# IN THE DISTRICT COURT OF TULSA COUNTY STATE OF OKLAHOMA

APRIL ROSE WILKENS, PETITIONER,

Case No: CF-99-2575

STATE OF OKLAHOMA, SALLY HOWE SMITH, COURT CLERK STATE OF OKLA. TULSA COUNTY RESPONDENT.

### APPLICATION FOR POST-CONVICTION RELIEF

### PART A

I, April Rose Wilkens, whose present address is Mabel Bassett Correctional Center, 29501 Kickapoo, McLoud, Oklahoma 74851, hereby apply for relief under the Post-Conviction Act of <u>Title 22 O.S. Section 1080 et seq.</u>

The sentence from which I seek relief is as follows:

- 1. (a) Court in which sentence was rendered: <u>District Court of Tulsa County</u>
  - (b) Case Number: <u>CF-99-2575</u>
- 2. Date of Sentence: 10 July 2000
- 3. Terms of Sentence: Two years
- 4. Name of Presiding Judge: Michael Gassett
- 5. Are you in custody serving this sentence: <u>I am in prison serving a life sentence in related</u>

  <u>District Court of Tulsa County case number CF-98-2173</u>

Where: Mabel Bassett Correctional Center, 29501 Kickapoo Road, McLoud, OK 74851

6. For what crime or crimes were you convicted: Possession of a controlled drug

7. 8.	After plea of guilty ( ) After plea of not guilty, check whether the finding was A jury ( )  A jury ( ) A judge without a jury ( X )  Name of Lawyer who represented you in trial court? Julia O'Cor		st (X) No (X)
10.	Was your lawyer hired by you or your family?	Yes (X)	No()
	Appointed by the court?	Yes()	No (X)
11.	Did you appeal the conviction?	<u>N/A</u>	
12.	Did a lawyer represent you for the appeal?	N/A	
	Was it the same lawyer as in No. 9 above?	N/A	
	If "no" what was this lawyer's name?  Was an opinion written by the appellate court?	<u>N/A</u>	
13.		<u>N/A</u>	
	If "yes" give citations if published:  If not published, give appellate case no:	<u>N/A</u>	
	als any further review of or relief from your conviction at any other		
14	in any court?	Yes ( )	140 (11)
	If "Yes" state when you did so, the nature of your claim and the result (include citation		
	to any reported opinions.)	N	<u>'A</u>

### PART B

(If you have more than one proposition for relief, attach a separate sheet for each proposition. Answer the questions below as to each additional proposition, labeled SECOND PROPOSITION, THIRD PROPOSITION.)

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

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

  I was deprived of my Fourteenth Amendment right to due process before a fair and impartial tribunal and my Sixth Amendment right to effective assistance of counsel.
  - 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 instant case (hereafter the "drug case") was filed and prosecuted by Tulsa County District Attorney Tim Harris in May 1999, one month after I was convicted of first-degree murder in a related District Court of Tulsa County case, case number CF-98-2173 (hereafter the "murder case"). DA Harris based the charges in this drug case on the testimony of a Tulsa police officer at my April 1999 trial in the murder case. The officer, Aaron Tallman, testified that he took me to a mental hospital after he saw drug paraphernalia and discovered drugs in my purse on 2 April 1998, just a few weeks before I shot and killed my ex-fiancé, Terry Carlton, the decedent in the murder case. As reported by the *Tulsa World* newspaper, when DA Harris filed this drug charge, he claimed that the previous district attorney should have filed the charge "a

long time ago. Terry Carlton's life might have been saved." See Exhibit A (11 July 2000 Tulsa World newspaper article titled "Drug Conviction Adds 2 Years to Woman's Murder Sentence").

against my Application for Post-conviction Relief in 2003 in that case. See the April 1999 murder trial transcript. See also Second Application for Post-conviction Relief filed in the murder case on Application for Post-conviction Relief filed in the murder case on Application for Post-conviction Relief by Tim Harris filed in the murder case). It turns out that Harris is a personal friend of Terry Carlton's father, Don Carlton. Id. at Exhibit 1 (21 July 2006 Tulsa World newspaper article titled "DA's Race Among Most Moneyed"). Moreover, Don Carlton, a well-known auto dealer, was an ardent financial contributor to Tim Harris's political coffers. Id. Don Carlton even hosted at least one campaign fundraiser for Harris in 2006. Id. And in late 2006, the state Ethics Commission issued a report listing Harris as one of the top two campaign rule-breakers. Id. at Exhibit 2 (18 November 2006 Tulsa World newspaper article titled "Donor Reports Missing the Mark"). The report revealed that Harris accumulated 240 campaign rule violations by failing to disclose the occupation and/or employer of his campaign contributors. Id.

