



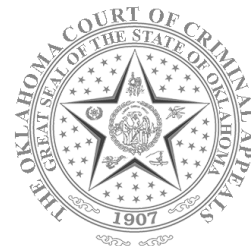
## HAMMON v. STATE

2023 OK CR 19

Case Number: PC-2023-176

Decided: 11/28/2023

GLEN DALE HAMMON, Petitioner v. THE STATE OF OKLAHONA, Respondent



Cite as: 2023 OK CR 19, \_\_ \_\_

### ORDER REVERSING DISMISSAL OF POST-CONVICTION APPLICATION

¶1 Petitioner, pro se, appeals the order of the District Court of Oklahoma County dismissing his application for post-conviction relief in Case No. CF-2000-6659. In December 2001, a jury convicted Petitioner of drug and firearms offenses. He was sentenced to terms of imprisonment totaling seventy years. The convictions and sentences were affirmed on direct appeal in an opinion handed down on April 1, 2003. See *Hammon v. State*, Case No. F-2001-1496 (OkI.Cr. April 1, 2003) (not for publication).

¶2 At the time Petitioner's judgment and sentence was affirmed, there was no limitations period governing the filing of a post-conviction application pursuant to the Post-Conviction Procedure Act. See 22 O.S.2001, § 1080, et seq.<sup>1</sup> This remained the case until November 1, 2022, when Section 1080.1 of Title 22 of the Oklahoma Statutes became effective. This Section instituted a limitations period for filing post-conviction applications which provides in pertinent part:

A one-year period of limitation shall apply to the filing of any application for post-conviction relief, whether an original application or a subsequent application. The limitation period shall run from the latest of:

1. The date on which judgment of conviction or revocation of suspended sentence became final by the conclusion of direct review by the Oklahoma Court of Criminal Appeals or the expiration of the time for seeking such review by the Oklahoma Court of Criminal Appeals[.]

22 O.S.Supp.2022, § 1080.1 (A)(1).<sup>2</sup> The statute permits several narrow exceptions to this one-year period, none of which apply here.

¶3 On January 5, 2023, Petitioner filed the post-conviction application that is the subject of this appeal. On February 6, 2023, the State filed a motion to dismiss the application. The State argued that because more than one year had elapsed since Petitioner's conviction became final, his application should be barred under Section 1080.1. On February 8, 2023, the Honorable Cindy Truong, District Judge, granted the State's motion and dismissed the application as time barred.

¶4 Petitioner appealed. He filed his petition in error and brief on March 7, 2023. On July 3, 2023, we directed Judge Truong, or her designated representative, to respond to Petitioner's claim that Section 1080.1 should not be applied to retroactively bar his application. The District Court's response was filed on August 17, 2023. On August 11, 2023, we granted the motion of the Oklahoma Attorney General's Office to file an *amicus curiae* brief. The Attorney General's brief was filed on September 25, 2023.

¶5 "A law is retrospective if it changes the legal consequences of acts completed before its effective date." *Miller v. Florida*, 482 U.S. 423, 430 (1987) (citations omitted). Application of the new limitations period to Petitioner would bar the filing of any post-conviction application as of April 1, 2004, some eighteen years prior to the statute's effective date. There is a heavy presumption against such a result. See *Landgraf v. ISI Film Products*, 511 U.S. 244, 280 (1994) ("If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result.").

¶6 The presumption against retroactive legislation is "deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic." *Id.*, at 265. Retroactive statutes are disfavored because they raise "special concerns" due to the government's "unmatched powers ... to sweep away settled expectations...." *I.N.S. v. St. Cyr*, 533 U.S. 289, 315 (2001). The presumption against them is founded on "[e]lementary considerations of fairness" and is "express[ed] in several provisions of our Constitution," including the *Ex Post Facto* Clause, the Fifth Amendment's Takings Clause, the prohibitions on "Bills of Attainder" in Art. I, §§ 9-10, and the Due Process Clause. *Landgraf*, 511 U.S. at 266.

¶7 However robust, the presumption against retroactive legislation remains just that, a presumption. After all, within constitutional limits, the Legislature has "the power to enact laws with retrospective effect." *St. Cyr*, 533 U.S. at 316. However, it must do so with unmistakable clarity. *Id.* See *Nestell v. State*, 1998 OK CR 6, ¶ 5, 954 P.2d 143, 144 (new legislative enactments should be applied prospectively unless they are "specifically declared" to have retroactive effect).

¶8 According to Section 1080.1(C), the limitations period "shall apply to any post-conviction application filed on or after the effective date of this act." According to its terms, the limitations period applies to both "original" and "subsequent" applications. 22 O.S.Supp.2022, § 1080.1 (A). We must determine whether this language evidences the Legislature's intent to retroactively bar applications, both original and subsequent, upon the effective date of the legislation. Ultimately, we agree with the position taken by the Oklahoma Attorney General's office in its *amicus curiae* brief that the Legislature did not intend such a result.

