No. 18-7033

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL CASEY JACKSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals erred in denying a certificate of appealability on petitioner's claim that his offense, which he conceded had occurred within the territorial boundaries of an Indian reservation, did not take place in "Indian country," as defined in 18 U.S.C. 1151.

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OPINIONS BELOW

The order of the court of appeals (Pet. App. A, at 2-3) is unreported. The decision of the district court (excerpted at Pet. App. B, at 1-4) is not published in the Federal Supplement but is available at 2018 WL 2093947.

JURISDICTION

The judgment of the court of appeals (Pet. App. A, at 1) was entered on August 27, 2018. The petition for a writ of certiorari was filed on November 23, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Eastern District of Michigan, petitioner was convicted on one count of unlawful imprisonment, in violation of 18 U.S.C. 13, 1151, and 1152 and Mich. Comp. Laws Ann. § 750.349b (West Supp. 2016). Judgment 1. The court sentenced petitioner to 165 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. Petitioner filed a motion to vacate his sentence under 28 U.S.C. 2255, D. Ct. Doc. 32 (Jan. 10, 2018), and the court denied the motion and declined to grant a certificate of appealability (COA), Pet. App. B, at 1-4. The court of appeals denied petitioner's application for a COA. Pet. App. A, at 1-3.

1. On April 27, 2016, Jennifer Jackson and her two children were asleep at their home, which was located within the Saginaw Chippewa Tribe's Isabella Reservation in Mt. Pleasant, Michigan. Presentence Investigation Report (PSR) ¶ 12. Petitioner, who was Jackson's estranged husband, pounded on the front door and demanded entry. Ibid. Because of previous domestic disturbances, Jackson had a personal protection order against petitioner at the time. Ibid. Jackson came to the door and demanded that petitioner leave the premises. Ibid.

Petitioner instead forced his way into the home, pushed Jackson toward the bathroom, and shoved her into the bathtub, where he began assaulting her. PSR ¶ 12. Jackson tried several times

to escape, but each time petitioner forced her back into the bathtub. Ibid. Petitioner kept Jackson locked in the bathroom for 30 minutes, during which time he injured her and threatened her life. Ibid. Jackson finally escaped by jumping out of the bathroom window while petitioner was distracted by their five-year-old son, who had attempted to intervene on Jackson's behalf. Ibid. Jackson called the police, who upon arrival found petitioner barricaded in the bathroom with a crack pipe. PSR ¶¶ 12-13.

2. On June 24, 2016, the government filed a one-count superseding information charging petitioner with unlawful imprisonment, in violation of 18 U.S.C. 13, 1151, and 1152 and Mich. Comp. Laws Ann. § 750.349b (West Supp. 2016). Superseding Information 1. The federal Assimilative Crimes Statute, 18 U.S.C. 13(a), provides that a person who, in an area of exclusive federal jurisdiction, commits a crime that "would be punishable if committed or omitted within the jurisdiction of the State * * * in which such place is situated, * * * shall be guilty of a like offense and subject to a like punishment." Section 1152 provides that "the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States * * * shall extend to the Indian country." 18 U.S.C. 1152. And Section 1151 defines the term "'Indian country'" to include, inter alia, "all land within the limits of any Indian reservation under the

jurisdiction of the United States Government, notwithstanding the issuance of any patent." 18 U.S.C. 1151.

The same day that the superseding information was filed, petitioner pleaded guilty pursuant to a plea agreement. PSR ¶¶ 5-6. The district court accepted petitioner's guilty plea and sentenced him to 165 months of imprisonment, to be followed by three years of supervised release. Judgment 1-3. In accordance with the appeal waiver in his plea agreement, see Plea Agreement 7-8, petitioner did not appeal his conviction or sentence.

3. Petitioner filed a pro se motion under 28 U.S.C. 2255, seeking to vacate the judgment on the ground that his prior counsel had been ineffective for "failing to properly research and/or investigate" petitioner's contention "that the [district] Court lacked jurisdiction" because his "crime occurred on land/property (city) that was no longer tribally owned." D. Ct. Doc. 32, at 4. Petitioner's motion was referred to a magistrate judge, who recommended that it be denied. Pet. App. B-1, at 1-7. After reviewing petitioner's objections to the magistrate judge's report and recommendation, the district court denied petitioner's motion and declined to issue a COA. Pet. App. B, at 1-4; see 28 U.S.C. 2253(c)(1) (providing that "an appeal may not be taken" absent a COA).

