

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

FILED
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STATE OF OKLAHOMA

OCT - 3 2007

MICHAEL S. RICHIE
CLERK

TERRY LYN SHORT,

Appellant,

vs.

THE STATE OF OKLAHOMA,

Appellee.

Case No. D-97-540

NOTICE OF EXHAUSTION OF STATE AND FEDERAL APPEALS

COMES NOW W.A. Drew Edmondson, Attorney General of the State of Oklahoma, and hereby provides notice to this Court that Defendant Terry Lyn Short has exhausted all his regular appeals in State and Federal Court:

1. Defendant, Terry Lyn Short, was charged and convicted by a jury of his peers of the crimes of one (1) count of Murder in the First Degree (While in the Commission of Arson in the First Degree) (Count I) in violation of 21 O.S.1991, § 701.7(B); five (5) counts of Attempting to Kill after Former Convictions of Two or More Felonies (Counts II through VI) in violation of 21 O.S.1991, § 652; and one (1) count of Possession of Explosives by a Convicted Felon after Former Convictions of Two or More Felonies (Count VII) in violation of 21 O.S.1991, § 1368, in Case No. CF-95-216, in the Oklahoma County District Court. Count VII was dismissed on motion of the State. The jury returned a verdict of guilty as to all remaining counts.

2. During the second stage of trial, the jury found the existence of three aggravating circumstances: (1) that the defendant knowingly created a great risk of death to more than one person; (2) that the murder was especially heinous, atrocious, or cruel; and (3) that there was an existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society.

3. The jury then set punishment at death in Count I, imprisonment of one-hundred (100) years for each of Counts II through IV, and imprisonment of two-hundred (200) years for each of Counts V and VI. The trial court sentenced Defendant in accordance with the jury's verdicts and ordered Counts II through VI to be served consecutively with each other and with Count I.

4. Defendant's convictions and sentences were affirmed and his request for an evidentiary hearing was denied by this Court in Case No. F-1997-540, on April 14, 1999. *Short v. State*, 1999 OK CR 15, 980 P.2d 1081. This Court denied a petition for rehearing on May 21, 1999.

5. The United States Supreme Court denied a petition for writ of certiorari to the OCCA on January 10, 2000. *Short v. Oklahoma*, 528 U.S. 1085 (2000).

6. This Court denied Defendant's applications for an evidentiary hearing, for discovery, and for post-conviction relief in Case No. PCD-1998-1274 on May

21, 1999, in an unpublished opinion. Defendant did not seek certiorari review of the denial of these applications by the Supreme Court of the United States.

7. Defendant filed a Petition for Writ of Habeas Corpus in the District Court for the Western District of Oklahoma on October 31, 2000, which was denied on August 17, 2004.

8. The denial of habeas relief was affirmed by the Tenth Circuit Court of Appeals on December 26, 2006. *Short v. Sirmons*, 472 F.3d 1177 (10th Cir. 2006).

9. Finally, Defendant sought certiorari review in the United States Supreme Court and was denied such on October 1, 2007. *Short v. Sirmons*, ___ U.S. ___, ___ S.Ct. ___, ___ L.Ed.2d ___ (U.S., October 1, 2007). At this time, all appeals in state and federal courts have been exhausted.

10. The manner in which the State carries out the sentence of death is wholly constitutional. Its lethal injection protocol is the most humane method of carrying out its responsibilities to execute the judgment of juries and courts that lawfully impose the ultimate sanction for the most heinous murderers. Both this Court and the federal courts have found that Oklahoma's lethal injection protocol is neither cruel nor unusual. See, e.g., *Malicoat v. State*, 2006 OK CR 25, ¶¶ 6, 11, 137 P.3d 1234; *Bland v. State*, 2007 OK CR 25, ¶ 10, 164 P.3d 1076; *Hamilton v. Jones*, 472 F.3d 814, 815 (10th Cir. 2007); see also *Bland v. Jones*, Western District of Oklahoma, Case No. CIV-07-695-F (Transcript of order denying

preliminary relief attacking lethal injection, June 25, 2007). Under the current protocol, there is no likelihood of conscious suffering during a lethal injection.

However, the State is aware that the United States Supreme Court has granted a writ of certiorari challenging Kentucky's lethal injection protocol in *Baze v. Rees*, U.S. Case No. 07-5439, ___ U.S. ___, 2007 WL 2075334 (Mem.) (September 25, 2007).

11. Out of an abundance of caution and notwithstanding the constitutionality of Oklahoma's lethal injection process, the State suggests that an execution date not be set pending resolution of *Baze* and that the appropriateness of setting an execution date be revisited when *Baze* has been decided by the United States Supreme Court.

Respectfully submitted,

**W.A. DREW EDMONDSON
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CERTIFICATE OF MAILING

On this 3rd day of October, 2007, a true and correct copy of the foregoing was mailed to:

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