18-9526 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

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APR 1 7 2019
OPERIOR CHITHE CLEEK

JIMCY McGIRT—PRO SE PETITIONER

VS.

STATE OF OKLAHOMA—RESPONDENT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Petitioner has previously been granted leave to proceed in forma pauperis in the following courts:

The District Court of Wagoner County, Oklahoma, May 05, 1997, State v. McGirt, CF-96-0355 (jury trial); June 18, 2018, McGirt v. State, CF-96-0355, (post-conviction relief application);

The Oklahoma Court of Criminal Appeals, June 26, 1997, McGirt v. State, F-97-0967 (direct appeal); October 15, 2018, McGirt v. State, PC-2018-1057, (post conviction appeal).

Courts never appointed counsel for these proceedings.

Petitioner's declaration in support of this motion is attached hereto.

EXECUTED under penalty of perjury at James Crabtree Correctional Center, and resubmitted May 16, 2019.

MMCY McGIRT, Pro se Petitioner 216 North Murray Street Unit 5 south Helena, OK 73741-1018

DECLARATION IN SUPPORT OF

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

- I, Jimcy McGirt, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefore; and I believe I am entitled to redress.
- 1. I am a 70-year-old pauper in Oklahoma Department of Corrections custody since June 26, 1997; my only income is the \$14.45 monthly gang pay (all taken by my legal or medical copays—see enclosed inmate trust fund statement marked 4); I am unmarried; I have no dependents, no friends of family willing or able to help me with the costs of this action; no property of any value (real or personal, i.e. homes, cars, businesses—see enclosed Office of Special Trustee statement marked 5); no checking or savings accounts in any financial institutions other than the DOC's inmate trust fund (see inmate trust fund statement marked 4).
- 2. Unemployed.

Income source:	Average monthly amount during the past 12 months:	Amount expected next month:
DOC gang pay	\$14.45	\$14.45

(DOC takes all of my gang pay for my legal and medical co-pays soon as it becomes available in my account.)

- 3. Not married and a pauper in DOC custody since June 26, 1997.
- 4. No cash or savings, not even in DOC inmate trust fund account (see DOC statement marked 4), in any bank or other financial institution.
- 5. I have no home, no motor vehicle(s) and 1/10 of 1/60 interest in Indian allotment inherited from my deceased mother's estate in September 2018 (see enclosed OST statement marked 5).
- 6. I have no debts other than the legal and medical co-pays I owe (see DOC statement marked 4).
- 7. I have no dependents.
- 8. My only expenses are the legal and medical co-pays, which vary, and is taken by DOC soon as the money becomes available in my account (see DOC statement marked 4).

TOTAL MONTHLY EXPENSES EXCEED MY ONLY INCOME, \$14.45 DOC GANG PAY.

- 9. NO expected change in monthly income, expenses, assets, or liabilities during the next-12-months.
- 10. NO payments, or expected payments, to any attorney or firm.
- 11. I have not paid any money to anyone in relation to this case, or any case—none to pay.

12. There is no other information other than that I am a pauper in DOC custody, since June 26, 1997, with no family or friends willing or able to pay, or help pay, the expenses of this case; no income other than the \$14.45 monthly gang pay; no personal property or any assets other than my 1/10 of 1/60 % interest in Indian allotment land inherited from my mother's estate September 11, 2018 (see enclosed OST statement marked 5).

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED at James Crabtree Correctional Center Helena, OK May 16, 2019.

