

IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

SEP 20 2021

JOHN D. HADDEN  
CLERK

KEITH ELMO DAVIS,

Petitioner,

v.

STATE OF OKLAHOMA,

Respondent.

No. PC-2019-451

**ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF**

Petitioner, pro se, appealed to this Court from an order of the District Court of Latimer County in Case No. CF-2004-65 denying his request for post-conviction relief pursuant to *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020).<sup>1</sup> In *State ex rel. Matloff v. Wallace*, 2021 OK CR 21, \_\_ P.3d \_\_, this Court determined that the United States Supreme Court decision in *McGirt*, because it is a new procedural rule, is not retroactive and does not void final state convictions. See *Matloff*, 2021

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<sup>1</sup> Petitioner filed the instant application for post-conviction relief from a trial court order entered on June 10, 2019, denying Petitioner's claim that the trial court lacked jurisdiction to try him based on the reasoning relied upon in *McGirt*. We affirmed the district court's ruling and denied Petitioner's post-conviction appeal. *Davis v. State*, PC-2019-451 (Okla. Cr. August 20, 2019) (unpublished). Petitioner sought review of our decision by the United States Supreme Court and that Court vacated our judgment and remanded this case to this Court for further consideration in light of *McGirt*. *Davis v. Oklahoma*, 141 S.Ct. 193 (2020).

Appendix "A"

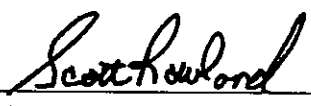
OK CR 21, ¶¶ 27-28, 40.

The conviction in this matter was final before the July 9, 2020 decision in *McGirt*, and the United States Supreme Court's holding in *McGirt* does not apply. Therefore, the trial court's denial of post-conviction relief is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2021), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

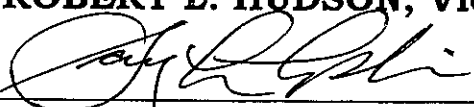
**IT IS SO ORDERED.**

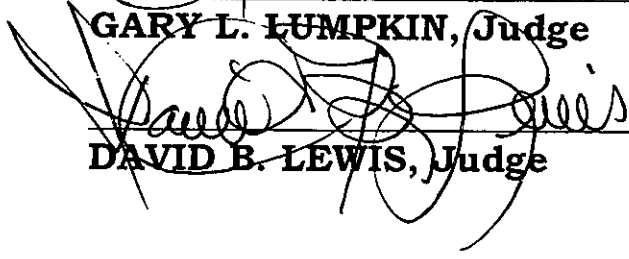
**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this

20<sup>th</sup> day of September, 2021.

  
\_\_\_\_\_  
**SCOTT ROWLAND, Presiding Judge**

  
\_\_\_\_\_  
**ROBERT L. HUDSON, Vice Presiding Judge**

  
\_\_\_\_\_  
**GARY L. LUMPKIN, Judge**

  
\_\_\_\_\_  
**DAVID B. LEWIS, Judge**

ATTEST:

John D. Hadden

Clerk

PA

IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

FILED IN MY OFFICE AT  
Wagon, Latimer County, Okla.

APR 14 2021

MELINDA BRINLEE  
COURT CLERK  
Deputy

KEITH ELMO DAVIS,

Petitioner,

v.

STATE OF OKLAHOMA,

Respondent.

No. PC-2019-451

Latimer County No. CF-04-65

**EVIDENTIARY HEARING FINDINGS OF FACT**  
**AND CONCLUSIONS OF LAW**

On this 7<sup>th</sup> day of April, 2021, the above styled case comes on for an evidentiary hearing pursuant to the Oklahoma Court of Criminal Appeals (OCCA) order remanding for evidentiary hearing and ruling on application for post-conviction relief entered on the 24<sup>th</sup> day of February, 2021. Blake Lynch appears with and for the Defendant, and Joshua Lockett appears for the State. Specifically, this Court has been ordered to address the petitioner's claim that the State lacked jurisdiction to charge, try and convict him because the crime occurred on the Choctaw Reservation and that he is an Indian. Furthermore, this Court has been ordered to make written findings of fact and conclusions of law, and forward a certified copy of those findings and conclusions of law to the OCCA and all counsel of record.

