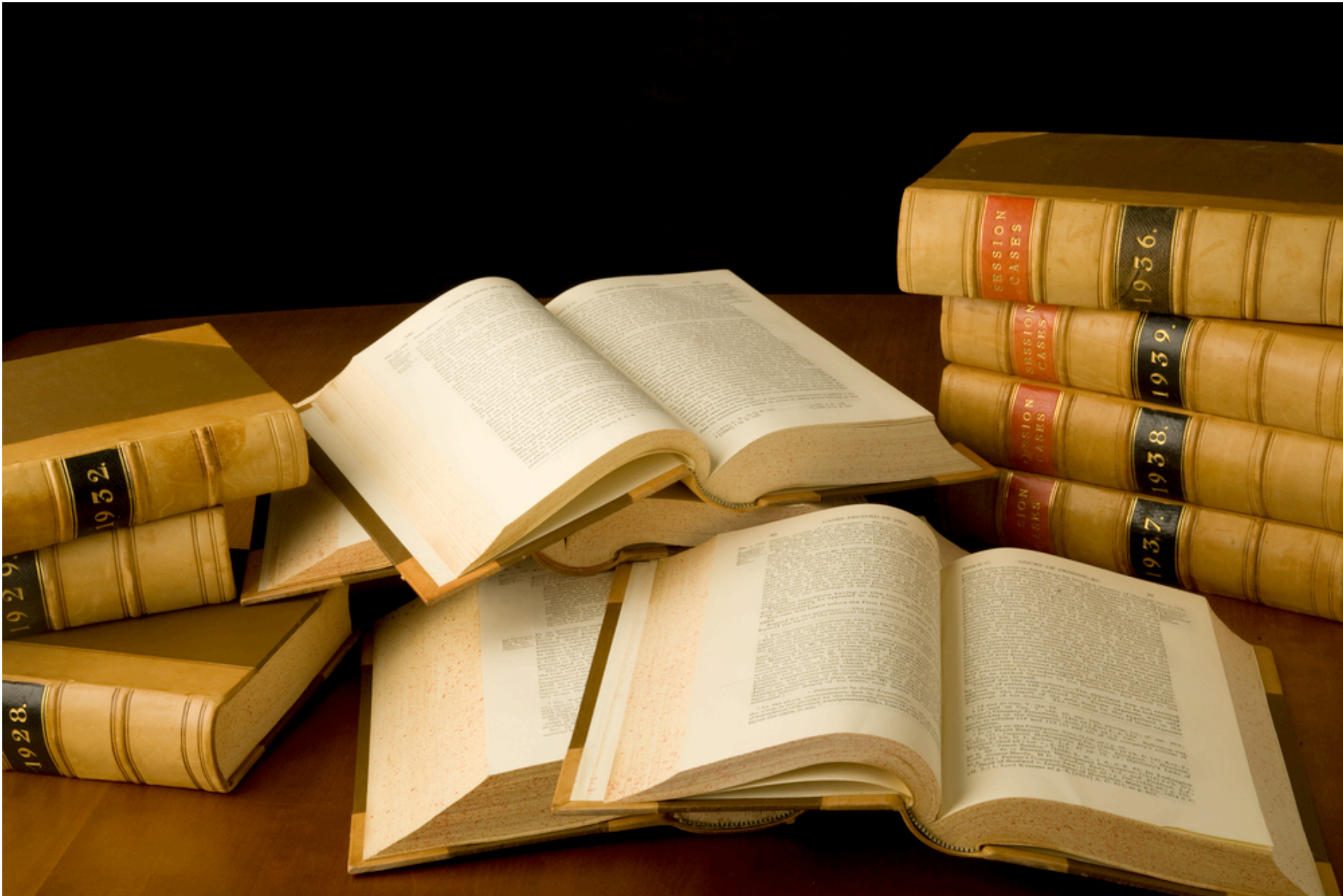


Fighting Your Case After Direct Appeal



Brought to you by:

Kevin D. Adams
Attorney at Law

406 S. Boulder Ave, Suite 400
Tulsa, OK 74103
Office (918) 582-1313
Toll Free 1-877-799-1313
Kadams@lawyer.com
www.OklahomaCriminalLaw.com



Overview of Appellate Process After Direct Appeal

If the direct appeal of your state conviction has been denied, you must act quickly to preserve your appellate rights. While under Oklahoma law there is no statute of limitations for appealing your conviction, there are strict time limitations if you wish to seek review of your state conviction in Federal Court.

