P.2d 681 (Ok1.1967)

Legislation modifying, and even abrogating, the rule began to appear about the middle of the 19th century. 77 ALR 1294

'Lord Campbell's Act, passed in England in 1846, may be said to have led the way in this respect. It provides that whenever the death of any person is caused by the wrongful act, neglect, or default of another, in such a manner as would have entitled the party injured to have maintained an action in respect thereof if death had not ensued, an action may be maintained if brought within 12 months after his death in the name of his executor or administrator, for the benefit of certain relatives, to the respective persons for whose benefit the action is brought, and that the damages so recovered, after deducting the costs not recovered from the defendant, shall be divided among the beneficiaries in such shares as the jury by their verdict may direct.'" 22 Am.Jur.2d, Death, §2

The English Act was followed in the United States by provisions modeled after it and having the same general purpose. St. Louis & S.F.R. Co. v. Goods, 142 Pac. 1185 (Ok1.). Present-day provisions substantially embody the provisions of Lord Campbell's Act, insofar as the right to maintain an action for wrongful death is concerned. Brookshire v. Burkhard, 283 Pac. 571 (Ok1.)

12 O.S. §1053 constitutes the wrongful death statute in Oklahoma, and it has been amended, from time to time, since its enactment. As said in Kerley v. Hoehman, 183 Pac. 980 (Ok1. 1919), this section creates a right of action for damages by wrongful act which did not exist at common law, and which does not obtain the absence of such act.

Ab initio, in their brief, plaintiffs cite to the case of Fiedeer v. Fiedeer, 140 Pac. 1022 (Ok1. 1914) as substantiating their claim that Article II, Section 6, of the Oklahoma Constitution confers upon them the right to maintain their action in its present posture. In discussing the Fiedeer case, supra, the Court will also discuss various cases involving torts and the "intra-family relationship", because some of the basic rationale of those cases will lend an understanding with reference to the problem confronting the Court in this litigation. It will be shown, that notwithstanding Article II, Section 6, of the Oklahoma Constitution, in certain circumstances the Courts of this State are not open to all litigants under the provisions claimed by the plaintiffs.

In Fiedder v. Fiedeer, supra, a wife was allowed a recovery for personal injuries in tort for injuries deliberately inflicted by her husband, notwithstanding the fact that at common law such a recovery was denied. In discussing Article II, Section 6, the Supreme Court of Oklahoma said:

"For the language of this section of the Bill of Rights, it appears to us that the framers of our Constitution intended to open the courts of justice to every person, no matter whom, for redress of wrongs and for reparation for injuries."

Of course, this case was decided in 1914 (prior to the enactment of the wrongful death statute) and deals with the husband-wife relationship for tort injuries. Still the plaintiffs do, in fact, and this Court will reiterate their position, contend that Article II, Section 6, confers upon them the right to recover for the alleged wrong that attains to them by virtue of the death of their son. This Court does not dispute that plaintiffs do possibly have a cause of action for the death of their son, but such cause of action, if any, lies under 12 O.S. §1053.

Additionally, the Fiedeer case, supra, states:

"Construing these statutes and constitutional provisions as a whole, we think it is clearly manifest that the legislative intent has been an endeavor to shake off the shackles of the common-law rules as to the rights of married women and to clearly define such rights. Besides, many of the more modern decisions on this question either offer an apology and give way to expressions of regret that the earlier decisions of their respective jurisdiction had announced a doctrine in which they did not fully concur but by which they felt themselves bound."

In discussing the Fiedeer case, supra, the Oklahoma Supreme Court said, in Tucker v. Tucker, 395 P.2d 67 (Okla. 1964), that an examination of the cited cases (Fiedeer, supra, and Courtney v. Courtney, 184 Okla. 395, 87 P.2d 660) "reveals that they were based, at least in part, upon the Oklahoma version of the Married Womens Acts which have been enacted in most states."

The Tucker case, supra, gave the Supreme Court of Oklahoma an occasion to decide a case involving the question of whether an emancipated child, at the time the cause of action was brought, but unemancipated at the time the cause of action arose, could

maintain an action, based upon ordinary negligence, against his mother (where public liability insurance was involved). In that case it was the plaintiff's argument that if the public policy that an unemancipated child may not maintain an action in tort for injuries resulting from ordinary negligence on the part of his parent, the reason for the rule disappeared when the parent was protected by public liability insurance.

In limiting any cause of action in such a situation under the broad provisions of Article II, Section 6, Oklahoma Constitution, the Court said:

"In argument plaintiff contends that the State of Oklahoma has already expressed itself in constitutional and statutory provisions, as follows:

"The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong \*\*\*." Art.2, Sec.6, Okla.Const."

The Court went on to say:

"The foregoing constitutional and statutory provisions are some of the broad and fundamental provisions expressing principles which underlie any system of jurisprudence based upon the common law, and we may not safely conclude that Oklahoma was legislatively pioneering in the right of a child to sue its parents for injuries sustained as a result of ordinary negligence when the foregoing provisions were adopted. Art.2, Sec.6, Okla.Const., supra, originated with Magna Charta.\*\*\*."

The Court then held:

"In accordance with the prevailing weight of authority, we hold that a minor child may not recover damages from a parent for personal injuries suffered while unemancipated as a result of said parent's ordinary negligence in the operation \*\*\*."

In *Boswell v. Nolan*, 336 P.2d 767 (Okla. 1961), the Supreme Court of Oklahoma held that the parent of a deceased child, whose death results from the wrongful act or omission of another, cannot recover under common law for loss of anticipated services of the child from date of death, and can only maintain the action for wrongful death under the Wrongful Death Act, 12 O.S. §1053, 1054. The Court said at page 769:

"This court has had occasion to pass on this proposition and has determined it adversely to plaintiff's contention. In *Potter v. Pure Oil Co.*, 182 Okl. 509, 78 P.2d 694, 696, the parents instituted an action for wrongful death of their 9 year old child by drowning. The damages sought included loss of services. The plaintiffs asserted the action was not in fact an action for wrongful death but was for loss of services of the child from his death until he would have reached his majority. There, as here, the plaintiffs cited 10 O.S.1951 §5, relative to entitlement to custody, services and earnings. Therein we cited *City of Eureka v. Merrifield*, 53 Kan. 794, 37 P. 113, 115, and other authority for the proposition that by the common law, no civil action lies for an injury which results in death, and stated:

"In *City of Eureka v. Merrifield*, supra, it is said: 'It is suggested that the action was brought to recover for the damages the parents sustained by reason of the loss of anticipated services that might have been rendered to them by the deceased up to his majority, and, therefore, that this action is maintainable by them. At common law this action could not be maintained.'

"There being no right of action at common law, it follows that there can be no cause of action unless the right be given by statute. In the case of *McCarthy v. [Chicago, R.I.&P.] R.R. Co.*, 18 Kan. 46, 26 Am.Rep. 742, it is said: 'The right of the action under section 422 (the same as out section 570, O.S.1931, 12 Okl.St.Ann. §1053) is exclusive.'

"There is, as stated, authority for holding that a parent may under our statute recover for services of his child, or loss thereof, while living. But we are cited to no case which holds that there is a right of action given by statute where the loss of such service is brought about by the death of a minor child caused by the wrongful act of another, other than by sections 570, 571, O.S. 12 Okl.St.Ann. §§1053, 1054." (Emphasis supplied)

In *Padillow v. Elrod*, 424 P.2d 16 (Okla. 1967), the Oklahoma Supreme Court held that parents could not maintain a cause of action for a still-born child due to alleged prenatal injuries under the wrongful death statutes since the Legislature has not seen fit to amend such statute.

In *Hale v. Hale*, 426 P.2d 679 (Okla. 1967), the Court held that the law to the effect that an unemancipated minor may not maintain an action against a parent for ordinary negligence obtained to a stepchild.

See also *Workman v. Workman*, 498 P.2d 1384 (Okla. 1972); *Van Wart v. Cook* (decided June 29, 1976), Volume 47, Oklahoma Bar Journal No. 27, Page 1518, dealing with torts and intra-family relationship.

As stated in *Boswell v. Nolan*, supra, if there is no right of action at common law, there can be no cause of action unless the right is given by statute, and Article II, Section 6, of the Oklahoma Constitution, under reported Oklahoma case law, does not abrogate this principle.

Prior to the enactment of 12 O.S. (Supp. 1975) §1055, the recovery for the alleged wrongful death of a minor child was limited by Oklahoma case law. *Crossett v. Andrews*, 277 P.2d 117 (Okla.1954); *Hathaway v. Beatley*, 127 F.Supp. 634 (USDC, WD Okla.1955); *Parkhill Trucking Co. v. Hopper*, 356 P.2d 810 (Okla.1953); *Mathies v. Kittrell*, 354 P.2d 413 (Okla.1960).

The Oklahoma Legislature has now seen fit to extend to parents of children not having attained the age of majority a cause of action for loss of love and affection and the destruction of the parent-child relationship by the passage of Title 12 O.S. §1055 in 1975. This statute deals specifically with minor children and minor children have been defined by Title 15 O.S. §13 as under the age of 18 years. By no stretch of this Court's imagination can plaintiffs' deceased son come within the provisions and terms of 12 O.S.A. §1055, as presently written and enacted.

Plaintiffs argue that Title 12 O.S. §1055 is merely procedural and not substantive and retroactive and not prospective. Statutes which create a cause of action for wrongful death or which change the rights under an existing death statute are ordinarily not given a retroactive effect unless the legislature has clearly expressed an intention that such effect be given. 22 Am.Jur.2d, Death, §7. The Court finds that a statute providing for a survival of an action creates a substantive right and does not amount merely to a rule of procedure. 22 Am.Jur.2d, Death, §7.

In 1974, the Oklahoma Supreme Court construed Title 15 O.S. §13, in *Bassett v. Bassett*, 521 P.2d 434 (Okla.1974), wherein the Court held that this statute (§13) which prior to the 1972 amendment, defined minors as females under 18 years of age and males

under 21 years of age was unconstitutional as violative of the equal protection clause of the Fourteenth Amendment, classifying by sex and that the classification was unreasonable, arbitrary and not upon grounds of difference fairly and substantially related to a definition of a minor. The Court agreed that the statute, prior to the amendment in 1972 was unconstitutional; that the amendment's object in 1972 was to define minors, with no classification as to sex.

Turning next to the argument of plaintiffs that §1055 is unconstitutional and violates their constitutional rights, the Court notes the language contained in *Reed v. Reed*, 401 U.S. 71 (1971), wherein the Supreme Court of the United States said:

"In applying that clause, this Court has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat classes of persons in different ways. *Barbier v. Connolly*, 113 U.S. 27 (1885); *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61 (1911); *Railway Express Agency v. New York*, 336 U.S. 106 (1949); *McDonald v. Board of Election Commissioners*, 394 U.S. 802 (1969). The Equal Protection Clause of that amendment does however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike.' *Royster Guano Co. v. Virginia*, 253 U.S. 412 (1920). The question presented by this case, then, is whether a difference in the sex of competing applicants for letters of administration bears a rational relationship to a state objective that is sought to be advanced by the operation of \*\*\*." (Emphasis supplied)

It cannot be disputed that §1055 enacted in 1975 creates a cause of action in favor of parents not heretofore available to them. Such relief was not allowed at common law or by previous statutes.

There is no legislative history concerning this Statute. In terms of written history, expressing what the sponsors of the statute or committee or even individual legislators thought when passing this Statute is not available to the Court.

The dominant theory that should prevail in the interpretation of the statute is the plain language of the section. As Mr. Justice Holmes said in *Roschen v. Ward*, 279 U.S. 337 (1928):

"There is no canon against using common sense in construing laws as saying what they obviously mean."

This Court finds no case where age of a minor is inherently suspect or invidiously discriminatory where the age of both male and female and religion and origin and alienage are the same.

It is apparent that the object of enacting §1055 was to create a cause of action for parents of minors for the death of a minor.

Wrongful death statutes are remedial. They must be liberally construed. But they should not, by judicial construction, be extended to include rights of action that are not within the lawmaking intent as shown by the language used.

It is apparent from the very words of the statute here involved that §1055 was enacted to establish or create a cause of action for parents for losses sustained by them as delineated in that statute. The classification is not unreasonable, arbitrary or inherently suspect.

We are not dealing, in the instant case, with a gender-based status, nor a classification concerning race, alienage or national origin, which classifications are subjected to close judicial scrutiny, because they focus upon generally immutable characteristics over which individuals have little or no control. In the instant case no concept as delineated above is involved.

The Oklahoma cases dealing with discrimination in terms of difference in age of males and females generally deal with criminal statutes. *Lamb v. Brown*, 456 F.2d 18 (10th CCA 1972).

It is interesting to note that at page 15 of plaintiffs' brief the following language is found:

"In the case at bar, the plaintiffs are seeking to have this Court declare that 12 O.S. (Supp.1975) §1055, while enunciating a valid and needed legislative purpose, nonetheless, creates an arbitrary classification which has denied your plaintiffs the equal protection of the law. Plaintiffs seek to have this Court expand the benefits of the statute to cover parents of children who have reached the age of majority when they are killed by the wrongful acts of another." (Emphasis supplied)

In Mathews v. Lucas (decided by the United States Supreme Court on June 29, 1976), 44 LW 5139, the Court said:

"Statutory classification, of course, are not per se unconstitutional; the matter depends upon the character of the discrimination and its relation to legitimate legislative aims. 'The essential inquiry \*\*\* is \*\*\* inevitably a dual one: What legitimate [governmental] interest does the classification promote? What fundamental personal rights might the classification endanger?' Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 173 (1972)."

As stated in McLaughlin v. Florida, 379 U.S. 184 (1974):

"State legislative bodies are to be 'given the benefit of every conceivable circumstance which might suffice to characterize the classification as reasonable rather than arbitrary and invidious.'"

The statutory distinction between a minor and an adult; the distinction between a child classified as a minor and a child classified as having attained majority, is inherent in the statutory scheme of both Federal and State Legislation.

This Court does not argue with plaintiffs' contention that although their deceased son was 19 years of age at the time of his demise, that they felt his loss no less than the parents of a child under the age of 18. To expand plaintiffs' basic theory and argument---there is no age when a parent will feel less the loss of a child, regardless of age.

But this argument of the plaintiffs does not attain the stature of inherently suspect or invidiously discriminatory classification. As noted in Frontiero v. Richardson, 411 U.S. 677, at 692 (1973), the group of classifications which are inherently suspect is narrowly limited.

The Court, therefore, finds, that under all the allegations, theories and arguments propounded by plaintiffs, no federal question has been raised so as to vest this Court with jurisdiction.

IT IS, THEREFORE, ORDERED that defendant's Motion to Dismiss be and the same is hereby sustained and the cause of action and complaint are hereby dismissed for lack of jurisdiction.

ENTERED this 17<sup>th</sup> day of August, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

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

THE AETNA CASUALTY and  
SURETY COMPANY, a foreign  
corporation,

Plaintiff,

vs.

NATIONAL BIO-LYTE SYSTEMS  
INC., and OKLAHOMA CORPORATION,  
MARION F. WEBSTER, CONNIE S. WEBSTER,  
BRYAN STIGER, and MARY I. STIGER,

Defendants.

No. 76-C-33-C

**FILED**

AUG 13 1976

Jack C. Silver, Clerk  
DISTRICT COURT

ORDER OF DISMISSAL

ON This 13<sup>th</sup> day of August, 1976, upon the written Application of the parties for A Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said Application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with Prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said Application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff filed herein against the Defendant be and the same hereby is dismissed with prejudice to any future action.

H. Dale Cook  
JUDGE, DISTRICT COURT OF THE UNITED  
STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

Richard D. Wagner

Richard D. Wagner  
Attorney for the Plaintiff

Jack Gordon

Jack Gordon  
Attorney for Defendants, Bryan  
Stiger and Mary I. Stiger

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

BOB DALE McDANIEL, )  
 )  
 Petitioner, )  
 )  
 vs. ) No. 76-C-423-C ✓  
 )  
 STATE OF OKLAHOMA, et al., )  
 )  
 Respondent. )

FILED  
AUG 13 1978 ph  
Jack C. Silver, Clerk  
DISTRICT

ORDER DISMISSING MOTION  
PURSUANT TO TITLE 28 U.S.C. § 2254

The Court has before it for consideration the Petition of Bob Dale McDaniel for Writ of Habeas Corpus filed pursuant to Title 28 U.S.C. § 2254. Petitioner has been allowed to proceed in forma pauperis. Petitioner is currently incarcerated in the Oklahoma State Penitentiary at McAlester, Oklahoma. His Petition alleges that he was arrested on March 12, 1976, for the crime of armed robbery and incarcerated in the Tulsa County Jail in Tulsa, Oklahoma; that his jury trial on the charge of armed robbery began in May, 1976, and was later declared a mistrial, that he was brought before the Tulsa County District Court on June 21, 1976, for the purposes of determining his sanity and that his trial was scheduled for the jury docket of September, 1976. The Petition further alleges that upon the request of the assistant district attorney he was transported to the Oklahoma State Penitentiary for incarceration until the time of his jury trial.

Petitioner contends that the distance between McAlester, Oklahoma, and his counsel from the Public Defender's Office in Tulsa, Oklahoma has caused his counsel to be ineffective and therefore violates his Sixth Amendment right to counsel. He further contends that his treatment at the Oklahoma State Penitentiary violates his right to due process and equal protection as guaranteed by the Fourteenth Amendment.

