

FVI

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

RAYSHUN CARLIE MULLINS,

Petitioner,

-vs.-

The Honorable
TWYLA MASON GRAY,
District Judge,

Respondent.

No. C-2006-1154

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAR - 5 2007

MICHAEL S. RICHIE
CLERK

ORDER ISSUING WRIT OF MANDAMUS FOR
PREPARATION OF DESIGNATED TRANSCRIPTS

AND

ORDER SETTING BRIEFING SCHEDULE

On November 27, 2006, Petitioner, through counsel, S. Gail Gunning of the Oklahoma Indigent Defense System, filed with the Clerk of this Court a Petition for Writ of Mandamus. The Petition concerns a pending certiorari appeal from proceedings in Oklahoma County District Court, Case No. CF-2004-4411. Within that District Court case, Respondent, the Honorable Twyla Mason Gray, District Judge, on April 11, 2006, sentenced Petitioner upon twenty-one felony counts to terms of imprisonment totaling 865 years. On April 25, 2006, Respondent denied Petitioner's motions to withdraw his pleas of guilty.¹

Petitioner's mandamus petition complains that Respondent is refusing to approve the preparation of certain transcripts at public expense that Petitioner designated for inclusion within the certiorari appeal record. On January 24, 2007, this Court issued an Order directing a response to that Petition. On February 12, 2007, Respondent filed the requested response.

¹ This Court, on October 17, 2006, in Appellate Case No. PC-2006-893, granted Petitioner leave to commence an out-of-time certiorari appeal from the District Court proceedings.

At issue are two transcripts that were designated by Petitioner but denied by the District Court for Petitioner's preliminary hearing of April 6, 2005, and his competency proceedings held on February 2, 2005. Within her response, Respondent asserts that the District Court, in denying these two transcripts, "was guided by the general rule that, on certiorari review of a case . . . , the Court of Criminal Appeals is concerned only with the voluntariness of the guilty plea." The response further observes, that the decisions of this Court have "held that a guilty plea waives all-non-jurisdictional defects in the proceedings before the guilty plea"; therefore, in certiorari appeals, the Court has refused to address errors occurring at the preliminary hearing. (Response at 4.)

A defendant's competency to enter a plea is an issue that can be raised in a certiorari appeal;² therefore, Petitioner is entitled to a transcript of his competency proceedings. Although we might point to exceptions to those general rules upon which Respondent relied in denying the requested transcripts,³ it is sufficient for purposes of this order to note simply that the record of proceedings occurring before plea and sentencing will sometimes provide information bearing upon whether error occurred in the trial court accepting the plea and imposing sentence and whether the defendant should have been permitted to withdraw the plea.⁴ Because of such circumstances, it is usually

² *E.g.*, *Marshall v. State*, 1998 OK CR 30, ¶¶ 13-22, 963 P.2d 1, 6-9 (certiorari appeal addressing issues concerning defendant's competency hearing); *Frederick v. State*, 1991 OK CR 56, ¶ 6, 811 P.2d 601, 603 ("Certainly any determination that the plea was entered knowingly and voluntarily requires a preliminary finding that the accused is competent and thus able to properly exercise his rights.").

³ *E.g.*, *Maxwell v. State*, 2006 OK CR 33, ¶¶ 6-7, 141 P.3d 564, 567 (finding that the constitutionality of the statute under which defendant was convicted could be raised on certiorari appeal); *Brennan v. State*, 1988 OK CR 297, ¶ 3, 766 P.2d 1385, (certiorari appeal finding "it was error to permit filming [at sentencing hearing] over the defendant's objection").

⁴ *E.g.*, *Carpenter v. State*, 1996 OK CR 56, ¶¶ 33-34, 929 P.2d 988, 997 (in certiorari appeal wherein defendant claimed that he did not realize that Robbery with a Dangerous Weapon was

necessary that appellate counsel review the entire record of the case in order to diligently fulfill their responsibilities to the defendant. The Court therefore **FINDS** that Petitioner has shown sufficient need for the requested transcripts and that he is entitled to the requested writ.