Petitioner sought a COA from the court of appeals. See Pet. C.A. Mem. 1-14. In so doing, petitioner raised new arguments,

including an argument that the land on which he had committed the offense of conviction was "exempt from the Treaty of 1855" that had established the Isabella Reservation, such that the land "is not 'Indian Country.'" Id. at 4-5. The court denied petitioner a COA. Pet. App. A, at 1-2. The court determined that "[r]easonable jurists would not debate the district court's resolution of [petitioner's] claims" because petitioner had "conceded [below] that the property where the crime occurred is within the boundaries of the Isabella Indian reservation." Id. at 2.

ARGUMENT

Petitioner contends (Pet. 4-4e) that his criminal offense was not punishable under federal law because it occurred on land that was excluded by treaty from the Saginaw Chippewa Tribe's Isabella Reservation. Petitioner did not raise that argument in his Section 2255 motion, which instead conceded the reservation status of the land on which his crime occurred, and the courts below did not address the argument on the merits. Petitioner also conceded in his motion that his crime occurred on land located within the Isabella Reservation. In any event, petitioner's new argument is unsound. The petition for a writ of certiorari should be denied.

1. "Criminal jurisdiction over offenses committed in 'Indian country' is governed by a complex patchwork of federal, state, and tribal law." Negonsott v. Samuels, 507 U.S. 99, 102 (1993) (citations and internal quotation marks omitted). With

exceptions not relevant here, under the Indian Country Crimes Act, 18 U.S.C. 1152, "general [criminal] laws of the United States" that apply in areas under the "exclusive jurisdiction of the United States," known as federal enclaves, also apply to most crimes committed in "Indian country." Section 1152 thus extends to Indian country "the general criminal laws of federal maritime and enclave jurisdiction." Negonsott, 507 U.S. at 102. One such law is the Assimilative Crimes Statute, 18 U.S.C. 13(a), under which a person who, in a federal enclave, commits a crime that "would be punishable if committed or omitted within the jurisdiction of the State * * * in which such place is situated, * * * shall be guilty of a like offense and subject to a like punishment." As a result, conduct that would violate state criminal prohibitions may be subject to punishment under federal law if committed in Indian country. See Williams v. United States, 327 U.S. 711, 713-714 (1946).

Congress has defined the term "Indian country" to include "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent." 18 U.S.C. 1151. Here, petitioner conceded in his Section 2255 motion that the residence in which he committed the offense of conviction -- unlawful imprisonment in violation of Mich. Comp. Laws Ann. § 750.349b (West Supp. 2016) -- "is within the exterior bound[a]ries of the [Saginaw Chippewa] Tribal Reservation." D. Ct. Doc. 32, at 18; see id. at 17 ("The

address * * * is State/County property located within the exterior boundaries of Isabella Indian Reservation."). "Because [petitioner] conceded that the property where the crime occurred is within the boundaries of the Isabella Indian reservation," the offense occurred in "Indian country" as defined by Section 1151, and the court of appeals correctly determined that "[r]easonable jurists would not debate the district court's rejection of [petitioner's] claims." Pet. App. A, at 2; see, e.g., Riley v. Cockrell, 339 F.3d 308, 313-314 (5th Cir. 2003) (issue raised by prisoner not debatable in light of prisoner's concession), aff'd, 362 F.3d 302 (5th Cir. 2004), cert. denied, 543 U.S. 1056 (2005); Lambright v. Stewart, 220 F.3d 1022, 1031 (9th Cir. 2000) (prisoner's concession made contested issue "not debatable").

Petitioner nevertheless argued in his Section 2255 motion that "the house/property [where] Petitioner's alleged crime occurred was no longer tribally owned," because the land "had passed out of tribal ownership and was now part of the State/County." D. Ct. Doc. 32, at 16, 18. The current ownership of land within an Indian reservation, however, is immaterial to its jurisdictional status as "Indian country." Section 1151 defines that term to include "all land within the limits of any Indian reservation," a designation that applies "notwithstanding the issuance of any patent" of ownership. 18 U.S.C. 1151 (emphasis added). As this Court has explained, "the plain language of

§ 1151" refutes any contention that "the existence or nonexistence of federal jurisdiction * * * depends upon the ownership of particular parcels of land" within a reservation. Seymour v. Superintendent of Wash. State Penitentiary, 368 U.S. 351, 358 (1962).