At no point in this drug case or the murder case did DA Tim Harris ever divulge his and Don Carlton's friendship and financial ties. A conflict of interest clearly existed and still does, and there is an unacceptable appearance of bias against me. Therefore, Harris and his office should have recused from handling both cases. I contend that Harris and Carlton were friends by the time Harris prosecuted me at the murder trial in April 1999 and filed this drug case in May 1999. Id. at Exhibit 1 (21 July 2006 Tulsa World newspaper article titled "DA's Race Among Most Moneyed," wherein Don Carlton acknowledges that he met DA Tim Harris in 1998 and

they became personal friends). (For one thing, how often does Tulsa Ccunty's elected district attorney personally prosecute a case, as Harris did my murder case?) And because Harris failed to divulge his and Carlton's friendship and financial ties when he argued against my Application for Post-conviction Relief filed in the murder case in 2003, Harris cannot be trusted to tell the truth about whether or not he and Carlton were friends when he personally prosecuted me at the murder trial in April 1999 and filed this drug case in May 1999.

Bolstering my claim that DA Harris and his office should not have prosecuted this case is the fact that in 2003, while my Application for Post-conviction Relief in the murder case was still pending, Harris was embroiled in a very public scandal in which another Tulsan, David Wheeler, accused Harris's office of asking for money to prosecute a suspect in the murder of his father, Roger Wheeler. David Wheeler was quoted by the *Tulsa World* newspaper accusing an assistant district attorney of asking, " 'Has Tim [Harris] asked you for money yet? Well, if he does, just turn him down.' " Suspiciously, the assistant DA claimed he couldn't remember whether or not he said that to Mr. Wheeler. Mr. Wheeler went on to say, "You can't give somebody money to prosecute. Everybody should be afforded equal protection under the law....They wanted money. We didn't pay, and the result is obvious." *Id. at Exhibit 3 (20 July 2003 Tulsa World newspaper article titled "DA, Law Officers in Feud")* (The suspect, notorious former FBI agent Paul Rico, whom Harris refused to prosecute, was later indicted by a Tulsa County grand jury. Rico died while awaiting trial.)

DA Tim Harris said and did many reprehensible things that hurt me in the murder case. One example of this occurred during closing arguments at the April 1999 murder trial, when Harris said this to my jury about the three emergency protective orders I obtained against Terry Carlton:

The State of Oklahoma believes these were just tactics, manipulative tactics to screw with her boyfriend. [April Wilkens] also likes to cry rape. When in trouble, cry rape. Everybody listens...You know, the only version you have is the defendant's. Because [Terry Carlton] can't talk.

Murder Trial Transcript at Vol. XV pages 3055-56. See also Application for Post-conviction Relief filed in the murder case on 16 August 2009, at Exhibit 4 (Trial Transcript excerpt of Tim Harris's closing arguments at the murder trial). Four years later, in my 2003 Application for Post-conviction Relief in the murder case, I presented evidence of an audiotape recording that was not presented at my trial of Terry Carlton arrogantly admitting that he had physically assaulted and raped me. Id. at Exhibit 5 (5 March 2003 Application for Post-Conviction Relief filed in the murder case). (The audiotape was in the possession of Federal District Judge Claire Eagan, who represented me in a protective order application against Terry Carlton prior to assuming her duties on the federal bench; however, the attorney who represented me at trial in the murder case failed to contact Judge Eagan before rial, and therefore that evidence was not presented at the murder trial. Id. at Exhibit 5 Appendix of Supporting Documents (Affidavit of Claire Eagan and audiotape transcript of Terry Carlton admitting he In spite of-and likely because of-this concrete physically and sexually assaulted me).) evidence disproving Harris's arguments at the murder trial, Harris argued against my Application for Post-conviction Relief in that case. Id. at Exhibit 6 (27 March 2003 Response to Application for Post-conviction Relief by Tim Harris filed in the murder case). The Tulsa County District Court adopted Harris's arguments against me almost verbatim when it denied my Application for Post-conviction Relief in the murder case. Id. at Exhibit 7 (22 August 2003 Order Denying Application for Post-conviction Relief filed in the murder case).

I did file a direct appeal and a post-conviction appeal in the murder case. However, Oklahoma Court of Criminal Appeals ("OCCA") Presiding Judge Charles Johnson is also a personal friend of Don Carlton. I myself met Judge Johnson in 1996, when-while actively serving as an OCCA judge—he officiated at Don Carlton's wedding. Id. at Exhibit 10 (29 May 1996 Marriage Certificate of Don Carlton certified by OCCA Judge Charles Johnson as the officiating judge). Judge Johnson recused from my direct appeal in the murder case, which was denied by the OCCA in April 2001. Id. at Exhibit 9 (OCCA Summary Opinion Denying Direct Appeal in the murder case). However, Judge Johnson failed to recuse from my post-conviction appeal in the murder case and voted to deny that appeal, which was denied by the OCCA in August 2004. Id. at Exhibit 8 (OCCA Order Affirming Denial of Application for Post-conviction Relief filed in the murder case). Further, former OCCA Judge Stephen Lyle, who voted to deny both my direct and post-conviction appeals in the murder case, resigned on 1 March 2005 amid the state Attorney General's investigation into allegations that Judge Lyle misappropriated funds and used his position as an OCCA judge to influence his son's criminal case. Id. at Exhibit 11 (1 March 2005 Tulsa World newspaper article titled "Appellate Judge Quits Amid State Investigation") and Exhibits 8 and 9 (OCCA Order Affirming Denial of Application for Postconviction Relief and OCCA Summary Opinion Denying Direct Appeal filed in the murder case). Stephen Lyle was disbarred by the Oklahoma Supreme Court on 16 September 2008 for the same reasons. Id. at Exhibit 12 (17 September 2008 Tulsa World newspaper article titled "State High Court Disbars Former Appellate Judge"). According to the Oklahoma Supreme Court, Lyle's punishment was so severe because of "the seriousness of [Lyle's] misconduct while serving in his position as a judge on the Oklahoma Court of Criminal Appeals." Id.

