

No. 21-1058

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER, 2021 TERM

STATE OF OKLAHOMA,

Petitioner,

v.

MARQUISE PETEY WHITE,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE OKLAHOMA COURT OF CRIMINAL APPEALS**

BRIEF IN OPPOSITION

**JAMES H. LOCKARD
Oklahoma Bar No. 18099**

**Oklahoma Indigent Defense System
P.O. Box 926
Norman, Oklahoma 73070
Telephone (405) 801-2666
Telefacsimile (405) 801-2690**

ATTORNEY FOR RESPONDENT

March 1, 2022

QUESTION PRESENTED

Whether a State has authority to prosecute non-Indians who commit crimes against Indians in Indian country.

INTRODUCTION

This petition's question is identical to the first question presented in *Oklahoma v. Castro-Huerta*, No. 21-429. This Court recently granted certiorari on the first question presented in that petition. *See* No. 21-429 (U.S. Jan. 21, 2022). This petition should be held pending a decision in *Castro-Huerta*.

STATEMENT OF THE CASE

In *Sharp v. Murphy*, 140 S. Ct. 2412 (2020), and *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), it was common ground that the Court's holding would apply to all crimes involving Indians, whether as defendants or victims. That was because, as Oklahoma explained, “States lack criminal ... jurisdiction ... if either the defendant or victim is an Indian.” Petition for a Writ of Certiorari at 18, *Royal v. Murphy*, No. 17-1107 (U.S. Feb. 6, 2018). Hence, Oklahoma emphasized that an adverse ruling would invalidate convictions for “crimes committed against Indians” by Indians or non- Indians, “which the state would not have jurisdiction over.” Transcript of Oral Argument at 54, *McGirt v. Oklahoma*, No. 18-9526 (U.S. May 11, 2020).

Respondent invoked that law below before the Oklahoma Court of Criminal Appeals. Respondent Marquise Petey White was charged by Information, for alleged crimes committed within the Cherokee Reservation.¹ Information (Okla. Dist. Ct., Rogers Cnty. August 29, 2017, Case No. CF-2017-762).² In Count 1, after entering a blind plea of guilty, Respondent was sentenced on December 20, 2019, to life imprisonment without the possibility of parole. Pet.App.29-30a.

¹ In this case, Appellant asserted the State of Oklahoma lacked jurisdiction to prosecute him for Count I only, murder in the first degree, not any of the other counts charged in the Information. Although Appellant was not Native American, the victim in County I, but not the other Counts, was Native American.

² References to the district court filings are to Rogers County District Court Case No. CF-2017-762, available at <https://www.oscn.net/dockets/GetCaseInformation.aspx?db=rogers&number=CF-2017-762>.

Respondent appealed and filed a brief with the Oklahoma Court of Criminal Appeals on November 10, 2020. In that brief, Marquise White requested the Oklahoma Court of Criminal Appeals to dismiss Count I for lack of jurisdiction in light of this Court's decision in *McGirt v. Oklahoma*. Brief of Appellant, Proposition II (Okla. Ct. Crim. App. Nov. 10, 2020).³ On March 21, 2021, the Oklahoma Court of Criminal Appeals remanded the jurisdictional issue in Proposition II to the District Court of Rogers County for an evidentiary hearing to determine (1) The Indian status of the victim in Count 1, and (2) whether the murder occurred on the Cherokee Reservation.⁴ Pet.App.29a-34a.

On remand, the parties entered into a Joint Stipulation as follows: (1) The victim was registered as a member of the Muscogee (Creek) Nation at the time of the offense, and that the Musogee (Creek) Nation was/is an Indian Tribal Entity recognized by the federal government; and (2) The offense occurred within the boundaries of the Cherokee Nation, and that these boundaries have been explicitly recognized as a established reservation as defined by 18 U.S.C. § 1151(a), and affirmed by the Oklahoma Court of Criminal Appeals in *Spears v. State*, 2021 OK CR 7, ¶ 16, 485 P.3d 873, and *Hogner v. State*, 2021 OK CR 4, ¶ 18, 500 P.3d 629. Pet.App.26a-28a. Upon remand, and based on the joint stipulation of the parties, the District Court of Rogers County made findings that at the time of the murder, Dakota Rex had Indian blood and was a member of the Muscogee (Creek) Nation; that the Muscogee (Creek) Nation was a Tribe recognized by the federal government; that a Cherokee Reservation was established by the federal government and that said

³ References to the Oklahoma Court of Criminal Appeals Case are to Case No. C-2020-113 available at <https://www.oscn.net/dockets/GetCaseInformation.aspx?db=appellate&number=C-2020-113>

⁴ On April 1, 2021, the Oklahoma Court of Criminal Appeals held that Congress established a reservation for the Cherokee nation and that the Cherokee reservation continues to exist. *Spears v. Oklahoma*, 2021 OK CR 7, ¶¶ 11-16, 485 P.3d 873, 876-877, *petition for cert. filed*, No. 21-323 (U.S. Sept. 1, 2021).

