



4. The presiding judge at Mr. Cummings' trial was the Honorable Doug Gabbard, II.
5. Mr. Cummings is currently in custody at the H-Unit, Oklahoma State Penitentiary, P.O. Box 97, McAlester, Oklahoma 74502.

There are no criminal matters pending in other courts against Mr. Cummings, nor is there any sentence, capital or non-capital, to be served by Mr. Cummings in any other jurisdiction.

### I. Capital Offense Information

6. Mr. Cummings was convicted of two counts of Murder in the first degree, 21 O.S.1991, §701.7, with a sentence of death imposed on each count.

The aggravating factors alleged in the Bill of Particulars (OR 207) are:

Count I, the homicide of Judy Moody Mayo: the existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society. COUNT I WAS REVERSED WITH THE INSTRUCTION DISMISSED BY THE OKLAHOMA COURT OF APPEALS ON DIRECT APPEAL, AUGUST 4, 1998

Count II, the homicide of Melissa Moody: (1) the existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society, and (2) the murder was committed for the purpose of avoiding arrest or prosecution. IF 2 WAS DISMISSED BY THE OKLAHOMA CRIMINAL COURT OF APPEALS AUGUST 4, 1998 ON DIRECT APPEAL

The aggravating factors found by the jury were the same as those alleged in the Bill of Particulars.

Mitigating factors listed in the jury instructions (OR 465) that jurors could consider were, *inter alia*, the following:

Mr. Cummings has been an exemplary prisoner while incarcerated.  
Mr. Cummings has a family that loves and cares for him.  
There are others more morally culpable for these crimes.  
There is a residual doubt as to the guilt of Mr. Cummings.  
Mr. Cummings has performed acts of kindness to friends and family.  
Mr. Cummings has had an impoverished and deprived background.

Victim Impact Evidence was not introduced at Mr. Cummings' trial.

7. The finding of guilty was made after a plea of "not guilty" by Mr. Cummings.
8. Mr. Cummings was found guilty by a jury.

9. The two death sentences were determined by a jury.

## II. Non-capital Offense Information

10. A Second Amended Felony Information charged Count III, Child Abuse (OR 290). The trial court dismissed Count III at the close of the State's case (T. 855-56), because there was no evidence to corroborate the testimony of co-defendant Juanita Cummings in support of Count III.
11. No finding of guilt was made on the non-capital charge.
12. The non-capital charge was not submitted to the jury.

## III. Case Information

13. Mr. Cummings, who was indigent, was represented by court-appointed counsel in the trial court. The names and addresses of his trial attorneys are as follows:

Paul S. Faulk  
Capital Trial Division  
Oklahoma Indigent Defense System  
P.O. Box 926  
Norman, OK 73070-0926

Joseph O. Minter V  
P.O. Box 370  
Madill, OK 73446

14. Lead counsel was appointed by the trial court. Co-counsel was selected by lead counsel and contracted with by the State through the Oklahoma Indigent Defense System's Capital Trial Division, with a \$5000 cap on compensation paid to co-counsel.
15. Mr. Cummings has appealed his convictions to this Court, Case No. F-96-657.

**Appellant's Brief** was filed on July 7, 1997.

The State, through the office of the Attorney General, filed **Brief of Appellee** on November 3, 1997.

A **Reply Brief** was filed on behalf of Mr. Cummings on November 24, 1997.

**Oral Argument** was presented to this Court on March 10, 1998.

To date Mr. Cummings' direct appeal case has not been remanded to the District Court for an evidentiary hearing. An **Application for an Evidentiary Hearing**, alleging facts in support of a claim of ineffective assistance of trial counsel, was filed by appellate counsel on July 7, 1997. That motion is presently pending before this Court.

16. Mr. Cummings' direct appeal counsel is:

William H. Luker  
Capital Direct Appeals Division  
Oklahoma Indigent Defense System  
1660 Cross Center Drive  
Norman, Oklahoma 73019

17. No opinion has been issued; Mr. Cummings' direct appeal is presently pending before this Court.
18. No further review has been sought at this time, pending decision of this Court on the direct appeal and this Original Application for Post-Conviction Relief.

**Part B: Grounds For Relief**

19. A motion for discovery is being filed with this Application (*see* Addendum B). In addition, Mr. Cummings has filed two pending discovery motions with this Court, to wit:
- Motion to View Evidence Relevant to Innocence in the Possession of the OSBI, filed on February 2, 1998.
- Motion to Produce Brady Evidence Relevant to Innocence, filed on March 23, 1998.
20. A motion for evidentiary hearing is being filed with this Application (*see* Addendum B).
21. The other motions filed prior to the filing of this Application are:
- Petitioner's Motion for Extension of Time for Filing an Original Application for Post-Conviction Relief, filed on February 13, 1998, and which was granted by Order of this Court dated March 2, 1998.
- Joint Motion to Substitute Petitioner's Correct Name, Mr. J. Cummings, and to Strike by Interlineation the Incorrect Named Used in These Proceedings, filed on February 18, 1998.
- Petitioner's Motion for Extension of Time for Filing An Original Application for Post-Conviction Relief, filed on March 11, 1998, and which was granted by Order of this Court dated March 26, 1998.
22. The propositions raised in this Application are set forth in the Claims for Relief below, and are listed in the following Table of Contents.