Now about this drug case. At the murder trial, I did testify about the 2 April 1998 incident from which the charges in this drug case stemmed. See the murder trial transcript at Vol. XI pages 2074-79, 2103 and Vol. XIII pages 2392-94. Further, I outlined the details of what happened that day more fully in a supporting affidavit attached to my Application for Postconviction Relief filed in the murder case. See Second Application for Post-conviction Relief filed in the murder case on August 2009, at Exhibit 5 Appendix of Supporting Documents (14 October 2002 Affidavit of Petitioner). This is what happened. On 2 April 1998, I fled my home to escape from yet another of Terry Carlton's break-ins and assaults. See the murder trial transcript at Vol. XI pages 2075-76 and Vol. XIII at pages 2392-93. I was only a block from my home, and I could see Terry's car parked directly in front. Id. at Vol. XI page 2079. I was so outdone, scared and angry, and I was praying out loud and asking God to help me when Officer Aaron Tallman approached me and asked who I was talking to. Id. at Vol. XIII pages 2392-94. I told him I was pleading to God for help. Id. I told Officer Tallman that Terry was breaking into my home again, and I pointed out Terry's car to Tallman. Id. at Vol. XI page 2079. Officer Tallman saw Terry's car and told me that Terry could park in front of my home because it's public parking. Id. Frustrated, I exclaimed that Terry thought he was God and that Tallman must think so, too. I also accused Tallman of being in Terry Carlton's pocket. See Pre-sentence Investigation Report filed in the murder case on 8 July 1999. Tallman testified at the murder trial that when he arrived on the scene that day, I as "talking to God and Jesus" and acting like I was getting answers. See the murder trial transcript at Vol. XIII page 2580. He called it "gibberish." Id. at Vol. XIII page 2589. Tallman acknowledged that he "EOD'd" me, meaning he obtained an Emergency Order of Detention for my commitment to Parkside Hospital, a local mental hospital. Id. at Vol. XIII page 2581. Officer Tallman then transported me to Parkside Hospital where I was hospitalized. *Id. at Vol. XIII page* 2593. I remember Tallman telling Parkside's staff that I was a drug addict who had called the police repeatedly claiming someone was breaking into my home, but when the police arrived at my home, no one was ever there. And the staff at Parkside Hospital treated me as though my fear of Terry Carlton was a paranoid delusion. *See Second Application for Post-conviction Relief filed in the murder case on Log Access* 2009, at Exhibit 5 Appendix of Supporting Documents (14 October 2002 Affidavit of Petitioner). (More than once, Parkside Hospital's staff skeptically asked me, "Do you still think someone is trying to harm you?") On 23 April 1998, Parkside Hospital transferred me to Eastern State Hospital. *Id.* And Terry Carlton—still free despite having a warrant for his arrest—continued to stalk and harass me even while I was hospitalized at Eastern State. *Id.* Three Eastern State Hospital employees testified at the murder trial about Terry's threatening behavior and outbursts towards me when he showed up there in late April 1998. *Id. See also the murder trial transcript at Vol. XIII pages 2512-14, 2526-29 and Vol. XIV pages 2614-17.* 

There was plenty of evidence presented at the murder trial—aside from my testimony—that Terry Carlton really was stalking me and breaking into my home before Officer Tallman took me to Parkside Hospital, and that I was able to clearly articulate what was happening and who was doing it. One of my neighbors, Maxine Callicoat, testified that on one occasion, I came to her house needing to use the phone because Terry had yanked mine out of the wall or disconnected it somehow. See the murder trial transcript at Vol. XIV pages 2689-92. Ms. Callicoat testified that she could hear arguing and yelling when Terry was at my home, and I used her phone more than once to call the police because Terry was threatening me. Id. at Vol. XIV pages 2686-88. She said that once, Terry even followed me to her house and knocked on

the door wanting to see me, but she wouldn't let him in. *Id. at Vol. XIV pages 2689-90.* Ms. Callicoat said I seemed to be afraid for my life because Terry was threatening me. *Id.* Ms. Callicoat exclaimed that Terry and the police were at my home "day after day after day." *Id.* 