¶9 The Oklahoma Legislature has explicitly embraced the presumption against retroactive legislation. See 22 O.S.2011, § 3 ("No part of this code is retroactive unless expressly so declared."). To this end, when the Legislature intends legislation to have retroactive effect, it does so in unmistakable terms. See e.g., 22 O.S.Supp.2021, § 991c(E) ("The provisions of subsection D of this section shall be retroactive"); 47 O.S.Supp.2023, § 759(G) ("The provisions of subsections B and C of this subsection shall be retroactive."). Section 1080.1 contains no such language.

¶10 Absent specific language to the contrary the statute must be interpreted to provide a reasonable opportunity to bring the action:

"It may be properly conceded that all statute of limitations must proceed on the idea that the party has full opportunity afforded him to try his right in the courts. A statute could not bar the existing rights of claimants without affording this opportunity; if it should attempt to do so, it would not be a statute of limitations, but an unlawful attempt to extinguish rights arbitrarily, whatever might be the purport of its provisions. It is essential that such statutes allow a reasonable time after they take effect for the commencement of suits upon existing causes of action...."

*Texaco, Inc. v. Short*, 454 U.S. 516, 527 n.21(1982) (quoting *Wilson v. Iseminger*, 185 U.S. 55, 62-63 (1902)). See *Block v. North Dakota ex rel. Board of Univ. & School Lands*, 461 U.S. 273, 286 n.23 (1983) ("statutes of limitations must allow a reasonable time after they take effect for the commencement of suits upon existing causes of action") (internal quotation marks omitted); *Terry v. Anderson*, 95 U.S. 628, 632-33 (1877) ("statutes of limitation affecting existing rights are not unconstitutional, if a reasonable time is given for the commencement of an action before the bar takes effect"); *Wolfe v. Phillips*, 172 F.2d 481, 485 (10th Cir. 1949) ("A state may constitutionally shorten the periods of limitation fixed by previously existing statutes and make the amended statute applicable to existing causes of action, provided it affords a reasonable time within which suits for such existing causes of action may be commenced.").

¶11 Where, as here, the statute is silent as to the grace period to be allowed, the courts must fashion a grace period that is appropriate to the circumstances. See *United States v. Morena*, 245 U.S. 392, 397 (1918). Particularly in proceedings with the potential to affect life and liberty, courts should avoid "ad hoc equitable devices" and strive for a rule that is both "clear and fair." *Lonchar v. Thomas*, 517 U.S. 314, 330 (1996).

¶12 We conclude that a one-year grace period is appropriate. This affords the affected petitioners as much time as their counterparts whose convictions became final after Section 1080.1 became effective and avoids potential unfairness. Accordingly, petitioners whose convictions became final on or before November 1, 2022, had until November 1, 2023, to file their application for post-conviction relief. Petitioner's application was therefore not untimely.

¶13 The order of the District Court dismissing Petitioner's application for post-conviction relief is **REVERSED**. Petitioner's motion to file a reply brief out of time is **DENIED**. This matter is remanded to the District Court for proceedings not inconsistent with this order. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2023), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

¶14 **IT IS SO ORDERED.**

¶15 **WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 28th day of November, 2023.

**/S/SCOTT ROWLAND, Presiding Judge**

**/S/ROBERT L. HUDSON, Vice Presiding Judge**

**/S/GARY L. LUMPKIN, Judge**

**/S/DAVID B. LEWIS, Judge**

**/S/WILLIAM J. MUSSEMAN, Judge**

ATTEST:

/s/John D Hadden  
Clerk

#### FOOTNOTES

<sup>1</sup> In fact, on two previous occasions Petitioner sought and was denied post-conviction relief by the District Court, once in 2004 and again in 2020. We affirmed these denials in *Hammon v. State*, Case No. PC-2004-513 (OkI.Cr. July 8, 2004) (not for publication) and *Hammon v. State*, Case No. PC-2022-265 (OkI.Cr. April 19, 2022) (not for publication), respectively.

<sup>2</sup> This order only interprets this particular section of the legislation.

#### **Citationizer<sup>®</sup> Summary of Documents Citing This Document**

**Cite Name Level**

None Found.

#### **Citationizer: Table of Authority**

**Cite Name**

**Level**

##### **Oklahoma Court of Criminal Appeals Cases**

Cite	Name	Level
<u>1998 OK CR 6, 954 P.2d 143, 69 OBJ 502,</u>	<u>Nestell v. State</u>	Discussed

##### **Title 22. Criminal Procedure**

Cite	Name	Level
<u>22 O.S. 991c,</u>	<u>Deferred Sentence</u>	Cited
<u>22 O.S. 1080.1,</u>	<u>One-year Period of Limitation for Filing</u>	Discussed

**Cite Name****Level**22 O.S. 3,Code Not Retroactive Unless Expressly Declared

Cited

22 O.S. 1080,Post-Conviction Procedure Act - Right to Challenge Conviction or Sentence.

Cited

**Title 47. Motor Vehicles**

Cite

Name

Level

47 O.S. 759,Board of Tests for Alcohol and Drug Influence - Members - Authority - Rules -  
Revolving Fund

Cited