Petitioner states that an oral motion was made by his counsel, Mr. Allen Smallwood, to allow the petitioner to remain in Tulsa County until all pending charges were concluded. Petitioner has not alleged that he presented these issues to the courts of the State of Oklahoma. He affirmatively alleges that he merely presented a request to remain in Tulsa County prior to being transported to the Oklahoma State Penitentiary. Title 28 U.S.C. § 2254(b) provides that:

"An application for a writ of habeas corpus in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, . . . "

Petitioner makes no showing that he has exhausted his remedies in the courts of Oklahoma. Petitioner makes no showing that he is in custody pursuant to a judgment of a State court.

"Habeas corpus is available only to a prisoner who is in custody pursuant to the court judgment which is challenged by the proceedings." Ward v. State, 376 F.2d 847 (10th Cir. 1967).

The petitioner has an adequate remedy in the courts of Oklahoma. This action may not be maintained until he has properly exhausted his state remedies. Therefore:

IT IS ORDERED ADJUDGED AND DECREED that the Motion for Writ of Habeas Corpus filed pursuant to Title 28 U.S.C. § 2254 is hereby dismissed for failure to exhaust State remedies.

It is so Ordered this 13<sup>th</sup> day of August, 1976.

  
H. DALE COOK  
United States District Judge

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

BRUCE HENDRICKSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 76-C-215-C
	)	
UNITED STATES STEEL	)	
CORPORATION, a foreign	)	
corporation; BETHLEHEM STEEL	)	
CORPORATION, a foreign	)	
corporation; JONES & LAUGHLIN	)	
STEEL CORPORATION, a foreign	)	
corporation; and STEWART	)	
ENGINEERING & EQUIPMENT	)	
COMPANY, INC., a corporation,	)	
	)	
Defendants.	)	

**FILED**  
AUG 13 1976  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

APPLICATION AND ORDER

Comes the plaintiff, BRUCE HENDRICKSON, and requests leave of the Court to dismiss without prejudice the cause of action herein filed against United States Steel Corporation and Bethlehem Steel Corporation, reserving unto the plaintiff all causes of action against Jones & Laughlin Steel Corporation and Stewart Engineering & Equipment Company, Inc.

LEROY MUSHRUSH  
DALE F. McDANIEL

By \_\_\_\_\_  
Attorneys for Plaintiff

ORDER

Upon application the Court finds that the plaintiff is allowed to dismiss without prejudice the defendants, United States Steel Corporation and Bethlehem Steel Corporation from the cause of action herein.

The Court further finds that the plaintiff reserves unto the plaintiff all causes of action as alleged against Jones & Laughlin Steel Corporation and Stewart Engineering & Equipment Company, Inc., and the Court further orders that said dismissals do not prejudice the rights of the plaintiff to proceed in an orderly manner against the two remaining defendants, Jones & Laughlin Steel Corporation and Stewart Engineering & Equipment Company, Inc.

*15/ H. Dale Cook*  
\_\_\_\_\_  
JUDGE

**FILED**  
AUG 13 1976  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

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

ARDA FAYE BRUCE

Plaintiff

vs.

HORIZON CORPORATION, a Delaware  
Corporation, HORIZON PROPERTIES  
CORPORATION, a Delaware Corporation  
HORIZON DEVELOPMENT CORPORATION, a  
Delaware Corporation

Defendants

No. 76-C-161-C

FILED

AUG 13 1976

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

STIPULATION FOR DISMISSAL WITHOUT  
PREJUDICE

It is stipulated and agreed by and between the plaintiff  
and defendant Horizon Development Corporation that said cause  
may be dismissed as to said defendant Horizon Development  
Corporation without prejudice.

18/ Don L. Smith  
Attorney for Plaintiff

18/ Joseph A. Sharp  
Attorney for Defendant Horizon Development  
Corporation

ORDER

Pursuant to the stipulation of the parties herein, the  
above cause is dismissed without prejudice as to the defendant  
Horizon Development Corporation.

18/ H. Dale Cook  
Judge

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

LLOYD BRUCE )

Plaintiff )

vs. )

No. 76-C-162-C )

HORIZON CORPORATION, a Delaware Corporation, HORIZON PROPERTIES CORPORATION, a Delaware Corporation HORIZON DEVELOPMENT CORPORATION, a Delaware Corporation )

Defendants )

FILED

AUG 13 1976

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

STIPULATION FOR DISMISSAL WITHOUT PREJUDICE

It is stipulated and agreed by and between the plaintiff and defendant Horizon Development Corporation that said cause may be dismissed as to said defendant Horizon Development Corporation without prejudice.

1/2/ Don L Smith  
Attorney for Plaintiff

1/8/ Joseph A. Sharp  
Attorney for Defendant Horizon Development Corporation

ORDER

Pursuant to the stipulation of the parties herein, the above cause is dismissed without prejudice as to the defendant Horizon Development Corporation.

1/8/ H. Dale Cook  
Judge

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

NANCY E. KING

Plaintiff

vs.

HORIZON CORPORATION, a Delaware Corporation, HORIZON PROPERTIES CORPORATION, a Delaware Corporation HORIZON DEVELOPMENT CORPORATION, a Delaware Corporation

Defendants

No. 76-C-163-C

FILED

AUG 13 1976

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

STIPULATION FOR DISMISSAL WITHOUT PREJUDICE

It is stipulated and agreed by and between the plaintiff and defendant Horizon Development Corporation that said cause may be dismissed as to said defendant Horizon Development Corporation without prejudice.

/s/ Don L. Smith  
Attorney for Plaintiff

/s/ Joseph A. Sharp  
Attorney for Defendant Horizon Development Corporation

ORDER

Pursuant to the stipulation of the parties herein, the above cause is dismissed without prejudice as to the defendant Horizon Development Corporation.

/s/ D. Dale Cook  
Judge

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

DAVID S. KING )

Plaintiff )

vs. )

NO. 76-C-164-C )

HORIZON CORPORATION, a Delaware Corporation, HORIZON PROPERTIES CORPORATION, a Delaware Corporation HORIZON DEVELOPMENT CORPORATION, a Delaware Corporation )

Defendants )

FILED

AUG 13 1976

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

STIPULATION FOR DISMISSAL WITHOUT PREJUDICE

It is stipulated and agreed by and between the plaintiff and defendant Horizon Development Corporation that said cause may be dismissed as to said defendant Horizon Development Corporation without prejudice.

/s/ Don L. Smith  
Attorney for Plaintiff

/s/ Alfred B. Knight  
Attorney for Defendant Horizon Development Corporation

ORDER

Pursuant to the stipulation of the parties herein, the above cause is dismissed without prejudice as to the defendant Horizon Development Corporation.

/s/ J. Dale Cook  
Judge

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

MELVIN LITTLE )

Plaintiff )

vs. )

No. 76-C-165-C )

HORIZON CORPORATION, a Delaware )  
Corporation, HORIZON PROPERTIES )  
CORPORATION, a Delaware Corporation )  
HORIZON DEVELOPMENT CORPORATION, a )  
Delaware Corporation )

Defendants )

FILED

AUG 13 1976

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

STIPULATION FOR DISMISSAL WITHOUT  
PREJUDICE

It is stipulated and agreed by and between the plaintiff and defendant Horizon Development Corporation that said cause may be dismissed as to said defendant Horizon Development Corporation without prejudice.

/s/ Don L. Smith  
Attorney for Plaintiff

/s/ Joseph A. Sharp  
Attorney for Defendant Horizon Development Corporation

ORDER

Pursuant to the stipulation of the parties herein, the above cause is dismissed without prejudice as to the defendant Horizon Development Corporation.

/s/ H. Dale Cook  
Judge

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

DONNA LITTLE )

Plaintiff )

vs. )

NO. 76-C-166-C )

HORIZON CORPORATION, a Delaware Corporation, )  
HORIZON PROPERTIES CORPORATION, a Delaware Corporation )  
HORIZON DEVELOPMENT CORPORATION, a Delaware Corporation )

Defendants )

FILED

AUG 13 1976

STIPULATION FOR DISMISSAL WITHOUT PREJUDICE

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

It is stipulated and agreed by and between the plaintiff and defendant Horizon Development Corporation that said cause may be dismissed as to said defendant Horizon Development Corporation without prejudice.

/s/ Don L. Smith  
Attorney for Plaintiff

/s/ Joseph A. Sharp  
Attorney for Defendant Horizon Development Corporation

ORDER

Pursuant to the stipulation of the parties herein, the above cause is dismissed without prejudice as to the defendant Horizon Development Corporation.

/s/ H. Dale Cook  
Judge

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

LINDA LITTLE )

Plaintiff )

vs. )

NO. 76-C-167-C )

HORIZON CORPORATION, a Delaware Corporation, HORIZON PROPERTIES CORPORATION, a Delaware Corporation HORIZON DEVELOPMENT CORPORATION, a Delaware Corporation )

Defendants )

FILED

AUG 13 1976

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

STIPULATION FOR DISMISSAL WITHOUT PREJUDICE

It is stipulated and agreed by and between the plaintiff and defendant Horizon Development Corporation that said cause may be dismissed as to said defendant Horizon Development Corporation without prejudice.

/s/ Don L. Smith  
Attorney for Plaintiff

/s/ Joseph A. Sharp  
Attorney for Defendant Horizon Development Corporation

ORDER

Pursuant to the stipulation of the parties herein, the above cause is dismissed without prejudice as to the defendant Horizon Development Corporation.

/s/ H. Dale Cook  
Judge

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

ROY LITTLE

Plaintiff

vs.

HORIZON CORPORATION, a Delaware Corporation, HORIZON PROPERTIES CORPORATION, a Delaware Corporation HORIZON DEVELOPMENT CORPORATION, a Delaware Corporation

Defendants

NO. 76-C-168-C

FILED

AUG 13 1976

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

STIPULATION FOR DISMISSAL WITHOUT PREJUDICE

It is stipulated and agreed by and between the plaintiff and defendant Horizon Development Corporation that said cause may be dismissed as to said defendant Horizon Development Corporation without prejudice.

18/ Dan L. Smith  
Attorney for Plaintiff

18/ Joseph A. Sharp  
Attorney for Defendant Horizon Development Corporation

ORDER

Pursuant to the stipulation of the parties herein, the above cause is dismissed without prejudice as to the defendant Horizon Development Corporation.

18/ H. Dale Cook  
Judge

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

OWEN S. KING, Administrator of the )  
Estate of RICHARD L. KING, deceased )

Plaintiff )

vs. )

NO. 76-C-169-C

HORIZON CORPORATION, a Delaware )  
Corporation, HORIZON PROPERTIES )  
CORPORATION, a Delaware Corporation )  
HORIZON DEVELOPMENT CORPORATION, a )  
Delaware Corporation )

Defendants )

FILED

AUG 13 1976

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

STIPULATION FOR DISMISSAL WITHOUT  
PREJUDICE

It is stipulated and agreed by and between the plaintiff  
and defendant Horizon Development Corporation that said cause  
may be dismissed as to said defendant Horizon Development  
Corporation without prejudice.

18/ Don L. Smith  
Attorney for Plaintiff

18/ Alfred B. Knight  
Attorney for Defendant Horizon Development  
Corporation

ORDER

Pursuant to the stipulation of the parties herein, the  
above cause is dismissed without prejudice as to the defendant  
Horizon Development Corporation.

18/ H. Dale Cook  
Judge

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

FILED

AUG 13 1976 SK

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

GERALD C. ANGUS and CARMEN ANGUS )  
Individually and as husband and )  
wife, )

Plaintiffs, )

vs. )

No. 75-C-408-B ✓

SOUTHWESTERN BELL TELEPHONE )  
COMPANY, INC., (a corporation) )  
and PATRICK B. FOWLER, agent, )  
servant or employee of South- )  
western Bell Telephone Co., Inc., )

Defendants. )

STIPULATION FOR DISMISSAL

It is hereby stipulated by Gerald C. Angus and  
Carmen Angus, individually and as husband and wife,  
plaintiffs herein, and Kainor Carson, their attorney, and  
Southwestern Bell Telephone Company, defendant, by its  
attorney Nancy L. Coats, that the above-entitled action  
be dismissed with prejudice.

Dated this 13<sup>TH</sup> day of August, 1976.

Gerald C. Angus  
Gerald C. Angus

Carmen Angus  
Carmen Angus

Kainor Carson  
Kainor Carson  
Attorney for Plaintiffs

Nancy L. Coats  
Nancy L. Coats  
Attorney for Southwestern  
Bell Telephone Company

FILED

AUG 17 1976

75-C-408-B ✓ Jack C. Silver, Clerk  
U. S. DISTRICT COURT SK

ORDER

On the above stipulation filed herein on the 17<sup>th</sup>  
day of August, 1976, it is so ordered and the cause  
of action and complaint are dismissed with prejudice.

Allen F. Panour  
United States District Judge

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

ALEX GLOVER, JR., )  
 )  
 Petitioner, )  
 )  
 vs. ) No. 75-C-545-C  
 )  
 STATE OF OKLAHOMA, )  
 )  
 Respondent. )

FILED  
AUG 12 1976

Jack C. Silver, Clerk  
DISTRICT OF

ORDER DISMISSING MOTION PURSUANT TO  
TITLE 28 U.S.C. § 2254

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 Stringtown, Oklahoma. Petitioner attacks the validity of the judgment and sentence rendered and imposed by the District Court in and for the County of Tulsa, Oklahoma, wherein after a trial by jury, the petitioner was found to be guilty of the crime of Robbery with Firearms After Former Conviction of a Felony and sentenced to a term of imprisonment in Oklahoma State Penitentiary for a period of thirty-eight (38) years, in Case No. 73-1505.

Petitioner demands his release from custody and as grounds therefor claims that he is being deprived of his liberty in violation of his rights under constitutions of the United States and the State of Oklahoma. The petitioner claims that:

1. Prejudicial remarks by prosecutor denied him a fair trial; as guaranteed by the sixth amendment to the United States Constitution;
2. The respondent made a deal with a witness, Doris Selbert Monday, which caused the witness to testify falsely;
3. A starter pistol is not a "firearm" under Oklahoma law;
4. No counsel was present to represent petitioner at the lineup and counsel, once appointed, was ineffective;
5. In-court identification of petitioner was tainted by prejudicial statements at lineup proceedings;

6. Weapon introduced as evidence was seized by an illegal search.

Petitioner has presented documents which show that he has exhausted all of his remedies at the State level. Petitioner appealed his conviction to the Oklahoma Court of Criminal Appeals. The judgment and sentence was affirmed in Glover v. State, 531 P.2d 689 (Okla. Cr. 1975) (Brett, J., dissenting). Petitioner filed for post-conviction relief on June 12, 1975 in the District Court of Tulsa County. By order dated October 15, 1975 the District Court of Tulsa County denied relief. Petitioner appealed the denial of post-conviction relief to the Oklahoma Court of Criminal Appeals which court affirmed said denial in Case No. PC-75-667.

The Court has carefully reviewed the entire transcript of the proceedings held in the District Court of Tulsa County, State of Oklahoma and has perused the entire record presented in support of and in opposition to the Petition for Writ of Habeas Corpus.

#### PREJUDICIAL REMARKS OF PROSECUTOR

Petitioner asserts that certain remarks and acts by the prosecutor during trial were highly prejudicial and denied him his United States Constitutional right to a fair trial as guaranteed by the Sixth Amendment. The alleged prejudicial remarks relate:

- I. To examination of defense witnesses
  - A. Alibi Witness:
    1. Esther Teal (Tr. 333-336)
    2. Linda Glover (Tr. 352-357)
  - B. Defense Witnesses
    1. Harold J. Harrison (Tr. 373-376)
    2. Alex Glover (Tr. 411, 413, 470-471)
    3. Otis Bagsby (Tr. 484)
- II. To conclusions of guilt (Tr. 374, 497, 535)
- III. To the solicitation of sympathy for the victims (Tr. 491, 495, 531-532, 534, 536-538)

The alleged prejudicial acts of the prosecutor relate to pointing the revolver which had been introduced into evidence

at members of the jury. (Tr. 491, 493, 533).<sup>1/</sup>

I. Examination of Defense Witnesses  
A. Alibi Witnesses  
1. Self-Incrimination

Petitioner contends that the prosecutor addressed questions to the alibi witnesses, Teal and Glover, which suggested that their testimony was false because they did not report the alibi to the District Attorney prior to trial. In support of this contention petitioner cites the case of Buchanan v. State, 523 P.2d 1134 (Okla. Cr. 1974). In Buchanan the court held that:

"cross-examination of the witness [defendant] concerning her failure and the failure of her parents to come forward and make a statement prior to trial and the closing argument stressing same constitutes fundamental error on behalf of the prosecuting attorney. The defendant had a clear constitutional right to remain silent from the moment she became a suspect." Buchanan at 1137.

The right not to be a witness against oneself is a right which is personal to the witness. Rogers v. United States, 340 U.S. 367, 71 S.Ct. 438, 95 L.Ed. 344 (1951); United States v. Skolek, 474 F.2d 582 (10th Cir. 1973). The prosecutor may question the alibi witnesses to determine their credibility. Had the prosecutor commented on the failure of the petitioner to report his defense of alibi the privilege against self-incrimination may very well have been violated. Deats v. Rodriguez, 477 F.2d 1023 (10th Cir. 1973); United States v. Arnold, 425 F.2d 204 (10th Cir. 1970); United States v. Nolan, 416 F.2d 588 (10th Cir. 1969). The prosecutor made no comment on the silence of petitioner prior to trial. The claims which petitioner raises in regard to the silence of a witness are without merit.