Glenda McCarley, another one of my neighbors, testified that she witnessed Terry stalking me and breaking into my home in the early months of 1998. Id. at Vol. XIV pages 2740-48, 2761-62. Ms. McCarley described one incident she witnessed in February or March of 1998, when she saw Terry trying to break into my home using what appeared to be a piece of pipe to beat on the back doors and windows. Id. at Vol. XIV page 2745. Ms. McCarley testified that she called the police on that occasion, but Terry left just before officers arrived and "as usual" the police did nothing. Id. at Vol. XIV page 2746. She expressed that it got to be a very common occurrence for the police to be at my residence, and the police usually did nothing. Id. Ms. McCarley testified that it was "almost a joke" among my neighbors about how Terry had the police officers' timing down and would always leave right before officers showed up. Id. at Vol. XIV pages 2747-48, 2740. Ms. McCarley also testified about an incident she witnessed late one night when she heard me screaming and saw me running from my home. Id. at Vol. XIV pages 2743-44, 2761. She saw Terry exit my home, run me down, grab me by my hair, and drag me back behind my fence toward the back of my home. Id. Ms. McCarley said she never saw me do anything aggressive toward Terry. Id. at Vol. XIV page 2762.

Carl Hughes, another one of my neighbors, testified about witnessing Terry trying to force his way into my property in the middle of the night sometime around January 1998. *Id. at Vol. XIV pages 2729-31*. Mr. Hughes said that when he confronted Terry, Terry warned him to mind his own business and asked, "Do you have any idea who I am?" *Id.* 

Mr. Hughes also testified that around this same time period, Terry's car regularly woke him up between two and five o'clock in the morning. *Id*.

On 21 February 1998 at about three o'clock in the morning, Terry attempted to break into my home and I called 911 again. Id. at Vol. XI pages 2063-69. Officer Troy Dewitt testified at the murder trial that he responded to the 911 call and found Terry Carlton outside of my home with a loaded Glock 9mm pistol—chambered and ready to fire—as well as a stun gun. Id. at Vol. XIV pages 2708-16. Officer Dewitt said that Terry was trying to elude the police, and officers had to stop Terry at gunpoint. Id. Officer Dewitt further testified that he had been to my home in response to 911 calls numerous times before, but this was the first time he had caught Terry there. Id. Officer Dewitt said I was "very upset and seemed to be frightened." Id. Officer Dewitt testified that due the circumstances and what he found at my home, he called a judge and obtained an emergency protective order for me on the spot. Id. As outlined in the arrest report Officer Dewitt filed when he arrested Terry Carlton, I told him that Terry had threatened me in the past. See Second Application for Post-conviction Relief filed in the murder case on // August 2009, at Exhibit 5 Appendix of Supporting Documents (21 February 1998 Tulsa Police arrest report evidencing Terry Carlton's arrest).

On 25 March 1998, a bench warrant was issued for Terry Carlton's arrest in Tulsa County District Court case number CM-1998-575 for his failure to appear in court on a gun charge stemming from his arrest outside of my home on 21 February 1998. Id. at Exhibit 5 (5 March 2003 Application for Post-Conviction Relief filed in the murder case.) and Exhibit 5 Appendix of Supporting Documents (21 February 1998 Tulsa Folice arrest report and District Court of Tulsa County case number CM-1998-575 case report evidencing Terry

Carlton's arrest, indictment, and outstanding bench warrant). (The warrant was not introduced into evidence or even mentioned at my trial. Id.) The warrant for Terry Carlton's arrest was still outstanding on 2 April 1998, when the incident occurred from which the charges in this drug case evolved. Id. And despite the fact that Terry Carlton had this outstanding warrant for his arrest on 2 April 1998, Officer Aaron Tallman did not even attempt to arrest Terry that day after I told him Terry was breaking into my home again and he saw Terry's car parked in front of my residence. See the murder trial transcript at Vol. XI pages 2074-79, 2103 and Vol. XIII pages 2392-94. Instead, Officer Tallman took me to a mental hospital. Id.. Terry Carlton later told me that he was the one who arranged to have me taken to the mental hospital that day. Id. at Vol. XI page 2013. Terry said that he thought a stay in a mental hospital would teach me that he was the only person who cared about me. Id.

At the murder trial, Officer Tallman testified that when he arrived on the scene that day, 2 April 1998, the contents of my purse were "strewn about the place" and he saw drug paraphernalia coming from my purse. *Id. at Vol. XIII page 2580*. Tallman lied when he said that. To anyone with a reasonable mind, that doesn't even make sense. I did not empty my bag and drug paraphernalia was not coming from my purse, nor was it anywhere else in plain view. *Id. at Vol. XII page 2216*. The same holds true for drugs. *Id*.