APPENDIX "B"

In reaching its findings and conclusions of law, this Court has considered the filings in this case including the State's pre-evidentiary hearing brief following second remand, arguments made by counsel for the parties, and relevant case and statutory law. The Court incorporates its prior findings that the Defendant is 3/16 degree Cherokee blood, that the Defendant was enrolled as a member of the Cherokee Nation at the time of the charged offenses, that the Cherokee Nation is an Indian Tribal Entity recognized by the federal government, that the crimes in this case occurred within the historical boundaries of the Choctaw Nation, that the portion of the Choctaw Nation including all of Latimer county has not been disestablished by Congress, and that the crimes in this case occurred in Latimer county which is in Indian Country.

The State's pre-evidentiary hearing brief raised issues beyond the scope of the evidentiary hearing initially ordered by the OCCA so the Court asked the OCCA for clarification. The OCCA clarified its order and authorized this Court to consider procedural issues following the law as set forth in *Bosse v. State*, OK CR 3, \_\_\_ P.3d \_\_\_ before ruling on the application for post-conviction relief. The Court was informed at the present hearing that the has OCCA denied a motion in *Bosse* by the State to reconsider or similar requested relief, and that the State has requested a review of that case by the U.S. Supreme Court. Because this Court has been directed by the OCCA to apply the law as set forth in *Bosse*, yet that case might be in a state

of flux, this Court will make alternative findings of fact and conclusions of law without the guidance provided by *Bosse* in addition to its findings of fact and conclusions of law following *Bosse*. The Court's findings of fact and conclusions of law following this Court's understanding of *Bosse* differ significantly from the findings of fact and conclusions of law that the Court would reach without the guidance provided by *Bosse*.

**Alternative findings of fact and conclusions of law pertaining to  
procedural bars absent the guidance of *Bosse***

For this Court, a difficulty associated with the issues stemming from the Supreme Court's ruling in *McGirt v. Oklahoma* is resolving jurisdictional questions. If this Court's authority is a matter of subject matter jurisdiction at every level of the inquiry, then this Court's jurisdiction can be challenged at any time before or after conviction because a challenge to subject matter jurisdiction cannot be waived, nor can subject matter jurisdiction be created by stipulation of the parties. Therefore, the procedural issues raised by the State in its pre-evidentiary hearing brief would not apply. This Court has expended some effort attempting to visualize how the pieces of this jurisdictional puzzle fit together.

When considering this case in light of *McGirt*, it doesn't feel to this Court like every jurisdictional question in the case is a question of subject matter jurisdiction. The Supreme Court addressed the *McGirt* case largely because the request for relief

was based partially on the application of the Major Crimes Act (MCA) providing that within "the Indian country," "any Indian who commits" certain enumerated offenses "shall be subject to the same law and penalties as all other persons committing any of those offenses, within the exclusive jurisdiction of the United States." 18 U.S.C. section 1153(a). The Supreme Court could not resolve the MCA issue without resolving the determination of "Indian" and "Indian Country." It seems clear that the Federal Government's jurisdiction over crimes enumerated in the MCA rests solely on the grant of authority by federal law once it has been determined that the person charged is an Indian in Indian Country. It appears to this Court that there are two separate issues in general that must be determined before the Federal Courts have jurisdiction. The first is that the person charged with a crime is an Indian in Indian Country, and the second is that the person is charged with a crime enumerated in the MCA. The second requirement seems to clearly fall within the normal definition of subject matter jurisdiction in that the Federal Government has exclusive jurisdiction over a particular group of crimes pertaining to Indians in Indian Country.

From the State's point of view, in areas designated as Indian Country it is initially only necessary to determine whether the person charged with a crime has a degree of Indian blood and is a member of a Federally recognized Indian tribe. If that person is not a member of an Indian tribe recognized by the Federal government

or does not have some degree of Indian blood, then the State court has jurisdiction. Notwithstanding the fact that the definition of "Indian" is contained in federal law, it appears to this Court that this issue is more closely related to a matter of personal jurisdiction than of subject matter jurisdiction for reasons discussed below.

