

No. 21-6464

IN THE
Supreme Court of the United States

JOHN FITZGERALD HANSON,
Petitioner,

v.

OKLAHOMA,
Respondent.

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

BRIEF IN OPPOSITION

JOHN M. O'CONNOR
*Attorney General of
Oklahoma*

JENNIFER CRABB
CAROLINE HUNT
*Assistant Attorneys
General*

BRYAN CLEVELAND
*Assistant Solicitor
General*

MITHUN MANSINGHANI
*Solicitor General
Counsel of Record*

OKLAHOMA OFFICE OF THE
ATTORNEY GENERAL
313 NE Twenty-First St.
Oklahoma City, OK 73105
(405) 522-4932
mithun.mansinghani@oag.ok.gov

CAPITAL CASE
QUESTION PRESENTED

Whether federal law requires state courts to apply *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), retroactively on state postconviction review.

TABLE OF CONTENTS

QUESTION PRESENTED..... i

TABLE OF CONTENTS..... ii

TABLE OF AUTHORITIES..... iii

BRIEF IN OPPOSITION 1

CONCLUSION..... 2

TABLE OF AUTHORITIES

CASES

Hanson v. State,
206 P.3d 1020 (Okla. Crim. App. 2009).....1

McGirt v. Oklahoma,
140 S. Ct. 2452 (2020)..... i, 1, 2

State ex rel. Matloff v. Wallace,
497 P.3d 686 (Okla. Crim. App. 2021).....1

The Monrosa v. Carbon Black Export, Inc.,
359 U.S. 180 (1959)2

STATUTES

18 U.S.C. 11531

BRIEF IN OPPOSITION

The Petition in this case relies entirely upon the arguments advanced in the petition in *Parish v. Oklahoma*, No. 21-467, as a basis for certiorari in this case. For the reasons given in the State's brief in opposition in *Parish*, certiorari should be denied in this case as it should be in *Parish*.

1. Petitioner John Fitzgerald Hanson and an accomplice kidnapped and murdered Mary Bowles. Because Jerald Thurman observed the two men in the course of the kidnapping, they also murdered him. Petitioner was convicted of two counts of murder in Oklahoma state court. He was sentenced to death for the murder of Ms. Bowles and life imprisonment without the possibility of parole for the murder of Mr. Thurman. *See Hanson v. State*, 206 P.3d 1020, 1025 (Okla. Crim. App. 2009).

2. After oral argument in *McGirt*, petitioner filed a third application for postconviction relief in state court. For the first time, petitioner argued that the State lacked authority to prosecute him because he claims to be an Indian and his crimes occurred within the borders of the historical Cherokee territory. The trial court on remand, however, found that petitioner had failed to prove he was recognized as an Indian at the time of the offense for purposes of the Major Crimes Act, 18 U.S.C. 1153. *See Pet. App. 2 n.1; Resp. App. 6-20.*

While petitioner's claim was pending, the Court of Criminal Appeals in another case held as a matter of state law that *McGirt* was not retroactively applicable to void state convictions on state postconviction review. *See State ex rel. Matloff v. Wallace*, 497 P.3d 686 (Okla. Crim. App. 2021). The Court of Criminal Appeals then applied that decision, which is the subject of the pending certiorari petition in *Parish*, to deny petitioner's claim in this case. *Pet. App. A.*

3. As more fully explained in *Parish*, when this Court decided *McGirt*, it recognized that many state inmates who attempt to seek release under its decision would

nonetheless remain in state custody “thanks to well-known state and federal limitations on postconviction review in criminal proceedings.” 140 S. Ct. at 2479. The Oklahoma Court of Criminal Appeals took *McGirt* at its word, applying one such well-known limitation: claims seeking to apply new decisions retroactively are, as a general rule, not redressable when raised for the first time on postconviction review.

Petitioner, who stands convicted of two counts of murder after a full and fair trial and appellate process (where his current contentions were never raised), nonetheless seeks review of the Court of Criminal Appeals’ state law decision. For the reasons given by the State in *Parish*, certiorari is unwarranted. The State respectfully requests that the Court refer to that brief when considering the petition here. Moreover, as the trial court held, petitioner does not qualify as an Indian for purposes of the Major Crimes Act, which provides an alternative basis to uphold the judgment below and an additional reason why certiorari is unwarranted. *See The Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully Submitted,

JOHN M. O’CONNOR
*Attorney General of
Oklahoma*

MITHUN MANSINGHANI
*Solicitor General
Counsel of Record*

JENNIFER CRABB
CAROLINE HUNT
*Assistant Attorneys
General*

OKLAHOMA OFFICE OF THE
ATTORNEY GENERAL
313 NE Twenty-First St.
Oklahoma City, OK 73105
(405) 522-4932

BRYAN CLEVELAND
*Assistant Solicitor
General*

mithun.mansinghani@oag.ok.gov

Counsel for Respondent

January 3, 2022