No. 21-6528

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Leon Tushkahomma — PETITIONER
(Your Name)

vs.

State of Oklahoma — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Oklahoma Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TUSHKAHOMMA LEON
(Your Name)

216 N. MURRAY ST.
(Address)

HELENA, OK. 73741
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

1. Whether *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), applies retroactively to convictions that were final when *McGirt* was announced?[1]

2. Is Oklahoma's decision in *Matloff v. Wallace* contrary to clearly established Supreme Court law which holds that subject-matter jurisdiction claims can be raised at any time?

3. Does Oklahoma's decision in *Matloff v. Wallace* serve as an unconstitutional state procedural bar to Petitioner's jurisdictional challenge under *McGirt v. Oklahoma*?

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[1] In support of this question, Petitioner fully incorporates the arguments presented in the Petition for a Writ of Certiorari in *Clifton Merrill Parish v. The State of Oklahoma*, attached hereto as Exhibit " ". In addition to the reasons presented in the Petition for a Writ of Certiorari in the case of *Clifton Merrill Parish v. The state of Oklahoma*, Petitioner further argues that the rule announced in *McGirt* is more substantial in this case because Petitioner was a juvenile when the crimes were committed. Hence if his case were prosecuted in the court of proper jurisdiction, he would have the benefit of *Miller v. Alabama*, 507 U.S. 460, (2012) and a more compassionate juvenile justice system.

LIST OF PARTIES

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

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Attorney General of Oklahoma

RELATED CASES

Gonzalez v. Thaler, 566 US. 134, 141 (2015)
McGirt v. Oklahoma, 140 S.Ct. 2452 (2020
Ramos v. Louisiana, 140 Sct. 1390 (2020)
Arizona v. Grant, 566 U.S. 332 (2009)
Montgomery v. Louisiana, 136 S.Ct. 718

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STATUTES AND RULES

None

OTHER

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 N/A to the petition and is

[ ] reported at N/A; 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 N/A to the petition and is

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

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

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

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

The opinion of the N/A court appears at Appendix N/A to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] 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).

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

The date on which the highest state court decided my case was Sept 16, 2021. A copy of that decision appears at Appendix B.

[ ] 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14th Amendment to the United States Constitution.

STATEMENT OF THE CASE

Petitioner ~~was convicted by~~

Petitioner pled guilty to three counts of First Degree Murder IN Latimer County District Court, case number CF-94-39, regarding the shooting deaths of his grandparents and his aunt. Petitioner was 15 at the time the crimes were committed. Petitioner did not seek to withdraw his guilty plea. Then, on July 31, 2020, Petitioner, a recognized Choctaw Indian, filed a post-conviction following this court's decision in McGirt v. Oklahoma. The district court denied post-conviction relief, and Petitioner appealed to the OCCA. Following several remands, the OCCA denied relief on September 16, 2021.

REASONS FOR GRANTING THE PETITION

It well settled precedent of this Court that challenges to a criminal conviction which involves the subject-matter jurisdiction of the court "can never be waived or forfeited." *Ganzalez v. Thaler*, 566 U.S. 134, 141 (2015) citing *United States v. Cotton*, 535 U.S. 625, 630 (2002). However, the decision of the Oklahoma Court of Criminal Appeals in *Matloff v. Wallace* 2021 OK CR. 23, which held that the decision in *McGirt* does not apply to those whose convictions became final before *McGirt* was decided, clearly does not acknowledge this Court's longstanding precedent regarding subject-matter jurisdiction. Indeed, if subject-matter jurisdiction claims "can never be waived or forfeited" then isn't the issue of *McGirt's* retroactivity moot?- or made clear? It is submitted that to comport with federal due process, this Court must resolve the discrepancy between Oklahoma's decision in *Wallace* and this Court's own precedent regarding claims of subject-matter jurisdiction.

It is within this legal theory that Petitioner alleges that Oklahoma's decision in *Matloff v. Wallace* is illegal and violative of the Fourteenth Amendment in that it contravenes the current precedent of this Court (presented above) and serves as an unconstitutional state procedural bar to litigants who would otherwise be entitled to collateral relief under *McGirt*. *See also Hill v. United States*, 268 U.S.