Personal jurisdiction and subject matter jurisdiction together give the court the overall jurisdiction to charge, try, and convict a defendant. It has been this Court's experience that generally, it is clear from reading a pleading combined with knowledge of the relevant law whether the Court has subject matter jurisdiction. Perhaps a Court doesn't have subject matter jurisdiction because the amount of money in controversy exceeds some amount or the case addresses federal issues such as patent law, social security matters, or immigration issues. These are all matters that are known to all parties at or near the time of the filing of a case. The question of personal jurisdiction isn't always as easily answered, and usually the person challenging the Court's exercise of personal jurisdiction has the responsibility to raise that challenge. Failure to raise the challenge in a timely manner can be deemed as a waiver of the challenge and an acquiescence to the Court's jurisdiction over the person.

As to subject matter, the District Court is a court of general jurisdiction and has the legal authority to try criminal cases arising from almost any violation of State criminal law occurring within the geographical boundaries of the Court's



jurisdictional area. In other words, the District Court has subject matter jurisdiction to try cases arising from crimes committed in that Court's jurisdictional area. In addition to subject matter jurisdiction, the Court must have personal jurisdiction over the defendant. For personal jurisdiction to arise, the individual must have some contact with the Court's jurisdictional area. Generally, a defendant's presence in the jurisdictional area at some point in time is sufficient contact for a Court to exercise personal jurisdiction over that defendant. In the context of a criminal case, the commission of a crime in the Court's jurisdictional area is sufficient contact for a Court to exercise personal jurisdiction over a defendant.

The application of these jurisdictional principles becomes more complicated in Indian Country because Indian Country and that portion of the State of Oklahoma occupy the same area and have the same geographical boundaries. The jurisdictional area of the State of Oklahoma and the jurisdictional area of the Choctaw Reservation each include the entire county of Latimer. This means that a crime committed anywhere in Latimer Country occurs simultaneously within the boundaries of both jurisdictional areas which suggests that both the State and the Tribe would have subject matter jurisdiction, however, subject matter jurisdiction alone is insufficient for a Court to try a case.

Until the State or the Tribe acquires personal jurisdiction over the Defendant there can be no trial, and only one of the two jurisdictions can obtain personal

jurisdiction for a single crime because the defendant will be either a member of an Indian tribe subject to Tribal authority or a non-tribal member who is either subject to the authority of the State or the Tribal authority, but not both. This Court finds it easier to resolve the personal jurisdiction issue if it views the geographical areas of Oklahoma known as Indian Country as two jurisdictional layers with the same physical boundaries, but the boundary between the layers is a legal rather than physical boundary. For purposes of criminal law, it is as if tribal members live in one layer, non-tribal members live in the other layer, and non-tribal members who commit a crime against a tribal member have momentarily stepped into the tribal layer. Sufficient contact for personal jurisdiction is present in each case. If a tribal member commits a crime or a non-tribal member commits a crime against a tribal member, personal jurisdiction will lie within the tribal jurisdictional layer, whereas if a non-tribal member commits the same crime against another non-tribal member, personal jurisdiction will lie within the State jurisdictional layer. Only one of the two jurisdictional areas will have both subject matter and personal jurisdiction.

There is at least one complication that must be added to the process described above due to the principles set forth in *McGirt*. It would seem that personal jurisdiction over a non-Tribal member committing a crime against a non-Tribal victim and a Tribal victim will be found in both jurisdictional layers, and the defendant should be tried for the crime against the non-Tribal victim in State Court

and tried for the crime against the Tribal victim in Tribal Court. In other words, rather than being charged with two counts in one Court, the defendant would be charged with one count in each of two Courts. Although this sounds odd and inefficient, and will probably trigger double jeopardy challenges, it is consistent with the intent of the treaties and laws to allow the Indian tribes to try crimes committed by or against Indians but not grant the Tribe authority over non-Tribal members who happen to be in Indian country.

For the above stated reasons, it is this Court's opinion that the jurisdictional issue between the Tribes and the State is a matter of personal jurisdiction for crimes not falling within the Major Crimes Act. When crimes fall within the Major Crimes Act the controlling jurisdictional issue between the Tribe, State, and Federal government is subject matter jurisdiction, and only the Federal government will have it. If the above reasoning is correct, it follows that when crimes don't fall within the Major Crimes Act that jurisdictional challenges based on Tribal membership against the State should be classified as personal jurisdiction challenges and be subject to the procedural bars discussed in the State's pre-evidentiary hearing brief. However, neither the State or an Indian Tribe will have subject matter jurisdiction over crimes falling within the Major Crimes Act, and objections to subject matter jurisdiction are never waived so the procedural bars presented argued by the State do not apply. This reasoning might be incompatible with *Bosse* as it stands today which treats both the

Tribal membership status as well as the operation of the MCA as subject matter issues. Furthermore, the above reasoning might be incompatible with the dicta of the OCCA in paragraph number one of its opinion in *Sizemore v. State* where the Court concluded that regardless of whether an assault charge fell within the MCA, that the State of Oklahoma was without jurisdiction to prosecute.

