

No.

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**IN THE SUPREME COURT OF THE UNITED STATES**

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WINSTON RAY WALTERS,

*Petitioner,*

v.

THE STATE OF OKLAHOMA,

*Respondent.*

---

*On Petition for a Writ of Certiorari to  
the Oklahoma Court of Criminal Appeals*

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTION PRESENTED FOR REVIEW**

Petitioner is a full tribal member of the Comanche Nation. The crimes occurred within the territorial boundary of the Kiowa-Comanche-Apache Nation Reservation. Under federal law, the State of Oklahoma has no jurisdiction to prosecute a criminal case on an “Indian reservation” committed by a tribal member. This Court has granted certiorari in an Oklahoma capital habeas case on the similar, but distinct, question whether the Creek Nation territorial boundaries in Oklahoma constitute an “Indian reservation” as that term is defined under 18 U.S.C. § 1151(a), and whether Congress has disestablished the reservation. *See Terry Royal, Warden, v. Patrick Dwayne Murphy*, No. 17-1107 (U.S.) (certiorari granted May 21, 2018). The question presented is:

Whether Congress has disestablished the reservation of the Kiowa-Comanche-Apache Nation in Oklahoma.

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TO: The Honorable Chief Justice and Associate Justices of the United States Supreme Court:

Winston Ray Walters petitions respectfully for a writ of certiorari to review the judgment of the Oklahoma Court of Criminal Appeals.

**OPINION BELOW**

The Oklahoma Court of Criminal Appeals issued an unpublished Order in this case on July 10, 2018. *See* attached Appendix “A” (*Winston Ray Walters v. State of Oklahoma*, No. PC-2018-592 (Okla.Cr., July 10, 2018)).

**JURISDICTION**

The judgment of the Oklahoma Court of Criminal Appeals was entered July 10, 2018. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1153(a) provides, in relevant part:

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely,...kidnapping...felony assault...burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

18 U.S.C. § 1151 provides, in relevant part:

“[T]he term ‘Indian country’, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.”

## STATEMENT OF THE CASE

On November 22, 2013, WINSTON WALTERS was charged initially, along with co-defendants JOHN EDWARD OXFORD and ANDREW GLENN TRAVIS, by felony Information filed in the district court of Stephens County, State of Oklahoma, with six counts: 1) Robbery (Conjoint); 2) Burglary in the First Degree; 3) Burglary in the Second Degree; 4) Conspiracy (Shop Building); 5) Conspiracy (Dwelling Home); and 6) Assault and Battery with a Dangerous Weapon. O.R. 2; 12 (Amended Information).

Preliminary examination was held on May 20, 2014, before the Hon. Jerry W. Herberger. At the conclusion of the evidence, the court found probable cause to issue a bind-over order on the six charged counts, but also added a *seventh count* of Kidnaping. On May 27, 2014, the State filed a Second Amended Information charging Walters with the seven counts.

On the day of trial, February 17, 2015, the State moved to dismiss Count 5 (Conspiracy), and the trial court ordered it dismissed. The State thereafter filed a final “Trial Information” alleging six

counts. Thus, Walters faced six counts when trial commenced in the courtroom of the Hon. Ken Graham.

After four days of trial, the jury returned a verdict of Guilty on Count I (Conjoint Robbery) and recommended 35 years; Guilty on Count II (Burglary in the First Degree) and recommended 17 years; Not Guilty on Count III (Burglary in the Second Degree); Not Guilty on Count IV (Conspiracy); Guilty on Count V (Assault and Battery with a Deadly Weapon) and recommended 25 years; and Guilty on Count VI (Kidnapping) and recommended 15 years.

Formal sentencing was had on May 12, 2015, at which Judge Graham imposed sentence according the recommendations of the jury, and ordered also that all sentences run *consecutively* for a total of 92 years in prison.

