

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

ANTHONY SANCHEZ,)	Case No. _____
Petitioner,)	County Cleveland
)	District Court Case # CF-2000-325
vs.)	
)	Direct Appeal Case # D-2006-627
THE STATE OF OKLAHOMA,)	
Respondent.)	
)	

**FOURTH
APPLICATION FOR POST CONVICTION RELIEF
IN A DEATH PENALTY CASE**

PART A – PROCEDURAL HISTORY

Petitioner, Anthony Sanchez, through undersigned counsel, submits his application for post-conviction relief under Okla. Stat. tit. 22, § 1089. This is the first time an application for post-conviction relief has been filed.

The sentence from which relief is sought is:

- Count I - Murder in the First Degree - Death by Lethal Injection
- Count II - Rape in the First Degree - 40 Years Imprisonment
- Count III - Forcible Anal Sodomy - 20 Years Imprisonment

1. Court in which sentence was rendered:

Cleveland County District Court, Case No. CF-2000-325

2. Date of sentence:

June 6, 2006

3. Terms of sentence:

- Count I - Murder in the First Degree - Death by Lethal Injection.
- Count II - Rape in the First Degree - 40 Years Imprisonment and a \$10,000.00 fine.
- Count III - Forcible Anal Sodomy - 20 Years Imprisonment and a \$10,000.00 fine.

4. Name of Presiding Judge: Hon. William C. Hetherington, Jr.

5. Is Petitioner currently in custody? Yes (X) No ()

Where? H Unit, Oklahoma State Penitentiary, McAlester, Oklahoma.

Does Petitioner have criminal matters pending in other courts?
Yes () No (X).

If so, where? N/A

List charges: N/A

Does Petitioner have sentences (capital or non-capital) to be served in other states or jurisdictions? Yes () No (X)

If so, where? N/A

List convictions and sentences: N/A.

I.
CAPITAL OFFENSE INFORMATION

6. Petitioner was convicted of the following crime, for which a sentence of death was imposed:

(a) First Degree Murder, in violation of 21 O.S. § 701.7 (A).

Aggravating factors alleged:

(a) The murder was especially heinous, atrocious, and cruel;

(a) The murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution;

(b) At the present time there exists a probability that the defendant will commit criminal acts of violence that would constitute a continuing threat to society.

Aggravating factors found:

(a) The murder was especially heinous, atrocious, and cruel;

(b) The murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution;

(c) At the present time there exists a probability that the defendant will commit criminal acts of violence that would constitute a continuing threat to society.

Mitigating factors listed in jury instructions:

(a) The defendant's age;

(b) The defendant's character;

(c) The defendant's emotional/family history;

(d) The defendant's life has value and meaning to others.

Was Victim Impact Evidence introduced at trial? Yes (X) No ().

- 7. Check whether the finding of guilty was made:
After plea of guilty () After plea of not guilty (X)**
- 8. If found guilty after plea of not guilty, check whether the finding was made by:
A jury (X) or; A judge without a jury ().**
- 9. Was the sentence determined by (X) a jury, or () the trial judge?**

II.

NON-CAPITAL OFFENSE INFORMATION

- 10. Petitioner was convicted of the following offense(s) for which a sentence of less than death was imposed (include a description of the sentence imposed for each offense).**

- Count II - Rape in the First Degree in violation of Okla. Stat. tit. 21, § 1114 - 40 Years Imprisonment and a \$10,000.00 fine.
- Count III - Forcible Anal Sodomy in violation of Okla. Stat. tit. 21, § 888 - 20 Years Imprisonment and \$10,000.00 fine.

11. Check whether the finding of guilty was made:

After a plea of guilty () After a plea of not guilty (X)
Not Applicable ()

12. If found guilty after a plea of not guilty, check whether the finding was made by:

A jury (X) A judge without a jury () Not Applicable ()

III.