If your state direct appeal is denied you always have the option of filing a *Petition for Writ of Certiorari* with the United States Supreme Court. While this is an option, most people choose to forego this option because very few cases are ever reviewed by the Supreme Court. (Only 1 to 2% of cases are accepted for review.) Choosing to forego this step does not preclude a state prisoner from challenging his or her conviction through the state Post Conviction and Federal Habeas Corpus processes.

Before you can file a Habeas Corpus action in Federal Court you need to “exhaust” your state court remedies. In Oklahoma “exhaustion” of the state court remedies involves filing an Application for Post Conviction Relief under Title 22 O.S. Section 1080 at the District Court level. The District Court is the court that the conviction was suffered in to begin with. If the Application for Post Conviction is denied at the District Court or “trial court” level, than the next step is to appeal the denial of the Application for Post Conviction relief at the Oklahoma Court of Criminal

Appeals.

If the appeal of the denial of your Application for Post Conviction Relief is denied at the Oklahoma Court of Criminal Appeals than you have “exhausted” your state remedies and you are now in a position to begin the Federal Habeas Corpus process.

State prisoners challenging their convictions in federal court using the Federal Habeas Corpus file their petitions under 28 U.S.C. Section 2254. The process in Federal Court is similar to the process in state court. First the Petition for Habeas Corpus is filed at the federal district court level and if the petition is denied an appeal of the denial is filed with the appropriate Federal Court of Appeal.

If the appeal of the denial of the Petition for Habeas Corpus is denied at the Federal Court of Appeals than the petitioner has an opportunity to appeal to the United States Supreme Court.

This is a slow process that takes years to complete and there are many procedural pitfalls along the way. However, if a state prisoner has legitimate legal issues in his or her case, the federal courts often provide the prisoner with their last best chance to gain relief.

Oklahoma State Post Conviction Relief Process

Title 22 O.S. §1080 list the statutory basis for pursuing an application for post conviction relief in Oklahoma: Section 1080 reads:

Any person who has been convicted of, or sentenced for, a crime and who claims:

- (a) that the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this state;
- (b) that the court was without jurisdiction to impose sentence;
- (c) that the sentence exceeds the maximum authorized by law;
- (d) that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(e) that his sentence has expired, his suspended sentence, probation, parole, or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

(f) that the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy;

A state prisoner filing a state Application for Post Conviction Relief needs to keep in mind a few important points.

I. Post Conviction Is Not The Place To Re-raise Issues Already Denied

Issues that were raised on the direct appeal that were denied by the appellate court generally will be denied on state post conviction. * These issues are barred by the doctrine of *Res Judicata*. See *Castro v State, 880 P.2d 387 (Okl.Cr.1994)* Post Conviction appeals are not mechanisms to reassert issues previously denied. *You may want to re-raise issues arguing Federal law and the US Constitution so you can argue the issue in your Federal Habeas action.

II. Issues That Could Have Been Raised On Direct Appeal But Were Not Are Waived

Issues that were not raised on direct appeal, that could have been raised are deemed to have been waived on post conviction. See *Fowler v. State, 873 P. 2d 1053 (Okl.Cr. 1994)*

These first two points creates a “catch 22” for many legal issues. If the issue was previously raised and denied it can not be re-raised and if it was not raised it is deemed waived. However, there are issues that do not fall into this category. Such issues are ineffective assistance of counsel (Generally should be raised on trial and appellant counsel to avoid pitfalls. Trial counsel was ineffective at trial and appellate counsel was ineffective for not raising issue concerning trial counsels ineffectiveness), newly discovered evidence, jurisdictional issues such as statute of limitations, violations of Due Process caused by the withholding of evidence by police or prosecution, and reconsideration of claims affected by subsequent changes in the law.

