

**IN THE DISTRICT IN AND TULSA COUNTY  
STATE OF OKLAHOMA**

**THE STATE OF OKLAHOMA,**     )  
  )  
  )  
  )  
**vs.**    )     **Case No. CF-2007-5987**  
  )  
**KIMBERLY GRAHAM,**                     )

**Second Application for Post Conviction Relief**

**Part A**

The sentence from which I seek relief is as follows:

- 1. (a) Court in which sentence was rendered in Tulsa County.
- 2. (b) Case Number CF-2007-5987
- 3. Date of sentence September 1, 2009
- 4. Terms of sentences:
  - Count 1 First-Degree Manslaughter 20 years DOC
  - Count 2 First-Degree Manslaughter 20 years DOC
  - Count 3 First-Degree Manslaughter 20 years DOC
  - Count 4 First-Degree Manslaughter 20 years DOC
  - Count 5 First-Degree Manslaughter 20 years DOC
  - Count 6 Leaving the Scene of a Fatality Accident 7 years DOC

- 5. Name of Presiding Judge Tom Gillert  
Are you now in custody serving this sentence? Yes  
Where? Mabel Bassett Correctional Center McLoud, OK
- 6. For what crime or crimes were you convicted? 5 Counts of First Degree Manslaughter and Leaving the Scene of a Fatality Accident

- 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)     A judge without a jury ( )
- 9. Name of lawyer who represented you in trial court: Kevin Adams
- 10. Was your lawyer hired by you or your family?     Yes( ) No(X )  
Appointed by the court?                             Yes( ) No(X )

11. Did you appeal the conviction? Yes( ) No( )  
 To what court or courts? Oklahoma Court of Criminal Appeals
12. Did a lawyer represent you for the appeal? Yes( ) No( )  
 Was it the same lawyer as in No. 9 above? Yes( ) No()  
 If "no," what was this lawyer's name? James Hankins
13. Was an opinion written by the appellate court? Yes()No( )  
 If "yes," give citations if published: \_\_\_\_\_  
 If not published, give appellate case no.: F-2009-786
14. Did you seek any further review of or relief from your conviction at any other time in any court? Yes( ) No( )  
 If "Yes," state when you did so, the nature of your claim and the result (include citations to any reported opinions.)

An Application for Post Conviction Relief was filed on 11-21-2012 by another lawyer and nothing has happened on that application since.

## PART B

### First Proposition

I have one (1) proposition for relief from the conviction and sentence described in PART A. This is my sole proposition.

Because I am an Indian and a member of a federally recognized tribe, the State of Oklahoma was without jurisdiction to charge, try, convict and sentence me for Manslaughter that occurred on "Indian Land" according to federal law.

1. Of what legal right or privilege do you believe you were deprived in your case?

Due Process of Law, the State of Oklahoma convicted and sentenced me for a crime they had no jurisdiction to convict and sentence me for.

2. In the facts of your case, what happened to deprive you of that legal right or privilege and who made the error of which you complain?

The state was in error in believing that it had jurisdiction.

3. List by name and citation any case or cases that are very close factually and legally to yours as examples of the error you believe occurred in your case.

*Murphy v. Royal*, \_\_\_ F.3d \_\_\_, Case Nos. 07-7068, 15-7041 (10th Cir. Aug. 8, 2017)

4. How do you think you could now prove the facts you have stated in answer to Question No. 2, above? Attach supporting documentation.

See attached exhibits A and B to Brief in Support of Application for Post Conviction Relief.

The factual issues are not expected to be in dispute.

Or in the alternative at an evidentiary hearing pursuant to Section 3.11 (B) (3) (b), Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch 18, App. (1998).

5. If you did not timely appeal the original conviction, set forth facts showing how you were denied a direct appeal through no fault of your own.

N/A

6. Is this a proposition that could have been raised on Direct Appeal? Yes( ) No(X )

Explain: Because case the APC is based upon was not issued until August 8th of this year.

### **PART C**

I understand that I have an absolute right to appeal to the Court of Criminal Appeals from the trial court's order entered in this case, but unless I do so within thirty (30) days after the entry of the trial judge's order, I will have waived my right to appeal as provided by Section 1087 of Title 22.

### **PART D**

I have read the foregoing application and assignment(s) of error and hereby state under oath that there are no other grounds upon which I wish to attack the judgment and sentence under which I am presently convicted. I realize that I cannot later raise or assert any reason or ground known to me at this time or which could have been discovered by me by the exercise of reasonable diligence. I further realize that I am not entitled to file a second or subsequent application for post-conviction relief based upon

facts within my knowledge or which I could discover with reasonable diligence at this time.

STATE OF OKLAHOMA                    )  
COUNTY OF TULSA                    )

Kimberly Graham, being first sworn under oath, states that he signed the above application and that the statements therein are true to the best of his/her knowledge and belief.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me this \_\_\_\_th day of August, 2017.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

Respectfully Submitted,

\_\_\_\_\_  
Kevin D. Adams, OBA# 18914  
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**CERTIFICATE OF DELIVERY**

I hear by certify that a copy of the foregoing instrument was mailed or delivered on August \_\_\_\_\_, 2017 to the office of the following:

Tulsa County District Attorney's Office

\_\_\_\_\_  
Kevin Adams

Tulsa County District Attorney's Office

&

The District Judge Assigned to the Case

\_\_\_\_\_  
Kevin D. Adams