

SHORT TITLE: Criminal procedure; modifying procedures related to post-conviction relief in capital cases; effective date.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 418

By: Wilkerson

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 1991, Sections 1053 and 1089, which relate to appeals by the state and post-conviction relief in capital cases; modifying cases in which state may appeal trial court rulings; authorizing state to appeal to Court of Criminal Appeals from certain rulings of district court in capital cases; requiring Oklahoma Indigent Defense System to represent indigent defendants seeking post-conviction relief in capital cases; removing requirement that Oklahoma Appellate Public Defender System represent indigent defendants seeking post-conviction relief in capital cases; modifying procedures for post-conviction relief in capital cases; limiting number of applications for post-conviction relief in capital cases; stating exceptions; requiring applications for post-conviction relief in capital cases to be filed with Court of Criminal Appeals; requiring Court of Criminal Appeals to make initial disposition of certain application; requiring remand of certain application to district court; modifying time in which to file certain response; requiring filing of certain district court decision with Court of Criminal Appeals; providing for appeal of certain district court decisions; limiting scope of review

on certain appeals in capital cases; providing schedule for filing certain pleadings; limiting application of certain opinions of Court of Criminal Appeals; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 22 O.S. 1991, Section 1053, is amended to read as follows:

Section 1053. Appeals to the Court of Criminal Appeals may be taken by the state or a municipality in the following cases and no other:

1. Upon judgment for the defendant on quashing or setting aside an indictment or information;
2. Upon an order of the court arresting the judgment;
3. Upon a question reserved by the state or a municipality; ~~and~~
4. Upon judgment for the defendant on a motion to quash for insufficient evidence in a felony matter; and
5. Upon ruling of the district court disposing of an application on remand from the Court of Criminal Appeals in an action for post-conviction relief in a capital case pursuant to Section 1089 of this title.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 1089, is amended to read as follows:

Section 1089. A. ~~The~~ An application filed on or after the effective date of this act for post-conviction relief of a defendant who is under the sentence of death and whose death sentence has been reviewed by the Court of Criminal Appeals in accordance with the provisions of Section 701.13 of Title 21 of the Oklahoma Statutes, and affirmed, shall be expedited as provided in this section.

B. The Oklahoma ~~Appellate Public Defender~~ Indigent Defense System shall represent all indigent defendants in capital cases seeking post-conviction relief upon appointment by the appropriate district court after a hearing determining the indigency of any such defendant.

C. 1. The application for post-conviction relief shall be filed in the ~~district court which imposed the sentence~~ Court of Criminal Appeals within sixty (60) days:

- a. from the expiration date of the time for filing a petition for a writ of certiorari with the United States Supreme Court; or
- b. from the date that the United States Supreme Court denied the defendant's petition for writ of certiorari.

All grounds for relief must be raised in the defendant's original application and no subsequent applications shall be accepted except where the defendant can persuasively demonstrate (a) that a new constitutional rule, announced after the appeal was final, would change the outcome of the conviction or sentence and (b) that the rule is to be applied retroactively.

2. The Court of Criminal Appeals may, with or without requesting a response from the Attorney General, review the application to determine whether it raises any issues that were previously raised, or could have been raised, on direct appeal; the Court may then dismiss any such issues. The Court shall then remand any remaining issues to the district court which imposed the sentence. Once the application has been remanded to the district court, it may be amended to include issues not raised in the original application only upon motion to the Court of Criminal Appeals and good cause shown.

3. The state shall have ~~fifteen (15)~~ twenty (20) days ~~thereafter~~ after the application is remanded to the district court

within which to file a response to the application. The district court may grant one extension of twenty (20) days for good cause shown; any applications for extension beyond the twenty (20) days shall be presented to the Court of Criminal Appeals. The district court shall make its decision and file it with the Court of Criminal Appeals within forty-five (45) days from the date that the state filed its response.

~~3.~~ 4. If the district court determines that an evidentiary hearing should be held, that hearing shall be held within thirty (30) days from the date that the state filed its response, and the district court shall issue its ruling within forty-five (45) days from the date of the conclusion of the evidentiary hearing.

~~4.~~ ~~If the defendant's application for post-conviction relief is denied by the district court, a notice of intent to appeal and a designation of the record shall be filed by the defendant's counsel in district court within ten (10) days from the denial of the application.~~

5. The ruling of the district court disposing of the application on remand may be appealed to the Court of Criminal Appeals on petition in error filed by either the defendant or the state within thirty (30) days from the entry of judgment. An appeal by the state shall be limited to questions of law. The party appealing the ruling of the district court shall file a notice of intent to appeal and a designation of the record in district court within ten (10) days from the entry of judgment. A copy of the notice of intent to appeal and the designation of the record shall be served on the court reporter, the defendant, the district attorney, and the Attorney General, and shall be filed with the Court of Criminal Appeals. If an evidentiary hearing was held, the court reporter shall prepare and file all transcripts necessary for the appeal within sixty (60) days from the date the notice of intent to appeal and designation of record is filed. The appellant's

brief-in-chief shall be filed within forty-five (45) days from the date the transcript is filed in the Court of Criminal Appeals or, if no evidentiary hearing was held, within forty-five (45) days from the date of the filing of the notice of appeal. The ~~Attorney General~~ appellee shall have twenty (20) days thereafter to file a response brief. The court clerk shall file the records on appeal with the Court of Criminal Appeals on or before the date the appellant's brief-in-chief is due. The Court of Criminal Appeals shall issue an opinion in the case within one hundred twenty (120) days of the filing of the response brief ~~by the Attorney General~~. An opinion rendered by the Court of Criminal Appeals on an appeal by the state pursuant to this section shall be applied only prospectively and shall not be applied to the case from which the appeal was made.

D. All matters not specifically governed by the provisions of this section shall be subject to the provisions of the Post-Conviction Procedure Act. If the provisions of this act conflict with the provisions of the Post-Conviction Procedure Act, Section 1081 et seq. of this title, the provisions of this act shall govern.

SECTION 3. This act shall become effective November 1, 1995.

45-1-0520

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