2. Failure to Report Evidence

Petitioner contends that the cross-examination of defense

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1/ The pages of the transcript which are identified herein are attached as Appendix I.

witnesses Teal, Linda Glover and Harrison was highly prejudicial and constitutes reversible error for the reason that the prosecution failed to lay the proper predicate before examining the witnesses on their silence. State v. Fletcher, 36 N.M. 47, 7 P.2d 936 (1932). Petitioner contends that before an impeaching question is propounded in regard to a witness' prior silence, the prosecutor must make a prima facie showing as to time, place and circumstance which would have prompted the witness to come forward with the evidence. See Fletcher at 938; Glover v. State, 531 P.2d 689, 694 (Okla. 1975).

In regard to the suggestion of silence as it relates to the witness Teal, the prosecutor asked whether she had ever reported her telephone conversation with the petitioner which occurred at 9:30 a.m. on August 13, 1973 to the District Attorney's office. (Tr. 333). This question of the prosecutor was not answered by the witness. Upon redirect-examination by counsel for petitioner, the witness Teal answered that she made no attempt to contact the prosecutor's office in regard to petitioner's case. (Tr. 335).

The witness Teal testified that she had telephoned and talked with petitioner at 9:30 a.m. on August 13, 1973 at the T-Town Motel where petitioner was living. She further testified that she did not know where petitioner was located at 9:45 a.m. on said date. The prosecution witnesses testified that the robbery occurred at approximately 9:45 a.m. on August 13, 1973.

Since the question of the prosecutor in regard to her silence was not answered by the witness, Teal, and was answered only after being presented by counsel for the petitioner, the claim of prejudice is without merit. In addition the witness Teal testified that she did not know the location of the petitioner at 9:45 a.m. on the day of the robbery. (Tr. 333). In view of the testimony of the witness Teal it is the conclusion of the Court that any reference to her silence by the prosecutor was not so

prejudicial as to give rise to Constitutional error. The trial court has broad discretion on questions of evidence. Unless the trial court has abused its discretion the determination of the trial judge on matters of examination and cross-examination should stand. Carpenter v. United States, 463 F.2d 397 (10th Cir. 1972) cert. denied 409 U.S. 985, 93 S.Ct. 337, 34 L.Ed. 2d 251 (1972); Morris v. United States, 409 U.S. 985, 93 S.Ct. 339, 34 L.Ed.2d 251 (1972); United States v. Acree, 466 F.2d 1114(10th Cir. 1972), cert denied 410 U.S. 913, 93 S.Ct. 968, 35 L.Ed.2d 278 (1973).

In regard to the suggestion of silence as it relates to the witness Linda Glover, wife of the petitioner, the prosecutor asked whether she had ever reported her testimony of alibi to the authorities prior to trial. (Tr. 356). Mrs. Glover answered by stating that she had reported the alibi to Sergeant Harrison of the Tulsa Police Department. (Tr. 357). The prosecutor failed to impeach the witness Linda Glover on the ground of her prior silence. Therefore no prejudice could have occurred by the questions in regard to the presentation of an alibi defense prior to trial.

The petitioner challenges the prosecutor's questions to Sergeant Harold Harrison. Sergeant Harrison testified that one of the witnesses made a positive identification of the petitioner only after the witness had been shown a handgun which was similar to the handgun introduced into evidence. (Tr. 367). The prosecutor asked of Sergeant Harrison why he had not presented this information to the District Attorney's office prior to trial. Sergeant Harrison responded to these questions by stating that he was not in charge of the lineup and that he did not interfere in another officer's case. (Tr. 375).

In reviewing the record as it pertains to the failure of Sergeant Harrison to reveal incidents which occurred at the lineup it is the conclusion of the Court that no prejudice

occurred against the petitioner when the prosecutor asked why Harrison had not come forward with this information. These questions do not appear to be directed for the purpose of impeaching the testimony of Harrison but rather for the purpose of publicly reprimanding a policeman and to present a self-serving statement that the Tulsa County District Attorney does not prosecute innocent people. The prosecutor's questions probe for the reason why Sergeant Harrison failed to report the lineup incident. This testimony was presented to the jury for their determination as to the accuracy of Hunt's identification of petitioner. No Constitutional error was committed by the prosecutor in his examination of Sergeant Harrison.

#### B. Defense Witnesses

The petitioner charges that the prosecutor's remarks upon his examination of defense witnesses Harrison, Alex Glover and Bagsby were so prejudicial as to create reversible error. The basis of the complaint here is that the prosecutor by his comments insinuated that each of these witnesses was lying. Petitioner cites many comments which he contends separately or in combination support his contention of an unfair trial.

The questions directed to Sergeant Harrison have been explored above. In regard to the comments directed by the prosecution to the petitioner, the petitioner particularly objects to the statements:

"You're just a pretty good boy, aren't you, Alex?" (Tr. 411). and

"Just a hard-working boy, aren't you?" (Tr. 471).

In regard to the comments directed by the prosecution to the defense witness Otis Bagsby, the petitioner particularly objects to the statement:

"You've had a pretty busy life, haven't you?" (Tr. 484).

The Court has examined the entire record surrounding the examination and cross-examination of these witnesses and finds

that these statements were not so prejudicial as to constitute reversible error. The general rule is that the prosecutor is allowed broad latitude in commenting on the testimony of the witnesses. On the other hand, the prosecutor may not make statements which will prejudice the jury nor may he do acts which would intimidate witnesses or the jury. In Marlin v. Florida, 489 F.2d 702 (5th Cir. 1974) where the petitioner made a similar claim of prejudicial remarks during the closing argument of the prosecuting attorney, the court found that the petitioner presented no error of constitutional magnitude.

"The general rule is that conduct of state prosecutors which, it is contended, was unfair and prejudicial, has been held not to state a constitutional violation cognizable on federal habeas corpus. See Buchalter v. New York, 319 U.S. 427, 63 S.Ct. 1129, 87 L.Ed. 1492 (1943); Manuel v. Cox, CA 549-71-R (E.D. Va. 1973). Inquiry at this stage will only be made to determine whether said conduct denied petitioner 'a fair trial within the meaning of the due process clause of the Fourteenth Amendment,' keeping in mind that under the rule of Buchalter, supra, the standard is a strict one requiring more than a mere showing of unfairness or prejudice under state rules of criminal law. United States v. Fay, 350 F.2d 400 (2nd Cir. 1965)." Mechling v. Slayton, 361 F. Supp. 770, 774 (E.D. Va. 1973).

In the case of Sanders v. United States, 238 F.2d 145, 148 (10th Cir. 1956) the Tenth Judicial Circuit stated:

"A reasonable range of latitude is to be allowed counsel in drawing inferences and deductions from the facts and circumstances shown in the trial and in commenting thereon."

In view of the entire record surrounding the comments of the prosecutor concerning the defense witnesses Harrison, Alex Glover and Otis Bagsby it is the conclusion of the Court that such comments did not deny petitioner a fair trial within the meaning of the due process clause of the Fourteenth Amendment nor did such comments deny petitioner an impartial trial as guaranteed by the Sixth Amendment.

## II. Conclusions of Guilt

As stated herein the prosecutor's comments at various times

during the testimony and during closing arguments strongly suggest that the District Attorney of Tulsa County does not prosecute a person unless he is guilty and therefore it was the opinion of the prosecutor that petitioner was guilty.

The Tenth Judicial Circuit addressed the issue of a prosecutor's statements of a defendant's guilt in the case of Young v. Anderson, 513 F.2d 969, 971 (10th Cir. 1975) wherein it is stated:

"We have held that statements expressing an advocate's personal belief in the merits of the case are to be deplored. Devine v. United States, 403 F.2d 93 (10th Cir. 1968) cert. denied 394 U.S. 1003, 89 S.Ct. 1599, 22 L.Ed.2d 780 (1969). This holding was clearly enunciated in United States v. Martinez, 487 F.2d 973 (10th Cir. 1973):  
' . . . we caution prosecuting attorneys that in their closing argument they should not, in an effort to bolster the credibility of a Government witness, place their own integrity, directly or indirectly, on the scales. Such is improper, and in the proper case may well result in a reversal which could have been easily avoided.'  
487 F.2d at 977."

In the case of Donnelly v. DeChristoforo, 416 U.S. 637, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974) the Supreme Court held that a statement by a prosecutor to the effect that the defendant hoped the jury would find him guilty of something a little less than first-degree murder was not a denial of constitutional due process. The Donnelly Court also found that the prosecutor's statement to the effect that he believed that there was no doubt as to the defendant's guilt did not constitute reversible error. No contention is made that the trial court failed to instruct the jury that the arguments of counsel were not evidence. Both parties waived recording of the instructions. (Tr. 488). The trial court instructed the jury that the state must establish by evidence beyond a reasonable doubt all of the material allegations contained in the information.

In viewing the prosecutor's remarks concerning the practice of the Tulsa County District Attorney to prosecute only guilty

persons in light of the entire record it is the conclusion of the Court that no reversible error was committed and that such remarks did not violate petitioner's right to due process under the Fourteenth Amendment and right to an impartial trial under the Sixth Amendment.

### III. Solicitation of Sympathy

The petitioner contends that the prosecutor elicited the sympathy of the jurors in behalf of the state by his statements to the effect that the witnesses Bruffett, Minugh and Hunt were intimidated in having to lie face down on the floor, (Tr. 491), and that the witnesses were scared. (Tr. 534). These statements were made in response to defense counsel's argument that the State's witnesses were vague in their identification of the petitioner.

The prosecutor commented on the tools used by an armed robber. In this regard the prosecutor asked the jury to consider that a gun is a tool of an armed robber. In addition the prosecutor suggested that a gun is made to kill and that the jury should consider this fact. (Tr. 495).

The prosecutor answered the contention of the defense that the prosecution had failed to provide ballistics by stating that no ballistics were presented because there was no victim with a hole in his head. (Tr. 531). In this part of the argument the prosecutor was attacking the credibility of the defense witnesses.

The prosecutor sought the sympathy of the jury on behalf of the prosecution witnesses when he stated:

"And while, ladies and gentlemen, you're thinking about letting Alex Glover go -- not only the intimidation that the witnesses went through down here on the floor with his gun, but the intimidation they have to go through when they take the witness stand, I'm surprised that a lot of them even report their robberies. So if you want to discount all of this, let Mr. Glover go." (Tr. 537).

This comment in part is designed to bolster the credibility of

the government's witnesses.

The petitioner does not attack the trial court's instruction on sympathy. The trial court instructed the members of the jury that they should not let sympathy, sentiment or prejudice enter into their deliberations. While the prosecutor's remarks are designed to counter the evidence of the defense and to bolster the state's evidence, there is little doubt that such comments were also designed to elicit the sympathy of the jury. In view of the entire record the remarks of the prosecutor were not so damaging as to deny petitioner an impartial and a fair trial under the Sixth and Fourteenth Amendments.

Petitioner also contends that the actions of the prosecutor in pointing the gun at the jury were designed to horrify and enrage the jury and caused prejudice. In viewing the entire record it is the conclusion of the Court that such conduct did not rise to a level of Constitutional error.

The Court has gone to considerable effort in examining the contentions of the petitioner for the reason that the statements, comments and actions of the prosecutor in this case come perilously close to that condemned by the Sixth and Fourteenth Amendments. This Court in no way approves of the conduct of the prosecutor but merely finds that under the circumstances of this case no Constitutional error was committed.

#### PERJURED TESTIMONY OF WITNESS MONDAY

Petitioner contends that the testimony of the witness Monday was perjured because the State made a deal with this witness in exchange for his testimony.

The witness Monday testified that he overheard a conversation between the petitioner and the defense witness Otis Bagsby wherein the petitioner stated that he had committed the robbery of the Safeway store but that the State could not prove it. (Tr. 445).

Petitioner contends that in exchange for this testimony the State promised to be lenient with Monday on his charge of Second Degree Burglary After Former Conviction of a Felony. Petitioner also charges that the State told Monday what he should say in his testimony.

The requirements which must be satisfied by the petitioner in order to show a conviction through the use of perjured testimony are set out in McBride v. United States, 446 F.2d 229, 232 (10th Cir. 1971):

"While use of perjured testimony to obtain a conviction may be grounds for a vacation of a conviction, the petitioner has the burden of establishing that (a) testimony was false; (b) that it was material; and (c) that it was knowingly and intentionally used by the government to obtain a conviction. Oyler v. Taylor (10th Cir. 1964) 338 F.2d 260, cert. denied, 382 U.S. 847, 86 S.Ct. 92, 15 L.Ed.2d 87; Lister v. McLeod (10th Cir. 1957) 240 F.2d 16; Ryles v. United States, supra, 198 F.2d 199. Conclusory allegations to this effect are not sufficient. Early v. United States (D.C. Kan. 1969) 309 F.Supp. 421."

During the trial the witness Monday testified that he was not told by the District Attorney what to say in his testimony. (Tr. 446). Monday also testified that he was not promised anything by the District Attorney in return for his testimony (Tr. 446). Monday testified that no one had promised him anything in return for his testimony (Tr. 457). During the hearing on a petitioner's Motion for New Trial the witness Monday again testified that he had not been promised anything for his testimony (Tr. 581) and that the District Attorney had not told him what to say. (Tr. 582).

The trial court conducted an extensive hearing into the allegations of perjured testimony and concluded that no promise had been made to Monday and that he had not been told what to say. (Tr. 569-632).

After reviewing the record as it pertains to the allegation of perjured testimony it is the conclusion of the Court that

petitioner has failed to show that the testimony of the witness Monday was false or that it was obtained through promises or suggestions. Therefore the Motion pursuant to Title 28 U.S.C. § 2254 on the ground that the conviction was obtained by use of perjured testimony must be denied.

"FIREARM" UNDER OKLAHOMA LAW

Petitioner contends that he was improperly convicted of Robbery with Firearm because the firearm admitted into evidence at the trial was actually a starter pistol and not capable of discharging a projectile.

Petitioner was convicted of a robbery with a firearm which was committed on August 13, 1973 under Title 21 Okla. Stat. § 801. An amendment to § 801 which defines a firearm became effective on April 30, 1973.<sup>2/</sup> Since said amendment was effective at the time the crime of Robbery with Firearms was committed the petitioner was subject to being prosecuted for using a blank or imitation firearm in committing a robbery.

The Oklahoma Court of Criminal Appeals examined the application of this amendment to petitioner's case and found that the type of firearm which had been introduced into evidence at petitioner's trial was included in the definition of a firearm contained in Title 21 Okla. Stat. § 801 as amended. (Okla. Ct. Crim. App. No. PC-75-667). An interpretation of a state statute by the state court is controlling. Goldsmith v. Cheney, 447 F.2d 624 (10th Cir. 1971).

The petitioner's contention that a starter pistol is not a firearm within the meaning of Title 21 Okla. Stat. § 801 (Amended 1973) is without merit.

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<sup>2/</sup> Title 21 Okla. Stat. § 801 as amended provides:

Any person or persons who, with the use of any firearms or any other dangerous weapons, whether the firearm is loaded or not, or who uses a blank or imitation firearm capable of raising in the mind of the one threatened with such device a fear that it is a real firearm, attempts to rob or robs any person or persons, or who robs or attempts to rob any place of business, residence or banking institution or any other place inhabited or attended by any person or persons at any time, either day or night, shall be guilty of a felony, . . . ." Amended by Laws 1973, c. 76, § 1, emerg. eff. April 30, 1973.

## INEFFECTIVE COUNSEL

Petitioner contends that his defense counsel, Mr. Michael Hackett from the Tulsa County Public Defender's Office was ineffective. The guidelines for determining when defense counsel was ineffective or incompetent were set forth in Ellis v. State, 430 F.2d 1352, 1356 (10th Cir. 1970).

"It is the general rule that relief from a final conviction on the ground of incompetent or ineffective counsel will be granted only when the trial was a farce, or a mockery of justice, or was shocking to the conscience of the reviewing court, or the purported representation was only perfunctory, in bad faith, a sham, a pretense, or without adequate opportunity for conference and preparation. Goforth v. United States (10th Cir. 1963), 314 F.2d 868 \*\*\*. Williams v. Beto, 354 F.2d 698, 704 (5th Cir. 1965). And this test is applicable to cases in which counsel is retained by or for an accused as well as to cases in which counsel is appointed to represent an indigent defendant. Bell v. State of Alabama, 367 F.2d 243 (5th Cir. 1966)."

In applying this standard the record shows that petitioner's counsel was not ineffective or incompetent. To the contrary, the record shows that defense counsel provided effective legal assistance to the petitioner.

Petitioner has submitted an affidavit contained in his Brief in Support of his Motion Pursuant to 28 U.S.C. § 2254 wherein he states that defense counsel Hackett was advised by the "District Judge of Tulsa County District Court" that said judge would consider a defense Motion to Quash. The Attorney General for the State of Oklahoma has responded to this affidavit by stating that a Motion to Quash was filed on October 11, 1973 and that such Motion is reflected in the record. The record which was submitted to the Oklahoma Court of Criminal Appeals shows that a Motion to Quash the information was filed on October 11, 1973. The contention of the petitioner that defense counsel was ineffective or incompetent is without merit.

TIMELY ASSISTANCE OF COUNSEL

Petitioner contends that he was denied counsel at a lineup which was conducted on August 14, 1973 which denial was in contravention of his Sixth Amendment right to counsel.

The record reflects that the lineup was conducted on August 14, 1973. The Information charging petitioner with the crime of Robbery with Firearms was filed on August 15, 1973. Under the ruling of Kirby v. Illinois, 406 U.S. 682, 92 S.Ct. 1877, 32 L.Ed.2d 411 (1972), petitioner did not have an absolute right to counsel at a lineup which was conducted prior to a critical stage of the prosecution. However,

"[A]s the Court pointed out in Wade itself, it is always necessary to 'scrutinize any pretrial confrontation . . . .' 388 U.S. at 227. The Due Process Clause of the Fifth and Fourteenth Amendments forbids a lineup that is unnecessarily suggestive and conducive to irreparable mistaken identification. Stovall v. Denno, 388 U.S. 293; Foster v. California, 394 U.S. 440." Kirby 406 U.S. at 690-691.