Moving on with this alternative analysis, the Court now looks at specific facts in this case. The Court has previously found that the Defendant possesses some quantum of Indian blood, that he was a member of a Federally recognized Indian tribe at the time of the commission of the crimes, and that his crimes were committed in Indian country. Without knowing whether the defendant's crimes are enumerated in the MCA, the Court can conclude that between the Tribe and the State, personal jurisdiction will be in the Tribal jurisdiction, but personal jurisdiction can be waived. If the crimes are enumerated in the MCA, subject matter jurisdiction is exclusively with the Federal Government, and personal jurisdiction waiver issues between the Tribe and the State become moot. It is necessary in this case to ascertain whether the Defendant's crimes are enumerated in the MCA because if a crime is not enumerated in the MCA, the possibility that the Defendant has waived any objections to the State's exercise of personal jurisdiction must be considered by the Court.

The Petitioner stated in his petition for post-conviction relief that he was charged with Count 1: Forcible Sodomy and Count 2: Lewd or Indecent Proposal. The judgment and sentence indicates convictions for Count 1: Forcible Sodomy and Count 2: Lewd or Indecent Proposal to a Child Under Sixteen (16) Years of Age. Unfortunately, the Petitioner didn't state in his petition which, if either, of his crimes are enumerated in the MCA. The Court reviewed the MCA and didn't find either count specifically contained therein, although it seems quite likely that one or both of them will fall within the category of crimes enumerated in the MCA as being included in Title 18, Chapter 109A. Rather than interpret the Major Crimes Act without the Defendant and the State having an opportunity to argue their respective positions, the Court, for purposes of continuing this alternative analysis, will presume that the Major Crimes Act does not apply. No harm will be done if the crimes are in fact enumerated in the Major Crimes Act, because it goes to subject matter jurisdiction, and the Petitioner can always raise that issue in a future petition that more thoroughly presents his arguments.

Unless the Defendant has waived the State's exercise of personal jurisdiction over him, personal jurisdiction will lie with the Tribe, and coupled with the Tribe's subject matter jurisdiction over the crimes, the Tribal court will have the overall jurisdiction to charge, try, and convict the Defendant. In a typical civil case, personal jurisdiction challenges may be deemed waived if they are not raised very early in the

life of the case. It is difficult to imagine all of the problems that would arise, if the sometimes-ambiguous issue of personal jurisdiction could be raised at any time during a civil trial or perhaps even years after the conclusion of the case. The same need for finality exists for criminal cases. If a Defendant doesn't object to a court's exercise of personal jurisdiction within a reasonable time, that objection should be deemed as waived. It seems clear that challenges to personal jurisdiction related to tribal membership should be deemed waived within some time period after the *McGirt* case, and it is this Court's opinion that in some cases it should be deemed waived prior to *McGirt*.

Treating tribal membership as a subject matter issue will create uncertainty that will be improperly used by individuals charged with crimes to avoid or delay prosecution or to void previous convictions. For example, if a tribal member has already been convicted of a DUI in State Court, that individual might decide that it is better not to raise the Tribal jurisdiction issue until after the statute of limitations for that crime has run. A habitual drunk driver might even elect to wait until charged with another DUI, and then raise the issue knowing that the prior DUI will be dismissed in State Court but not prosecuted in Tribal Court because of the time lapse between the crime and the dismissal while knowing that the new DUI will not be enhanced by the prior DUI. The potential for abuse is tremendous.