Umcy McGirt, #178480, Pro se Petitioner 216 North Murray Street Unit 5 south

Helena, OK 73741-1018

#4

Cell/Bed

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Offender/Group Name

Institution: JCCC

Offender#

ODOC Offender Statement Report

Unit

Institution

0178480 MCGIRT, JIMCY JCCC UNIT 5 **SOUTH-BUNK 107A** Transaction List **Transaction Date** Transaction Type Source Document # Receipt#/Check# Sender Name **Amount Account Balance** BEGINNING BALANCE 09/01/2018 \$2.89 09/05/2018 INSTITUTIONAL DEBT COPIES/POSTAGE (\$2.50) \$0.39 COPIES, MAIL, \$0.00 09/05/2018 INSTITUTIONAL DEBT (\$0.39)**POSTAGE OUTSIDE SOURCE** 4030 89047812 111557 US TREASURY \$34.58 \$34.58 09/18/2018 COPIES, MAIL (\$2.96)\$31.62 09/18/2018 **INSTITUTIONAL DEBT POSTAGE LEGAL 1/17/18** \$30.43 09/18/2018 **LEGAL COPAY** (\$1.19)09/18/2018 **LEGAL COPAY** LEGAL 1/23/18 (\$0.50)\$29.93 09/18/2018 **LEGAL COPAY LEGAL 1/25/18** (\$0.15) \$29.78 LEGAL 1/29/18 (\$4.61) \$25.17 09/18/2018 **LEGAL COPAY** COPIES \$21.92 09/18/2018 **LEGAL COPAY** (\$3.25)COPIES/POSTAGE (\$2.86)\$19.06 09/18/2018 **LEGAL COPAY** COPIES/MAIL \$12.44 09/18/2018 **LEGAL COPAY** (\$6.62) \$9.34 **LEGAL COPAY** MAIL (\$3.10)09/18/2018 MAIL (\$1.36) \$7.98 09/18/2018 **LEGAL COPAY** 09/18/2018 **LEGAL COPAY** COPIES/MAIL (\$1.07)\$6.91 10/01/2018 **GANG PAY** \$14.45 \$21.36 10/01/2018 **LEGAL COPAY** COPIES/MAIL (\$7.47)\$13.89 3/6/18JC (\$1.00) **\$12.89** 10/01/2018 **LEGAL COPAY LEGAL COPAY** 3/6/18JC (\$1.50)\$11.39 10/01/2018 **LEGAL COPAY** COPIES/MAIL (\$1.59) \$9.80 10/01/2018 \$3.07 (\$6.73)10/05/2018 SALES MAIL, POSTAGE, (\$0.18) 10/17/2018 INSTITUTIONAL DEBT \$2.89 **CERTIFI** \$17.34 \$14.45 10/31/2018 **GANG PAY** 10/31/2018 INSTITUTIONAL DEBT MAIL, POSTAGE, (\$7.22)\$10.12 CERTIFI \$9.62 **INSTITUTIONAL DEBT** (\$0.50)JCC COPIES 10/31/2018 \$7.86 COPIES/MAIL (\$1.76) 10/31/2018 **LEGAL COPAY** (\$2.08)\$5.78 10/31/2018 **LEGAL COPAY** COPIES/MAIL SALES 36 (\$5.66)\$0.12 11/06/2018 11/20/2018 LEGAL COPAY -COPIES MAIL, (\$0.12)\$0.00 **POSTAGE GANG PAY** \$14.45 \$14.45 11/30/2018 INSTITUTIONAL DEBT MAIL, POSTAGE, (\$2.27)\$12.18 11/30/2018 **CERTIFI** COPIES/MAIL (\$2.37)\$9.81 11/30/2018 **LEGAL COPAY** \$9.31 LEGAL COPAY COPIES (\$0.50)11/30/2018 \$6.31 (\$3.00) 11/30/2018 LEGAL COPAY JCCC 3-19-18 (\$1.36)\$4.95 JCCC 3-19-18 11/30/2018 **LEGAL COPAY** COPIES/MAIL (\$2.06) \$2.89 11/30/2018 LEGAL COPAY SALES 2 (\$2.53)\$0.36 12/05/2018 COPIES (\$0.36)\$0.00 12/19/2018 **LEGAL COPAY** 12/31/2018 **GANG PAY** \$14.45 \$14.45 (\$1.14) COPIES/MAIL \$13.31 12/31/2018 LEGAL COPAY COPIES/POSTAGE \$11.20 (\$2.11)12/31/2018 **LEGAL COPAY** \$10.52 12/31/2018 **LEGAL COPAY POSTAGE** (\$0.68)