The Court must look to the totality of the circumstances of this case to determine whether the confrontation conducted in this case was so unnecessarily suggestive and conducive to irreparable mistaken identification that petitioner was denied due process of law. Stovall v. Denno, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967). See Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972).

In Neil v. Biggers, supra, the Supreme Court has set forth the factors to be considered in determining whether a misidentification was likely. Such factors include:

"the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation."  
Neil, 409 U.S. at 199-200.

The record in this case shows that the trial court conducted an evidentiary hearing with the jury absent in an effort to

determine the admissibility of the in-court identification of petitioner by the witness Jerry Hunt. (Tr. 160-213). During this evidentiary hearing, Jerry Hunt, who was the only witness to give a positive identification of the petitioner, testified that he had watched three men approach his location in the Safeway Store on August 13, 1973. (Tr. 161-166). During this testimony Hunt described the three men by their height and weight. Hunt further testified that on August 14, 1973 he and witness Minugh viewed a lineup at which time he positively identified the petitioner as one of the three men who had committed the Safeway robbery.

At trial the witness Hunt positively identified the petitioner (Tr. 259) and further testified that he had observed the three men for approximately five to seven minutes at the time of the robbery. (Tr. 262).

The testimony of Sergeant Harrison concerning Hunt's identification of the petitioner at the lineup conflicts with that of Hunt. Harrison testified that Hunt made no positive identification until after he had been shown a pistol similar to that used in the robbery by Investigator Larry Johnson. (Tr. 199-200). Officer Johnson testified at the trial that he remembered that someone had shown a pistol to the witness Hunt but that he could remember very few of the details. (Tr. 458-463). The photograph of the lineup was introduced into evidence and is attached to the trial transcript. This photograph shows that all of the possible suspects were black and were similar in height and weight. The lineup itself was not suggestive.

In reviewing the entire record as it pertains to the identification of the petitioner by the witness Hunt at the lineup, the totality of the circumstances does not support the contention that the identification was so unnecessarily suggestive as to deny petitioner due process of law. Hunt made a positive identification of the petitioner at the lineup which was conducted

within thirty hours of the robbery. He was exposed to the three robbers for approximately five minutes on August 13, 1973. His descriptions of the robbers were accurate as to height and weight. His attention during the robbery was disturbed only by whatever intimidation and fear he may have experienced. Therefore, this contention is without merit.

#### SEARCH OF AUTOMOBILE

Petitioner asserts that the gun which was introduced into evidence was seized through an unlawful search. This issue narrows itself to a question of whether Linda Glover, wife of petitioner consented to the search of her automobile at the time the gun was discovered in the glove compartment. The trial court conducted an evidentiary hearing in an effort to determine whether the gun should be suppressed as evidence obtained through an unlawful search. (Tr. 226-254). The trial court found that the search of the automobile was conducted after the consent to search was granted by the owner Mrs. Glover. (Tr. 257).

In the recent case of Stone v. Powell, 44 U.S.L.W. 5313 (Decided July 6, 1976) the United States Supreme Court held that:

"where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, the Constitution does not require that a state prisoner be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial."

Stone 44 U.S.L.W. at 5317.

The circumstances surrounding the seizure of the gun introduced at trial were fully presented to the trial court whereupon the trial court ruled it to be admissible. The Fourth Amendment grounds have been determined.

"In sum, we conclude that where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, (Footnote Omitted) a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial. (Footnote Omitted)." Stone 44 U.S.L.W. at 5321. See Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975; 26 L.Ed.2d 419 (1970).

The record shows that the trial court committed no fundamental error in its determination that consent was given to the search. This contention is without merit.

For the reasons stated herein the request of petitioner Alex Glover, Jr. for a Writ of Habeas Corpus pursuant to Title 28 U.S.C. § 2254 is denied and this cause is hereby dismissed.

It is so Ordered this 12<sup>th</sup> day of August, 1976.

  
H. DALE COOK  
United States District Judge

A P P E N D I X I

1 Q. How well do you know Linda Glover?

2 A. Well, I met her after she and Alex got married. I've known  
3 her about -- well, over a year.

4 Q. Can you look at this jury, ma'am, and tell them where  
5 Alex Glover, Jr., was at 9:45, 9:30 on the 13th of August  
6 of 1973?

7 A. At 9:30, he was at the T-Town Motel. At 9:45, I don't know  
8 where he was.

9 Q. All right. When was the first time, ma'am, that you became  
10 informed that Alex Glover was charged with the crime of  
11 armed robbery?

12 A. It was around -- oh, the 16th of August.

13 Q. Yes, ma'am. And would you give me the name of the police  
14 officer or the District Attorney you called and said that  
15 they had an innocent man?

16 MR. HACKETT: I'm going to object to that, Your  
17 Honor, incompetent, irrelevant, immaterial. I move for a  
18 mistrial, and the jury be admonished to disregard that entire  
19 question. Highly improper, prejudicial.

20 THE COURT: Objection to the form of the question  
21 is sustained. Motion for mistrial overruled with exception  
22 allowed.

23 Q. (By Mr. Hopper) Did you ever report, ma'am, to the District  
24 Attorney's Office?

25 MR. HACKETT: Note our exception to the ruling on

1 that, Your Honor.

2 THE COURT: Exception allowed.

3 Q. (By Mr. Hopper) Or to any other law enforcement that your  
4 nephew, Alex Glover, Jr., was being held in jail for the  
5 crime of armed robbery?

6 MR. HACKETT: Objection to this, Your Honor.

7 THE COURT: Just a minute, counsel. Let  
8 Mr. Hopper finish the question.

9 Q. (By Mr. Hopper) For the crime of armed robbery in which he  
10 was innocent of?

11 MR. HACKETT: I'll object to that, Your Honor, as  
12 incompetent, irrelevant, immaterial. Highly prejudicial  
13 and having no basis and fact at all.

14 THE COURT: Objection overruled.

15 MR. HACKETT: Note our exception.

16 Q. (By Mr. Hopper) Give me the names, ma'am, of the people  
17 that you reported this to.

18 A. That I reported --

19 MR. HACKETT: She just stated that she did not  
20 report anything to anyone. Therefore, this question is  
21 immaterial, based on the statement of facts not in evidence.

22 MR. HOPPER: No further questions.

23 REDIRECT EXAMINATION

24 QUESTIONS BY MR. HACKETT:

25 Q. Mrs. Teal, did anyone from the police department or D. A.'s

1 Office or any detectives attempt to contact you on this  
2 matter?

3 A. No.

4 Q. Do you think it would have done any good and tried to con-  
5 tact them?

6 A. I don't know. I don't believe so.

7 MR. HACKETT: I don't think I have anything  
8 further.

RE-CROSS-EXAMINATION

9 QUESTIONS BY MR. HOPPER:

10 Q. Why do you say you don't believe so?

11 A. Because, well, I don't see why -- I mean by me going down  
12 there, I don't see how it would help him any.

13 Q. Oh, you don't?

14 A. By telling them that.

15 Q. You got an innocent man sitting up there in jail and you  
16 don't --

17 MR. HACKETT: Object to this, Your Honor. Argu-  
18 mentative. It's outside the scope of redirect examination.

19 THE COURT: Objection sustained.

20 MR. HACKETT: Thank you, Your Honor.

21 Q. (By Mr. Hopper) Let me ask you this, ma'am, did Alex Glover  
22 ever tell you to go talk to somebody in the District Attor-  
23 ney's Office?

24 A. I never did talk to him.

1 MR. HACKETT: Objection, Your Honor.

2 Q. (By Mr. Hopper) Did you ever visit with him?

3 A. I tried, but he wouldn't let me visit him.

4 Q. Did you call the District Attorney's Office?

5 A. No, sir.

6 MR. HACKETT: Objection, been asked and answered.

7 THE COURT: And it has again. You may proceed.

8 MR. HOPPER: I have no further questions.

9 FURTHER REDIRECT EXAMINATION

10 QUESTIONS BY MR. HACKETT:

11 Q. Now, Mrs. Teal, you couldn't visit Alex in the Tulsa County  
12 jail because you're not a close enough relative.

13 A. That's what they told me.

14 Q. That's only wives and mothers and brothers and fathers and

15 A. Yes.

16 MR. HACKETT: That's all I have.

17 FURTHER RECROSS-EXAMINATION

18 QUESTION BY MR. HOPPER:

19 Q. What was the nature of Alex's illness?

20 MR. HACKETT: Object to this as being outside of  
21 the scope.

22 MR. HOPPER: Withdraw the question.

23 THE COURT: Anything further of this witness?

24 MR. HACKETT: Nothing further.

25 THE COURT: May this witness be excused?

1 Q. That was it?

2 A. Yes, as far as I can remember.

3 Q. Well, you're under oath, ma'am, and I'll remind you you're  
4 under oath, and I'll ask you the question --

5 MR. HACKETT: Object to that. That's argumentative.  
6 Move that it be stricken.

7 THE COURT: Objection to the form of the question  
8 is sustained. The Court would direct that the same be  
9 stricken from the record.

10 Q. (By Mr. Hopper) Okay. On the way to the police station  
11 with Officer Randolph -- you remember Officer Randolph,  
12 don't you?

13 A. Yes.

14 Q. Did he mistreat you?

15 A. No.

16 Q. Did he abuse you, hit you?

17 A. He didn't touch me.

18 Q. Did he question you?

19 A. No.

20 Q. Let me ask you this, ma'am, do you recall making this  
21 statement to Officer Randolph, I knew it, I knew it, I knew  
22 it. My mother told me to get rid of Alex, that he would  
23 get me in trouble.

24 A. Not in those words.

25 MR. HACKETT: Objection, Your Honor, incompetent,

1 irrelevant, immaterial, prejudicial. Move for a mistrial,  
2 and the members of the jury be admonished to disregard it.

3 THE COURT: Objection overruled at this time.

4 Q. (By Mr. Hopper) Did you make those statements to Officer  
5 Randolph?

6 MR. HACKETT: It's been asked and answered, Your  
7 Honor.

8 THE COURT: Overruled.

9 Q. (By Mr. Hopper) Did you make those statements?

10 A. Not in those words, no.

11 Q. Well, what were the words?

12 A. I said quote, "My mother said something might happen like  
13 this."

14 Q. Like what?

15 A. I mean stopped by the police.

16 Q. Well, then, what you said earlier about that being all of  
17 the conversation wasn't true, was it?

18 A. No. Just I can't remember --

19 Q. You can't remember?

20 A. No.

21 Q. What was the nature of Mr. Glover's illness on the 13th?

22 MR. HACKETT: Object to that. It's incompetent,  
23 irrelevant, immaterial.

24 THE COURT: Sustained.

25 Q. (By Mr. Hopper) Did you check in the motel on the 12th?

1 A. Yes.

2 Q. Would you look through the Defendant's Exhibits and tell me  
3 when and what time you checked in on the 12th of August of  
4 1973?

5 A. I can't remember the time.

6 Q. Is there a Defendant's Exhibit up there that would indicate  
7 that you checked in on the 12th?

8 A. Yes.

9 Q. There is?

10 A. July 12th.

11 Q. August 12, ma'am.

12 A. Okay.

13 Q. The day of the robbery.

14 MR. HACKETT: Object to the argumentative nature  
15 of that comment, Your Honor.

16 THE COURT: Objection overruled.

17 A. Yes.

18 Q. (By Mr. Hopper) August the 12th?

19 A. Yes.

20 Q. And what's the number of the exhibit?

21 A. 6. Is that it?

22 Q. And what time did you check into the motel on August the 12th?

23 A. Like I said, sir, I'm not sure of the time.

24 Q. Day, night?

25 A. Evening.

1 Q. You and Alex frequent the motel pretty often?

2 A. Yes.

3 Q. You don't have a regular address?

4 A. Well, we had been living with his mother.

5 Q. Is that Mrs. Page Glover?

6 A. Glover Page.

7 Q. Glover Page. Would you tell me, ma'am, on State's Exhibit  
8 No. -- or Defendant's Exhibit No. 6, who checked in and  
9 who checked out?

10 A. Alex checked in, but that's not Alex's handwriting.

11 Q. That's not his handwriting?

12 A. No, it's not.

13 Q. Well, whose is it?

14 A. The people at the motel.

15 Q. They checked him in?

16 A. They would fill out the information.

17 Q. What did your mother mean by Alex was going to get you in  
18 trouble?

19 A. Mothers are overprotective of daughters.

20 Q. Are they?

21 A. Yes.

22 Q. Now, ma'am, you're the husband of Alex and you think quite  
23 a bit of him, don't you?

24 A. Yes.

25 Q. And you knew that he was arrested on the 14th of August of

1 1973, didn't you?

2 A. Well, I was with him.

3 Q. Yes, ma'am. And when did you later learn that he was  
4 charged with arm robbery of the Safeway grocery store at  
5 9:45 a.m. on the 13th of August?

6 A. At the -- well, one of the detectives told me.

7 Q. And that was on the 14th?

8 A. Well, the day we were picked up.

9 Q. Yes, the 14th of August.

10 A. Yes.

11 Q. And would you give me the names, ma'am, of the people in  
12 the District Attorney's Office or the Sheriff's Office or  
13 the police department who you told that Alex Glover didn't  
14 do that because he wasn't there?

15 MR. HACKETT: Objection to that, Your Honor.  
16 Incompetent, irrelevant, immaterial. Prejudicial.

17 THE COURT: Overruled.

18 Q. (By Mr. Hopper) Could you give me their names, please?

19 MR. HACKETT: Exception.

20 A. I don't know the detective's name, but I know when I see  
21 him. And I talked with Harold Harrison.

22 Q. (By Mr. Hopper) What did you tell Harold Harrison?

23 A. That I didn't know what happened.

24 Q. What?

25 A. That I didn't know what was going on.

1 Q. Did you tell him that Alex could not have committed the  
2 robbery because he was in the motel at the time?

3 A. Yes, I did.

4 Q. You told that to Harold Harrison?

5 A. Yes, I did.

6 Q. What did Harold say?

7 A. Said, well, he said, Guess he couldn't have done it. That  
8 was it.

9 Q. Guess he couldn't have done it? Is that what he said?

10 A. Yes, that's what he said. That was it.

11 Q. Did you ever tell Officer Randolph you've never seen this  
12 before?

13 A. No.

14 Q. He would lie --

15 MR. HACKETT: Objection to that, it's argumentative.  
16 It's been asked and answered.

17 THE COURT: Sustained.

18 Q. (By Mr. Hopper) And you didn't give Officer Randolph per-  
19 mission to get into the glove compartment, did you?

20 MR. HACKETT: Objection.

21 Q. (By Mr. Hopper) Did you?

22 A. No, sir.

23 MR. HACKETT: Move that that answer be stricken.

24 THE COURT: Sustained.

25 MR. HOPPER: No further questions.

1 Q. Quite a while ago? And did he talk to you about the failure  
2 of Mr. Hunt to identify a witness in an armed robbery case?

3 A. He asked me about Mr. Glover. Said he represented Mr. Glover.  
4 Discussed the case.

5 Q. What did you discuss?

6 MR. HACKETT: I'll object to this as irrelevant.

7 MR. HOPPER: Very relevant, Your Honor.

8 THE COURT: Overruled.

9 A. He asked me about the lineup in particular, and I told him  
10 the same thing I'm telling you.

11 Q. (By Mr. Hopper) That Mr. Hunt could not make a positive  
12 identification?

13 A. Yes, sir.

14 Q. Were you aware that the case was going to trial?

15 A. Not at the time.

16 Q. Well, when did you become aware that the case was going to  
17 trial?

18 A. When I got my subpoena.

19 Q. When did you receive the subpoena?

20 A. After the conversation.

21 Q. Don't we work together on cases, Officer?

22 A. Yes, sir.

23 Q. Did you ever come to me and say, Mr. Hopper, you had a bad  
24 identification in this case.

25 A. No.

1 Q. Could you explain why you did not?

2 A. Yes.

3 MR. HACKETT: I'll object to that, Your Honor, as  
4 argumentative, having no relevancy.

5 THE COURT: Overruled.

6 Q. (By Mr. Hopper) Could you explain?

7 A. Yes. I didn't know you was handling it. You didn't call  
8 me there.

9 Q. Well, you know where the District Attorney's Office is,  
10 don't you, Mr. Harrison?

11 A. Yes, sir.

12 Q. And you're a police officer, aren't you?

13 A. That's right.

14 Q. And we work together, don't we?

15 A. That's right.

16 Q. And we don't like to send innocent men to the penitentiary,  
17 do we?

18 A. That's right.

19 Q. Could you explain why you would wait until today to come  
20 and tell somebody in the District Attorney's Office?

21 A. I sure can.

22 Q. Well, tell us.

23 A. Because it's not my case. Officer McMillen --

24 Q. In other words, it doesn't mean a damn to you, does it?

25 MR. HACKETT: I'm going to object to that, Your

1 Honor. Move that it be stricken. I think it's highly  
2 prejudicial.

3 THE COURT: The objection to the form of the  
4 question will be sustained.

5 MR. HACKETT: Move for a mistrial, and the jury be  
6 admonished to disregard that last statement.

7 THE COURT: The Court will decline to admonish the  
8 jury, and the motion for mistrial will be overruled.

9 Q. (By Mr. Hopper) Is that what you're saying, the mere fact  
10 that it was not your case, that you would set aside and let  
11 an innocent man go to the penitentiary?