2. Petitioner now argues that "the address of where the alleged offense took place is on land that was sold or disposed of by the United States" prior to a treaty consolidating the Saginaw Chippewa Tribe's land claims and was thus excluded from the Isabella Reservation, with the consequence that "this land is not within the exclusive jurisdiction of the United States government." Pet. 4b (capitalization and emphasis omitted). That ground was not asserted in his Section 2255 motion, where petitioner conceded that his crime had occurred on land "located within the exterior boundaries of Isabella Indian Reservation." D. Ct. Doc. 32, at 17. Moreover, neither the district court nor the court of appeals passed on that argument in disposing of petitioner's request for a COA. Recognizing that it is "a court of review, not of first view," this Court generally declines to reach issues that "were not addressed by the Court of Appeals." Cutter v. Wilkinson, 544 U.S. 709, 718 n.7 (2005). In any event, petitioner's argument is without merit.

a. Shortly after the Founding, the United States government pursued a policy of negotiated separation with neighboring Indian

tribes, including the Saginaw Chippewa Tribe. In 1795, a large group of Chippewas, along with 11 other Tribes, signed the Treaty of Greeneville, in which the federal government acknowledged Indian ownership of nearly the entirety of Michigan's Lower Peninsula and promised protection against intrusion by non-Indian settlers. Treaty with the Wyandots, et al., Aug. 3, 1795, 7 Stat. 49. Shortly thereafter, however, westward expansion drove a reversal in federal policy and led to the renegotiation or abrogation of prior agreements. Over several decades, the Chippewas ceded to the federal government more and more of their Michigan land claims. See Treaty with the Ottawas, et al., Mar. 28, 1836, 7 Stat. 491; Treaty with the Chippewas, Sept. 24, 1819, 7 Stat. 203; Treaty with the Chippewas, et al., Nov. 25, 1808, 7 Stat. 112. In 1837 and 1838, the Tribe acquiesced in a series of agreements ceding the remainder of their lands in the Lower Peninsula and promising to "remove from the State of Michigan, as soon as a proper location can be obtained" for their resettlement, in return for a series of payments. Treaty with the Saganaws, art. 6, Jan. 14, 1837, 7 Stat. 530; see Treaty with the Chippewas, Jan. 23, 1838, 7 Stat. 565; Treaty with the Saganaws, Dec. 20, 1837, 7 Stat. 547.

By the middle of the nineteenth century, however, the federal government had transitioned to a policy of establishing reservations of land for the permanent settlement of Indian tribes.

Under this new system, there would be "assigned to each tribe, for a permanent home, a country adapted to agriculture, of limited extent and well-defined boundaries, within which all [Tribe members], with occasional exceptions, should be compelled constantly to remain." Annual Report of the Commissioner of Indian Affairs 4 (1850). Consistent with that reservation policy, the United States entered into a treaty with the Saginaw, Swan Creek, and Black River bands of Chippewa Indians designating vacant public lands to serve as a home for the Chippewa Tribe. Treaty with the Chippewas (1855 Treaty), Aug. 2, 1855, 11 Stat. 633. Article 1 of the 1855 Treaty identified, "for the benefit of [the Chippewa] Indians," two tracts of unsold public land: (1) "Six adjoining townships of land in the county of Isabella," and (2) "two townships, on the north side of Saginaw Bay." Id. art. 1, 11 Stat. 633. Each tribal family was permitted to select 80 acres of land within one of those tracts. Ibid. In return for the land and additional financial consideration, see id. art. 2, 11 Stat. 634, the Chippewas agreed to "cede to the United States" all other tribal lands in Michigan, id. art. 3, 11 Stat. 634.

After it was discovered that the tract situated on Saginaw Bay was unsuitable for agricultural purposes, the United States entered into another treaty with the Chippewas on October 18, 1864. See Treaty with the Chippewa Indians (1864 Treaty), 14 Stat. 657. The 1864 Treaty released the Tribe's claim on the Saginaw Bay

reservation, as well as any claims to other land selected "in lieu of" -- i.e., as a replacement for -- lands that had been "sold or disposed of by the United States upon their reservation at Isabella." Id. art. I, 14 Stat. 657. In return, the United States promised "to set apart for the exclusive use, ownership, and occupancy" of the Tribe "all of the unsold lands within the six townships in Isabella county," id. art. II, 14 Stat. 657, and Tribe members who had selected land in Saginaw Bay were given a right to choose land "upon the Isabella reservation" instead, id. arts. III, 14 Stat. 657. The 1864 Treaty thus consolidated all Chippewa land claims in the Isabella Reservation.

b. The foregoing confirms that the land on which petitioner committed his offense was "Indian country" within the meaning of Section 1151. Petitioner has never disputed that Jackson's home is located within the "Six adjoining townships of land in the county of Isabella" that were set aside for the Chippewa Tribe in the 1855 Treaty, art. 1, 11 Stat. 633, and that were secured "for the exclusive use, ownership, and occupancy" of the Tribe in the 1864 Treaty, art. II, 14 Stat. 657. See D. Ct. Doc. 32, at 17-18. His crime was therefore committed on "land within the limits of any Indian reservation." 18 U.S.C. 1151.