It could be very difficult for the State to discover that a person charged with a crime or that a victim of a crime has a degree of Indian blood and is a member of a Federally recognized Indian tribe, if that person chooses to remain silent about his or her tribal membership or even lies to the Court under oath to conceal that fact. It has been said that the Federal Government recognizes over five hundred (500) Indian tribes across the United States. To conclusively identify Indian blood quantum and tribal membership with every tribe of which every person charged or every victim of crime could be a member will be a difficult task producing unreliable results. Even if the BIA creates or maintains a nationwide database of tribal membership designed to contain sufficient detail to provide the quantum of Indian blood and tribal membership for every Indian in every tribe in the U.S. on any day that a crime may have been committed, it seems unlikely that it would be accurate and reliable enough to rely on as the sole basis of subject matter jurisdiction.

For the above stated reasons, the Court now considers the issues raised by the State in its pre-evidentiary hearing brief. Regarding the issue of whether the outcome of *McGirt* is knowable for the purpose of the post-conviction statute in Title 22, the OCCA referred to its prior order remanding for evidentiary hearing in *Bosse* where it stated that "the issue could not have been previously presented because the legal basis for the claim was unavailable." As the State points out, the Court in *McGirt* stated that it changed no law, but that Court certainly interpreted the law in

a manner not expected by many. It seems unfair to impute the knowledge of the *McGirt* court to a layperson. Possibly, the OCCA found that the legal basis was unavailable prior to *McGirt* because it was practically unknowable.

The next step in this alternative analysis is where the ruling of the Court without the guidance of *Bosse* differs from the outcome when following *Bosse*. Under *Bosse*, every jurisdictional issue in this case is one of subject-matter, and because no procedural bars apply to subject matter jurisdiction issues, the Court would have no reason to consider the issues raised by the State in its brief. Under this alternative analysis, the crimes have been assumed to fall outside of the MCA, and the jurisdictional issue is one of personal jurisdiction regarding tribal membership status. Therefore, the procedural bars raised by the State could apply. Most of the procedural bars discussed by the State in its brief fail for the same reason that “knowability” wasn’t a bar. However, of particular interest is the Petitioner’s Motion to Vacate Judgment filed on the 1<sup>st</sup> day of June, 2012. In this motion the Petitioner specifically alleged that “Jurisdiction may lie only with USA or Tribes not State,” and he alleged that “The Defendant and alleged victim are both Indians, furthering lack of jurisdiction . . .” On the 6<sup>th</sup> day of July, 2021, this Court made a finding in part that the “defendant has either known or should have known from the day of the filing of this case the Indian status of the victim who is a blood relative of the defendant, the Indian status of himself, and the Indian status of his



homestead . . . ,” and denied that motion along with other pending matters. The Defendant clearly stated the elements of *McGirt*, and it isn’t necessary to impute that knowledge to the Defendant when he has demonstrated actual knowledge of the law. The Defendant failed to appeal the Court’s order which could have led to the same outcome as Mr. McGirt’s appeal, but he didn’t pursue that available legal remedy. It wasn’t a matter of the Defendant not knowing the law, it was a matter of the Defendant failing to crank the handle of the judicial machinery as he has done at other times.


**For the above reasons the Court makes the alternative findings that the Defendant could have pursued an available legal remedy to challenge the ruling of this Court denying his Motion to Vacate Judgment filed on the 1<sup>st</sup> day of June, 2012, that he failed to appeal said denial, that it should be deemed that he has waived his right to object to this Court’s exercise of personal jurisdiction over him related to tribal membership effective no later than at the time of his failure to appeal, that the State of Oklahoma had the necessary jurisdiction to charge, try, and convict the Defendant, and that his prayer for relief should be denied**

#### **Findings of fact and conclusions of law following Bosse**

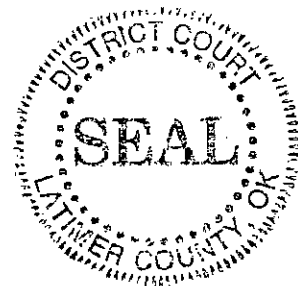
Under *Bosse*, the Tribal membership component of the test for jurisdiction in *McGirt* is matter of subject matter jurisdiction. Subject matter jurisdiction can never be waived, challenges to subject matter jurisdiction can be raised at any time, subject

matter jurisdiction cannot be conferred by stipulation or agreement of the parties, and a challenge to subject matter jurisdiction is not subject to any of the procedural obstacles presented in the State's pre-evidentiary hearing brief. Furthermore, it is not necessary for this Court to consider whether the Defendant's crimes are enumerated within the MCA because the if the Defendant has a quantum of Indian blood, was a member of a Federally recognized Indian tribe, and the crimes occurred in Indian Country, the State of Oklahoma did not have jurisdiction to charge, try, or convict the Defendant. The Court has previously found that the Defendant has a quantum of Indian blood, was a member of a Federally recognized Indian tribe at the time of the commission of the crimes, and that the crimes occurred in Indian Country. For these reasons the Courts finds that the State of Oklahoma did not have the jurisdiction to charge, try, or convict the Defendant, and his prayer for relief should be granted.