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Institution: JCCC

ODOC Offender Statement Report

Transaction Date	Transaction Type	Source Document #	Receipt#/Check#	Sender Name	Amount	Account Balanc
12/31/2018	LEGAL COPAY	COPIES/ MAIL			(\$4.84)	\$5.6
12/31/2018	LEGAL COPAY	COPIES		•	(\$1.25)	\$4.4
12/31/2018	LEGAL COPAY	JCCC 18-16			(\$1.54)	\$2.8
01/04/2019	SALES	129			(\$2.63)	\$0.20
01/10/2019	LEGAL COPAY	JCC 1/8/19			(\$0.26)	\$0.00
01/31/2019	GANG PAY				\$14.45	\$14.4
01/31/2019	LEGAL COPAY	JCCC 18-16			(\$0,46)	\$13.9
01/31/2019	LEGAL COPAY	4/25/18JC			(\$1.50)	\$12.4
01/31/2019	LEGAL COPAY	COPIES			(\$2.14)	\$10.38
01/31/2019	LEGAL COPAY .	COPIES/NOTARY			(\$1.25)	\$9.10
01/31/2019	LEGAL COPAY	JCCC 18-85			(\$2.00)	\$7.10
01/31/2019	LEGAL COPAY	JCC 9/11/2018			(\$4.21)	\$2.89
02/01/2019	SALES	135			(\$2.67)	\$0.2
02/06/2019	LEGAL COPAY	POSTAGE		•	(\$0:22)	\$0.0
02/28/2019	GANG PAY			·	\$14.45	\$14.45
02/28/2019	LEGAL COPAY	JCC 9/11/2018			(\$0.79)	\$13.66
02/28/2019	LEGAL COPAY	9/27/18JC			(\$3.50)	\$10.16
02/28/2019	LEGAL COPAY	COPIES,MAIL, POSTAGE			(\$0.93)	\$9.23
02/28/2019	LEGAL COPAY	COPIES			(\$0.14)	\$9.09
02/28/2019	LEGAL COPAY	POSTAGE			(\$1.00)	\$8.09
02/28/2019	LEGAL COPAY	JCCC 12/21/18			(\$0.50)	\$7.59
02/28/2019	LEGAL COPAY	JCCC 12/18/18		ı	(\$2.50)	* \$5.09
02/28/2019	LEGAL COPAY	JCCC 12/18/18			(\$0,55)	\$4.54
02/28/2019	LEGAL COPAY	JCC 1/8/19		•	(\$0.24)	\$4.30
02/28/2019	LEGAL COPAY	JCC 1/7/19		ř	(\$0.75)	\$3.55
02/28/2019	LEGAL COPAY	JCC 1/7/19	<u> </u>		(\$0.66)	\$2.89
03/06/2019	SALES	135			(\$2.71)	\$0.18
03/07/2019	LEGAL COPAY	3/4/19 COPIES			(\$0.18)	\$0.00

Summary Dalances	* .					
Available Balance	Savings Balance	Debt Encumbrance	Other Encumbrance	Outstanding Instruments	Administrative Holds	Account Balance
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00



#5-1

JIMCY MCGIRT #178480 216 N MURRAY ST UNIT 6N-JCCC HELENA OK 73741

IF YOU HAVE ANY QUESTIONS, PLEASE CALL 888.678.6836 TRUST BENEFICIARY CALL CENTER HOURS OF OPERATION: MONDAY - FRIDAY: 7:00AM - 6:00FM (MT) SATURDAY: 8:00AM - NOON (MT)

ACCOUNT OF JIMCY MCGIRT XXXXXX5841

TRANSACTION ACTIVITY FOR ACCOUNTING PERIOD: 09/05/18 THROUGH 09/30/18

	DATE	TRANSACTION DESCRIPTION	_	CASH
		BEGINNING BALANCES		0.00
1)	09/11/18	CASH RECEIPT ESTATE DISTRIBUTION PAID FROM ACCOUNT # XXXXXX4429 JV09TP182718 9/7/2018 PB 12 56		34.58
2)	09/11/18			-34.58
	•	216 N MURRAY ST UNIT 6N-JCCC HELENA OK 73741 ACCOUNT BALANCE T/A CHECK # 89047812		
		ENDING BALANCES		0.00

THE BALANCE IN YOUR ACCOUNT IS INVESTED DAILY. REALIZED GAINS OR LOSSES MAY OCCUR IN THE FUND AS A RESULT OF REDEMPTION OF ASSETS PRIOR TO MATURITY. ANY GAIN OR LOSS IN THE FUND IS REFLECTED ABOVE IN YOUR MONTHLY INCOME EARNED IN THE ANNUALIZED RATE. IF THE BALANCE IN YOUR ACCOUNT GENERATES AT LEAST ONE CENT OF INCOME, THEN THE INCOME IS POSTED.

1. *Accumalated amount since 10/26/06 death.

2. Accumalated co-pay for legal medical postage.

- postage took all of this amount in one
accounting.





PAGE

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AS OF 09/30/18

JIMCY MCGIRT ACCOUNT NO. XXXXXX5841

THIS IS YOUR IIM ACCOUNT NUMBER AND LAND OWNER ID NUMBER. ACCOUNT NUMBER:

UNDIVIDED OWNERSHIP: THIS IS THE UNDIVIDED OWNERSHIP INTEREST YOU OWN IN THE RESPECTIVE TRACT AND/OR ENCUMBRANCES; WHEN FOLLOWED BY A PLUS ('+'), THE OWNERSHIP INTEREST IS SMALLER THAN CAN BE REPRESENTED BY A DECIMAL AMOUNT.

TRACT ID:

THIS IS THE UNIQUE BIA NUMBER ASSIGNED TO THE TRACT OF LAND; WHEN PRICEDED BY AN ASTERISK ('*'), THE TRACT IS ENCUMBERED.