There certainly is compelling evidence that Officer Tallman was prejudiced against me and that he lied. Importantly, prior to the 2 April 1998 incident, Officer Tallman had responded to several 911 calls made by me regarding Terry Carlton, and Tallman had established a sordid pattern of refusing to protect me from Terry. *Id. at Vol. XII page 2217*. My neighbor Glenda McCarley testified at the murder trial that she was "infuriated" by Officer Tallman's rude,

dismissive behavior towards me on one occasion in February or March of 1998, when Officer Tallman responded to a 911 emergency call made from her house after Terry broke into my home. Id. at Vol. XIV pages 2748-49, 2737. Ms. McCarley testified that Officer Tallman appeared "put out" when he saw me, and he "got into his car and left" without helping me. Id. Ms. McCarley recognized Officer Tallman because she had seen him at my residence "several times before." Id. at 2758. She was so infuriated by Officer Tallman's unprofessional conduct that she took down his name and badge number from another officer. Id. at 2749-50. On another occasion in February 1998, Terry Carlton violated the emergency protective order issued to me following his arrest at my home with the fully loaded, chambered Glock 9mm pistol and stun gun. Id. at Vol. XI pages 2077-79, 2090-91; and XIII at 2412-14. I called the police to report the violation and Officer Tallman responded. Id. Officer Tallman refused to enforce the protective order, telling me that I was "beginning to annoy him." Id. (For his part, while Officer Tallman admits responding to a call at my neighbor Glenda McCarley's residence, he pretty much denies everything else and claims he has only been to my house twice. Id. at Vol. XIII pages 2582-85, 2585, 2598.)

Julia O'Conner, the Public Defender who represented me in this drug case, told me that Officer Tallman's history of refusing to protect me from Terry Carlton would not be admissible if I went to trial in this drug case, and that any sentence handed down after trial in this case would run consecutive to the life sentence I was given in the murder case. She encouraged me to therefore plead no contest and accept a concurrent two-year sentence rather than go to trial. Her statements don't seem right to me. Don't I have the right to bring forth the above evidence challenging the integrity, motives, and veracity of Officer Tallman? Also, I don't believe that any sentence handed down at trial would automatically run consecutive to the life-sentence I

received in the murder trial. I suspect I was misinformed. Additionally, I have always believed that my Public Defender should have raised a Fourth Amendment illegal search and seizure challenge to any evidence in this drug case. Although Tallman did tell me he was going to search my purse, I did not give him permission to do it and I never saw him find any drugs or paraphernalia in my purse or anywhere else. For the foregoing reasons, I believe I was also deprived of my Sixth Amendment Right to effective assistance of counsel in this case.

By the time this drug charge was filed, I had already been in the county jail over one year, and this case kept me in jail for several more months after I was sentenced to life imprisonment in the murder case on 7 July 1999. Finally, on 25 January 2000, I was shipped to prison. In July 2000, I was transported to Tulsa County from a maximum security prison to resolve this case. I was having a difficult time facing the prospect of spending the rest of my life in prison, and I was not adjusting well. Plus, after I was convicted in the murder case, I felt like I didn't stand a chance at trial in this drug case and I was worried about that, too. Simply put, I was a basket case. Court records will show that at the time I entered my plea in this case on 10 July 2000, I was taking numerous physician-prescribed sedating medications including an antidepressant, a narcotic pain reliever, a benzodiazepine, and an antihistamine. I submit that I entered a plea in this case based on misinformation I received from my Public Defender when I was mentally distressed and under duress. But most importantly, I reiterate that DA Tim Harris's and Don Carlton's friendship and financial ties rendered this entire case unconstitutional to begin with.

DA Tim Harris filed this drug charge on 26 May 1999, less than a week after Don Carlton filed a wrongful death suit against me in this court. See Don Carlton v. April Rose Wilkens, filed in this court on 20 May 1999. Coming immediately on the heels of my conviction

in the murder case one month earlier on 24 April 1999, the two new cases naturally overwhelmed me. Plus, DA Harris made inflammatory extrajudicial statements to the press about me, which further distressed me and could have had the effect of inciting public condemnation against me. For instance, Harris told the news media that Terry's life might have been saved if the drug charge had been filed a long time ago by the previous district attorney, implying that my drug use was the reason Terry Carlton died. See Exhibit A (11 July 2000 Tulsa World newspaper article titled "Drug Conviction Adds 2 Years to Woman's Murder Sentence). There are a number of things—things Harris knew or should have known—that prove Harris was out of line when he publicly laid the blame for Terry's death on my drug abuse. First of all, it was unethical for Harris to make inflammatory extrajudicial comments to the press about me. Second, according to my trial attorney, my urinalysis from the morning of the shooting was negative for all drugs, although that evidence was not presented at my trial. See Second Application for Post-conviction Relief filed in the murder case on 19 August 2009, at Exhibit 5 (5 March 2003 Application for Post-Conviction Relief filed in the murder case). What's more, the medical examiner's testimony at the murder trial revealed that Terry Carlton himself abused drugs and had done so for years. See the murder trial transcript at Vol. VI pages 1236-37, 1253-54. Terry's autopsy also indicated that methamphetamine and heroin were in his system at the time of his death. Id. at Vol. VI pages 1246, 1255. Plus, there was substantial evidence presented at my trial showing Terry Carlton was a violent man who stalked me and repeatedly broke into my home, physically assaulted, and raped me. See Second Application for Post-conviction Relief filed in the murder case on 16 August 2009, at Exhibit 5 (5 March 2003 Application for Post-Conviction Relief filed in the murder case). And unlike Terry, whose ex-wife, Sherry Blanton, also filed a protective order against him, I do not