Reservation has not been disestablished; and that the murder occurred within the boundaries of the recognized Cherokee Indian Reservation and qualifies as “Indian Country.” Pet.App.23a-25a.

At the Oklahoma Court of Criminal Appeals, the State of Oklahoma continued to assert they had concurrent jurisdiction with the federal government and could prosecute this case because it was committed by a non-Indian against an Indian even though it occurred on the Cherokee reservation. See filings on March 5, 2021, and June 7, 2021. The Oklahoma Court of Criminal Appeals correctly rejected that argument stating,

The State of Oklahoma does not have jurisdiction to prosecute Appellant for the murder alleged in this case. This Court recently rejected the State’s concurrent jurisdiction argument in *Roth v. State*, 2021 OK CR 27, 499 P.3d 23, and we apply the holding there. To summarize, federal law broadly preempts state criminal jurisdiction over crimes committed by, or against, Indians in Indian Country. 18 U.S.C. §§ 1151-1153. (Footnotes omitted.)

Pet.App.4a-5a.

REASONS FOR DENYING THE PETITION

Respondent maintains that this petition should be denied for the same reasons enumerated in the Brief in Opposition in *Castro-Huerta*.⁵ In *Castro-Huerta*, however, this Court granted certiorari on the question presented here: whether States have concurrent jurisdiction over crimes committed by non-Indians against Indians in Indian country. No. 21-429 (U.S. Jan. 21, 2022). This Court should therefore hold this petition pending *Castro-Huerta* and dispose of it as appropriate after the decision in *Castro-Huerta*.

⁵ Respondent also maintains that the petition should be denied as moot. See “Cherokee Nation Amicus Brief at 12-14, *Oklahoma v. Castro-Huerta*,” No. 21-429 (U.S. Oct. 29, 2021).

Respectfully submitted,



JAMES H. LOCKARD
Oklahoma Indigent Defense System
P.O. Box 926, Norman, Oklahoma 73070
Telephone (405) 801-2666
ATTORNEY FOR RESPONDENT
Marquise Petey White in No. 21- 1058
United States Supreme Court

No. 21-1058

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2021

STATE OF OKLAHOMA

Petitioner,

v.

MARQUISE PETEY WHITE

Respondent.

CERTIFICATE OF SERVICE

I, James H. Lockard, a member of the bar of the United States Supreme Court, certify that I have this 1st day of March, 2022, served a copy of the Brief in Opposition to the Oklahoma Court of Criminal Appeals on counsel for respondent, The State of Oklahoma, by depositing the same in the United States mail, with adequate first class postage, prepaid addressed to: John M. O'Connor, Attorney General, Office of the Attorney General of the State of Oklahoma, 313 N. E. 21st, Oklahoma City, Oklahoma, 73105 and whose telephone number is (405) 521-3921. All parties required to be served have been served.


James H. Lockard

No. 21-1058

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER, 2021 TERM

STATE OF OKLAHOMA,

Petitioner,

v.

MARQUISE PETEY WHITE,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE OKLAHOMA COURT OF CRIMINAL APPEALS**

BRIEF IN OPPOSITION

**JAMES H. LOCKARD
Oklahoma Bar No. 18099**

**Oklahoma Indigent Defense System
P.O. Box 926
Norman, Oklahoma 73070
Telephone (405) 801-2666
Telefacsimile (405) 801-2690**

ATTORNEY FOR RESPONDENT

March 1, 2022

QUESTION PRESENTED

Whether a State has authority to prosecute non-Indians who commit crimes against Indians in Indian country.

INTRODUCTION

This petition's question is identical to the first question presented in *Oklahoma v. Castro-Huerta*, No. 21-429. This Court recently granted certiorari on the first question presented in that petition. *See* No. 21-429 (U.S. Jan. 21, 2022). This petition should be held pending a decision in *Castro-Huerta*.

STATEMENT OF THE CASE

In *Sharp v. Murphy*, 140 S. Ct. 2412 (2020), and *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), it was common ground that the Court's holding would apply to all crimes involving Indians, whether as defendants or victims. That was because, as Oklahoma explained, “States lack criminal ... jurisdiction ... if either the defendant or victim is an Indian.” Petition for a Writ of Certiorari at 18, *Royal v. Murphy*, No. 17-1107 (U.S. Feb. 6, 2018). Hence, Oklahoma emphasized that an adverse ruling would invalidate convictions for “crimes committed against Indians” by Indians or non- Indians, “which the state would not have jurisdiction over.” Transcript of Oral Argument at 54, *McGirt v. Oklahoma*, No. 18-9526 (U.S. May 11, 2020).

Respondent invoked that law below before the Oklahoma Court of Criminal Appeals. Respondent Marquise Petey White was charged by Information, for alleged crimes committed within the Cherokee Reservation.¹ Information (Okla. Dist. Ct., Rogers Cnty. August 29, 2017, Case No. CF-2017-762).² In Count 1, after entering a blind plea of guilty, Respondent was sentenced on December 20, 2019, to life imprisonment without the possibility of parole. Pet.App.29-30a.