12 MR. HACKETT: Objection, Your Honor, been asked  
13 and answered.

14 THE COURT: Overruled.

15 Q. (By Mr. Hopper) Is that what you're telling the jury,  
16 Mr. Harrison?

17 A. I'm telling the jury that I don't butt in another officer's  
18 case unless I'm asked to help, for help.

19 Q. You don't butt in other officer's case unless you're asked  
20 for help?

21 A. It's assigned to him, not me. I didn't work it out.

22 Q. This case was assigned to you, wasn't it?

23 A. No. It's assigned to McMillen. I been trying to tell you  
24 that.

25 Q. Well, you just said a while ago that Mr. Johnson told you --

1 told Mr. Hunt it was your case.

2 A. I helped with the lineup at that time.

3 Q. Let me ask you this, sir: Are you telling the jury that you  
4 would set aside and remain silent and watch a man go to the  
5 penitentiary when there was a faulty identification, unless  
6 it was your case?

7 A. Not necessarily. I thought the other officer would handle  
8 it. I don't know what he's done. I don't know whether he  
9 talked to you or not. I have no knowledge of this.

10 Q. Well, you had knowledge that Mr. Hackett had knowledge of it,  
11 didn't you?

12 A. Sure did.

13 Q. Then you --

14 A. Officer McMillen had the same knowledge.

15 Q. Yes, sir. Do you know where Officer McMillen is?

16 MR. HACKETT: Been asked and answered.

17 A. No.

18 Q. (By Mr. Hopper) You don't, do you?

19 A. Sure don't.

20 Q. You don't really care, do you?

21 MR. HACKETT: Your Honor, I'll object to that.

22 It's argumentative, and move that it be stricken.

23 THE COURT: Sustained.

24 Q. (By Mr. Hopper) Let me ask you this: Now you said there was  
25 a conversation between Mr. Hunt and Mr. Johnson.

1 A. No, I haven't.

2 MR. HACKETT: That's all I have.

3 RE-CROSS-EXAMINATION

4 QUESTIONS BY MR. HOPPER:

5 Q. You're just a pretty good boy, aren't you, Alex?

6 MR. HACKETT: I'll object to that as argumentative.

7 MR. HOPPER: That's a compliment.

8 Q. (By Mr. Hopper) I want you to look at this jury, Alex, and  
9 tell them whether or not you know how to spell Pontiac.

10 A. I don't know how to spell Pontiac.

11 Q. Do you know how to read?

12 A. Some.

13 Q. (Counsel writes.) Do you know what that spells?

14 A. I'm not for sure, but it looks like Pontiac.

15 Q. And you went through the eleventh grade.

16 A. Right.

17 Q. What was your employment on the 18th day of November of  
18 1966, Alex?

19 MR. HACKETT: I'm going to object to that, Your  
20 Honor. It's outside of the scope of redirect.

21 THE COURT: Sustained.

22 MR. HOPPER: Well, he went into his employment,  
23 Your Honor.

24 MR. HACKETT: Not in '66.

25 THE COURT: Not back that far.

1 Q. North 60th?

2 A. It would be going out by Southroads Mall. I'm not too  
3 familiar with those streets out there, but I know it's out  
4 towards Southroads Mall.

5 Q. What kind of work did you do there?

6 A. We put a patio in.

7 Q. Are you telling the truth here today?

8 A. Yes, sir, I am.

9 MR. HACKETT: No further questions.

10 FURTHER RECROSS-EXAMINATION

11 QUESTIONS BY MR. HOPPER:

12 Q. Does your wife tell the truth?

13 MR. HACKETT: Objection, Your Honor, calling for  
14 a conclusion. Outside of the scope of redirect.

15 THE COURT: Overruled.

16 Q. (By Mr. Hopper) You heard your wife testify, didn't you?

17 A. Yes, sir.

18 Q. Did she tell the truth?

19 A. Yes, sir, she did.

20 Q. You're telling the truth?

21 A. Yes, sir, I am.

22 Q. When did you sell your Cadillac?

23 A. Oh, about --

24 MR. HACKETT: Outside of the scope of redirect,  
25 Your Honor.

1 MR. HOPPER: I have one question I'd like to ask  
2 Mr. Glover.

3 FURTHER CROSS-EXAMINATION

4 QUESTIONS BY MR. HOPPER:

5 Q. You've got an interest in the outcome of this case,  
6 Mr. Glover?

7 A. Beg pardon?

8 Q. You got an interest in the outcome of this case?

9 A. Do I have an interest? Yes, my life is at stake. I have  
10 a big interest.

11 Q. Right.

12 A. A man come in a told a lie.

13 MR. HACKETT: That's all right, Alex. You've  
14 responded to the question.

15 Q. (By Mr. Hopper) Mr. Jerry Hunt was lying, too, wasn't he?

16 A. No, sir, he just made a mistake.

17 MR. HACKETT: I'm going to object to that, Your  
18 Honor.

19 THE WITNESS: He made a big mistake.

20 MR. HACKETT: Objection to that, Your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: I wouldn't call that man a liar.

23 He just made a mistake.

24 Q. (By Mr. Hopper) What about Officer Randolph?

25 A. What do you mean what about him?

1 Q. Well, you heard your wife testify, didn't you?

2 A. My wife was telling the truth.

3 Q. And Officer Randolph --

4 MR. HACKETT: Objection.

5 A. No, he made a mistake.

6 THE COURT: Just a minute, just a minute. One  
7 question at a time, one answer at a time.

8 MR. HOFFER: I have no further questions.

9 MR. HACKETT: I'd like the record to reflect that  
10 Mr. Hopper was standing, gesturing at Mr. Glover. I feel  
11 like it was an intimidating tactic that he was using.

12 MR. HOFFER: I'm sorry if I got too close to him.

13 THE COURT: Anything further from this witness?

14 MR. HACKETT: You didn't have anything to do with  
15 the armed robbery, did you?

16 THE WITNESS: I didn't have nothing to do with  
17 no armed robbery.

18 MR. HOPPER: Just a hard-working boy, aren't you?

19 MR. HACKETT: Object to the form of the question.

20 THE COURT: Just a minute. Any further questions?  
21 Defendant may call his next witness in surrebuttal.

22 MR. HACKETT: Could I approach the bench at this  
23 time, Your Honor?

24 (After a conference was held at the bench out of the hearing  
25 of the reporter and the jury, the following occurred:)

1 of selling marijuana, and malicious mischief, but these are  
2 misdemeanors, you know, if that's -- if you want me to say  
3 that, too. But I know statements I made about Monday are  
4 correct because we did not discuss any involvement of our  
5 cases, you know, prior to our time of being suspected of  
6 them.

7 Q. What are you up there for now?

8 A. I'm up there for suspicion of armed robbery, attempted  
9 robbery, and a shooting with intent to kill.

10 Q. Shooting?

11 A. Yes, suspicion.

12 Q. Are you known as a truthful man?

13 A. That would all depend on who was questioning my truth.

14 Q. What do you mean by that?

15 A. What I mean by this is, you know, some people look at people  
16 as truthful people, and, you know, look at them as, you  
17 know, each individual looks at a certain individual a  
18 different way.

19 Q. How old are you?

20 A. 25.

21 Q. You've had a pretty busy life, haven't you?

22 A. What do you mean?

23 MR. HACKETT: Your Honor, I'm going to object to  
24 that; incompetent, irrelevant, immaterial. Move that it be  
25 stricken.

1 MR. HACKETT: Your Honor, I'm going to have to  
2 object if Mr. Hopper is going to fire the gun; pull the  
3 trigger on the gun that's been introduced into evidence.  
4 I think that's prejudicial and move for a mistrial and the  
5 jury be admonished.

6 THE COURT: Objection overruled. Request for  
7 admonition for mistrial overruled.

8 MR. HOPPER: Did you ever stop to think, ladies  
9 and gentlemen, how intimidating it is for a grown working  
10 man, woman, to have to lie facedown on the floor while a  
11 man is in there with a gun to rob them of money, firing  
12 shots? Did you ever think how long that day was for  
13 Mr. Bruffett and for Mrs. Minugh? You heard their testimony,  
14 ladies and gentlemen.

15 Now, there's been some quite a bit of discussion during  
16 the course of this trial as to the identity of Alex Glover,  
17 Jr. They were trying to argue, ladies and gentlemen, that  
18 everybody is mistaken, or that we got Mr. Hunt to change  
19 his testimony. Ladies and gentlemen, the District Attorney's  
20 Office in Tulsa County don't try cases that way. If we get  
21 to the point where we have to go to a witness and ask him  
22 to change his testimony so we can convict an innocent man,  
23 then we're all in trouble, ladies and gentlemen.

24 Now, you think about this. Now, if we wanted to rig  
25 a testimony, why didn't we do it good? Why didn't we do a

1 ladies and gentlemen, that a man's got when he's got a gun  
2 in his hand and he's got an unarmed person standing in  
3 front of that gun?

4 MR. HACKETT: Your Honor, I'll have to object at  
5 this time to the way Mr. Hopper is using the gun that's  
6 been introduced into evidence. Highly prejudicial and move  
7 for a mistrial.

8 THE COURT: Objection overruled as to mistrial.

9 MR. HACKETT: And the jury be admonished to dis-  
10 regard that statement.

11 THE COURT: Request for admonition denied;  
12 exception.

13 MR. HOPPER: Did you ever stop to think about  
14 that, ladies and gentlemen, how much power a man like  
15 Alex Glover, who has been identified as a would-be  
16 executioner, armed robber? Think about that. That's the  
17 evidence. That's the evidence before you. Another thing,  
18 ladies and gentlemen, not only did Mr. Hunt identify  
19 Alex Glover by viewing his face, by seeing him, pointing  
20 him out, he also recognized his voice in the lineup.

21 Then you heard our next witness. You heard Officer  
22 Mullins who arrested the defendant, arrested him. And  
23 isn't it just a coincidence, ladies and gentlemen, that he  
24 found in the car that Alex Glover was driving a small pis-  
25 tol, just like the pistol that was used in the Safeway

1 saw. Each profession has its own tools. Well, Mr. Glover's  
2 profession is armed robbery, based on this evidence and  
3 based on his testimony.

4 MR. HACKETT: Objection to this, Your Honor.

5 MR. HOPFER: And here is the tool of his trade.

6 MR. HACKETT: I'm going to object to this. It's  
7 highly prejudicial, move for a mistrial, request the jury  
8 be admonished to disregard that statement.

9 THE COURT: Request for admonition denied, and  
10 motion for mistrial be overruled.

11 MR. HACKETT: Note our exception.

12 THE COURT: Exception allowed.

13 MR. HOPFER: Did you ever stop to think what guns  
14 are made for? They're made to kill.

15 MR. HACKETT: I'm going to object to that, Your  
16 Honor; highly prejudicial. Move for a mistrial.

17 THE COURT: Overruled.

18 MR. HACKETT: Move that the jury be admonished  
19 to disregard that statement.

20 THE COURT: Request for admonition denied, motion  
21 for mistrial overruled.

22 MR. HOPFER: Notice the difference in Alex Glover,  
23 Jr., today, throughout the course of this trial, and what  
24 he looked like the day after the robbery? It might be rather  
25 hard, ladies and gentlemen, for him to get a lady's stocking

1 of weeks. Why the conflicting statements? It's simple,  
2 it's to serve a purpose. It's to create in your minds that  
3 the State hasn't met its burden in proving beyond a reason-  
4 able doubt. Well, something's fishy going on here, ladies  
5 and gentlemen. Somebody is not telling the truth, and I  
6 leave it up to you to determine who has the most to gain.  
7 Is it Alex? Is it Linda? There is Mr. Jerry Hunt and  
8 Officer Randolph. This is evidence, ladies and gentlemen.  
9 This is where the State has met its burden and proved to  
10 you beyond the reasonable doubt. Was there any conflicting --  
11 did you have any questions about whether or not our wit-  
12 nesses are lying? Did they bring in rebuttal testimony to  
13 show that Mr. Hunt was lying, that Mr. Bruffett was lying,  
14 that Mrs. Minugh was lying?

15 And there's something else going on, ladies and gentle-  
16 men, that disturbs me greatly. I had to cross-examine a  
17 police officer today, and I'll have to apologize for  
18 Mr. Harold Harrison because if what he said was the truth,  
19 under oath, that he would stand by and watch an innocent  
20 man go to the penitentiary just because the case wasn't  
21 assigned to him, then, we're in trouble, we're in trouble,  
22 because I have worked with Mr. Harrison and I have declined  
23 many cases if there was any doubt. We decline them. We  
24 don't have to file trumped-up charges, but it disturbed me  
25 that Officer Harrison, who has been on the police force for

1 in Mr. Hackett's argument that I must comment on. Number  
2 one is about all of these snitches that are running around  
3 upstairs. Thank God for them. This Mr. Claybough that he's  
4 talking about, he filed a motion to get a snitch out of the  
5 cell. Well, that snitch happened to be in the jail cell;  
6 I've used him to testify in a murder case and a shooting of  
7 a deputy sheriff. And thank God the jury believed him and  
8 give him life for murder; and give him 99 years for shooting  
9 a deputy sheriff at point blank. That's what the snitch is  
10 doing upstairs. So when you want to discredit somebody's  
11 testimony because they happen to be a snitch up in the jail  
12 with a former conviction, don't forget Alex Glover. He's an  
13 admitted armed robber. So is his good friend Mr. Bagsby;  
14 lived a life of crime ever since he was 14 years old. Now,  
15 which one of them are you going to believe, Alex Glover,  
16 Mr. Bagsby? If you had your choice, who would you believe?  
17 Or Mr. Monday? Think. Think of that. Take your choice.  
18 Take your choice.

19 No, we don't have any ballistics, ladies and gentlemen.  
20 This is an armed robbery, but we would have ballistics,  
21 ladies and gentlemen, if we had a victim laying down there  
22 with a bullet hole --

23 MR. HACKETT: Objection to that, Your Honor. It's  
24 highly improper. Move for a mistrial and request the jury  
25 to be admonished to disregard that statement.

1 THE COURT: Objection overruled. Request for  
2 admonition denied.

3 MR. HACKETT: Note our exception.

4 THE COURT: Exception allowed.

5 MR. HOPPER: If we find victims, ladies and  
6 gentlemen, with a bullet in their head --

7 MR. HACKETT: Your Honor, I'm going to object to  
8 this.

9 MR. HOPPER: I'm trying to explain the ballistics  
10 he wants.

11 THE COURT: Objection overruled.

12 MR. HACKETT: Move for a mistrial and request  
13 for admonition.

14 THE COURT: Motion for mistrial overruled and  
15 request for admonition denied.

16 MR. HOPPER: As I say, ladies and gentlemen, if  
17 we find a victim with a bullet in his head that we can com-  
18 pare ballistics with, you would have a ballistics report.  
19 But we've got some live rounds here.

20 MR. HACKETT: Your Honor, I'll object to that.  
21 There's no evidence.

22 THE COURT: Objection overruled.

23 MR. HOPPER: And he's bragging about his witnesses.

24 Now, what witness put Alex Glover at that motel at 9:45?

25 Only one, and that's the little lady that said, That's not

1 my gun. I don't know where it come from. I never seen it  
2 before. That's the same one that puts him at the motel at  
3 9:45, the only one. So who are you going to believe? No,  
4 we don't have fingerprints. We don't have a TV or film of  
5 what went on out there on the 13th of August. If we did  
6 have, we wouldn't be here today. We'd just flash him on the  
7 screen and plead guilty. We'd have it. But that's not the  
8 way to try a case and that's not the way we get our evidence.  
9 We get our evidence by piecing it together.

10 And you bet old Alex is left-handed. He's left-handed.  
11 What's he doing with his left hand? What counts to him  
12 most: The money in the drawer, the money in the safe. You  
13 bet he's left-handed. Let me stick this in one of your  
14 faces.

15 MR. HACKETT: I'm going to object to that, Your  
16 Honor, it's intimidating the jury with statements like that.

17 THE COURT: Objection overruled.

18 MR. HOPPER: I'll ask you to see what my left  
19 hand --

20 MR. HACKETT: Ask for a mistrial and request for  
21 admonition.

22 THE COURT: Request for admonition denied and  
23 motion for mistrial overruled.

24 MR. HOPPER: I've got a gun on you. And see what  
25 my left hand is doing? Are you going to be looking for a

1 scar? You're going to be just like Mr. Bruffett, you're  
2 going to be scared to death.

3 Sure, I'd be crying, too, if I was on the way to the  
4 penitentiary, but don't let those tears, ladies and gentle-  
5 men, make you forget about the evidence you've heard from  
6 this witness stand. The uncontradicted evidence that you  
7 have heard. No, it's not a pleasant thing, and you don't  
8 have a pleasant task, because you are sitting there in  
9 judgment of this man for armed robbery. And neither was it  
10 a pleasant sight out there on the 13th day of August, either,  
11 ladies and gentlemen, and don't forget that. Sure, how  
12 could he get from here to here to here? Well, let me tell  
13 you, ladies and gentlemen, that when an armed robber hits,  
14 he doesn't mess around. They move fast. Because here's a  
15 man who knows what armed robbery is all about. Here's a  
16 man that's not as dumb as his attorney would have him to be.  
17 Put a Ford on there. Maybe they'll be looking for a Ford  
18 when me and my wife was in a Pontiac. They'll never spot  
19 us in a Firebird, so we'll put Ford down. If I'd been con-  
20 victed of armed robbery before and was caught again, facing  
21 the penitentiary, I'd have an alibi, I would have an alibi.  
22 Like it was Dr. Booth, I'm not saying Dr. Booth is lying.  
23 Not about to. Dr. Booth is head of the drug rehabilitation  
24 center. I'm not saying he's lying, but he doesn't know where  
25 Alex was at 9:45. An hour and forty-five minutes later he

1 can testify that he was at his office. Alex is not so  
2 dumb, not so dumb as he would have you believe. He's an  
3 armed robber, ladies and gentlemen.