Petitioner nevertheless argues (Pet. 4b) that the relevant property was "sold on the 8th day of September, 1856," and that, as a result, the federal government "did not have any control over

the lands when they were relinquished by the Treaty of 1864." Petitioner's argument disregards this Court's instruction that "[o]nce a block of land is set aside for an Indian reservation and no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise." Solem v. Bartlett, 465 U.S. 463, 470 (1984). The Isabella Reservation was created under the 1855 Treaty and has existed continuously since that time. Even if petitioner were correct that, following its creation some land within the Reservation was sold to non-members of the Tribe in 1856, that would not alter "its reservation status." Ibid.

Contrary to petitioner's contention (Pet. 4b), the 1864 Treaty did not "explicitly indicate[]," Solem, 465 U.S. at 470, Congress's intent to remove from the Isabella Reservation parcels of land that had been included in that Reservation under the 1855 Treaty but were later sold. Petitioner points (Pet. 4b-4c) to treaty language in which the Chippewa Tribe agreed "to relinquish to the United States all claim to any right [the Tribe's members] may possess to locate lands in lieu of lands sold or disposed of by the United States upon their reservation at Isabella." 1864 Treaty, art. I, 14 Stat. 657. But that provision merely prevented tribal members from seeking compensatory lands outside the Isabella Reservation as compensation for ("in lieu of") land that the United States had already patented and sold within the

Reservation; instead, the treaty granted tribal members further rights within the Isabella Reservation (namely, the right to select land there to replace unsuitable Saginaw Bay land, id. Arts. 2, 3). The provision in no way varied the jurisdictional boundaries of the Reservation itself, nor did it cause land within those boundaries to fall outside federal jurisdiction merely because it had been patented and sold. And even if the 1864 Treaty were ambiguous on that point, such ambiguity must be "resolved from the standpoint of the Indians" in favor of preserving the Reservation's boundaries. Winters v. United States, 207 U.S. 564, 576 (1908); see Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172, 194 n.5 (1999) ("[T]reaties are to be interpreted liberally in favor of the Indians, * * * and treaty ambiguities to be resolved in their favor."); Choctaw Nation v. Oklahoma, 397 U.S. 620, 631 (1970) ("[A]ny doubtful expressions in them should be resolved in the Indians' favor.").

Petitioner identifies nothing in the history of the 1864 Treaty suggesting that either party sought to carve up piecemeal the jurisdictional status of the contiguous six-township Isabella Reservation established by the 1855 Treaty. See Choctaw Nation, 397 U.S. at 631 ("[T]reaties were imposed upon [native peoples] and they had no choice but to consent. As a consequence, this Court often has held that treaties with the Indians must be interpreted as they would have understood them."). To the

contrary, the 1864 Treaty integrated former Saginaw Bay residents into the Isabella Reservation and confined the Saginaw Chippewa Tribe to available parcels within that Reservation -- rather than permitting them to acquire other land "in lieu of" unavailable Reservation land. 1864 Treaty, arts. I, III, 14 Stat. 657-658; see id. art. II, 14 Stat. 657. Those provisions confirm the intention of the treaty parties to make the geographic footprint of the entire Saginaw Chippewa community coterminous with the boundaries of the six-township Isabella Reservation set out in 1855. Because petitioner unlawfully imprisoned Jackson at a home within those boundaries, his offense occurred in "Indian country" and was properly subject to federal jurisdiction. 18 U.S.C. 1151.

c. In 2010, following years of litigation, a settlement was reached between the United States, the Saginaw Chippewa Indian Tribe, the State of Michigan, various state officials, the County of Isabella, and the City of Mt. Pleasant regarding the borders of the Tribe's Isabella Reservation. See Saginaw Chippewa Indian Tribe v. Granholm, No. 05-cv-10296, 2011 WL 1884196, at *1 (E.D. Mich. May 18, 2011) (discussing Saginaw Chippewa Indian Tribe v. Granholm, No. 05-cv-10296, 2010 WL 5185114 (E.D. Mich. Dec. 17, 2010)). The settlement included a proposed order "declar[ing] the six-county Reservation, identified in the 1855 and 1864 treaties, [to be] 'Indian country' under federal law." Ibid. Pursuant to

the parties' agreement, the district court entered the proposed order. Ibid.

Petitioner argues (Pet. 4c) that the 2010 settlement agreement impermissibly "restore[d] land that was relinquished by treaty and then declare[d] it Indian Country." Because, as described above, the land in question was not "relinquished by treaty," petitioner's objection to the settlement agreement lacks merit. Petitioner's disagreement with the resolution reached by the settling parties, and the judicial approval of it, provides no reason to question the correctness of the court of appeals' decision in his case, which did not rely on the settlement.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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