have a history of being violent. (At the murder trial, Sherry Blanton testified about the protective order she filed against Terry Carlton. See the murder trial transcript at Vol. XIV pages 2788-90.) And here's the clincher: although the murder trial jurors never heard about it, I'm sure Harris knew that in April 1998—on the date of the incident from which this drug charge stems as well as at the time of Terry Carlton's death a few weeks later-Terry Carlton had an outstanding warrant for his arrest for his failure to appear in court on a gun charge that was filed after he was arrested at my home with a loaded, chambered 9mm pistol and a stun gun. See Second Application for Post-conviction Relief filed in the murder case on 14 August 2009, at Exhibit 5 (5 March 2003 Application for Post-Conviction Relief filed in the murder case). and Exhibit 5 Appendix of Supporting Documents (21 February 1998 Tulsa Police arrest report and District Court of Tulsa County case number CM-1998-575 case report evidencing Terry Giver, all those things, it was Carlton's arrest, indictment, and outstanding bench warrant). especially egregious of DA Harris to publicly lay the blame for Terry's death on my drug abuse. The fact that Harris did so-coupled with the fact that Harris filed this charge less than one week after Don Carlton filed a wrongful death suit against me—is further evidence of Harris's and Carlton's friendship as well as their collusion to use the court system to discredit, degrade, harass, and imprison me.

DA Tim Harris's motives in filing this case have not gone unchecked. After my sentencing in this drug case, the Tulsa World newspaper quoted Public Defender Julia O'Connell exclaiming that filing the drug charge was an act of "meanness." See Exhibit A (11 July 2000 Tulsa World newspaper article titled "Drug Conviction Adds 2 Years to Woman's Murder Sentence"). Ms. O'Connell further expressed that prosecutors "gain absolutely nothing" with a two-year term that did not add to the prison time I already faced. Id. The

DA's office countered that if I was granted a new trial in the murder case, the conviction in this drug case could be used to discredit me. Id. I'm not an attorney, but I don't believe that's true given my no contest plea in this case. Regardless, given the audiotape recording that has since surfaced of Terry Carlton admitting he physically assaulted and raped me, the DA's office could not use this drug conviction to bolster its assertion that I lied about that. Plus, I have been upfront and honest about my drug use and the record in the murder case proves that.

Yes, I did abuse drugs. It was weak and wrong, and I regret it very much. I wish I had been stronger and wiser. However, if an unbiased DA had filed charges in this case, he or she may have offered to resolve it with a deferred prosecution that would not have further hampered my ability to make a living in my profession, prosthetics, a medical field which requires both certification and licensure.

Deferred prosecutions in felony cases are not unheard of. On 15 June 2009, a felony indecent exposure charge was dismissed against District Court of Tulsa County Judge Jesse

Harris after he entered into a deferred prosecution plea agreement with the prosecutor in that case. As reported by the *Tulsa World* newspaper:

That agreement states that [Judge Harris] admits that he committed the offense of "gross injury of the public peace," a misdemeanor....

The deferred prosecution agreement requires Harris to pay \$1200 in reimbursement for witness travel expenses incurred by the District Attorney's Office.

Under the agreement, the District Attorney's Office agrees to defer or delay the filing of the gross-injury misdemeanor charge for one year and will not file any charge if Harris complies with the agreement.

See Exhibit B (16 June 2009 Tulsa World newspaper article titled "Case Against Judge Dismissed"). Jesse Harris is still a Tulsa County judge. Id.

WHEREFORE, for all of the foregoing, I now wish to withdraw my plea of no contest in this drug case, and given all of the unconstitutional and extenuating circumstances from which this drug case evolved, I ask this court to dismiss this case in the interest of justice. Further, I hereby request that this court disqualify Tulsa County District Attorney Tim Harris and his office from handling this Application for Post-conviction Relief or any other litigation in this case given his friendship with and financial ties to Don Carlton, Terry Carlton's father. I also request that the OCCA be disqualified from any involvement in this case, especially considering that OCCA Judge Charles Johnson, who is also a friend of Don Carlton's, is now the presiding judge of that court.

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. N/A

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

The following exhibits attached to this Application for Post-conviction Relief help prove the facts stated hereinabove:

**EXHIBIT A:** 11 July 2000 *Tulsa World* newspaper article titled "Drug Conviction Adds 2 Years to Woman's Murder Sentence," evidencing DA Tim Harris's extrajudicial inflammatory statements to the press about this case.