Walters filed notice of intent to appeal on May 21, 2015. On October 12, 2016, the Oklahoma Court of Criminal Appeals issued a written, but unpublished, opinion denying relief. *See Winston Ray Walters v. State*, No. F-2015-503 (Ok1.Cr., October 12, 2016) (unpublished).

Thereafter, on January 10, 2018, Walters filed an application for post-conviction relief in the district court of Stephens County, State of Oklahoma. The district court issued an Order of Summary Disposition on April 12, 2018. *See* Appendix “B.” Walters appealed to the Oklahoma Court of Criminal Appeals, which issued an Order on July 10, 2018, denying post-conviction relief. *See* Appendix “A.”

### **STATEMENT OF THE FACTS**

As outlined, *supra*, Walters was convicted by a state court jury of: Count I (Conjoint Robbery) and recommended 35 years; Count II (Burglary in the First Degree) and recommended 17 years; Count V (Assault and Battery with a Deadly Weapon) and recommended 25 years; and Count

VI (Kidnapping) and recommended 15 years. After he was denied relief on direct appeal, he filed an application for post-conviction relief in state district court, asserting, *inter alia*, that the State of Oklahoma did not have jurisdiction to prosecute him in a criminal case because he is an “Indian” under federal law who was accused of committing a crime enumerated in 18 U.S.C. § 1153(a).

As Walters asserted in his Application for Post-Conviction Relief and on direct appeal to the Oklahoma Court of Criminal Appeals, the crimes for which Walters was convicted occurred “three and three-quarters west of Comanche on Highway 53, north side of the roadway” in Stephens County, State of Oklahoma, or mailing address of Route 3 Box 89, Comanche, Oklahoma—which is in the boundary of the Kiowa-Comanche-Apache Nation reservation, and is thus “Indian Country” under federal law.

In addition, Walters is a member of the Comanche Nation, is thus an “Indian” for purposes of this issue. Neither the State nor the district court, or the Oklahoma Court of Criminal Appeals contested the fact that the crimes occurred in Indian Country (within the bounds of the reservation) or that Walters is an Indian. The legal issue centered around whether Congress has “disestablished” the Tribes explicitly such that federal jurisdiction has been extinguished and the State may prosecute in a criminal case.

In the courts below, Walters notified the state courts that this Court had granted certiorari in a case raising an almost identical issue. *See Terry Royal, Warden, v. Patrick Dwayne Murphy*, No. 17-1107 (U.S., cert. granted May 21, 2018). The Oklahoma Court of Criminal Appeals, however, noted that the Tenth Circuit Court of Appeals had issued a stay in the *Murphy* case pending review in this Court. *See* Appendix “A” at 3. Thus, according to the OCCA, the jurisdictional arguments raised by Walters were “premature” and the court did not address them. *Id.*



## REASONS FOR GRANTING THE WRIT

This Court should grant the writ because Walters raises an almost identical legal claim as the Petitioner in *Terry Royal, Warden, v. Patrick Dwayne Murphy*, No. 17-1107 (U.S., cert. granted May 21, 2018). The outcome in the *Murphy* case in this Court will likely impact the legal analysis of the federal law issue of the extent to which the State of Oklahoma has jurisdiction to prosecute an accused such as Walters.

As noted, this case involves an “Indian” convicted of committing criminal offenses (major crimes) against non-Indians within “Indian Country”; thus, under current federal law the State of Oklahoma lacks subject-matter jurisdiction over the case. 18 U.S.C. § 1153 (the Major Crimes Act); *see also Solem v. Bartlett*, 465 U.S. 463, 465, 104 S.Ct. 1161, 79 L.Ed.2d 443 (1984) (“Within Indian Country, state jurisdiction is limited to crimes by non-Indians against non-Indians, and victimless crimes by non-Indians.”); *accord State v. Klindt*, 1989 OK CR 75, ¶ 3, 782 P.2d 401, 403 (“[T]he State of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country.”)