On February 7, 2007, Petitioner's appellate counsel filed an objection to the filing of the District Court Clerk's Notice of Completion of Record on Appeal. Petitioner objects that the Clerk has certified the record complete despite Petitioner's designation of the transcripts of the February 2, 2005, and April 6, 2005, proceedings. As the Court finds that Petitioner should be allowed these transcripts at public expense for inclusion within the appeal record, and as Petitioner properly designated them for inclusion, the Court finds the District Court Clerk's Notice of Completion is premature and that the following orders should be entered.

IT IS THEREFORE THE ORDER OF THIS COURT that a writ of mandamus is issued to the District Court directing it to enter such orders as might be necessary for preparation of the transcripts designated in Petitioner's case for the hearings conducted on February 2, 2005, and April 6, 2005, in Oklahoma District Court Case No. CF-2004-4411, and for initial payment of the costs for completing such transcripts to be made at public expense.

IT IS THE FURTHER ORDER OF THIS COURT that upon the court reporter's filing of these designated transcripts, the Clerk of the District Court

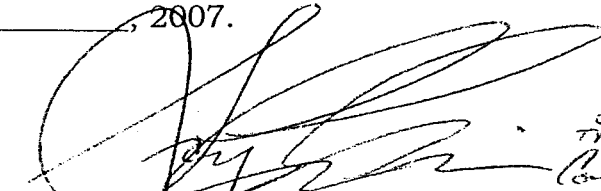
the underlying felony for his felony murder charge, Court looked, in part, to information produced at the preliminary hearing to determine defendant's understanding of charges); *Robinson v. State*, 1991 OK CR 23, ¶¶ 3-4, 806 P.2d 1128, 1129 (certiorari appeal wherein Court looked to proof presented at preliminary hearing to determine if there was a factual basis for defendant's admission to those prior convictions used for enhancement of sentence, and where Court further held: "we must look to the entire record to determine if judgment and sentence rendered on the plea of guilty should be disturbed" and that "[t]he entire record, when considering a plea of guilty, includes all pleadings and proceedings in the case").

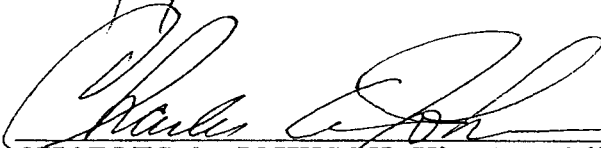
shall file an Amended Notice of Completion of Appeal Record with the Clerk of this Court. The briefing schedule for this appeal will then commence upon the Clerk of this Court issuing his Notice to Transmit pursuant to the trial court clerk's Amended Notice of Completion.

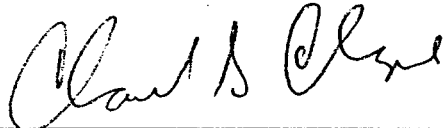
The Clerk of this Court shall ensure that a copy of this Order is transmitted to Respondent.


IT IS SO ORDERED.

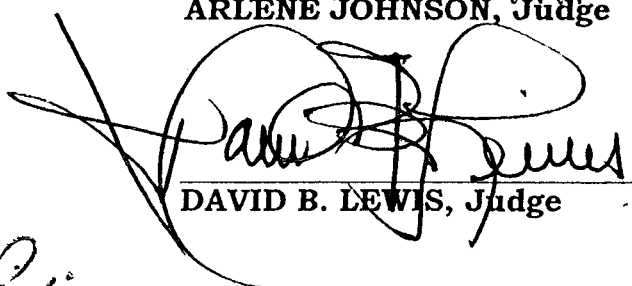
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 3rd day of March, 2007.


GARY L. LUMPKIN, Presiding Judge
I agree transcript of completely hearing is relevant. However, I can find no allegation of fact that precludes transcript is relevant to issues. (concur in part) (Dissent in part)


CHARLES A. JOHNSON, Vice Presiding Judge


CHARLES S. CHAPEL, Judge


ARLENE JOHNSON, Judge


DAVID B. LEWIS, Judge

*(Dissent)
I believe the trial court has already approved all relevant transcripts being prepared at public expense.*

ATTEST:


Clerk

NF