EXHIBIT B: 16 June 2009 Tulsa World newspaper article titled "Case Against Judge Dismissed," evidencing the dismissal of a felony indecent exposure charge against District Court of Tulsa County Judge Jesse Harris following a deferred prosecution plea agreement in which Judge Harris admits that he committed the offense of "gross injury of the public peace," a misdemeanor.

EXHIBIT 1: 21 July 2006 Tulsa World newspaper article titled "DA's Race Among Most Moneyed," wherein Don Carlton says that he met DA Tim Harris eight years earlier (in 1998) after the death of Terry Carlton, Don Carlton's son. Carlton, a well-know car dealer, goes on to acknowledge that he became a personal friend of Harris's as well as a campaign contributor, and that he even hosted a fundraiser for Harris.

- EXHIBIT 2: 18 November 2006 Tulsa World newspaper article titled "Donor Reports Missing the Mark," evidencing the state Ethics Commission's report listing Harris as one of the top two campaign rule-breakers. The report revealed that Harris accumulated 240 campaign rule violations by failing to disclose the occupation and/or employer of his campaign contributors.
- **EXHIBIT 3:** 20 July 2003 *Tulsa World* newspaper article titled "DA, Law Officers in Feud," is also attached wherein murder victim Roger Wheeler's son, David Wheeler, accuses Tim Harris's office of asking for money to prosecute a suspect in his father's murder.
- EXHIBIT 4: April 1999 Trial Transcript Volume XV pages 3055-56 evidencing DA Harris's assertion at trial that I "[like] to cry rape."
- **EXHIBIT 5:** 5 March 2003 Application for Post-Conviction filed in the murder case, with attached supporting documents, including affidavit of Federal District Judge Claire Eagan and audiotape transcript of the decedent admitting he physically and sexually assaulted me.
- **EXHIBIT 6:** 27 March 2003 Response to Application for Post-Conviction Relief filed in the murder case by DA Tim Harris.
- **EXHIBIT 7:** 22 August 2003 District Court of Tulsa County's order denying Application for Post-Conviction Relief filed in the murder case, adopting, Tim Harris's response.
- **EXHIBIT 8:** 2 August 2004 OCCA Order Affirming Denial of Post-Conviction Relief in the murder case, evidencing OCCA Judges Charles Johnson and Stephen Lyle concurring, and showing OCCA Judge Charles Chapel "not participating."
- **EXHIBIT 9:** 3 April 2001 OCCA Summary Opinion denying direct appeal in the murder case, showing OCCA Judge Charles Johnson recusing and Stephen Lyle concurring.

EXHIBIT 10: 29 May 1996 Creek County marriage certificate #ML-96-141, proving OCCA Judge Charles Johnson officiated at Don Carlton's wedding and evidencing their long-standing friendship.

**EXHIBIT 11:** 1 March 2005 *Tulsa World* newspaper article titled "Appellate Judge Quits Amid State Investigation," evidencing Stephen Lyle's resignation while under fire.

EXHIBIT 12: 17 September 2008 Tulsa World newspaper article titled "State High Court Disbars Former Appellate Judge" evidencing the fact that Lyle was disbarred on 16 September 2008 for "the seriousness of [Lyle's] misconduct while serving in his position as a judge on the Oklahoma Court of Criminal Appeals."

EXHIBIT 13: 7 July 1999 murder case Pre-sentence Investigation Assessment Statement in support of Petitioner by Domestic Violence Intervention Services Counselor Lynda Driskell

EXHIBIT 14: 10 October 2008 Affidavit of psychologist Dr. Lynda Driskell, a domestic violence expert, in support of Petitioner

- 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:

Evidence of District Attorney Tim Harris's conflict of interest in this case was not available at the time of direct appeal, application for post-conviction relief, or post-conviction appeal.

### 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 (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.

### PART E

I hereby apply to have counsel appointed to represent me. I believe I am entitled to relief. I do not possess any money or property except the negligible amount in my inmate trust and savings accounts. I am filing a separate Motion for Leave to Proceed in Forma Pauperis.

22 JUNE 2009 Date

April Rose Wilkens, pro se #282399 MBCC C1C-218 29501 Kickapoo Road

McLoud, OK 74851

STATE OF OKLAHOMA ) COUNTY OF POTTAWATOMIE )  ss.			
AFFIDAVIT OF APRIL ROSE WILKENS			
I, April Rose Wilkens, being first sworn under oath, state that I signed the foregoing application			
and the statements therein are true to the best of my knowledge and belief. Moreover, all			
exhibits attached to this application are authentic.			
Asrif Rose Wilkens Signature			
Subscribed and sworn before me this 22 day of June, 2009.    3/3/10   Superior Super			

Commission No. 05019492

# Drug conviction adds 2 years to woman's murder sentence MITULY 2000 TULSA WORLD PAID Wilkens, 30, was charged on May 26, 1999, with felony pos-

time for the meth possession concurrently.

A woman who already is serving a life prison term for murdering a man who she said had abused her pleaded no contest Monday to possessing methamphetamine weeks prior to the slaving.