CASE INFORMATION

13. Name and address of lawyer in trial court:

Silas Lyman
1800 E Memorial Rd #106
Oklahoma City, OK 73131

Names and addresses of all co-counsel in the trial court:

Diane Box
444 NW 44th
Oklahoma City, OK 73118

Matthew Haire
Oklahoma Indigent Defense System
P.O. Box 926
Norman, OK 73070

14. Was lead counsel appointed by the court? Yes (X) No ().

15. Was the conviction appealed? Yes(X) No()

To what court or courts? Oklahoma Court of Criminal Appeals.

Date Brief In Chief filed: April 10, 2008

Date Response filed: August 8, 2008

Date Reply Brief filed: August 28, 2008

Date of Oral Argument: February 10, 2009

Date of Petition for Rehearing (if appeal has been decided): N/A.

Has this case been remanded to the District Court for an evidentiary hearing on direct appeal? Yes (X) No ()

If so, what were the grounds for remand? Shackles used at Trial.

Is this petition filed subsequent to supplemental briefing after remand? No

16. Name and address of lawyers for appeal?

Michael D. Morehead
Janet Chesley
Oklahoma Indigent Defense System
P.O. Box 926
Norman, OK 73070

**17. Was an opinion written by the appellate court?
Yes(X) No ()**

If "yes," give citations if published: *Sanchez v. State*, 2009 OK CR 31, 223 P.3d 980

18. Was further review sought? Yes (X) No()

If "Yes," state when relief was sought, the court in which relief was sought, the nature of the claims(s) and the results (include citations to any reported opinions).

Certiorari from direct appeal was denied in *Sanchez v. Oklahoma*, 562 U.S. 93, 131 S.Ct. 326, 178 L.Ed. 2d 212 (2010); the first post-conviction application was denied. Case PCD-2006- 1011 (April 10, 2010); a petition for writ of habeas corpus was denied in *Sanchez v. Trammell*, CIV-10-1171-HE, 2015 Dist. Lexis 18544 (W.D. Okla. 2015); a certificate of appealability was denied in *Sanchez v. Warrior*, 2016 U.S. App. Lexis 247 (10th Cir. 2016); a petition for certiorari was denied in *Sanchez v. Duckworth*, 137 S.Ct. 119, 1965 L.Ed.2d 96 (2016). Two additional

applications for post-conviction relief were filed, Court of Criminal Appeals Cases PCD-2017-666 and PC-2020-93. Both were denied.

PART B: GROUNDS FOR RELIEF

19. **Has a motion for discovery been filed with this application?**
Yes (X) No ()
20. **Has a Motion for Evidentiary Hearing been filed with this application? Yes (X) No ()**
21. **Have other motions been filed with this application or prior to the filing of this application? Yes () No (X)**
If yes, specify what motions have been filed:
22. **List propositions raised (list all sub-propositions).**

PROPOSITION ONE: NEWLY DISCOVERED EVIDENCE ESTABLISHES AND/OR PROVIDES A REASONABLE LIKELIHOOD OF AN EVIDENTIARY HEARING ESTABLISHING BY CLEAR AND CONVINCING EVIDENCE THAT MR. SANCHEZ WOULD NOT HAVE BEEN CONVICTED, AND WOULD NOT HAVE RECEIVED A DEATH SENTENCE IF ALL EVIDENCE POINTING TOWARD THE GUILT OF THOMAS GLEN SANCHEZ, PETITIONER'S FATHER, HAD BEEN KNOWN TO THE JURY. CONSEQUENTLY, MR. SANCHEZ'S CONVICTION AND SENTENCE SHOULD BE VACATED UNDER OKLAHOMA LAW AND UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

PART C: FACTS

On December 20, 1996, the body of Jewell Busken was found near Lake Stanley

Draper in Cleveland County, Oklahoma. (Tr. 2053-65) There was single gunshot wound to the back of her head. (Tr. 2190) For several years, the offense was considered unsolved by authorities. Then on July 26, 2004, an Oklahoma State Bureau of Investigation criminalist documented a cold hit, connecting a person in the Combined DNA Index System database with the Busken homicide. That person was identified as Anthony Sanchez. (Tr. 2291-2304)

