

**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

**FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA**

NOV 16 2018

JOHN D. HADDEN
CLERK

NAJEE JAMALL COX,

Petitioner,

v.

**THE DISTRICT COURT OF
OKLAHOMA COUNTY,
THE HONORABLE RAY C.
ELLIOTT, DISTRICT JUDGE,**

Respondent.

No. MA-2018-987

**ORDER LIFTING STAY, GRANTING EXTRAORDINARY RELIEF
AND REMANDING MATTER TO DISTRICT COURT**

On September 25, 2018, Petitioner Cox, by and through appellate counsel Jeremy Stillwell, filed with this Court a Petition for Writ of Mandamus and Application to Assume Original Jurisdiction in Oklahoma County District Court Case No. CF-2014-5486. Cox seeks a writ compelling the District Court of Oklahoma County, the Honorable Ray C. Elliott, District Judge, to order preparation of the appeal record in this case, including preparation of Cox's properly designated transcripts at public expense. In an order issued October 8, 2018, Judge Elliott or his designated representative was directed to respond to Cox's application.

Cox entered a blind plea in Oklahoma County Case No. CF-2014-5486 and was assessed a seven (7) year deferred sentence. On August 14, 2018, this deferred sentence was accelerated and Cox was sentenced to ten (10) years imprisonment. Cox filed his Notice of Intent to Appeal and Designation of Record in the District Court on August 24, 2018, along with his pauper's affidavit. The Oklahoma Indigent Defense System (OIDS) was appointed to represent Cox on appeal.¹ Appointed counsel filed a Notice of Intent to Appeal in this Court on August 30, 2018 and the matter was assigned this Court's Case No. F-2018-901.

Judge Elliott ordered that a record of Cox's case (specifically, the transcript of the proceeding) was not to be prepared at public expense² finding Cox indigent only for purposes of appointment of appellate counsel. Cox seeks timely preparation and filing of the trial transcripts necessary for his appeal, alleging that he has provided sufficient documentation of his indigent status.

¹ See Exhibit A, Notice of Intent to Appeal, Section III, Determination of Indigence Section B.1.-4., page 4.

² See Exhibit A, Notice of Intent to Appeal, Section III, Determination of Indigence Section A.1., page 3.

In his response filed with this Court, Judge Elliott did not dispute that Cox was personally indigent for purposes of court-appointed counsel. However, the trial court found that Cox had assets sufficient to pay for the cost of his transcripts and that the court had the authority to require Cox to make a reasonable allocation of his available funds to pay for the preparation of his trial transcripts.³

For a writ of mandamus, Petitioner has the burden of establishing that (1) he has a clear legal right to the relief sought; (2) the respondent's refusal to perform a plain legal duty not involving the exercise of discretion; and (3) the adequacy of mandamus and the inadequacy of other relief. Rule 10.6(B), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018).

Judge Elliott appointed OIDS to represent Cox on appeal, finding him personally indigent for purposes of court-appointed

³ Judge Elliott's response noted that the cost of the trial transcript in question is \$210.00 and that Cox has assets valued between \$1776.00-2776.00. Cox indicated on his pauper's affidavit that he owned a vehicle worth about \$1,000.00, furniture worth \$300.00 and had cash in the bank in the amount of \$476. The State's assessed value for Cox's vehicle was approximately \$2,000.00. Cox's affidavit also stated that he had rent expense in the amount of \$680 prior to his incarceration.

counsel. See, 22 O.S. 2011, § 1356(B). Pursuant to this appointment, OIDS is statutorily required to perfect Cox's appeal. 22 O.S. 2011, § 1356(A). Likewise, the court clerk for the relevant county is statutorily required to transmit one certified copy of the original record for each appeal authorized by the Indigent Defense Act directly to OIDS as soon as possible after the filing of the Notice of Intent to Appeal and the order appointing OIDS within the time limits established by this Court's Rules. See 22 O.S.2011, § 1362, and Rules 2.2 and 2.3, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018). While 22 O.S.2011, § 1365 specifies that all necessary transcript costs and court fees required for perfecting appeals for indigents shall be paid by the defendant if the defendant is financially able to do so, the court cannot delay the timely filing of an appeal record by the clerk of the court by refusing to authorize preparation of transcripts at public expense, even if that expense is subject to reimbursement by the defendant.

Upon finding that a defendant is able to pay all or part of the costs of the transcripts, as it has in this case, the trial court may order the person or persons responsible to pay the same and

prescribe the method of payment to reimburse the court fund. See 19 O.S.2011, § 138.10, 22 O.S.2011, §1365, 20 O.S.2011, § 106.4(B). The court has numerous avenues for assessing the cost of the transcript to the defendant upon finding he or she is able to pay the cost of the same, however, delaying the filing of an appeal pending such payment is not one of those listed options.

Accordingly, Petitioner's application for a writ of mandamus is **GRANTED** and the matter is **REMANDED** to the District Court. The District Court is directed to issue an order authorizing preparation of the appeal record in this matter, including the preparation of the properly designated transcript(s), and to ensure that the original and two copies of the transcript are filed with the Clerk of the District Court on or before ten days from the date of this order. See, 22 O.S. 2011, § 1362.

The stay of proceedings is hereby **LIFTED**.

The Clerk of this Court is directed to transmit a copy of this order to the Court Clerk of Oklahoma County, the District Court of Oklahoma County, the Honorable Ray C. Elliott, District Judge, Court Reporter Cindy Jones, Petitioner, and counsel of record.

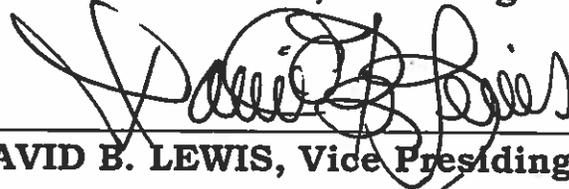
IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT

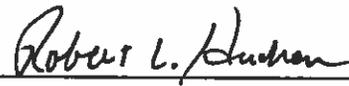
this 16th day of November, 2018.



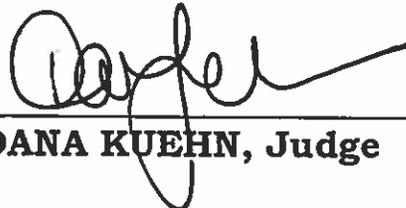
GARY L. LUMPKIN, Presiding Judge



DAVID B. LEWIS, Vice Presiding Judge



ROBERT L. HUDSON, Judge

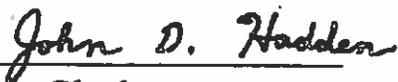


DANA KUEHN, Judge



SCOTT ROWLAND, Judge

ATTEST:



Clerk

OA/F