April Rose Wilkens received a two-year prison sentence that. will run concurrently with the life term imposed when she was convicted of the first-degree murder of Terry Carlton.

session of a controlled drug and misdemeanor possession of paraphernalia on April 2, 1998.

The misdemeanor was dismissed Monday in a plea agreement.

When the charge was filed more than 13 months ago, District Attorney Tim Harris said it "should have been filed a long time ago. Terry Carlton's life might have been saved."

Testimony at her April 1999 murder trial indicated that Wilkens shot Carlton, 40, eight times with a .22-caliber pistol on April 28, 1998, at his Tulsa home.

Jurors rejected h "battered woman's syndrome" defense.

Filing the drug charge was an act of "meanness," defense attorney Julia O'Connell said. Prosecutors "gain absolutely nothing" with a two-year term that will not add to the prison time Wilkens already faced, she said.

Prosecutor Rebecca Nightingale indicated that if the state Court of Criminal Appeals grants Wilkens a new trial in the murder case, prosecutors could use the drug conviction in an effort to challenge the credibility of her testimony at any retrial.

The life term allows the possibility of parole.

XHIBIT B

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# TUESDAY

JUNE 16, 2009

FINAL EDITION

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# KICKAPES ■LOCALLY OWNED SINCE 1905

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# se agains

 Harris and the D.A.'s Office instead enter into a "deferred prosecution" agreement.

BY BILL BRAUN

World Staff Reporter

At a prosecutor's request, against Tulsa County District Judge Jesse Harris was disan indecent exposure charge missed Monday

Washington County Dis-trict Attorney Rick Esser asked that the felony case be dismissed "for the reason that after review of all evidence it is in the best interest of jus-

injury of the public peace;" a misdemeanor, and has pro-vided a statement acknowledging that.

prosecution agreement pro-vided to the Tulsa World did not contain more specific details of any statement by Har-The three-page deferred

> Pursuant to a request by the Tulsa World under the state Open Records Act, a document obtained from the

tice," records show.

ficient evidence to charge Harris with the misdemeanwrongfully committing an act that was grossly injurious to serts that his office has sufor offense of "willfully and public peace at the Extended Stay Motel" in the 8200 block In the document, Esser asattorneys - states that "the Washington County District Attorney's Office shows that That agreement - signed by Harris, Esser and two defense accused" admits that he committed the offense of "gross Harris, 54, entered into a "deferred prosecution" agree-

ment with Esser's office.

tulsaworld.com

tulsaworld.com/harrisdeferred Read the deferred prosecution: agreement.

Read the order to dismiss the

tulsaworld.com/harrisdismiss

been scheduled to begin Monday at the Tulsa Country A trial on the felony indecent exposure charge had of East Skelly Drive on Marel 9, 2008.



NO CHARGE

esse Harris: The exposure charge felony indecent was dismissed against him Monday.

SEE HARRIS AS

## HARRIS:

The agreement requires Harris to pay \$1,200 in reimbursement.

FROM A1

Courthouse.

At a brief court proceeding, that charge was dismissed by Creek County District Judge Joe Sam Vassar without prejudice, which means it could be refiled.

Defense lawyers Joel Wohlgemuth and Allen Smallwood declined to comment, and efforts to obtain comment from Harris were unsuccessful.

The deferred prosecution agreement requires Harris to pay \$1,200 in reimbursement for witness travel expenses incurred by the District Attorney's Office.

Under the agreement, the District Attorney's Office agrees to defer or delay the filing of a gross-injury misdemeanor charge for one year and will not file any charge if Harris complies with the agreement. If Harris does not comply, the misdemeanor charge can be filed.

Harris has previously denied accusations that he indecently exposed his genitals to two women in a parking lot in March 2008.

One of the accusers is Kalisha Nolen, identified as a former girlfriend of Harris.

Although the Tulsa World has a policy of not identifying alleged victims of sex crimes, Nolen — also known by the first name of Kali — previously consented to the publication of her name. She now lives in another state.

The other accuser was sentenced to prison in July 2008 for two felony DUI crimes in Tulsa County.

Neither woman was in the courtroom Monday. Esser said he conferred with both of them about how the matter was being resolved.

Harris' attorneys have re-

Harris' attorneys have repeatedly attacked the credibility of the accusers and have maintained that the women's preliminary-hearing testimony was "riddled with contradictions and basic credibility failures."

peatedly attacked the credibility of the accusers and have maintained that the women's preliminary-hearing testimony was "riddled with contradictions and basic credibility failures."

Harris was released on his own recognizance after being charged in April 2008 by Esser, who was appointed by the state Attorney General's Office to handle the prosecution. State Supreme Court Chief Justice James Edmondson assigned Vassar to conduct a trial in the case.

Harris, who presided over a felony docket before he was charged, has continued to handle judicial duties, but in a different area of the law. He works in the Probate Di-

vision, where cases involve wills, trusts, estates and guardianships.

> Bill Braun 581-8455 bill.braun@tulsaworld.com