Done this 14th day of April, 2021

  
\_\_\_\_\_  
William D. Welch  
Judge of the District Court

STATE OF OKLAHOMA ) SS  
COUNTY OF LATIMER  
MELINDA BRINLEE, Court Clerk within and for  
Latimer County, State of Oklahoma, do hereby certify  
that I have compared the foregoing instrument with the  
original now remaining on file and of record in this office,  
that the same is a true and exact copy thereof. In  
witness whereof I have hereunto set my hand and affixed  
my official seal this 15 day of April 20 21.  
Melinda Brinlee Court Clerk  
By: Kelli Mc Gill Deputy



IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

APR 26 2021

KEITH ELMO DAVIS,

Petitioner,

v.

STATE OF OKLAHOMA,

Respondent.

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JOHN D. HADDEN  
CLERK

No. PC-2019-451

**ORDER PROVIDING RESPONDENT WITH OPPORTUNITY TO FILE  
SUPPLEMENTAL BRIEF AND ESTABLISHING DUE DATE**

On January 22, 2021, Latimer County District Court Case No. CF-2004-65 was remanded to the Honorable Bill D. Welch, Associate District Judge, for an evidentiary hearing to resolve issues following the decision announced in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). The evidentiary hearing was held on April 7, 2021, and the District Court's findings of facts and conclusions of law were filed in this Court on April 19, 2021.

Respondent is authorized to file a supplemental brief. Either party may file a supplemental brief on or before May 28, 2021.

**IT IS FURTHER ORDERED** that the Clerk of this Court shall transmit copies of this order to the Court Clerk of Latimer County;

APPENDIX "C"

the Honorable Bill D. Welch, Associate District Judge; Petitioner and  
all counsel of record.

**IT IS SO ORDERED.**

**WITNESS MY HAND AND THE SEAL OF THIS COURT** this

26th day of April, 2021.

  
\_\_\_\_\_  
**DANA KUEHN, Presiding Judge**

ATTEST:

John D. Hadden

Clerk

NF

Feb 12021

IN THE COURT OF CRIMINAL APPEALS      FILED  
OF THE STATE OF OKLAHOMA      IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

KEITH ELMO DAVIS,

Petitioner,

v.

STATE OF OKLAHOMA,

Respondent.

JAN 22 2021

JOHN D. HADDEN  
CLERK

No. PC-2019-451

**ORDER REMANDING FOR EVIDENTIARY HEARING AND  
RULING ON APPLICATION FOR POST-CONVICTION RELIEF**

In 2005, a jury convicted Petitioner of forcible sodomy and lewd or indecent proposals to a child. He was sentenced to 20 years and 15 years imprisonment, respectively. The convictions and sentences were affirmed on direct appeal. *See Davis v. State*, No. F-2005-1044 (Okl.Cr. December 15, 2006) (not for publication).

On June 10, 2019, the District Court denied the subsequent post-conviction application that is the subject of this order. On August 20, 2019, we affirmed the District Court, finding Petitioner's jurisdictional challenge premature because the Supreme Court had yet to decide *Sharp v. Murphy*, 591 U.S. \_\_\_, 140 S.Ct. 2412 (2020). Petitioner sought certiorari in the Supreme Court.

On July 9, 2020, the Court handed down *Murphy* and *McGirt v. Oklahoma*, 591 U.S. \_\_\_, 140 S.Ct. 2452. The Court also granted Davis' certiorari petition, vacated the judgment, and remanded the case to this Court for further consideration in light of *McGirt*. See *Davis v. Oklahoma*, No. 19-6428 (U.S. July 9, 2020).