4 MR. HACKETT: Your Honor, I'm going to object to  
5 that. Invading the province of the jury.

6 THE COURT: Overruled.

7 MR. HACKETT: Exception.

8 MR. HOPPER: He knows how to prepare his alibis,  
9 and he knows how to make his getaways; lives in a fast  
10 world; in a motel out on the east side.

11 You were up on the north side. Use a little logic,  
12 ladies and gentlemen. You're up on the north side. You  
13 commit a robbery on the north side. You're a black man  
14 here in Tulsa on the north side. Where are they going to  
15 look for you? On the north side. Wouldn't it be more  
16 convenient to keep from being detected to go way out east,  
17 6300 block on East Admiral and rent a motel, live in a  
18 motel at \$7.90 a day while you're unemployed? Discount all  
19 of that. Let Mr. Glover go. This is evidence. It's  
20 competent evidence.

21 They talked about the chain, circumstantial evidence.  
22 The only circumstantial evidence that's been put before you,  
23 ladies and gentlemen of the jury, is this little white-  
24 handled pistol, the kind that are poking around all over  
25 town. Hundreds of them, but there's only one Alex Glover.

1 There's only one Alex Glover. And isn't it a coincidence  
2 that he happened to have a little white-handled pistol just  
3 like was used to rob Mr. Hunt. Isn't that just a little  
4 coincidental. So if you want to discount that, discount it,  
5 then let Mr. Glover go and I'm sure he would appreciate it.  
6 And ladies and gentlemen, it doesn't matter how much money  
7 you are instructed -- it doesn't make any difference if it's  
8 two pennies. How much money is not important. And do you  
9 know why we don't make our Safeway managers or any store  
10 manager tell how much money was taken? It's because every  
11 little thief, every little robber would be looking forward  
12 to going out and robbing them again. That's why we don't  
13 make it known. I'm sure that if Mr. Hackett would have  
14 wanted you to know how much money was taken, he could have  
15 asked Mr. Hunt.

16 Ladies and gentlemen of the jury, while you're thinking  
17 about letting Mr. Glover go because the State has not  
18 proved its case, while you're thinking about that, you think  
19 about Mrs. Minugh, Mr. Bruffett and Mr. Hunt. You think  
20 about how they felt and the intimidation they went through  
21 out --

22 MR. HACKETT: Your Honor, we'll object. This is  
23 a contradiction to the --

24 MR. HOPPER: And I'm getting tired of being  
25 interrupted, Your Honor.

1 MR. HOPPER: And, ladies and gentlemen, you're  
2 not convicting Mr. Glover. Mr. Glover has convicted himself.  
3 He was the one who thought up the idea of robbing the store.  
4 It's not you. Mr. Glover is the one who had the courage to  
5 go in there with a gun and rob the store, not you.

6 So when you're feeling sorry for Mr. Glover and you're  
7 saying, let me go, don't send me down to the penitentiary  
8 to live in a cage like an animal, well, think about the  
9 little people laying on the floor like an animal with their  
10 faces down.

11 MR. HACKETT: Move for a mistrial, Your Honor, and  
12 request for admonition.

13 THE COURT: Motion for mistrial overruled.  
14 Request for admonition denied.

15 MR. HOPPER: Disregard all of this, ladies and  
16 gentlemen, and let Mr. Glover go. Thank you, ladies and  
17 gentlemen.

18 THE COURT: Will the parties waive a swearing of  
19 the bailiff?

20 MR. HOPPER: State will so waive, Your Honor.

21 MR. HACKETT: We'll so waive, Your Honor.

22 THE COURT: The Court at this time will request  
23 that the 12 original jurors, and each of them, retire to  
24 the jury deliberation room for their deliberation in this  
25 cause. The Court will instruct the bailiff to deliver to

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

UNITED STATES OF AMERICA and  
RON CLARK, Revenue Officer,  
Internal Revenue Service,

Petitioners,

vs.

CRAWFORD WAYNE WOODY,

Respondent.

FILED

AUG 11 1976

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

No. 76-C-356-B

ORDER OF DISMISSAL

NOW, on this 10th day of August, 1976, this cause comes on for hearing on an Order to Show Cause why Respondent should not be held in contempt for his failure to abide by the Order of this Court made and entered July 12, 1976, for the production of tax records for inspection by the Internal Revenue Service. Petitioner is represented by Ben F. Baker, Assistant United States Attorney, and Respondent is present in person and by counsel, Don Herrold.

The Government announces to the Court that Respondent has complied with the Order of the Court and produced all material tax records for inspection by the Internal Revenue Service, and in addition has presented to the Internal Revenue Service this date income tax returns for 1974 and 1975. Petitioner, United States of America, moves the Court for an order of dismissal upon payment of court costs.

The Court finds that Respondent has complied with the Order of the Court for production of records and that Petitioner's motion for dismissal should be allowed.

IT IS THEREFORE ORDERED that this cause <sup>of action + complaint</sup> be and the same is hereby dismissed upon payment of court costs in the sum of \$47.84 by the Respondent.

St. Allen E. Barnew  
CHIEF JUDGE  
Northern District of Oklahoma

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

MILDRED AGEE, et al., )  
 )  
 Plaintiffs, )  
 )  
 -v- )  
 )  
 PREFERRED SECURITY LIFE )  
 INSURANCE COMPANY OF OKLAHOMA, )  
 )  
 Defendants. )

AUG 11 1976

No. 72-C-410 ✓

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

ORDER APPROVING ORDERS OF SPECIAL MASTER

On February 20, 1976 this Court entered, by agreement of counsel, its Order Of Reference To Special Master which order empowered the said Special Master to do all things and to make such orders as may be required to accomplish a full hearing on all matters of fact and law in issue in this case. It appearing to the Court, from an examination of the file, that the said Special Master has so acted and that the case has been fully and finally concluded by virtue of certain orders of the Special Master (including, but not limited to, Order Approving Dismissal filed July 1, 1976, Order Approving Application of Named Plaintiffs For Permission To Dismiss Action filed August 9, 1976, and Order Allowing Legal Fees And Disbursements To Attorney For Named Plaintiffs filed August 9, 1976), now therefore it is ORDERED, ADJUDGED AND DECREED that all orders of the Special Master entered herein are hereby accepted and approved. It is FURTHER ORDERED, ADJUDGED AND DECREED that, in accordance with said orders, this <sup>*cause of and compliance*</sup> ~~action~~ is hereby dismissed.

*Allen E. Barrow*  
Allen E. Barrow - Chief Judge

FILED

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

AUG 11 1976

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

WINTHROP J. ALLEGAERT, Trustee, )  
 )  
 Plaintiff, )  
 )  
 v. ) Cause No. 75-C-51-B  
 )  
 SKELLY OIL COMPANY, )  
 )  
 Defendant. )

ORDER APPROVING DISMISSAL

Upon consideration of the Stipulation of Dismissal with Prejudice filed herein by the parties to this action the Court hereby approves dismissal of the captioned action with prejudice to any and all further action.

Dated this 11<sup>th</sup> day of August, 1976.



Allen E. Barrow  
United States District Judge

FILED

AUG 11 1976

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

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

FLORENE P. HARBER,

Plaintiff,

vs.

PHILLIPS PETROLEUM COMPANY,  
a corporation,

Defendant.

)  
)  
)  
)  
) 76-C-366-B  
)  
)  
)  
)  
)

ORDER

The Court has for consideration the Motion to Dismiss filed by the defendant for lack of jurisdiction, the brief in support thereof, and having reviewed the Plaintiff's response thereto, wherein she admits there is no diversity jurisdiction,

IT IS ORDERED that the Motion to Dismiss for lack of jurisdiction filed by the defendant be and the same is hereby sustained and this cause of action and complaint be and the same are hereby dismissed for lack of jurisdiction.

ENTERED this 11<sup>th</sup> day of August, 1976 .

*Allen E. Barrow*

CHIEF UNITED STATES DISTRICT JUDGE

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

BOARD OF TRUSTEES, PIPELINE )  
INDUSTRY BENEFIT FUND, )  
 )  
Plaintiff )  
 )  
-vs- )  
 )  
GEORGE W. FOWLER )  
 )  
Defendant )  
 )

**FILED**

AUG 10 1977

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

No. 76-C-387

NOTICE OF DISMISSAL

TO: MR. JACK C. SILVER, COURT CLERK

George W. Fowler  
P. O. Box 295  
Haughton, Louisiana 71037

cc: GEORGE W. FOWLER  
P. O. Box 295  
Haughton, Louisiana 71037

Please take notice that the above entitled action is hereby dismissed with prejudice.

*Wm. K. Powers*

WILLIAM K. POWERS, Attorney for Plaintiff  
1501 Fourth National Bank Building  
Tulsa, OK 74119  
Telephone: 587-0141 (918)

FILED

AUG 10 1976

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

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 76-C-69-B
	)	
	)	
LEROY STEPHENSON, JOYCE	)	
STEPHENSON, W. K. MYERS	)	
d/b/a BUCK MYERS MOTOR COMPANY,	)	
THOMAS E. YELDELL, and	)	
CONTINENTAL OIL COMPANY,	)	
a Corporation,	)	
	)	
Defendants.	)	

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 10th day of August, 1976, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney, and the Defendants, Leroy Stephenson, Joyce Stephenson, W. K. Myers d/b/a Buck Myers Motor Company, Thomas E. Yeldell, and Continental Oil Company, a Corporation, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Leroy Stephenson, Joyce Stephenson, and W. K. Myers d/b/a Buck Myers Motor Company, were served with Summons and Complaint on February 19, 1976; that Defendant, Thomas E. Yeldell, was served with Summons and Complaint on February 25, 1976; and that Defendant, Continental Oil Company, was served with Summons and Complaint on February 23, 1976, all as appears from the U.S. Marshals Service herein.

It appearing 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 Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirty-two (32), Block Nineteen (19), SUBURBAN HILLS ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Leroy Stephenson and Joyce Stephenson, did, on the 5th day of May, 1973, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$10,000.00 with 4 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Leroy Stephenson and Joyce Stephenson, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$9,735.83 as unpaid principal with interest thereon at the rate of 4 1/2 percent per annum from December 1, 1975, 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, Leroy Stephenson and Joyce Stephenson, in personam, for the sum of \$9,735.83 with interest thereon at the rate of 4 1/2 percent per annum from December 1, 1975, 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 Defendants, W. K. Myers d/b/a Buck Myers Motor Company, Thomas E. Yeldell, and Continental Oil Company.

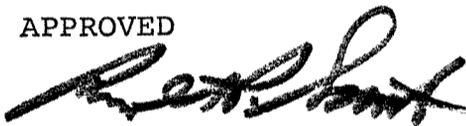
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's

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, 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, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

*15/ Allen E. Barrow*  
UNITED STATES DISTRICT JUDGE

APPROVED



ROBERT P. SANTEE  
Assistant United States Attorney

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

AUG 10 1976

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 WILLIE BARKINS, LOBELIA BARKINS, )  
 MANANA, INC., d/b/a VELVET CLOSET, )  
 PHONE BOOTH AND BOTTOM DRAWER, )  
 RALPH COOK, d/b/a BOB MARSHALL TV, )  
 SOONER FEDERAL SAVINGS AND LOAN )  
 ASSOCIATION, COUNTY TREASURER, )  
 Tulsa County, Oklahoma, BOARD OF )  
 COUNTY COMMISSIONERS, Tulsa County, )  
 Oklahoma, TULSA ADJUSTMENT BUREAU, )  
 INC., and MUTUAL PLAN OF TULSA, )  
 INC., )  
 )  
 Defendants. )

CIVIL ACTION NO. 76-C-67-B

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 9th day of August, 1976, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; and the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appearing by their attorney, Gary J. Summerfield, Assistant District Attorney; the Defendant, Sooner Federal Savings and Loan Association, appearing by its attorney, Houston and Klein by Kenneth M. Smith; the Defendant, Tulsa Adjustment Bureau, Inc., appearing by its attorney, Jacobus and Green, Inc. by D. William Jacobus, Jr.; the Defendant, Mutual Plan of Tulsa, Inc., appearing by its attorney, Woodson and Gasaway by Don E. Gasaway; and the Defendants, Willie Barkins, Lobelia Barkins, Manana, Inc., d/b/a Velvet Closet, Phone Booth and Bottom Drawer, and Ralph Cook, d/b/a Bob Marshall TV, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Manana, Inc., d/b/a Velvet Closet, Phone Booth and Bottom Drawer, was served by publication as shown on the Proof of Publication filed herein; that Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County

Commissioners, Tulsa County, Oklahoma, were served with Summons, Complaint, and Amendment to Complaint on February 24, 1976, and April 5, 1976, respectively; that Defendant, Sooner Federal Savings and Loan Association, was served with Summons, Complaint, and Amendment to Complaint on February 19, 1976, and April 6, 1976, respectively; that Defendants, Willie Barkins and Lobelia Barkins, were served with Summons, Complaint, and Amendment to Complaint on February 25, 1976, and April 7, 1976, respectively; that Defendant, Ralph Cook, d/b/a Bob Marshall TV, was served with Summons, Complaint, and Amendment to Complaint on March 29, 1976, and April 7, 1976, respectively; that Defendants, Tulsa Adjustment Bureau, Inc. and Mutual Plan of Tulsa, Inc., were served with Summons, Complaint, and Amendment to Complaint on April 6, 1976; all as appears from the United States Marshal's Service herein.

It appearing that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, have duly filed their Answers herein on March 9, 1976; that Defendant, Sooner Federal Savings and Loan Association, has duly filed its Disclaimers on February 27, 1976, and April 9, 1976; that Defendant, Tulsa Adjustment Bureau, Inc., has duly filed its Disclaimer on April 7, 1976; that Defendant, Mutual Plan of Tulsa, Inc., has duly filed its Disclaimer on April 21, 1976; and, that the Defendants, Willie Barkins, Lobelia Barkins, Manana, Inc., d/b/a Velvet Closet, Phone Booth and Bottom Drawer and Ralph Cook, d/b/a Bob Marshall TV, 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 upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Twenty-Eight (28), Block Six (6), NORTHRIDGE,  
an Addition in Tulsa County, State of Oklahoma,  
according to the recorded plat thereof.

THAT the Defendants, Willie Barkins and Lobelia Barkins, did, on the 8th day of April, 1974, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$12,500.00 with 8 1/4 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Willie Barkins and Lobelia Barkins, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$12,379.96 as unpaid principal with interest thereon at the rate of 8 1/4 percent per annum from May 1, 1975, 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 Defendants, Willie Barkins and Lobelia Barkins, the sum of \$ 37.00 plus interest according to law for personal property taxes for the year(s) 1974 & 1975 and that Tulsa County should have judgment, in rem, 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, Willie Barkins and Lobelia Barkins, in personam, for the sum of \$12,379.96 with interest thereon at the rate of 8 1/4 percent per annum from May 1, 1975, 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, in rem, against

Defendants, Willie Barkins and Lobelia Barkins, for the sum of \$37.00 as of the date of this judgment plus interest thereafter according to law for personal property taxes, 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 the Plaintiff have and recover judgment, in rem, against Defendants, Manana, Inc., d/b/a Velvet Closet, Phone Booth and Bottom Drawer, and Ralph Cook, d/b/a Bob Marshall TV.

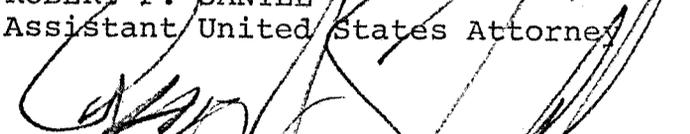
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisal the real property 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, specifically, including any lien for personal property taxes which may have been filed during the pendency of this action.

*S/ Allen L. Barrow*  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
ROBERT P. SANTEE  
Assistant United States Attorney

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

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

AUG 9 1976

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 DENNY MICHAEL LOVELESS, MARILEE )  
 LOVELESS, CHUCK ALNETT a/k/a )  
 CHUCK B. ALNETT, C. GEORGETTE )  
 ALNETT a/k/a GEORGETTA ALNETT, )  
 AETNA FINANCE CO., INC., VELMA )  
 WILLIAMS, INA BREWER, HENRY )  
 KROEKER, and SARAH KROEKER, )  
 )  
 Defendants. )

CIVIL ACTION NO. 76-C-68-B

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 6th  
day of August, 1976, the Plaintiff appearing by Robert P. Santee,  
Assistant United States Attorney; and the Defendant, Aetna  
Finance Co., Inc., appearing by its attorney, George P. Phillips;  
and, the Defendants, Denny Michael Loveless, Marilee Loveless,  
Chuck Alnett a/k/a Chuck B. Alnett, C. Georgette Alnett a/k/a  
Georgetta Alnett, Velma Williams, Ina Brewer, Henry Kroeker, and  
Sarah Kroeker, appearing not.

The Court being fully advised and having examined the  
file herein finds that Defendant, Aetna Finance Co., Inc., was  
served with Summons and Complaint on February 23, 1976, as appears  
from the United States Marshal's Service herein; and, that  
Defendants, Denny Michael Loveless, Marilee Loveless, Chuck Alnett,  
a/k/a Chuck B. Alnett, C. Georgette Alnett a/k/a Georgetta Alnett,  
Velma Williams, Ina Brewer, Henry Kroeker, and Sarah Kroeker,  
were served by publication as shown on the Proof of Publication  
filed herein.