The issue is framed by this Court’s analysis in *Solem v. Bartlett*, 465 U.S. 463, 104 S.Ct. 1161, 79 L.Ed.2d 443 (1984). Pursuant to *Solem*, courts must *presume* that Congress did not intend to diminish or disestablish an Indian reservation absent “clear and plain” evidence to the contrary. *Solem*, 465 U.S. at 470-71.

Indian reservations are only deemed diminished when there exists: 1) a clear congressional intent reflected in the text of a statute; 2) a history associated with enactment of the statute that “unequivocally reveal[s] a widely-held, contemporaneous understanding that the affected reservation would shrink as a result of the proposed legislation; and 3) “to a lesser extent,” events occurring after

the passage of the statute that unambiguously show evidence of a congressional intent to diminish the reservation. *Id.*

In the lower courts in the *Murphy* case, the Tenth Circuit applied the *Solem* test and concluded that the Muscogee (Creek) Nation Reservation was originally established by a land patent authorized in an 1833 treaty, that the Reservation was diminished by reaffirmed in an 1866 treaty; and that, applying *Solem*, the boundaries set in 1866 had subsequently never been diminished or disestablished by any one of the several statutes examined by the Court. *Murphy*, *slip op.* 32-56.

The same is true for the Comanche, and by extension to Walters. The 480,000 acres of the reservation was created by the Agreement with the Comanche, Kiowa and Apache signed with the Cherokee Commission during October 6-21, 1892. Walters asserts that these are the tribal lands in existence today in Oklahoma, that they have not been diminished or extinguished by Congress, and the headquarters of the Comanche Tribe today is located in Lawton, Oklahoma.

Thus, pursuant to 18 U.S.C. § 1153, *Solem*, *Klindt*, and the Tenth Circuit's opinion in *Murphy*, exclusive jurisdiction in such a case lies with the federal government and not the State of Oklahoma. The State had no jurisdiction to either try, convict, or sentence Walters in this case, and this Court must reverse with instructions to dismiss for lack of jurisdiction.

The State and the district court below concluded otherwise, relying upon *Lone Wolf v. Hitchcock*, 187 U.S. 553, 23 S.Ct. 216, 47 L.Ed. 299 (1903), and *Solem*. Specifically, the state district court seemed to hold that *Lone Wolf* held that Congress had diminished the Kiowa-Comanche-Apache Nation Reservation when by an act of Congress, two million acres were opened up for white settlement. This is so, according to the district court, because the *Solem* test holds that “when Congress purchases surplus lands from the tribes and opens that land for settlement by whites,

the land lost its Indian character and diminishment has occurred.” See Appendix “B” at 2. This is totally incorrect in the view of Walters.

*Lone Wolf* was a dispute where Indians attempted to involve the federal judiciary in a dispute it had with Congress over treaty provisions. This Court held that it was Congress, not the judiciary, that had plenary authority to deal with the Indian tribes. The case was one that dealt with the proper governmental entity to decide questions regarding the Indians, not whether disestablishment of a tribe had occurred.

Moreover, *Solem* stands for the exact opposite of the legal proposition cited by the state district court. *Solem* was a federal habeas corpus case in an underlying criminal matter where the issue was whether Congress had disestablished the Cheyenne River Sioux Reservation by opening it up to non-Indian settlement within the existing boundaries of the reservation—just like the reservation boundaries here in Oklahoma have been opened to white settlers to own land. This Court held in *Solem* that opening up the reservation boundaries to white settlement did *not* disestablish the Reservation; and the presumption that Congress did not intend to disestablish the Reservation stood. *Solem*, 465 U.S. at 481.

This is exactly the situation with Walters.

