

In the Supreme Court
of United States

Rickey Ray Wallgren Jr. pro se

v.

Rick Whitten, Warden

Case no. 21-6927

Motion to Reconsider
Writ of Certiorari

Rickey Ray Wallgren
#704446 JCCC Unit 5A
216 North Murrey Str.
Helena OK 73241

Petitioner Ricky Wallgren an Indian moves court in the interest of justice to reconsider certiorari to prevent a fundamental miscarriage of justice of one who is actually - factually innocent in light of new evidence and Brady material.

- 1.) Tenth Circuit erred, failed to take notice and properly consider newly discovered facts, evidence and undisputed testimony from (7) seven witnesses had during evidentiary hearing on 7-26-2021 no. CF-2013-516 in Pottawatomie County Oklahoma where in presiding Senior district Judge Canavan conceded he made a mistake in prior Order (7-7-2017) and now stated he "believed" Wallgren was un-aware at trial of critical new exculpatory Alibi material facts and evidence and Brady material establishing Wallgrens actual - factual innocence disputing District Courts findings of fact and conclusions of law. resulting in a denial of due process 28 U.S.C. § 2254 (d) (1)(2)

2.) This Court must either grant certiorari or remand with instructions otherwise Wellgren will be irreparably harmed and now his Indian country jurisdictional claims will be procedurally barred raised in DOL-11-20 thru 100 Cause of new intervening circumstances of substantial and controlling effect wherein all Oklahoma state and Federal courts are retroactively applying un-constitutional decision in State ex rel Matloff v. Wallace 2021 WL 206-9259) which violates principles of ex-post facto clause, overturns some 200 years of this courts precedent and fore closes any relief under in-applicable Oklahoma Law to possibly hundreds of otherwise Federal-Tribal Indian cases that stood to be overturned under McGirt v. Oklahoma 140 S.Ct. 2452 (2020) showing district court and states Attorney General erred or misled Wellgren to believe his Morphy / McGirt claim could be raised in subsequent habeas petition by A.G and court both stating McGirt would be "retroactive" see DOL-11 and 20 and there would be no impediments to relief

3.) Wallgren moves court to either grant certiorari, or remand with instructions or consolidate its decision with possible intervening decision by this court in *Oklahoma v. Victor Manuel Castro-Huerta* no 21-429 (2022) which may also be consolidated with other similar cases to settle circuit dispute, promote justice and judicial economy in *Confederated Tribes and Bands of Yakima Nation v. Klickitat County* 1 F.4th 673 9th Cir 2021 ; *Rosebud Sioux v. U.S.* 9 F.4th 1018 8th Cir 2021 ; which would provide some guidance to numerous similar cases on appeal including but not limited too ; 2022 WL 722208 (citing cases) see also 2022 WL 951997 ; WL 907194 ; WL 885656 ; WL 576559 ; WL 580449 ; WL 851774 ; WL 468607 WL 363357 ; WL 740921 ; WL 301598 ; WL 7046947 WL 291622 ; WL 472192 ; WL 291723 ; WL 740920 ; WL 420771 along with numerous other cases in lower trial courts just to name a few, including some cases courts have already released defendants to be set free, but are now trying to recall mandates and re-incarcerate, some now serving time in Federal prison and are not reported on West-Law.

If this court does not grant certiorari or remand with instructions, Wallgren will now be procedurally barred under Matloff v. Wallace supra see Montgomery v. Crow 2022 WL 1174095 Eckhardt v. Crow 2022 WL 1298575

In fact Oklahoma Legislature recently amended its own Uniform Post-Conviction Procedure Act to specifically defeat jurisdictional challenges overturning a 100 years of its own precedent and some 200 years of Supreme Court precedent in light of this court's McGirt decision

see 2022 Okla. Sess Law Serv. Ch. 144 (H.B. 3383)

placing limitations on McGirt type challenges, and allowing Oklahoma to usurp congressional policy and Federal Indian law, to maintain unlawful convictions of Indians within Indian country, in violation of the U.S. Constitution, Indian Treaties and Acts of Congress relied on by this court in McGirt - and numerous cases cited in Wallgren's Brief, supra.

Evidentiary Hearing

- 4.) Tenth Circuit erred and denied due process cause New undisputed facts, evidence and testimony developed during evidentiary hearing on 7-26-2021 along with additional briefs allowed by court proved beyond a reasonable doubt
- A.) Wellgren was denied effective assistance of trial and appellate counsel see Transcripts of hearing (7-26-21)
- B.) Wellgren and alleged victims are all Indian and location of alleged offenses is Indian Land within Indian Country under Congressional definitions in statutes cited in Supplemental (5) Briefs filed in 11-9-2018 thru 2021 in case no. CF-2013-516.
- C.) Jury was impaneled in violation of Batson v. Kentucky
- D.) Jury was deliberately tainted by ex-parte conversations about the case with Wellgren's ex-wife, her family and friends during un-instructed breaks in violation of Remmer. Corroborated by new propensity evidence where in ex-wife attempted to do the same at evidentiary hearing thru ex-parte conversation with Judge Canavan to rule against Wellgren.

