No. 19-5684

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

In re: Kendall Dean Mitchell - PETITIONER

vs.

Mike Hunter, Attorney General of Oklahoma
---------- -RESPONDENT(S)

PETITION FOR A WRIT OF MANDAMUS/PROHIBITION

Kendall Mitchell #178793
(Your Name)

JCCC 216 N. Murray Street
(Address)

Helena, Oklahoma 73741
(City, State, Zip Code)

(580) 852-3221
(Phone Number)

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Washington County, OK District court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

QUESTION(S) PRESENTED

(1) Whether the filing limitations AEDPA apply to claims that state courts lacked of subject matter jurisdiction in criminal cases due to provisions in treaties with Indians

(2) Whether the Supremacy Clause of the United States Constitution requires that a state court rule on the merits of a claim that said lacks subject matter jurisdiction in criminal cases due to provisions in treaties with Indians

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article VI, cl. 2

United States Constitution, Article I, cl. 8

Oklahoma Constitution, Article I, § 3

Treaty of New Echota, Article 5, 7 Stat 478 (1835)

Treaty of Washington, Article 13, 14 Stat 799 (1866)

18 USCA § 1151-1153

STATEMENT OF THE CASE

Petitioner, a Cherokee Indian, was prosecuted and convicted for the crime(s) of Murder First Degree in the district court of Washington County, Oklahoma. Petitioner filed an application for post-conviction relief in state district court claiming, among other things, that the State of Oklahoma lacked jurisdiction to prosecute him because criminal jurisdiction is reserved to the Cherokee Nation or the federal government pursuant to treaty. Petitioner was denied relief in state district court. He appealed to the Oklahoma Court of Criminal Appeals (OCCA), which affirmed.

REASONS FOR GRANTING THE PETITION

1. The State of Oklahoma courts refuse to rule on the merits of Petitioner's claims, ignoring the Supremacy Clause's requirements. (See US Constitution, Article VI)
2. Petitioner believes he would be precluded from filing an application for writ of habeas corpus in federal courts because the Anti-Terrorism Effective Death Penalty Act (AEDPA) would be applied under current precedent in the Tenth Circuit. (See, for example, Canady v. Bear, No. CIV-18-677-HE, 2018 WL 3824381 (W.D. Okla, Aug 2, 2018); Parris v. Bryant, 2019 WL 2928754)
3. This Court is the most appropriate forum to decide questions related to a treaty between an Indian tribe and the United States, especially when state courts refuse to rule on the merits of the claim and lower federal courts feel

they lack jurisdiction. Under the facts stated herein, this Court is the only court that can now rule on the merits of the issue presented in this case.

4. The relief Petitioner seeks is uniquely suited to this Court: (a) issue a writ of mandamus requiring the OCCA to consider the merits of Petitioner's claims, (b) issue a writ of prohibition restraining the OCCA from applying any procedural bars to consideration of this jurisdictional claim and restraining federal courts from applying AEDPA regarding claims of state trial court lack of jurisdiction or (c) convert this application for extraordinary writ to application for writ of certiorari and grant same.

CONCLUSION

The petition for writ of mandamus/prohibition should be granted.

Respectfully submitted,

Kendall Mitchell #178793

Date: August 12, 2019

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
EASTERN OKLAHOMA REGIONAL OFC.

Certificate of Degree of Indian Blood

This is to certify that KENDALL DEAN MITCHELL

born 9/17/1964 is 125/512 degree Indian blood

of the CHEROKEE Tribe.

6/25/1984
Date

Lynda Geary
Issuing Officer

Department of the Interior
Bureau of Indian Affairs

The degree of Indian blood shown on the face of this card is computed from the final rolls of the Five Civilized Tribes closed March 4, 1907, by the Act of April 26, 1906 (34 Stat. 137).

Any alteration or fraudulent use of this Certificate renders it null and void.

Appendix A

Oklahoma Court of Criminal Appeals Decision