The Comanche Nation reservation boundaries still stand, even though some of the land has been open to white settlement, but Congress has made no explicit judgment that the reservation boundaries have been diminished. The State and the state district court believe that the Reservation has been dissolved. As Walters pointed out in the courts below, this conclusion would come as a shock to the Comanche Nation, which is located in Lawton, Oklahoma

Thus, the primary reason to grant the writ is to, as this Court has agreed to do in *Murphy*,

clarify the meaning of the *Solem* test to Tribes in Oklahoma, and to explicate the holding of *Lone Wolf* to the extent that it has any bearing on whether Congress disestablished the Kiowa-Comanche-Appache Tribe which concerns Walters.

Second, although Walters raised this jurisdictional claim directly in the state district court and in the Oklahoma Court of Criminal Appeals (the OCCA) on the basis of the *Solem* test and *Lone Wolf*, the OCCA refused to address the merits of the claim, holding that the claim was based on the Tenth Circuit's opinion in *Murphy* which has been stayed by that court pending review in this Court. See Appendix "A" at 3. Thus, according to the OCCA, this claim as raised by Walters was "premature." *Id.*

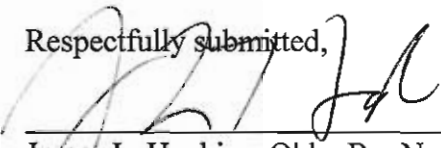
Walters disagrees. The basic facts are not in dispute, and his claim was raised based on established authority and analysis from the cases of this Court (*Solem* and *Lone Wolf*). Walters is entitled to a decision on the merits, and to the extent that this Court will re-visit the *Solem* test in this area of the law, Walters seeks review even in the form of a G/V/R based upon resolution of the *Murphy* case pending in this Court.

## CONCLUSION

For the reasons stated above, the Petitioner prays respectfully that a Writ of Certiorari issue to review the judgment of the Oklahoma Court of Criminal Appeals.

DATED this 5<sup>th</sup> day of October, 2018.

Respectfully submitted,



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*COUNSEL FOR PETITIONER*

*In the*

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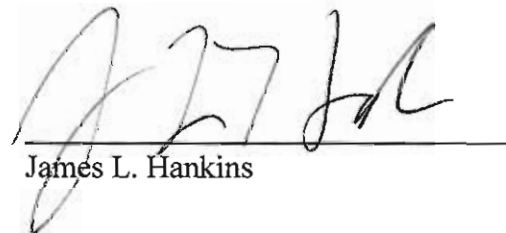
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**CERTIFICATE OF SERVICE**

I, James L. Hankins, certify that I have this 5<sup>th</sup> day of October, 2018, served a copy of  
Petitioner's *Petition for Writ of Certiorari to the Oklahoma Court of Criminal Appeals*, by  
depositing the copy in the United States Mail, first-class postage pre-paid thereon, addressed to:

Robert Whittaker  
ASSISTANT ATTORNEY GENERAL  
313 N.E. 21<sup>st</sup> St.  
Oklahoma City, OK 73105  
Telephone: 405.521.3921

All parties required to be served have been served.

  
James L. Hankins

*In the*

**SUPREME COURT OF THE UNITED STATES**

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WINSTON RAY WALTERS,

*Petitioner,*

v.

THE STATE OF OKLAHOMA,

*Respondent.*

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**APPENDIX “A”**

Order Affirming Denial of Application for Post-Conviction Relief  
*Winston Ray Walters v. State of Oklahoma*, No. PC-2018-592 (Okl.Cr., July 1, 2018)

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

JUL 10 2018

**WINSTON RAY WALTERS,**

**Petitioner,**

**v.**

**No. PC 2018-0592**

**THE STATE OF OKLAHOMA,**

**Respondent.**

**ORDER AFFIRMING DENIAL OF APPLICATION**  
**FOR POST-CONVICTION RELIEF**

On June 11, 2018, Petitioner, by and through counsel James L. Hankins, filed an appeal of the order of the District Court of Stephens County, Case No. CF-2013-419A, denying his application for post-conviction relief. The record reflects Petitioner was convicted on February 25, 2015, of Count 1 – Conjoint Robbery, Count 2 – Burglary in the First Degree, Count 5 – Assault and Battery with a Deadly Weapon, and Count 6 – Kidnapping. He was sentenced to thirty-five years on Count 1, seventeen years on Count 2, twenty-five years on Count 5 and fifteen years on Count 6. The sentences were ordered to run consecutively. Petitioner's conviction was appealed to this Court and affirmed in an unpublished opinion issued October 12, 2016, Appeal No. F 2015-503.