E.) New Facts, evidence and testimony discovered at evidentiary hearing (7-26-21) show Juror Tyler Hergus committed perjury during voir dire when asked if he knew district attorney, cause witness testified at hearing he discovered (after trial) that Hergus posted pictures on Face Book of himself playing golf with prosecutor "Bob" Boothe during trial that prosecutor failed to disclose.

F.) New Facts, evidence and testimony in transcripts from evidentiary hearing (7-26-2021) show that Jury was never made aware of newly discovered FaceBook confession by Wallgrens ex-wife to other party that Mrs. Wallgren coached their daughters BW and JW lied to police and investigators and made false allegations in retaliation for Wallgren leaving her ; to retain custody of children; obtain family farm and hundreds of thousands of dollars in cash and personal property named in divorce and to avoid criminal charges related to kidnapping children confessed in divorce hearing held some (6) six months after trial case no. FD-13-233)

Evidence from hearing on 7-26-21 show new facts and documents came to light in A.G.'s table of Exhibits submitted during habeas proceedings substantiating Brady violations that Wallgren attempted to set out during trial Post-conviction and habeas proceedings thoroughly Briefed in Supplemental Brief requested by trial court filed 9-1-2021

These new documents show state "modified" a disk (St. Ex-13) by deleting at least 101 ten days worth of recorded jail house conversations between Wallgren and his ex-wife Renee Christine Wallgren immediately after his arrest, wherein Mrs. Wallgren made similar confession to that made on Face Book wherein she admitted to her motives for coaching both children to lie to investigators and make false statements of being abused during SANE exams and forensic videos, along with numerous attempts at extortion for Wallgrens freedom in exchange for her coming forward and admitting to witness coaching but only if Wallgren would sign over titles to numerous vehicles and sign over deed to 40 acre family farm and to tell her where he buried

several hundred thousand dollars in cash she later discussed and demanded in divorce, but denied any interest in during trial

Face Book and deleted jail house confessions would have cast entire case in different light cause jury was ~~now~~ never made aware of the fact that J.W. confessed during preliminary hearing that she had no memory of any abuse what so ever, and admitted she had been told what to say during SANE and forensic video shown to jury. see P.H. 89-110 denied by court TR-340-355)

The proceeding evidence would have been further corroborated had court allowed jury to see forensic video of B.W. wherein she confessed J.W. was never abused but denied by court (TR-355) which finds further corroboration from B.W.'s Face Book postings admitting to no abuse and lying to police denied sua sponte by court (TR-495-98) and again denied at sentencing (STR-32) showing B.W. was ^ulying to jury" as noted by counsel at sentencing.

Evidence developed at hearing (7-26-21) shows that six-months after trial during divorce proceedings Mrs. Wallyen admits for the first time that J.W. and B.W. were both receiving counseling by psy. christ who's reports and testimony was never known by Wallyen or presented to jury, where in Wallyen requested in-camera hearing under Pennsylvania v. Ritchie, Browning v. Tammelle and Ellis v. Mullin to their to determine potential violations discussed in Ritchie, Browning and Ellis. Thoroughly argued in Brief filed in trial court on 9-1-2021

Conclusion

Wallyen argues that courts failure to remand case to exhaust meritorious claims worked to his prejudice, forced him into a Hobsons choice and placed him into a procedural box, cause if lower courts deny relief, he will need to request to the circuit to file second - subsequent petition since court denied him to Amend initial petition and now all courts are simply procedurally barring claims under Matloff v. Wallace see Beasley v. Harvonek 2022 WL 1321552 and WL 1400285 citing cases.

In fact in this case both the Attorney General and Federal District Court stated any decision in Murphy or McGirt would be "retroactive" see Doc 11-20 no CIV-18-824-F

Futility

This is the only court with the power, ability and competency to properly adjudicate claim cause all Oklahoma courts are stating McGirt is not retroactive to cases on collateral attack see Matloff v. Wallace 2021 WL 2069659 and applying "policy" like this court did in McGirt see Lumpkin ~~at~~ Concurring) applying OK. law and anticipatory procedural bar to all cases beyond direct appeal) Federal courts recognize it is futile to return to state post conviction when state courts fail to provide sub-stantive review of constitutional claims see Beer v. Boone 173 F.3d 782, 785 (10th Cir 1999) IF state routinely imposes a procedural bar on those claims which are being exhausted, the exhaustion requirement may be bypassed see Duckworth v. Serrano 102 S. Ct. 18 (1991) (An exception is made only if there is no opportunity

to obtain redress in state court, or if the corrective process is so clearly deficient as to render futile any effort to obtain relief" *Coleman v. Thompson*

n.1 111 S.Ct. 2546 (1991); *Harris v. Reed* 109 S.Ct 1038 (1989) (concurring opinion)