OWNERSHIP CLASSIFICATION:

THE FOLLOWING ARE THE DIFFERENT OWNERSHIP CLASSIFICATIONS THAT COULD BE LISTED ON YOUR STATEMENT:

'TITLE' ONLY

'BENEFICIAL' ONLY

'BENEFICIAL' ONLY

'BENEFICIAL ONLY ACCOUNT HOLDER HAS TITLE, BUT NOT BENEFICIAL, OWNERSHIP TO THE LAND. A TITLE
ONLY ACCOUNT HOLDER DOES NOT RECEIVE TRUST INCOME DERIVED FROM ENCUMBRANCE ACTIVITY.

BENEFICIAL ONLY ACCOUNT HOLDER RECEIVES TRUST INCOME DERIVED FROM ENCUMBRANCE
ACTIVITY. BENEFICIAL OWNERSHIP REVERTS TO THE TITLE OWNER/REMAINDERMAN UPON THE
BENEFICIAL OWNER'S DEATH.

THE ACCOUNT HOLDER HAS BOTH TITLE AND BENEFICIAL OWNERSHIP TO THE LAND. A
BENEFICIAL ACCOUNT HOLDER RECEIVES TRUST INCOME FROM ENCUMBRANCE ACTIVITY. 'TITLE & BENEFICIAL' A TITLE AND

ENCUMBRANCE/ ENCUMBERED:

ANY LEASE, RIGHT OF WAY, PERMIT OR ANY OTHER LEGAL INSTRUMENT WHICH AUTHORIZES USE OF THE PROPERTY

DOCUMENT ID:

BIA ASSIGNED NUMBER TO IDENTIFY THE ENCUMBRANCE DOCUMENT

EFFECTIVE DATE:

DATE THE ENCUMBRANCE STARTS

EXPIRATION DATE:

DATE THE ENCUMBRANCE ENDS IF THERE IS AN END DATE OR HBP = HELD BY PRODUCTION (OIL AND GAS) OR IP = IN PERPETUITY (THE ENCUMBRANCE DOES NOT HAVE AN EXPIRATION DATE)

NOTE: THIS ASSET STATEMENT REFLECTS THOSE REAL PROPERTY ASSETS RECORDED AT THE BUREAU OF INDIAN AFFAIRS' OFFICIAL

LAND TITLE AND RECORDS OFFICE.

Jimcy McGirt 178480 216 North Murray Street Unit 3 Helena, OK 73741-1018 Acc. No. xxxxxx5841

STATE OF OKLAHOMA)
) s
COUNTY OF ALFALFA	1

AFFIDAVIT OF JIMCY McGIRT

I state under penalty of perjury under 12 O.S. § 426 and 28 U.S.C. § 1746 that I have personal knowledge of the contents of this affidavit as true and correct.

FURTHER Affiant states:

- 1. Congressional acts imposed state jurisdiction over Indian property partition and inheritance of Indian property in state courts.
- 2. January 23, 2018—Estate of Elsie Mae McGirt-Faulkner, PB-2012-0056, approved by field solicitor about September 2018—the Hughes County District Court issued a final decree of determination of heirs and distribution order and adjudicated me as 1 of 10 devisees.
- 3. In your possession is the first page of my mother's will, as well as the page related to my share of her assets. Paragraph 5 lists Individual Indian Money (IIM) acc. No. 090U224429 as one of the assets I inherited.
- 4. "Beneficiaries of IIM trust accounts are statutorily entitled to an accounting and district court has obligation to exercise its equitable powers to ensure that the Secretary of the Interior provided them an equitable accounting." *Cobell v. Salazar*, 573 F3d 808 (CADC 2009).
- 5. The Trust Fund Management Reform Act of 1994, Pub. L. No. 103-412, 108 Stat. 4239 (Amended and codified at 25 U.S.C. § 162a et seq., subsection 4011) requires the Secretary of the Interior to "[a]ccount for the daily and annual balances of all funds held in trust by the United States for the benefit of...an individual Indian which are deposited or invested pursuant to the Act of June 24, 1938. (25 U.S.C. §162a)" (Amended and codified at 25 U.S.C. § 162a et seq., subsection 4011) *Cobell* at 840. Subsection 4011 imposes a responsibility on the Secretary of the Interior (or their designee) to provide 1) daily and annual balances, 2) quarterly performance statements, and 3) annual audits.
- 6. As lawful owner of the account I inherited from my mother, I made a lawful request that includes a copy of the February 2016 contract.

THEREFORE, as present beneficiary and owner of my mother's account, I am entitled to the information I requested—copy of the 2016 contract, daily and annual balances, quarterly performance statements, and annual audits for October 31, 2006 thru October 31, 2018 EXECUTED under penalty of perjury under state and federal laws at JCCC November 19, 2018.

Mc Hit 11/19/18

WITNESS:

Subscribed before me this 19 day of November 2018.

20000-100-1

Darren Gipson, CCM1

15007987 5XP. 08/27/19

OF OKLAHMINIM

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