In the District Court, citing *Murphy v. Royal*, 866 F.3d 1164 (10<sup>th</sup> Cir. 2017), Petitioner argued that the District Court lacked subject matter jurisdiction over the case because Petitioner is an Indian and the criminal act occurred in Indian country. Petitioner states that he is a full tribal member of the Comanche Nation and that just as the Tenth Circuit held that the Muscogee (Creek) Nation has not been disestablished by Congress, the same is true for the Comanche Nation. Petitioner also argued that he was deprived of his right to a fair and impartial trial judge in violation of due process. On post-conviction appeal Petitioner also argues he received ineffective assistance of appellate counsel.

In an order filed April 12, 2018, the District Court denied Petitioner's post-conviction application. The Honorable Ken J. Graham, District Judge, found the holding in *Murphy* is distinguishable from the present case in that the Tenth Circuit held the Muscogee (Creek) Reservation had not been diminished nor had the boundaries been disestablished; however, citing *Solem v. Bartlett*, 465 U.S. 463, 104 S.Ct. 1161, 9 L.Ed.2d 443 (1984), Judge Graham concluded that the Kiowa-Comanche-Apache Nation Reservation was diminished by the agreement signed by the members of the

confederated tribes and three commissioners representing the United States. Judge Graham also found no merit to Petitioner's claim that he was deprived of his right to a fair and impartial trial.

The Tenth Circuit's order issued November 16, 2017, in *Murphy* stayed the unopposed motion to stay the mandate pending the filing of a Petition for Writ of Certiorari in the United States Supreme Court. Mandate was stayed for ninety days and/or until the deadline passed for filing a certiorari petition in the Supreme Court. If the certiorari petition was filed, the Tenth Circuit ordered that the stay would continue until the Supreme Court's final disposition. As a petition for a writ of certiorari was filed in the United States Supreme Court on February 6, 2018, the matter is stayed until the Supreme Court's final disposition. Petitioner's argument based upon the Tenth Circuit's holding in *Murphy* and the application of its holding to other Indian lands is premature. Ineffective assistance of appellate counsel was not raised in the District Court and, therefore, is not properly before this Court. The remaining issues have been waived.

Accordingly, the denial of Petitioner's application for post-conviction relief is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018), the

**MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this  
10<sup>th</sup> day of July, 2018.

  
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**GARY L. LUMPKIN, Presiding Judge**

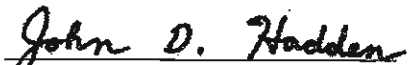
  
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**DAVID B. LEWIS, Vice Presiding Judge**

  
\_\_\_\_\_  
**ROBERT L. HUDSON, Judge**

  
\_\_\_\_\_  
**DANA KUEHN, Judge**

  
\_\_\_\_\_  
**SCOTT ROWLAND, Judge**

ATTEST:

  
\_\_\_\_\_  
Clerk

OA

*In the*

**SUPREME COURT OF THE UNITED STATES**

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WINSTON RAY WALTERS,

*Petitioner,*

v.

THE STATE OF OKLAHOMA,

*Respondent.*

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**APPENDIX “B”**

Order of Summary Disposition

*Winston Ray Walters v. State of Oklahoma*, No. CF-2013-419 (April 12, 2018)

APR 11 2018

IN THE DISTRICT COURT WITHIN AND FOR STEPHENS COUNTY,  
STATE OF OKLAHOMA

FILED DISTRICT COURT  
Stephens County, Okla.