It appearing that the Defendant, Aetna Finance Co.,  
Inc., has duly filed its Disclaimer herein on March 12, 1976,  
and that the Defendants, Denny Michael Loveless, Marilee Loveless,  
Chuck Alnett a/k/a Chuck B. Alnett, C. Georgette Alnett a/k/a

Georgetta Alnett, Velma Williams, Ina Brewer, Henry Kroeker, and Sarah Kroeker, 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 upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Four (4), Block One (1), YAHOLA HEIGHTS  
ADDITION to the City of Tulsa, Tulsa County,  
Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Denny Michael Loveless and Marilee Loveless, did, on the 19th day of December, 1963, execute and deliver to the Administrator of Veterans Affairs their mortgage and mortgage note in the sum of \$9,750.00 with 5 1/4 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Velma Williams and Ina Brewer, were the grantees in a deed from Defendant, Marilee Loveless, dated June 23, 1964, filed June 24, 1964, in Book 3463, Page 176, records of Tulsa County, wherein Defendants, Velma Williams and Ina Brewer, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, Henry Kroeker and Sarah Kroeker, were the grantees in a deed from Defendants, Velma Williams and Ina Brewer, dated April 24, 1967, filed April 26, 1967, in Book 3804, Page 1913, records of Tulsa County, wherein Defendants, Henry Kroeker and Sarah Kroeker, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, Chuck Alnett a/k/a Chuck B. Alnett and C. Georgette Alnett a/k/a Georgetta Alnett, were the grantees in a deed from Defendants, Henry Kroeker and Sarah Kroeker, dated March 23, 1974, filed

January 9, 1975, in Book 4150, Page 452, records of Tulsa County, wherein Defendants, Chuck Alnett a/k/a Chuck B. Alnett and C. Georgette Alnett a/k/a Georgetta Alnett, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, Denny Michael Loveless, Marilee Loveless, Chuck Alnett a/k/a Chuck B. Alnett, C. Georgette Alnett a/k/a Georgetta Alnett, Velma Williams, Ina Brewer, Henry Kroeker, and Sarah Kroeker, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$7,805.40 as unpaid principal with interest thereon at the rate of 5 1/4 percent per annum from April 1, 1975, 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, Denny Michael Loveless, Marilee Loveless, Chuck Alnett a/k/a Chuck B. Alnett, C. Georgette Alnett a/k/a Georgetta Alnett, Velma Williams, Ina Brewer, Henry Kroeker, and Sarah Kroeker, in rem, for the sum of \$7,805.40 with interest thereon at the rate of 5 1/4 percent per annum from April 1, 1975, 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 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. 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, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

S/Allen L. Barrow  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
ROBERT P. SANTEE  
Assistant United States Attorney

FILED

AUG 9 1976

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

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

W. J. USERY, JR., Secretary of Labor, )  
United States Department of Labor, )  
Plaintiff )  
v. )  
BOBBY GENE MARTIN, SR., an individual, )  
Defendant )

Civil Action

No. 76-C-1

O R D E R

This matter came on for consideration upon plaintiff's motion for default judgment and the court having considered said motion and being otherwise fully advised finds that said motion is well taken. It is therefore,

ORDERED that said motion be, and the same hereby is granted and judgment shall be entered for plaintiff for the relief prayed for in plaintiff's complaint. Furthermore, defendant is enjoined and restrained from withholding \$3,032.36 in unpaid overtime compensation plus interest thereon at six per cent per annum from the time of the entry of this order until said back wages are paid.

DATED this 9th day of August, 1976.

*Allen E. Barnow*

UNITED STATES DISTRICT JUDGE

FILED

UNITED STATES DISTRICT COURT

AUG 9 1976

FOR THE NORTHERN DISTRICT OF OKLAHOMA

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

W. J. USERY, JR., Secretary of Labor,	)	
United States Department of Labor,	)	
	)	
Plaintiff,	)	
	)	Civil Action File
v.	)	
	)	No. 76-C-1
BOBBY GENE MARTIN, SR., an	)	
individual,	)	
	)	
Defendant.	)	

JUDGMENT

In accordance with the affidavit of Mr. Curtis L. Poer, attached to the motion for default judgment, which the Court hereby adopts as its findings of fact and conclusions of law, it is:

ORDERED, ADJUDGED and DECREED that defendant Bobby Gene Martin, Sr., his agents, servants, employees and those persons in active concert or participation with him are permanently enjoined and restrained from violating the provisions of sections 7, 11(c), 15(a)(2) and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq.), hereinafter referred to as the Act, in any of the following manners:

I

Defendant shall not, contrary to the provisions of section 7 of the Act, employ any employee engaged in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than 40 hours unless defendant compensates such employee for employment in excess of 40 hours in a workweek at a rate not less than one and one-half times the regular rate at which such employee is employed.

II

Defendant shall not, contrary to the provisions of section 11(c) of the Act, fail to make, keep and preserve the records required by the Code of Federal Regulations, Title 29, Part 516.

It is further ORDERED, that defendant be enjoined and restrained from withholding payment of overtime compensation in the total amount of \$3,032.36, which the Court finds to be due under the Act to defendant's employees, named in attachment A hereto, which by reference is made a part hereof, together with interest at the maximum legal rate which shall be compounded monthly until this judgment is paid. The provisions of this paragraph shall be deemed satisfied when the defendant delivers to the plaintiff's Regional Solicitor a certified or cashier's check, payable to "Employment Standards Administration-Labor" in the total amount of \$3,032.36. Such payment is ordered to be made within thirty days of the entry of this judgment.

It is further ORDERED, that plaintiff, upon receipt of such certified or cashier's check from the defendant shall promptly proceed to make distribution, less income tax and social security withholdings, to defendant's employees named herein in the amounts indicated, or to the legal representative of any deceased person so named. If, after making reasonable and diligent efforts to distribute such amounts to the person entitled thereto, plaintiff is unable to do so because of inability to locate a proper person, or because of a refusal to accept payment by any such person, plaintiff, pursuant to 28 USC section 2041, shall deposit such funds with the Clerk of this Court. Any such funds may be withdrawn for payment to a person entitled thereto upon order of this Court.

It is further ORDERED, that defendant will pay the costs of this action.

DATED this 9th day of August, 1976.

  
UNITED STATES DISTRICT JUDGE

ATTACHMENT A

<u>NAME</u>	<u>AMOUNT DUE</u>	<u>INTEREST</u>	<u>TOTAL</u>
Larry Deaton	\$ 26.81	\$ 3.20	\$ 30.02
Robert Deaton	910.59	109.27	1,019.86
Bill Ferriman	483.26	57.96	541.22
Pete Galvin	214.27	25.00	239.27
Bobby Naus, Jr.	45.00	5.40	50.40
John Park	519.92	62.00	581.92
Jon Scheuerman	389.27	46.00	435.27
Randy Stewart	<u>120.00</u>	<u>14.40</u>	<u>134.40</u>
TOTALS	\$2,709.12	\$323.24	\$3,032.36

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MILDRED AGEE, et al., )  
)  
Plaintiffs, )  
)  
v. )  
)  
PREFERRED SECURITY LIFE )  
INSURANCE COMPANY OF )  
OKLAHOMA, et al., )  
)  
Defendants. )

72-C-410 ✓

FILED  
IN OPEN COURT

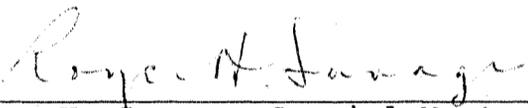
AUG 9 1976 J.

JACK C. SILVER, CLERK  
U. S. DISTRICT COURT

ORDER APPROVING KENNETH W. FRISBY  
SETTLEMENT AGREEMENT

Upon consideration of the Application of Plaintiff Class for Approval of Settlement Agreement with Defendant Kenneth W. Frisby, the Court finds that adequate notice has been given by virtue of the notice of prior settlements and notice to the Named Plaintiffs and that, in light of the cost of notice in relation to the proposed settlement, notice to counsel for the Plaintiff Class is proper and sufficient.

IT IS ORDERED, ADJUDGED, AND DECREED THAT the Kenneth W. Frisby Settlement Agreement is fair, reasonable, and adequate, and hereby approved.

  
Royce H. Savage, Special Master

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED  
IN OPEN COURT

AUG 9 1976 J.

JACK C. SILVER, CLERK  
U. S. DISTRICT COURT

MILDRED AGEE, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 PREFERRED SECURITY LIFE )  
 INSURANCE COMPANY OF )  
 OKLAHOMA, et al., )  
 )  
 Defendants. )

72-C-410 ✓

ORDER APPROVING APPLICATION OF NAMED  
PLAINTIFFS FOR PERMISSION TO DISMISS ACTION

Upon consideration of the Application of Named Plaintiffs For Permission To Dismiss Action, the Court finds that proper notice has been given of the Application in accordance with the provisions of Rule 23(e) and the prior orders of this Court. The Court, having heard the statement of counsel and the evidence of the Named Plaintiffs in support of the Application, and no objections to the Application having been made, finds that the Application should be granted.

IT IS ORDERED, that the Application of Named Plaintiffs For Permission To Dismiss Action is hereby granted.

  
\_\_\_\_\_  
Royce H. Savage, Special Master

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

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JOEY A. TAYLOR, MARCIA TAYLOR,  
GARY D. COOPER, SHARON COOPER,  
HAROLD E. MORROW, and HAZEL A.  
MORROW,

Defendants.

CIVIL ACTION NO. 76-C-130-C

FILED

AUG 6 1976 *Jun*

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 6<sup>th</sup> day of August, 1976, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; and the Defendants, Joey A. Taylor, Marcia Taylor, Gary D. Cooper, Sharon Cooper, Harold E. Morrow, and Hazel A. Morrow, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Joey A. Taylor, Marcia Taylor, Gary D. Cooper, and Sharon Cooper, were served by publication as appears from the Proof of Publication filed herein; and that Defendants, Harold E. Morrow and Hazel A. Morrow, were served with Summons and Complaint on April 8, 1976, as appears from the United States Marshal's Service herein.

It appearing that the Defendants, Joey A. Taylor, Marcia Taylor, Gary D. Cooper, Sharon Cooper, Harold E. Morrow, and Hazel A. Morrow, 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 upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirteen (13), RE-SUB of Block Three (3),  
NEW HAVEN ADDITION to the City of Tulsa, County  
of Tulsa, State of Oklahoma, according to the  
recorded plat thereof.

THAT the Defendants, Joey A. Taylor and Marcia Taylor, did, on the 28th day of January, 1972, execute and deliver to the Administrator of Veterans Affairs their mortgage and mortgage note in the sum of \$12,000.00 with 4 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Gary D. Cooper and Sharon Cooper, were the grantees in a deed from Defendants, Joey A. Taylor and Marcia Taylor, dated January 16, 1973, filed January 16, 1973, in Book 4052, Page 153, records of Tulsa County, wherein Defendants, Gary D. Cooper and Sharon Cooper, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

The Court further finds that Defendants, Harold E. Morrow and Hazel A. Morrow, were the grantees in a deed from Defendants, Gary D. Cooper and Sharon Cooper, dated August 1, 1973, filed August 14, 1973, in Book 4083, Page 319, records of Tulsa County, wherein Defendants, Harold E. Morrow and Hazel A. Morrow, assumed and agreed to pay the mortgage indebtedness being sued upon herein.

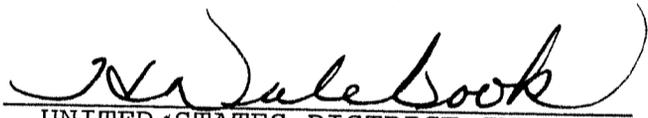
The Court further finds that Defendants, Joey A. Taylor, Marcia Taylor, Gary D. Cooper, Sharon Cooper, Harold E. Morrow, and Hazel A. Morrow, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$11,452.92 as unpaid principal with interest thereon at the rate of 4 1/2 percent per annum from March 28, 1975, 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, Joey A. Taylor, Marcia Taylor, Gary D. Cooper, Sharon Cooper, in rem, and Harold E. Morrow, and Hazel A. Morrow, in personam, for the sum of \$11,452.92 with interest thereon at the rate of 4 1/2 percent per annum from March 28, 1975, 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 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, 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, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
ROBERT P. SANTEE  
Assistant United States Attorney

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

ALAN GEORGE, FAITH GEORGE, individually  
and FAITH GEORGE as mother and next  
friend of JOHN WINNIE, a minor, DR. W.J.  
WARN and GLADA W. WARN,

Plaintiffs,

vs.

MID-STATES BUILDERS, INC., a Missouri  
corporation, MORTON BUILDINGS, INC.,  
an Illinois corporation, RID-A-BIRD, INC.,  
an Iowa corporation, and VELSICOL CHEMICAL  
COMPANY, an Illinois corporation,

Defendants.

No. 75-C-185-C

FILED

AUG 6 1976

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

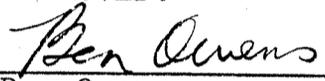
ORDER APPROVING SETTLEMENT OF MINORS  
CLAIM AND ORDER OF DISMISSAL

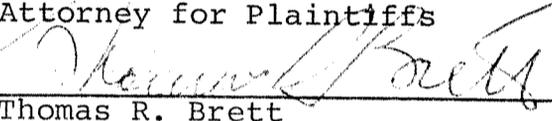
On this 30<sup>th</sup> day of July, 1976, upon the written application of the parties plaintiff for Court approval of settlement of any claim which may be made on behalf of Rachael Elizabeth George and John Winnie George, and for dismissal with prejudice of the Complaint herein as to Velsicol Chemical Company, and the Court having examined said Application, and finds that said Faith George is the natural mother of John Winnie and that said Alan George and Faith George are the natural parents of Rachael Elizabeth George, finds that said plaintiffs are the proper parties to act for said minors and that they are effecting a settlement with the named defendant, Velsicol Chemical Company, upon a covenant not to sue, is in the best interest of said minors, and should be and hereby is approved by the Court. The Court further finds that the parties plaintiff have each individually and in their representative capacity have entered into a compromise settlement with said defendant and have requested the Court to dismiss said defendant from this action and the Court finds that said allowance paid on behalf of said minors is equitable and proper under the circumstances herein and finds that said Complaint should be dismissed as to Velsicol Chemical Company pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiffs filed herein individually and in their respective capacity is hereby dismissed with prejudice as to the defendant, Velsicol Chemical Company, and the settlement on behalf of said minor children is found to be in their best interest and is approved by this Court.

  
\_\_\_\_\_  
H. Dale Cook, Judge of the United States  
District Court

APPROVED:

  
\_\_\_\_\_  
Ben Owens  
Attorney for Plaintiffs

  
\_\_\_\_\_  
Thomas R. Brett  
Attorney for Defendant,  
Velsicol Chemical Company





UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 5 1976

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

United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 75-C-142
	)	
10.00 Acres of Land, More or	)	Master File No. 400-7
Less, Situate in Washington	)	
County, State of Oklahoma,	)	Tract No. 109-A
and Marion Wilson Allen, et	)	
al., and Unknown Owners,	)	
	)	
Defendants.	)	

J U D G M E N T

NOW, on this 5th day of August, 1976, this matter came on for non-jury trial, before the Honorable H. Dale Cook, Judge of the United States District Court for the Northern District of Oklahoma. Plaintiff, United States of America, appeared by Hubert A. Marlow, Assistant United States Attorney, for the Northern District of Oklahoma. The defendant owner did not appear either in person or by counsel. After hearing the evidence presented at the trial and being fully advised in the premises, the Court finds and concludes that:

1.

This judgment applies to the entire estate condemned in the tract listed in the caption hereof, as such estate and tract are described in the Complaint filed in this action.

2.

The Court has jurisdiction of the parties and the subject matter of this action.

3.

Service of Process has been perfected by personal service upon each of the defendants in this case except Marion Wilson Allen, and has been perfected as to her by publication, as provided by Rule 71A of the Federal Rules of Civil Procedure.

4.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the

right, power and authority to condemn for public use the property described above in paragraph 1. Pursuant thereto, on April 16, 1975, the United States of America filed its Declaration of Taking of such property, and title thereto should be vested in the United States of America, as of the date of filing such instrument.

5.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the taking of subject property a certain sum of money, and none of this deposit has been disbursed, as set out below in paragraph 10.

6.

A. On the date of taking of the subject property the owner thereof, as shown by the land records of Washington County, State of Oklahoma, was the person whose name is shown below in paragraph 10. No other defendants appeared at the trial to make any claim for compensation for the subject taking. Therefore, the person named below in paragraph 10 is entitled to receive the just compensation awarded by this judgment.

B. However, the present whereabouts of the said owner is wholly unknown. The owner is a Cherokee Indian and the subject tract was held in a restricted capacity, under supervision of the Area Director, Bureau of Indian Affairs, Muskogee Area Office, of the United States Department of Interior. Under the present circumstances the subject award should be disbursed to said Area Director for deposit into the money account of the owner.

7.

At the trial of this case Mr. Charles Hutchins testified as a witness for the Plaintiff. Mr. Hutchins is a petroleum engineer and is qualified by training and experience to testify as an expert witness regarding the value of oil, gas and any other minerals under the subject tract. Mr. Hutchins testified that immediately before the taking in this case the fair market value of an undivided 1/2 interest in the minerals under the subject tract was \$50.00. Since the entire ownership was taken, this amount should be adopted as the just compensation for the subject taking.

8.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use Tract No. 109-A, as such tract is described in the Complaint filed herein, and such tract, to the extent of the estate described in such Complaint is condemned and title thereto is vested in the United States of America, as of April 16, 1975, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

9.

It is further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owner of the estate taken herein in subject tract was the defendant whose name appears below in paragraph 10, and the right to receive the just compensation for the taking of such estate is vested in the owner so named.