424, 428 (1962) (held that a collateral attack is always available "for a constitutional error, or a lack of jurisdiction in the sentencing court.") However, following the reasoning of Oklahoma's decision in *Matloff* leads to the conclusion that a prisoner whose conviction became final before *McGirt* was decided **cannot** bring his or her subject-matter jurisdiction claim in a collateral proceeding. This conclusion and reasoning in *Matloff* cannot stand because it violates the current precedent of this Court regarding subject-matter jurisdiction claims discussed above, in violation of the Fourteenth Amendment to the United States Constitution.[2] Furthermore, Oklahoma's failure to acknowledge in *Wallace* that subject-matter jurisdiction claims may be raised at any time also violates Equal Protection of the Law, which is also guaranteed by the Fourteenth Amendment.

It is further submitted that, under the doctorine of *stare decisis*, this Court must side with its existing precedent (which holds that subject-matter jurisdiction claims may be raised at any time) and rule that Oklahoma's decision in *Matloff* is unconstitutional and violative of the Fourteenth Amendment. See *Ramos v. Louisiana*, 140 S.Ct. 1390 (2020) and *Arizona v. Gant*, 556 U.S. 332 (2009) (recognizing that the doctorine of *stare decisis* is essential to respect judgments of

[2] In the McGirt opinion Justice Roberts dissented and recognized "[U}nder Oklahoma law, it appears that there may be little bar to state habeas relief because 'issues of subject-matter jurisdiction are never waived and can therefore be raised on collateral appeal.'" quoting *Murphey v. Royal*, 875 F.3d 896, 907 n.5 (10th Cir.2017). Hence, in addition to being contrary to precedent of this Court, the decision of the OCCA in *Wallace* also flies in the face of Oklahoma's own precedent regarding subject-matter-jurisdiction claims.

the court and the stability of the law). In deciding that *McGirt* is not retroactive, Oklahoma has clearly attempted replace, ignore, and/or overrule this Court's existing precedent regarding subject-matter jurisdiction. This action is arbitrary because it plainly and clearly ignores existing precedent of this Court, which, in turn, also arbitrarily denies those otherwise entitled to collateral relief under *McGirt*. Thus, the Court's intervention into this matter is warranted and necessary to prevent further prejudice to those entitled to collateral relief under *McGirt*, and, even more importantly, to re-enforce this Court's current precedent which holds that subject-matter jurisdiction claims may be raised at any time. Also, this Court's intervention is necessary to prevent the State of Oklahoma from making future decisions which contravene this Court's precedent regarding subject-matter jurisdiction.

IF THE TEST OF RETROACTIVITY DOES APPLY, THEN THE DECISION IN *MCGIRT* WAS SUBSTANTIAL RATHER THAN PROCEDURAL

Petitioner further submits that this Court's decision in *McGirt* is constitutionally substantial and should be available to all of those who meet its requirements, regardless of when their convictions became final. In *Montgomery v. Louisiana*, 136 S.Ct. 718, this Court recognized "a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced."

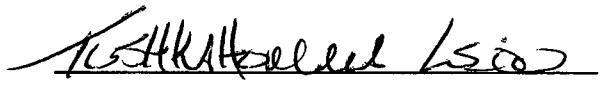
Id. Pursuant to this authority, the State of Oklahoma was without authority to make and implement a precedent which abrogates the important and substantial rule of law announced in *McGirt*. The rule announced in *McGirt* is a substantial one because in *McGirt* this Court recognized the importance of the promise that was made to the Creek *and Choctaw* Indians, "the Creek Nation received assurances **that their new lands in the west would be secure forever."** *Id.* This Court concluded, "because congress has not said otherwise, we hold the government to its word." *Id.*

Nobody is making the argument that the importance of this promise means more than the mere technicalities of a retroactivity test. If technicalities do apply, then the importance of this promise means that this Court must stand by its holding in *Montgomery,* where this Court clearly defined *what* constitutes a substantive rule of law, "substantive rules, then, set forth categorical constitutional guarantees that place certain criminal laws and punishments **altogether beyond the state's power to impose**." *Montgomery,* 577 U.S. at 501. Clearly, as this Court recognized in *McGirt*, the Major Crimes Act does **altogether** prevent the State of Oklahoma from prosecuting those of Indian descent who commit crimes on Indian lands. Consistent with these facts and authority, if this Court's recognition of the Major Crimes Act in *McGirt* does not fit the test of qualifying as a "new substantial rule of law," then nothing does.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: October 15th, 2021