APR 12 2018

DANA BLEVINS  
COURT CLERK

WINSTON RAY WALTERS;

Petitioner,

vs.

STATE OF OKLAHOMA,

Respondent.

Case No. CF-2013-419A

**ORDER OF SUMMARY DISPOSITION**

On January 10, 2018, the Petitioner filed an Application for Post-Conviction Relief by and through his attorney, James L. Hankins, of Timberbrooke Business Center. On January 30, 2018, the State of Oklahoma filed its Response.

Based upon the files, record and pleadings in this cause, the Court finds as follows:

1. Petitioner was found guilty by a jury on February 25, 2015 of Count I: Conjoint Robbery; Count II: Burglary in the First Degree; Count V: Assault and Battery with a Deadly Weapon; and Count VI: Kidnapping.
2. Consistent with the jury's recommendation, Petitioner was sentenced to the following, to-wit:

Count I: Conjoint Robbery - thirty-five (35) years in the Department of Corrections;  
Count II: Burglary in the First Degree - seventeen (17) years in the Department of Corrections;  
Count V: Assault and Battery with a Deadly Weapon - twenty-five (25) years in the Department of Corrections; and  
Count VI: Kidnapping - fifteen (15) years in the Department of Corrections.

The Court ordered these sentences to run consecutively.

**Proposition I**

The Petitioner challenged that the District Court lacked subject matter jurisdiction over this case because the Petitioner is an Indian and the criminal acts occurred in Indian Country. *Murphy v. Royal*, 866 F.3d 1164 (10 circ. 2017)

The Trial Court, after reviewing the State's Response to Application for Post-Conviction Relief, hereby adopts the holding in *Lone Wolf v. Hitchcock*, 187 U.S. 553, 23 S. Ct. 216, 47 L.Ed. 299 (1903) and in conjunction with the holding in *Solem v. Bartlett*, 465 U.S. 463, 104 S. Ct. 1161, 9 L.Ed.2d 443 (1984) and finds that the Kiowa-Comanche-Apache Nation Reservation was diminished by the agreement signed by the members of the confederated tribes and three (3) commissioners representing the United States.

The agreement provided for a surrender of the rights of the tribes in the reservation to the United State, and to the allotments out of such lands to the Indians in severalty. Fee simple title would be given to the Indian allottees at the end of twenty-five (25) years.

The tribes received \$2,000,000.00 as the consideration for the remaining surplus lands over and above the allotted lands.

The United States then opened the non-allotted land, constituting 2,000,000 acres to settlement by white men.

The Act of Congress of June 6, 1900, diminished the Kiowa-Comanche-Apache Nation Reservation by buying the surplus 2,000,000 acres and opening it up for white settlement.

The Supreme Court case of *Solem v. Bartlett*, 465 U.S. 463, 104 S. Ct. 1161, 79 L.Ed.2d 443 holds that "when Congress purchases surplus lands from the tribes and opens that land for settlement by whites, the land lost its Indian character and diminishment has occurred."

The holding in *Murphy v. Royal*, 866 F.3d 1164 (10 circ. 2017) is distinguishable from the present case in that the Tenth Circuit held the Muscogee (Creek) Reservation had not been diminished nor had the boundaries been disestablished.

Petitioner's Proposition I is without merit and hereby denied.

### **Proposition II**

The Petitioner alleges that he was deprived of his right to a fair and impartial trial Judge in violation of due process.

The Post-Conviction Procedure Act, 22 O.S. § 1080 is not a substitute for a direct appeal. "Issues that were not raised on direct appeal, but could have been raised are waived." *Logan v. State*, 2013 OK CR2, ¶ 3, 293 P.3d 969.

The Petitioner alleges that had he known the trial Judge was the son-in-law of a murder victim, he would "possibly have sought recusal of the Judge." The only impropriety alleged was that the Court sentenced the Petitioner to serve his sentences consecutively. "Therefore, the Court must have been impartial!"