10.

It is further ORDERED, ADJUDGED and DECREED that the award of just compensation for the estate taken in subject tract is as shown in the following schedule:

TRACT NO. 109-A

(1/2 of all minerals, including coal)

OWNER:	Marion Wilson Allen	
Award of just compensation pursuant to Court's findings	----- \$50.00	\$50.00
Deposited as estimated compensation	--- <u>\$50.00</u>	
Disbursed to owner	-----	<u>None</u>
Balance due to owner	-----	\$50.00

11.

It is further ORDERED that the Clerk of this Court shall now disburse the deposit for the subject tract as follows:

To: Area Director, Bureau of Indian Affairs, Muskogee Area Office, for deposit in the money account of Marion Wilson Allen, the sum of \$50.00.

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

APPROVED:

\_\_\_\_\_  
HUBERT A. MARLOW  
Assistant U. S. Attorney

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

HELEN A. WOOD, )  
 )  
 Plaintiff, )  
 )  
 vs )  
 )  
 MARGARET WICK, d/b/a WICK )  
 PERSONNEL, a/k/a WICK )  
 PERSONNEL, INC., )  
 )  
 Defendant. )

No. 75-C-563

FILED

AUG 5 1976

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

MOTION TO DISMISS WITHOUT PREJUDICE

Comes now the Plaintiff, HELEN A. WOOD, and moves the  
Court to dismiss the above styled cause of action.

  
\_\_\_\_\_  
LONNIE T. DAVIS,  
Attorney for Plaintiff

APPROVED

  
\_\_\_\_\_  
LOUIS LEVY  
~~LOUIS LEVY~~, for David E. Caywood  
Attorney for Defendant

ORDER

This matter coming on for consideration before me, the  
undersigned Judge of the Federal District Court, this 5<sup>th</sup> day of  
August, 1976, upon the Motion of the Plaintiff, the Court finds  
that the above styled cause of action should be dismissed without  
prejudice, costs to the Defendant.

IT IS THEREFORE ORDERED that the aforementioned cause  
of action is dismissed without prejudice, costs to the Defendant.

  
\_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 5 1976

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

United States of America, )  
 )  
Plaintiff, )  
 )  
vs. ) CIVIL ACTION NO. 75-C-144  
 )  
11.37 Acres of Land, More or ) Tract No. 111  
Less, Situate in Washington )  
County, State of Oklahoma, )  
and Marion Wilson Allen, et )  
al., and Unknown Owners, )  
 )  
Defendants. ) (Included in D.T. filed in  
Master File #400-7)

J U D G M E N T

NOW, on this 5th day of August, 1976, this matter came on for non-jury trial, before the Honorable H. Dale Cook, Judge of the United States District Court for the Northern District of Oklahoma. Plaintiff, United States of America, appeared by Hubert A. Marlow, Assistant United States Attorney, for the Northern District of Oklahoma. The defendant owner did not appear either in person or by counsel. After hearing the evidence presented at the trial and being fully advised in the premises, the Court finds and concludes that:

1.

This judgment applies to the entire estate condemned in the tract listed in the caption hereof, as such estate and tract are described in the Complaint filed in this action.

2.

The Court has jurisdiction of the parties and the subject matter of this action.

3.

Service of Process has been perfected by personal service upon each of the defendants in this case except Marion Wilson Allen, and has been perfected as to her by publication, as provided by Rule 71A of the Federal Rules of Civil Procedure.

4.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the

right, power and authority to condemn for public use the property described above in paragraph 1. Pursuant thereto, on April 16, 1975, the United States of America filed its Declaration of Taking of such property, and title thereto should be vested in the United States of America, as of the date of filing such instrument.

5.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the taking of subject property a certain sum of money, and none of this deposit has been disbursed, as set out below in paragraph 10.

6.

A. On the date of taking of the subject property the owner thereof, as shown by the land records of Washington County, State of Oklahoma, was the person whose name is shown below in paragraph 10. No other defendants appeared at the trial to make any claim for compensation for the subject taking. Therefore, the person named below in paragraph 10 is entitled to receive the just compensation awarded by this judgment.

B. However, the present whereabouts of the said owner is wholly unknown. The owner is a Cherokee Indian and the subject tract was held in a restricted capacity, under supervision of the Area Director, Bureau of Indian Affairs, Muskogee Area Office, of the United States Department of Interior. Under the present circumstances the subject award should be disbursed to said Area Director for deposit into the money account of the owner.

7.

At the trial of this case Mr. Charles Hutchins testified as a witness for the Plaintiff. Mr. Hutchins is a petroleum engineer and is qualified by training and experience to testify as an expert witness regarding the value of oil, gas and any other minerals under the subject tract. Mr. Hutchins testified that immediately before the taking in this case the fair market value of an undivided 1/2 interest in the minerals under the subject tract was \$50.00. Since the entire ownership was taken, this amount should be adopted as the just compensation for the subject taking.

8.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use Tract No. 111, as such tract is described in the Complaint filed herein, and such tract, to the extent of the estate described in such Complaint is condemned and title thereto is vested in the United States of America, as of April 16, 1975, and all defendants herein and all other persons are forever barred from asserting any claim to such estate.

9.

It is further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owner of the estate taken herein in subject tract was the defendant whose name appears below in paragraph 10, and the right to receive the just compensation for the taking of such estate is vested in the owner so named.

10.

It is further ORDERED, ADJUDGED and DECREED that the award of just compensation for the estate taken in subject tract is as shown in the following schedule:

<u>TRACT NO. 111</u>		
(1/2 of all oil, gas and other minerals, including coal)		
OWNER:	Marion Wilson Allen	
Award of just compensation		
pursuant to Court's findings -----	\$57.00	\$57.00
Deposited as estimated compensation ---	<u>\$57.00</u>	
Disbursed to owner -----		<u>None</u>
Balance due to owner -----		\$57.00

11.

It is further ORDERED that the Clerk of this Court shall now disburse the deposit for the subject tract as follows:

To: Area Director, Bureau of Indian Affairs,  
Muskogee Area Office, for deposit in the  
money account of Marion Wilson Allen, the  
sum of \$57.00.

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

APPROVED:

\_\_\_\_\_  
HUBERT A. MARLOW  
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 5 1976

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

UNITED STATES OF AMERICA )  
By )  
W. J. USERY, JR., Secretary of Labor, )  
United States Department of Labor, )  
 )  
Plaintiff, )  
 )  
v. ) Civil Action File  
 )  
 ) No. 76-C-159-B  
BOBBY G. MARTIN, doing business as )  
C. E. BROOKS CONSTRUCTION COMPANY, )  
 )  
Defendant. )

JUDGMENT OF DEFAULT

On this date of August, 1976, came on to be heard plaintiff's motion for default judgment against defendant, Bobby G. Martin, doing business as C. E. Brooks Construction Company, and it appearing that plaintiff's motion for default judgment is appropriate and well taken, it is therefore

ORDERED, ADJUDGED and DECREED that plaintiff have and recover from Bobby G. Martin, the amount of \$700.00, together with interest thereon at eight per cent per annum from March 26, 1975.

Cost of this action are taxed to defendant.

DATED this 5th day of August, 1976.



UNITED STATES DISTRICT JUDGE

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

CHARLES EDWARD NOEAR, )  
 )  
 Petitioner, )  
 )  
 vs. ) No. 76-C-218-C  
 )  
 STATE OF OKLAHOMA, DR. NED )  
 BENTON, Director, Dept. of )  
 Corrections, et al., )  
 )  
 Respondents. )

FILED

AUG 4 1976

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

O R D E R

The Court has before it for consideration a Petition for Writ of Habeas Corpus filed herein by Charles Edward NoEar. Petitioner attacks the validity of the judgment and sentence rendered by the District Court of Tulsa County, State of Oklahoma, in Case No. CRF-74-247. After a trial by jury, petitioner was found guilty of Burglary Second Degree, After Former Conviction of a Felony and he was sentenced to confinement in the state penitentiary for ten years. The conviction and sentence was affirmed by the Oklahoma Court of Criminal Appeals on May 12, 1975. On October 23, 1975 petitioner's request for Post Conviction Relief was denied, and that denial was affirmed on March 3, 1976.

In support of his Petition, petitioner claims:

1. There was insufficient evidence at the trial level to sustain a conviction.
2. Petitioner should have been allowed an evidentiary hearing at his hearing for application of post-conviction relief.
3. Petitioner was illegally arrested.
4. Petitioner claims he was denied due process in that his counsel was not a member of the Bar and was inexperienced.
5. Petitioner should have been allowed an evidentiary hearing to determine his counsel's effectiveness.

In regard to petitioner's first proposition, he cites

several cases stating that insufficient evidence will not sustain a conviction and asserts that because of insufficient evidence he was denied due process of law as guaranteed by the Sixth and Fourteenth Amendments to the Constitution of the United States. In Mathis v. State, 425 F.2d 1165, 1166 (10th Cir. 1970) the contention was similarly made that the evidence was insufficient to sustain the conviction. In affirming the denial of habeas corpus relief, the court stated:

"A state prisoner is entitled to federal habeas corpus relief only when rights guaranteed by the Constitution of the United States have been denied him. Hickock v. Crouse, 10 Cir., 334 F.2d 95, 100, cert. denied, 379 U.S. 982, 85 S.Ct. 689, 13 L.Ed. 2d 572. The sufficiency of the evidence to sustain a conviction is not subject to federal habeas review, Wagenknecht v. Crouse, 10 Cir., 344 F.2d 920, 921, unless the conviction is so totally devoid of evidentiary support as to raise a due process issue. Edmondson v. Warden, 4 Cir., 335 F.2d 608, 609."

Based upon petitioner's recitation of the evidence presented at trial as stated in the Petition, it is evident that there was evidentiary support for the conviction. Petitioner has therefore failed to raise a due process issue in regard to sufficiency of the evidence.

Petitioner secondly contends that he should have been afforded an evidentiary hearing in regard to his Application for Post-Conviction Relief. Title 22 O.S. § 1084 provides in pertinent part:

"If the application cannot be disposed of on the pleadings and record, or there exists a material issue of fact, the court shall conduct an evidentiary hearing at which time a record shall be made and preserved. . . ."

Pursuant to this statute, absent a finding that a material issue of fact was shown by the record, the Oklahoma Court of Criminal Appeals could properly dispose of the Application based upon the record without holding an evidentiary hearing. Had an evidentiary hearing been deemed necessary by the Court, petitioner

would, of course, have had the right to call witnesses. Absent such a hearing, petitioner's claimed denial of the right to call witnesses is frivolous.

Thirdly, petitioner alleges lack of probable cause as to his arrest. Petitioner claims that the arresting officer did not have probable cause to arrest petitioner or his co-defendant until the officer pulled the co-defendant's hand from the co-defendant's pocket and saw that it was bloody. Petitioner claims that this constituted an illegal search and that he was arrested as a result of the illegal search. As stated by the court in Holt v. United States, 404 F.2d 914, 918 (10th Cir. 1968):

"[T]o constitute probable cause for an arrest it must be shown at the time the officer makes the arrest that the facts and circumstances within his knowledge and of which he has reasonably trustworthy information, are sufficient to warrant a prudent man in believing that an offense has been or is being committed."

Based upon petitioner's statements in regard to the evidence presented at trial, it clearly appears that the officer had probable cause to arrest the petitioner based upon his knowledge that a burglary has been committed and upon the fact that a trail of blood from the scene of the burglary led directly to petitioner and his co-defendant. It is doubtful that the removal of petitioner's co-defendant's hand from his pocket could constitute a search. In any event, petitioner was not searched and cannot assert another's constitutional rights.

Petitioner also claims he was denied due process in that his counsel was not a member of the Bar and that after being admitted to the Bar was ineffective. In support of this proposition, petitioner states that several attorneys participated in his representation and that his court-appointed counsel, Mr. James E. Wallace, was a legal intern until April 26, 1974, at which time he became a regular member of the Oklahoma Bar. Petitioner makes no claim that Mr. Wallace was not a licensed

attorney at the time of petitioner's trial, which commenced on May 30, 1974, and merely asserts that Mr. Wallace was an intern during the initial proceedings. Petitioner claims this fact, plus Mr. Wallace's inexperience after he became a member of the Bar, infringed on petitioner's rights as guaranteed by the due process clause. Petitioner does not claim that Mr. Wallace, as a legal intern, alone represented him. The Court has no reason to believe that Mr. Wallace did not act within the statutory limitations placed on him by 5 O.S. Ch. 1-- App. 6 § 7-C-2 which states:

"The legal intern may represent an accused who is charged with a felony at all stages only where a supervising attorney is present."

In regard to the alleged inexperience of counsel, inexperience of counsel alone is not grounds for habeas corpus relief.

Smith v. Peyton, 276 F.Supp. 275 (D.C. Va. 1967). As stated by the court in Ellis v. State, 430 F.2d 1352, 1356 (10th Cir. 1970):

"It is the general rule that relief from a final conviction on the ground of incompetent or ineffective counsel will be granted only when the trial was a farce, or a mockery of justice, or was shocking to the conscience of the reviewing court, or the purported representation was only perfunctory, in bad faith, a sham, a pretense, or without adequate opportunity for conference and preparation."

The factual statements made by petitioner in the "Statement of Facts" which he attaches to his petition as well as the copies of portions of the transcript he includes indicate that the trial was certainly not a sham and that habeas corpus relief cannot be predicated on this proposition.

It is therefore the determination of the Court that the Petition for Writ of Habeas Corpus filed by Charles Edward NoEar should be and hereby is denied.

It is so Ordered this 4<sup>th</sup> day of August, 1976.

  
H. DALE COOK  
United States District Judge



As that case indicated, as well as others, it is unnecessary for this Court to decide the defendants' motion to dismiss for want of personal jurisdiction. Such determination does not bar the transfer of the action to the appropriate district court.

IT IS, THEREFORE, ORDERED that plaintiff's motion to transfer pursuant to 28 U.S.C. §1406(a) be and the same is hereby sustained and this cause of action and complaint are hereby transferred to the Eastern District of Oklahoma.

ENTERED this 4<sup>th</sup> day of August, 1976.



CHIEF UNITED STATES DISTRICT JUDGE

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

AMARCO, LTD., an Oklahoma  
corporation,

Plaintiff,

-vs-

GEORGIA-PACIFIC INTERNATIONAL  
INC., a foreign corporation,

Defendant.

No. 76-C-24-B

FILED

AUG 4 1976

ORDER VACATING DISMISSAL

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

NOW on this 4th day of August, 1976, this matter comes on for consideration of Plaintiff's MOTION TO VACATE. After consideration of Plaintiff's motion, the Court finds that it should be granted and that this Court's Order of Dismissal entered July 14, 1976 should be vacated, set aside and held for naught.

The Clerk is directed to reinstate this case for further proceedings instanter.

  
ALLEN E. BARROW  
CHIEF UNITED STATES DISTRICT JUDGE

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

VERNARD W. HULSEY, )  
)  
Plaintiff, )  
)  
vs. )  
)  
ARCHISON, TOPEKA and SANTA )  
FE RAILWAY COMPANY, a Kansas )  
Corporation; ST. LOUIS-SAN )  
FRANCISCO RAILWAY COMPANY, )  
a Missouri Corporation, and )  
COLORADO FUEL AND IRON, a )  
wholly owned subsidiary of )  
CRANE COMPANY, an Illinois )  
corporation, )  
)  
Defendants. )

No. 75-C-19-C ✓

FILED

AUG 3 1975

Jack C. Silver, Clerk  
S. DISTRICT

ph

O R D E R

The Court has before it for consideration a Motion for Summary Judgment filed herein by the defendant, The Atchison, Topeka and Santa Fe Railway Company, (hereinafter Santa Fe). In support of said motion, Santa Fe asserts that based upon all the pleadings, depositions and interrogatories on file, together with the affidavit of Mr. R. F. Kelly, the Motion for Summary Judgment of defendant Santa Fe should be sustained pursuant to Rule 56(b), Federal Rules of Civil Procedure.

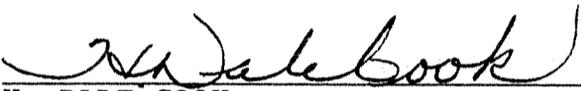
The Amended Complaint alleges that the freight car involved in this cause of action was "a certain steel freight car bearing [Elgin] railroad's name and being numbered 80543." The affidavit of Mr. R. F. Kelly filed on behalf of defendant Santa Fe states that Santa Fe does not own a railroad car designated EJE 80543. Furthermore, based upon the record it appears that the railroad car which forms the basis of plaintiff's amended complaint, EJE 80543, and on which plaintiff alleges he was working on May 1, 1974, was not furnished by Santa Fe to Inland Steel Corporation for loading; that said car was not moved by

the Santa Fe as a connecting carrier for delivery to Tuloma Stevedoring, Inc.; and that said railroad car was not delivered by the Santa Fe to Tuloma Stevedoring, Inc. for unloading.

Defendant St. Louis-San Francisco Railway Company in response to Santa Fe's Motion for Summary Judgment states that it does not dispute the right of Santa Fe to secure a summary dismissal of this action since "the affidavit and answers to interrogatories on file in this case show that Santa Fe had nothing whatsoever to do with the railroad car designated as EJE 80543, or the shipment which was being unloaded by plaintiff from such car." Plaintiff has chosen not to file a response to the Motion for Summary Judgment.

It is the determination of the Court, based upon the record, that the Motion for Summary Judgment of the defendant, The Atchison, Topeka and Santa Fe Railway Company should be and hereby is sustained.

It is so Ordered this 3<sup>rd</sup> day of August, 1976.

  
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H. DALE COOK  
United States District Judge