Apparently Mr. Sanchez had not been a suspect in the Jewell Busken murder during the seven years and seven months preceding the cold hit. Further, there was no evidence that Petitioner Sanchez and Ms. Busken had known each other or had even known of one another. Aside from the DNA evidence, nothing directly pointed to Anthony Sanchez. In a wall at a former residence of the petitioner, there was a bullet with a rifling pattern like that of the bullet that killed Ms. Busken. However, the State's expert conceded the pattern was not uncommon (Tr. 2350), and in fact could be found in bullets from six different manufacturers. (Tr. 2347) The State's shoe print witnesses did not claim to have determined the shoe print was the same size as Petitioner Sanchez's shoe, only that the shoe type was the same as a type Anthony Sanchez was said to have worn. (Tr. 2634-35)

But more striking was the evidence tending to exclude Anthony Sanchez. Ms. Busken's car, which witnesses saw going both to and from the area where the body was found, had not been wiped clean of fingerprints. Forty-nine fingerprints were lifted from the vehicle. (Tr. 2537) No matches were made to Anthony Sanchez, even though

eighteen identifiable prints were never matched to anyone. (Tr. 2551-53)

Even more significantly, there were two eyewitness, neither of whom identified Mr. Sanchez during their testimonies. Kay Merryman, who saw both Ms. Busken and the perpetrator in Ms. Busken's car on the way to the lake, helped with sketches and described a man several years older than Ms. Busken. (Tr. 1925-36) Ms. Busken was in her early twenties, whereas Mr. Sanchez turned eighteen the month prior to the homicide.

David Kill, who saw the perpetrator leaving the lake area in Ms. Busken's car, was in the courtroom with Mr. Sanchez when he testified he had not seen the man in the car since December 20, 1996 (Tr. 1967)

And of still greater importance, especially considering the newly discovered evidence presented here, Ms. Merryman drew a sketch of the man she saw. That sketch, attached in Appendix, p. 1 seems to match a 1996 photo of Thomas Glen Sanchez, the person in the right in Appendix, p. 2.

The state of the evidence until very recently was that there was DNA evidence pitted against some other facts that seemed to be inconsistent with Anthony Sanchez's guilt. Then in December, 2022, Charlotte Beattie, a girlfriend of Glen Sanchez, reported that Glen Sanchez confessed to being the person who committed the homicide.

Appendix, p. 5. Beginning in July of 2020 and occurring again in later months, Glen Sanchez said that Glen was the person who killed Jewell Busken. Appendix, pp. 3-4

Procedural facts:

Charlotte Beattie, whose declaration contains new evidence critical to this case

was previously interviewed by undersigned counsel and was asked if she had information implicating Glen Sanchez. She said she had no such direct evidence. The interview between an Anthony Sanchez attorney and Ms. Beattie occurred a number of years prior to Ms. Beattie's present statement. Appendix, p. 5 She said she first heard Glen Sanchez confess in July of 2020 and was too scared of Glen Sanchez to discuss the matter with anyone during Glen's lifetime. Glen Sanchez died on April, 24, 2022. Appendix, pp. 3-4. Undersigned counsel was told on December 6, 2022 that Glen had confessed. On December 7, 2022, undersigned counsel engaged an investigator to look into the matter. The investigator, David Ballard, interviewed Ms. Beattie on December 20, 2022. Appendix pp. 5-6.

Considering these facts, this post-conviction is brought within one year of the time the new evidence could have reasonably been discovered as required by 22 O.S. § 1081.1. This statute is made applicable to capital post-conviction filings by 22 O.S. §1089 (E). This post-conviction also is brought within sixty days of the time the evidence was discovered. Court of Criminal Appeals Rule 9.7 (G)(3).