III. All Issue You Are Aware of Should Be Raised in Application

Make sure to raise all issues that you are aware of in the first Application for Post Conviction Relief. If issues are not raised they are waived.

IV. You Are Not Entitled to Court Appointed Lawyer

Unless a prisoner is facing a death sentence they are not entitled to counsel at state expense for post conviction relief. This places many prisoners in a very bad position. They spend all of their resources, and their families resources, on trial and direct appeal and by the time post conviction comes around they have no money to hire a lawyer.

A defendant with limited resources who is convicted at trial may want to consider using court appointed counsel for direct appeal and saving his or her family's resources for either retrial or post conviction relief.

V. Include Your Federal Claims in State Post Conviction Appeal

This is a big point. If you do not include your federal claims in your state post conviction appeal you will not be able to argue them in federal court. Make sure you “federalize” your claims. You can argue an issue based on the state constitution but make sure you also argue a separate proposition based on the US Constitution and Federal law. You may want to re-assert issues raised on direct appeal or include issues not listed in direct appeal, using federal law so you can raise it in a Federal Habeas action.



Federal Habeas Corpus

Habeas corpus is petition that is filed in federal court to claim that a prisoner's imprisonment violates federal law. A federal habeas petition claims that the prisoner's imprisonment is illegal because his or her arrest, trial, or sentence violates federal law. Both state and federal prisoners can file a habeas petition regardless of whether your trial was in state court or federal court, and regardless of whether they are in state or federal prison.

The law governing Habeas Corpus Petitions is extremely complex and the assistance of a lawyer is certainly recommended. However, if you are unable to afford the assistance of counsel you should still pursue a Habeas Petition if you believe that your imprisonment violates federal law.

If you can not afford the assistance of counsel there are resources available that will assist you in understanding this area of law. One of those resources available for free on the internet is "A Jailhouse Lawyer's Manual Chapter 13: Federal Habeas Corpus" written by the Columbia Human Rights Law Review. This publication is less than 100 pages and can be printed off the internet free of charge. If your friends or family can not print and mail this publication to you can write Mr. Adams at the address below and he

will try to mail you a copy of the publication.

There are three basic rules that you should be aware of regarding federal habeas corpus appeals. You need to keep these rules in mind before beginning your state post conviction process.

To be successful with a federal habeas petition it is important to coordinate that appeal with the state post conviction relief appeal.



I. File Your Habeas Petition Within One Year

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) requires that habeas petitions be filed in federal court within one year of the end of the direct appeal process. Anytime that is used pursuing state post conviction relief will be subtracted from this year. You need to exhaust the state post conviction procedure before you file your federal habeas petition.

II. You Must Present Any And All Claims in State Court First

Before you present a claim in a federal habeas petition you must first present that claim in the state post conviction relief petition. The reasoning for this is to allow the state courts an opportunity to correct flawed convictions before the federal courts are asked to intervene.

This not only means that you must go through the state post conviction process, but that you must present the same issues in the state post conviction appeal that you present to the federal court in a habeas action.

This also means that you must "federalize" your issues. For example you may have an issue that violates both state and federal law, you must argue the federal law violation at the state post conviction level before you raise the issue in a federal habeas action. This requires you to consider issues to be raised in your federal habeas petition before filing your state post conviction appeal.

III. You Typically Only Get One Habeas Appeal

It is very difficult to get more than one habeas petition. This means that you must do it right the first time. You must meet all the deadlines and follow the court rules and ensure you include all the required information in your first petition. This may seem harsh, but it was designed to be harsh. A second or "Successive Petition" is very difficult to win.



Kevin Adams is an Oklahoma trial and appellate lawyer with an office in Tulsa. Mr Adams handles all aspects of criminal law in both state and federal court all over the state of Oklahoma. In addition to handling criminal cases Mr. Adams also handles Civil Rights cases.

Mr. Adams has been practicing law for over 10 years and has tried over 30 jury trials with numerous acquittals. In addition to representing individuals accused of crimes at the trial level, Mr. Adams represents individuals on direct appeal, post conviction relief and federal habeas proceedings.

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