The Federal District courts naturally defer to OCCA

Therefore Oklahoma's successor post-conviction process is ineffective in providing any hope of substantive review of Wallgren's Constitutional - Treaty claims, would be procedurally barred based upon the consistent pattern and practice of OCCA and a return to state court is futile and relief is available under 28 U.S.C. § 2254 (b) (1) (B) (ii) however to return to Federal District court may be just as futile based on

negative treatment Wallgren received by Judge Stephen Frost denying stay to exhaust Mc Brit claim stating courts lack of jurisdiction had "no bearing on any of the issues"

Even though Friot previously stated McGirt would

be 'retroactive' see Doc-20-99 no CIV-18-824 F)

Like the OCA Judge Friot expresses his own bias

by advocating for state, is openly hostile, based on

his apparent disdain to this courts decision in McGirt,

as evident by his condescending language, overall

negative tone, snide comments and derogatory statements

in his opinion in Oklahoma v. Dept. of Interior 2021

WL 606 4000 stating McGirt put: "the state of

Oklahoma and millions of its citizens in a uniquely

dis-advantaged position as compared to the other

forty-nine states.... Core functions of state govern-

ment relied by all Oklahomans for over a hundred years

are called into question is a prime example of

havee flowing from McGirt."

Friot suggests McGirt was not "correctly decided"

then Friot goes on to present possible defenses for Oklahoma on Appeal by applying *City of Sherrill N.Y. v. Oneida Indian Nation of New York* 125 S.Ct. 1478 (2005). In his Conclusion, Judge Friot rehearses Oklahoma's arguments it presented thru-out McGirt and Murphy claiming Reservation "... has been thoroughly hollowed out by more than a hundred years of legal, extra-legal, economic and demographic events" and "... is essentially a perimeter, a line zig-zagging around a major swath of eastern Oklahoma.")

Conclusion / Relief Requested.

Wallgren moves court to reconsider Couse Potawatomi Nations Treaty is only treaty specifically asserting "jurisdiction" and only reservation enlarged some 900 square miles over 60 years after Allotment Act. as discussed in Petition.

Motion to Apply Blackfeet - Trust Doctrine

Tenth circuit, U.S. District Court and Oklahoma state courts have consistently failed to apply canon of liberal

construction, to congressional or legislative intent, treaty's

Congressional Acts, Federal statutes and case law to

Indians benefit denying due process under 28 U.S.C. § 2254

(d)(1)(2) and Blackfeet Doctrine and Supremacy Clause

In Wallgrens case the Tenth circuit ignored its own precedent stating: "For the purpose of this case the canon of

construction favoring native americans controls over the more

general rule of deference Ramah Navajo Chap. v. Lujan 112

F.3d 1455 1461-62 10th cir 1997) ("statutes are to be construed

liberally in favor of the Indians with ambiguous provisions

interpreted to their benefit" Montana v. Blackfeet Tribe 105

S.Ct. 2399 (1985) applies to "legislative intent" S. Carolina v.

Catawba Indian Tribe 106 S.Ct. 2039 (1986) (even if statutes

"do not mention Indians at all EEOC v. Cherokee Nation 871

F.2d 937 939 10th cir 1989.) The courts and the 5th state

fails to appreciate, however that the standard principles of

Statutory construction do not have their usual force in cases

involving Indian Law *Quada County v. Quada Indian Nation* 105

S.Ct. 1245 (1985) (exemptions generally are to be construed

narrowly in dealings with the Indians the rule is exactly the

contrary, the construction instead of being strict is liberal

Choate v. Trapp, 32 S.Ct. 565 (1912) ("statutes are to be

read to reserve Congress powers' *Northern Cheyenne Tribe v.*

Hollow breast 96 S.Ct. 1793 (1936) (LAW bisunities in Federal

law have been construed generously in order to comport with

these general notions of sovereignty and with the Federal policy

Southland Royalty Co. v. Navajo Tribe 215 F.2d 486 488 10th Cir

1983) (When Indians are involved this court has long given

special meaning to this rule' *Lone Wolf v. Hitt* 23 S.Ct.

216 (1909) (most there fore be construed, not according to the

technical meaning of its words to learned lawyers but in the

sense in which they would naturally be understood by the

Indians *Toloe v. Washington* 62 S.Ct. 862 (1942) (should never

be construed to their prejudice' *Squire v. Copeman* 76 S.Ct. 461

(1956)

Certification / Verification

Petitioner Ricley Ray Wellgren Jr. swears and affirms under penalty of perjury 28 U.S.C. § 1746 that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented and petition for rehearing is presented in good faith and not for delay per Rule 44 and foregoing is true and correct.

Certificate of Mailing

Petitioner Ricley Ray Wellgren Jr. swears and affirms under penalty of perjury 28 U.S.C. § 1746 and that Motion to Reconsider was placed with prison facility staff along with disbursement for mailing cost on May 9 2022 within the 15 day deadline from letter from court clerk dated April 27 2022 per Rule 44.6, to be mailed to court clerk at 1 N.E 1st Str. Washington D.C. 20543-0001

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