

No. 19-5417

In The
Supreme Court of the United States

Travis Wayne Bentley,
Petitioner,

v.

State of Oklahoma,
Respondent.

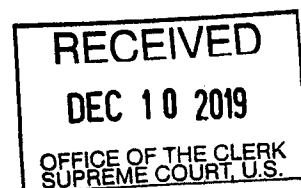
On Petition for a Writ of Certiorari to
the Oklahoma Court of Criminal Appeals

Response To Brief In Opposition

Reply Brief

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Pro se

Dated: December 2, 2019



"The policy of leaving Indians free from State jurisdiction and control is deeply rooted in the Nation's history." Rice v. Olson, 324 U.S. 786, 789 (1945).

"It is well-settled that [t]he judgment of conviction pronounced by a court without jurisdiction is void." U.S. v. Magnan, quoting Johnson v. Zerbst, 304 U.S. 458, 468 (1938).

"Without jurisdiction the court cannot proceed at all in any cause" Ex Parte McCordle, 74 U.S. (7 Wall.) 506 (1869). Accordingly, when a court "assume[s] a jurisdiction which in fact it could not take... all the proceedings in that court must go for naught." Riverdale Cotton Hills v. Ala. and GA. Mfg. Co., 198 U.S. 188, 195 (1905)

In Haines v. Kerner, 404 U.S. 519 (1972), the Court dealt with liberally construing pro se pleadings. The Court held that pro se pleadings were to be liberally construed while at the same time not acting as the pro se litigant's advocate. While Petitioner has attempted to make his claim clear, i.e. that the State of Oklahoma does not have jurisdiction to prosecute him as a Choctaw Indian pursuant to treaty provisions, nor does the state have jurisdiction to prosecute him as an Indian,

Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172 (1999); Herrera v. Wyoming, 139 S. Ct. 1686 (2019), whose alleged crime occurs in Indian Country. Any failure on Petitioner's part to present the correct legal theory or observe the legal niceties should not impair his pursuit of his claims.

To that end, Petitioner would move this Honorable Court for appointment of counsel because;

- (1) Petitioner's claims have merit.
- (2) The issues are complex.
- (3) As a pro se indigent state prisoner, Petitioner does not have access to the legal resources, nor fact-finding resources required for proper presentation of the case.
- (4) The case involves conflicting evidence on the history of the Citizen Potawatomi Nation's reservation and reservation status. (see for example, Citizen Band of Potawatomi Indians of Okl. v. U.S. Docket 96 ICC Sept 18 1958; Interior Board of Indian Appeals 28 IBIA 169 (9-12-1995); United States v. John, 437 U.S. 634 (1978).

Moreover, as the issues presented in Petitioner's case mirror the claims in a case pending before the Court, i.e. Sharp v. Murphy, No. 17-1107, judicial economy would be promoted by hearing Petitioner's case at this

time. Parklane Hosiery Co. Inc. v. Shore, 439 U.S. 322 (1979).

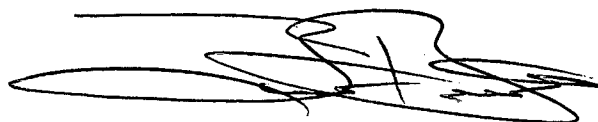
Finally, Petitioner vehemently disputes Respondent's characterization of his Post-Conviction Appeals to OCCA as procedurally barred; (see, Wackerly v. State, 237 P.3d 795, 797, holding that issues as to jurisdictional defect may not be waived or procedurally barred); Respondent's assertion that the Choctaw Treaty does not operate outside the Choctaw reservation, Respondent's assertion that the Citizen Potawatonic Nation Reservation was not Indian Country at the time the vehicular accident occurred (see, Bates v. Clark, 95 U.S. 204, 209, (1887)), and Respondent's assertion that the location of the vehicle accident in Petitioner's case was not Indian Country as defined by 18 U.S.C. § 1151, all of which deprives the State of Oklahoma of criminal jurisdiction in Petitioner's case. (see, 18 U.S.C. § 1153, proclaiming exclusive jurisdiction to federal authorities to prosecute an Indian in Indian Country)

Conclusion

The Petition for Certiorari should be Granted

Respectfully submitted,

December 2, 2019



Travis Bentley