¹ In this case, Appellant asserted the State of Oklahoma lacked jurisdiction to prosecute him for Count I only, murder in the first degree, not any of the other counts charged in the Information. Although Appellant was not Native American, the victim in County I, but not the other Counts, was Native American.

² References to the district court filings are to Rogers County District Court Case No. CF-2017-762, available at <https://www.oscn.net/dockets/GetCaseInformation.aspx?db=rogers&number=CF-2017-762>.

Respondent appealed and filed a brief with the Oklahoma Court of Criminal Appeals on November 10, 2020. In that brief, Marquise White requested the Oklahoma Court of Criminal Appeals to dismiss Count I for lack of jurisdiction in light of this Court's decision in *McGirt v. Oklahoma*. Brief of Appellant, Proposition II (Okla. Ct. Crim. App. Nov. 10, 2020).³ On March 21, 2021, the Oklahoma Court of Criminal Appeals remanded the jurisdictional issue in Proposition II to the District Court of Rogers County for an evidentiary hearing to determine (1) The Indian status of the victim in Count 1, and (2) whether the murder occurred on the Cherokee Reservation.⁴ Pet.App.29a-34a.

On remand, the parties entered into a Joint Stipulation as follows: (1) The victim was registered as a member of the Muscogee (Creek) Nation at the time of the offense, and that the Muscogee (Creek) Nation was/is an Indian Tribal Entity recognized by the federal government; and (2) The offense occurred within the boundaries of the Cherokee Nation, and that these boundaries have been explicitly recognized as a established reservation as defined by 18 U.S.C. § 1151(a), and affirmed by the Oklahoma Court of Criminal Appeals in *Spears v. State*, 2021 OK CR 7, ¶ 16, 485 P.3d 873, and *Hogner v. State*, 2021 OK CR 4, ¶ 18, 500 P.3d 629. Pet.App.26a-28a. Upon remand, and based on the joint stipulation of the parties, the District Court of Rogers County made findings that at the time of the murder, Dakota Rex had Indian blood and was a member of the Muscogee (Creek) Nation; that the Muscogee (Creek) Nation was a Tribe recognized by the federal government; that a Cherokee Reservation was established by the federal government and that said

³ References to the Oklahoma Court of Criminal Appeals Case are to Case No. C-2020-113 available at <https://www.oscn.net/dockets/GetCaseInformation.aspx?db=appellate&number=C-2020-113>

⁴ On April 1, 2021, the Oklahoma Court of Criminal Appeals held that Congress established a reservation for the Cherokee nation and that the Cherokee reservation continues to exist. *Spears v. Oklahoma*, 2021 OK CR 7, ¶¶ 11-16, 485 P.3d 873, 876-877, *petition for cert. filed*, No. 21-323 (U.S. Sept. 1, 2021).

Reservation has not been disestablished; and that the murder occurred within the boundaries of the recognized Cherokee Indian Reservation and qualifies as “Indian Country.” Pet.App.23a-25a.

At the Oklahoma Court of Criminal Appeals, the State of Oklahoma continued to assert they had concurrent jurisdiction with the federal government and could prosecute this case because it was committed by a non-Indian against an Indian even though it occurred on the Cherokee reservation. See filings on March 5, 2021, and June 7, 2021. The Oklahoma Court of Criminal Appeals correctly rejected that argument stating,

The State of Oklahoma does not have jurisdiction to prosecute Appellant for the murder alleged in this case. This Court recently rejected the State’s concurrent jurisdiction argument in *Roth v. State*, 2021 OK CR 27, 499 P.3d 23, and we apply the holding there. To summarize, federal law broadly preempts state criminal jurisdiction over crimes committed by, or against, Indians in Indian Country. 18 U.S.C. §§ 1151-1153. (Footnotes omitted.)

Pet.App.4a-5a.

REASONS FOR DENYING THE PETITION

Respondent maintains that this petition should be denied for the same reasons enumerated in the Brief in Opposition in *Castro-Huerta*.⁵ In *Castro-Huerta*, however, this Court granted certiorari on the question presented here: whether States have concurrent jurisdiction over crimes committed by non-Indians against Indians in Indian country. No. 21-429 (U.S. Jan. 21, 2022). This Court should therefore hold this petition pending *Castro-Huerta* and dispose of it as appropriate after the decision in *Castro-Huerta*.

⁵ Respondent also maintains that the petition should be denied as moot. See “Cherokee Nation Amicus Brief at 12-14, *Oklahoma v. Castro-Huerta*,” No. 21-429 (U.S. Oct. 29, 2021).

Respectfully submitted,



JAMES H. LOCKARD
Oklahoma Indigent Defense System
P.O. Box 926, Norman, Oklahoma 73070
Telephone (405) 801-2666
ATTORNEY FOR RESPONDENT
Marquise Petey White in No. 21- 1058
United States Supreme Court