On October 7, 2020, this matter was remanded to the District Court of Latimer County, the Honorable Bill D. Welch, Associate District Judge, for an evidentiary hearing. Judge Welch was directed to address Petitioner's Indian status and whether the crime occurred in Indian Country. On December 29, 2020, Judge Welch's order was filed with this Court. Judge Welch concluded that Petitioner is a member of a recognized Indian tribe and that his crimes occurred within the boundaries of the Choctaw Nation Reservation.

**IT IS THEREFORE THE ORDER OF THIS COURT** that this matter is **REMANDED** to the District Court of Latimer County, the Honorable Bill D. Welch, Associate District Judge, for an evidentiary hearing addressing Petitioner's application for post-conviction relief, specifically his claim that the State lacked jurisdiction to charge, try and convict him because the crime occurred on the Choctaw Reservation and that he is an Indian. The hearing shall be conducted


within sixty (60) days of the date of this order. The District Court, pursuant to this Court's Rule 5.4(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2021), shall then make written findings of fact and conclusions of law, a certified copy of which shall be forwarded to this Court, Petitioner and all counsel of record. Petitioner shall be allowed thirty (30) days from the date the order is filed in the District Court to file a supplemental application and brief for post-conviction relief with this Court, using this Court's Case No. PC-2020-451. If no supplemental brief is filed, Petitioner's application will be decided based upon his application and brief filed with this Court on June 19, 2019.

**IT IS FURTHER ORDERED** that the Clerk of this Court shall transmit copies of this order to the Court Clerk of Latimer County; the Honorable Bill D. Welch, Associate District Judge; Petitioner and all counsel of record.

**IT IS SO ORDERED.**

**WITNESS MY HANDS AND THE SEAL OF THIS COURT** this

22nd day of January, 2021.

  
\_\_\_\_\_  
**DANA KUEHN, Presiding Judge**

ATTEST:

John D. Hadden

Clerk

NF



IN THE DISTRICT COURT OF LATIMER COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Plaintiff,

v.

KEITH ELMO DAVIS,

Defendant.

Case Number: CF-04-65

FILED IN MY OFFICE AT  
Wilburton, Latimer County, Okla.  
FEB - 9 2021  
MELINDA BRINLEE  
COURT CLERK  
Deputy

Order.

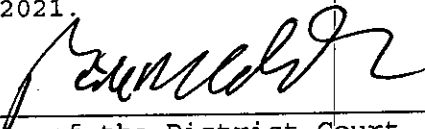
On this 9<sup>th</sup> day of February, 2021, the Defendant's "Motion to Dismiss with Prejudice" filed on February 1, 2021, comes on for consideration. In the motion, the Defendant re-urges the same issues presently being considered by the Oklahoma Court of Criminal Appeals. Notwithstanding the characterization by the Defendant of the filing as a motion to dismiss, it appears to this Court to be another petition for post-conviction relief. A prior petition for post-conviction relief was filed by the Defendant making similar allegations as those contained in his most recent motion. The District Court denied that petition, and the case was appealed by the Defendant. When considering the merits of the appeal, the Oklahoma Court of Criminal Appeals remanded the case to the District Court for an evidentiary hearing with instructions to make findings only as to the questions of whether the Defendant had any Indian blood, whether the Defendant was a member of a recognized Indian tribe, and whether the crime was committed in Indian country. This Court made the findings as directed and provided those findings to the appellate Court.

Subsequently, the Oklahoma Court of Criminal Appeals remanded the case to this Court with instructions to conduct another evidentiary hearing with instructions to make a finding limited to the issue of whether the State had jurisdiction to charge, try and convict the Defendant. This matter is presently set for hearing on the 19<sup>th</sup> day of February, 2021, at 2:00 p.m. for

the purpose of hearing arguments and receiving evidence to support the required finding. This Court will make the necessary findings and those findings will be returned to the Court of Criminal Appeals as directed, and that Court will make findings and issue orders that it deems necessary and appropriate.

It appears to this Court that the most recent motion filed by the Defendant is superfluous and raises issues either being considered by the Oklahoma Court of Criminal appeals or raises issues that could have been raised in any of the several previous petitions for post-conviction relief filed by the Defendant. For the above stated reasons, the Defendant's motion filed on February 1, 2021, is hereby denied.

Done this 9th day of February, 2021.

  
\_\_\_\_\_  
Judge of the District Court

cc: Blake Lynch  
Keith Davis  
State

**Additional material  
from this filing is  
available in the  
Clerk's Office.**