

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

APR 16 2015

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA  
MICHAEL S. RICHIE  
CLERK

CHARLES ALAN DYER, )  
 )  
 Petitioner, )  
 )  
 v. ) No. PC-2014-992  
 )  
 STATE OF OKLAHOMA, )  
 )  
 Respondent. )

**ORDER REVERSING DISTRICT COURT ORDER  
DISMISSING APPLICATION FOR POST-CONVICTION RELIEF  
AND DENYING APPLICATION FOR EVIDENTIARY HEARING,  
AND REMANDING FOR FURTHER PROCEEDINGS**

The Petitioner has appealed to this Court from an order of the District Court of Stephens County dismissing his application for post-conviction relief and denying his application for evidentiary hearing in Case No. CF-2010-17. In that case, Petitioner was tried by a jury and convicted of Child Sexual Abuse. He was sentenced in accordance with the jury's verdict to thirty years imprisonment. Petitioner appealed to this Court and his Judgment and Sentence was affirmed. *Dyer v. State*, No. F-2012-506 (Okl.Cr. October 30, 2013) (not for publication).

In this appeal, Petitioner's propositions of error include arguments that the District Court erred by denying his application for post-conviction relief without properly considering material issues of fact he asserted, and erred by denying his application for an evidentiary hearing. Petitioner claims that his application refers to several separate exhibits, which have never been seen or considered in

this case. Petitioner states that he submitted a pack of exhibits to the District Court along with his post-conviction application. Petitioner claims that the District Court refused to accept the evidence pack when the application was filed, and that the District Court said that Petitioner would need to present this evidence at the evidentiary hearing. Petitioner supports these assertions with an affidavit prepared by the person who filed Petitioner's application for post-conviction relief, and who allegedly tried to file the evidence pack.

A person filing an application for post-conviction relief may attach documents and exhibits to the application. 22 O.S.2011, § 1081. The record on appeal of a denial of post-conviction relief shall include supporting evidence presented to the District Court. Rule 5.2(C)(6)(d), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2015). Petitioner's application for post-conviction relief filed in the District Court, and included in this appeal record, does contain an evidence index of thirty-five numbered exhibits. Petitioner's brief in support of the application and his motion to amend/supplement pleadings also refer to those exhibits. However, the appeal record submitted to this Court does not contain those numbered exhibits.

In its order denying post-conviction relief, the District Court found in part that no material issue of fact existed and thus there was no need for an evidentiary hearing. The District Court order does not refer to any evidence pack of numbered exhibits, and does not reference any exhibits when addressing Petitioner's claims that there are material issues of fact. The order does not indicate that any evidence pack of documents and/or exhibits was attached to

Petitioner's application for post-conviction relief or filed in the District Court.


This Court finds that, in issuing its post-conviction order, the District Court must at least make findings of fact and conclusions of law concerning the alleged evidence pack; including such things as whether it exists, whether it was tendered for filing, whether it should be filed, and whether it should be considered in deciding Petitioner's claims that there are material issues of fact and that appellate counsel was ineffective concerning the evidence pack. 22 O.S.2011, §§ 1083(C), 1084. Therefore, the order of the District Court dismissing Petitioner's application for post-conviction relief and denying his application for evidentiary hearing in Case No. CF-2010-17 must be, and is hereby, **REVERSED** and **REMANDED** to the District Court for further proceedings.

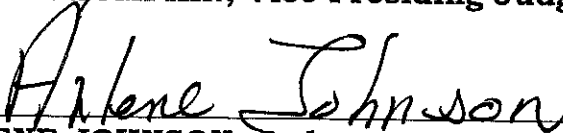
Pursuant to Rule 3.15, *Rules, supra*, the MANDATE is ORDERED issued forthwith upon the filing of this decision with the Clerk of this Court.

**IT IS SO ORDERED.**

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 16<sup>th</sup> day of April, 2015.

  
CLANCY SMITH, Presiding Judge

 **DISSENT - The District Judge's Correct and Analyzed each issue**  
GARY L. LUMPKIN, Vice Presiding Judge

  
ARLENE JOHNSON, Judge

  
DISSENT  
\_\_\_\_\_  
DAVID B. LEWIS, Judge

  
\_\_\_\_\_  
ROBERT L. HUDSON, Judge

ATTEST:

  
\_\_\_\_\_  
Clerk

PB