PART D: ARGUMENTS AND AUTHORITIES

PROPOSITION I

NEWLY DISCOVERED EVIDENCE ESTABLISHES AND/OR PROVIDES A REASONABLE LIKELIHOOD OF AN EVIDENTIARY HEARING ESTABLISHING THAT MR. SANCHEZ WOULD NOT HAVE BEEN CONVICTED, AND WOULD NOT HAVE RECEIVED A DEATH SENTENCE IF ALL EVIDENCE POINTING TOWARD THE GUILT OF THOMAS GLEN SANCHEZ, PETITIONER'S FATHER, HAD BEEN KNOWN TO THE JURY. CONSEQUENTLY, MR. SANCHEZ'S CONVICTION AND SENTENCE SHOULD BE VACATED UNDER OKLAHOMA LAW AND UNDER THE

EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

On direct appeal and in a federal petition for writ of habeas corpus, Anthony Sanchez's attorneys contended that there was substantial reason to suspect Anthony's father, Glen Sanchez, was the person who killed Jewell Busken.

Central to the position of Petitioner's counsel was the resemblance between the Merryman sketch and the 1996 photograph of Glen Sanchez. But also of importance was that, aside from the DNA, the evidence did not fit Anthony Sanchez. Ms. Merryman, said Ms. Busken, a University of Oklahoma student, was "several years younger than the gentleman she was with." (Tr. 1936) Ms. Busken was twenty-one years old at the time of her death (Tr. 1693), whereas Petitioner Sanchez turned eighteen in November of 1996. If he had been a couple of months younger at the time of the homicide, he would have been constitutionally ineligible for the death penalty.

Besides the Merryman sketch being of an older man resembling Anthony's father, other physical evidence, notably the fingerprints inside the car, tended to exclude Anthony Sanchez. There were also a number of hairs collected (Tr. 2217, 2256-57), without there ever being a report of a hair consistent with Anthony Sanchez.

Also absent was any incriminating statement on the part of Anthony Sanchez. None of the property stolen from Busken's car was recovered by virtue of Anthony Sanchez's arrest.

Ms. Beattie's statement that Glen Sanchez has confessed to her should be

considered in conjunction with these past anomalies in the case against Glen's son.

Counsel argued in the habeas proceedings that having a person's DNA at a crime scene is not sufficient to establish guilt beyond a reasonable doubt. *United States v. Bonner*, 648 P.2d 209, 212 (4th Cir. 2011). See also *O'Laughlin v. O'Brien*, 568 F.3d 287, 294-95 (1st Cir. 2009)(connection between defendant and item found at crime scene not sufficient to establish guilt).

Considering the dearth of evidence against Anthony Sanchez, coupled with the reasons to doubt his guilt, Mr. Sanchez's conviction and sentence should be vacated because there is clear and convincing evidence of his innocence. See *Slaughter v. State*, 2005 OK CR 6, 108 P.3d 1052, 1054.

And allowing Mr. Sanchez's conviction and sentence to stand violates the federal constitution in that, if all the present information had been known at trial, it would not have been reasonable to convict. *Sawyer v. Whitley*, 505 U.S. 333, 336, 112 S.Ct. 2514, 120 L.Ed2d 269 (1992). See also *Herrera v. Collins*, 506 U.S. 390, 41, 113 S.Ct. 853, 122 L.Ed2d 203 (1993)(truly persuasive innocence claim requires constitutional relief).

Considering the questions which arise here, this court should at a minimum grant an evidentiary hearing so the innocence claim can be explored further and so it can be determined whether further evidence can be developed that Glen Sanchez is the person who killed Jewell Busken.

Respectfully submitted,

MARK BARRETT, OBA # 557
P.O. Box 896
Norman, Oklahoma 73070
405-326-4758
barrettlawoffice@gmail.com
ATTORNEY FOR ANTHONY SANCHEZ

VERIFICATION

I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

February 1, 2023
Norman, Oklahoma

MARK BARRETT

CERTIFICATE OF SERVICE

I certify that on this _____ day of February, 2023, a true and correct copy of this document was forwarded to the Attorney General for the State of Oklahoma through the Clerk of this Court.

MARK BARRETT