Court of Criminal Appeals in their unpublished Summary Opinion in F-2015-503, (TCC# CF-2013-419A) found in first paragraph, Page 8, that "since Appellant shared authority with his older accomplice, showed a level of callousness both during and after the offenses, and appeared to lack any remorse we find that the trial Court did not abuse its discretion when it ordered Appellant sentences to run consecutively"

The trial Court heard testimony of the victims that described the cold, callous actions of the Defendant.

The evidence was that the victims were in bed asleep and were awakened by their small dog barking and the sound of glass breaking. The husband got up and walked into his den, when he noticed a man crouching next to his gun safe. The victim yelled and was shot in the back by the defendant who had been hiding behind the victim. The defendant then went to the bedroom and grabbed the wife and dragged her into the den. He then pointed his gun at the wife's head and threatened to "blow her brains out" if the husband did not open the safe.

The Defendant and his accomplice taped the wife to a chair, took all of the phones they could find, and as they were leaving, shot the husband again through both knees, while he was lying in a fetal position on the floor.

The trial Court sentenced the Defendant in accordance with the jury verdict and ordered the sentences to run consecutively.

The Court of Criminal Appeals has already determined that the trial Court did not abuse its discretion.

The trial Court does not remember whether it disclosed the fact that his wife's father was murdered in Comanche County in 2008.

The trial Court was also a victim of a Burglary 2<sup>nd</sup> Degree in 1989 and the perpetrator was never found. Does this make the trial Court unfit to preside over a burglary trial?

The incidents that the Appellant complains of were absolutely not a factor in this Court presiding over the Appellants trial. The only error this Court is aware of the Appellant raising is the consecutive sentences.

A trial by jury is a judgment of twelve (12) people, not a judge.

The trial Court did not know any of the Defendant's or either of the victims. All other witnesses were law enforcement or from out of the Court and unknown to the Court. The Court never even considered or thought about a possible conflict.

The Petitioner alleges in Proposition II that his case was "very similar to a home invasion out of Lawton that ended in murder." The victim was the trial judge's father-in-law.

The Petitioner is mistaken about being a home invasion murder. It was not. The defendant's in that case were known to the victim. There were confessions and a plea negotiated by the Comanche County District Attorney and the Defendant's lawyers.

The trial judge in the Petitioner's case did "not" attend any court hearings, pleas or had any connection to the case in Comanche County.

Petitioner's Proposition II is without merit is hereby denied.

THEREFORE the Petitioner's Application for Post-Conviction Relief is hereby **DENIED.**

**IT IS SO ORDERED.**

  
KEN J. GRAHAM  
DISTRICT JUDGE



CERTIFICATE OF RECEIPT/MAILING

I, Dana Blevins, District Court Clerk, do hereby certify that this office is in receipt of the above and foregoing ~~Order~~ of the Court and that the same has been filed in this office on this 12 day of April, 2018 and a true and correct copy of the same was mailed to the following:

Court of Criminal Appeals  
2100 N. Lincoln Blvd, #2  
Oklahoma City, OK 73105

James L. Hankins  
Timberbrooke Business Center  
929 N.W. 164<sup>th</sup> St.  
Edmond, OK 73103

and a true and correct copy of the same was hand delivered to:

Office of the District Attorney  
Stephens County Courthouse  
101 S. 11th St.  
Duncan, OK 73533

DANA BLEVINS, COURT CLERK

By: *Dana Blevins*

~~DEPUTY~~ COURT CLERK

I, DANA BLEVINS, COURT CLERK  
for STEPHENS COUNTY, OKLA., hereby certify  
that the foregoing is a true, correct and complete  
copy of the instrument herewith set out as appears  
of record in the COURT CLERK'S OFFICE of  
STEPHENS COUNTY, OKLA.

This 12 day of Apr 2018

DANA BLEVINS, COURT CLERK

BY *Dana Blevins* ~~DEPUTY~~