

Supreme Court, U.S.
FILED

DEC 21 2021

OFFICE OF THE CLERK

No. _____

21-7144

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT JAMES GRASS – PETITIONER

vs.

KEVIN HARVONEK (WARDEN) – RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

Robert James Grass
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ORIGINAL

QUESTIONS PRESENTED

- 1) Did the Oklahoma Court of Criminal Appeals violate Mr. Grass' Fourteenth Amendment right to Due Process by:
 - a) affirming the district court's Denial of Mr. Grass' application for Post-Conviction relief even though Mr. Grass had shown *prima facie* evidence of his Indian Status and the locale of the alleged Crime?
 - b) affirming the district court's decision to deny Mr. Grass' application for Post-Conviction based on the erroneous legal analysis in *State ex rel. Matloff v. Wallace*, 2021 OK CR 21, ____ P.3d ____?
- 2) Whether Oklahoma courts may exercise criminal jurisdiction over a Cherokee Indian in violation of treaty provisions between the Cherokee Indians and the United States?
- 3) Does U.S. Constitution Art. 1, Section 8, deny criminal jurisdiction to any State absent a grant by Congress?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page

RELATED CASES

Grass v. State, No. CF-97-311, Cherokee County District Court, State of Oklahoma, Judgment entered October 16, 2020. (PCR denial)

Grass v. State, No. PC-2020-827, Oklahoma Court of Criminal Appeals, Judgment entered, October 1, 2021. (OCCA Denial)

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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

The opinion of the Oklahoma Court of Criminal Appeals, Oct. 1, 2021, appears at Appendix A to the petition and is unpublished.

The opinion of the Oklahoma Court of Criminal Appeals, Jun. 22, 2021, appears at Appendix B to the petition and is unpublished.

The opinion of the Oklahoma Court of Criminal Appeals, May 21, 2021, appears at Appendix C to the petition and is unpublished.

The opinion of the Oklahoma Court of Criminal Appeals, Mar. 24, 2021, appears at Appendix D to the petition and is unpublished.

The opinion of the Cherokee County District Court, Oct. 16, 2020, appears at Appendix E to the petition and is unpublished.

JURISDICTION

The date on which the Oklahoma Court of Criminal Appeals decided my case was October 1, 2021.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS

Amendment XIV (Due Process)

U.S. Const. Art. VI cl. 2 (Supreme Law of The Land)

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18 U.S.C. § 3242 (Indians committing certain offenses; acts on reservations)

25 U.S.C. § 71 (Future treaties with Indian tribes)

25 U.S.C. §1321(a) (Assumption by State of Criminal Jurisdiction)

25 U.S.C. §1322(a) (Assumption by State of Civil Jurisdiction)

25 U.S.C. §1326 (Special election)

STATEMENT OF THE CASE

The Petitioner, Robert Grass, was convicted of First Degree Murder - Malice Aforethought in the District Court of Cherokee County on November 19, 1997. Mr. Grass was sentenced to 100 years imprisonment on July 22, 1999. Mr. Grass' attorney timely filed a Direct Appeal in which petitioner had no involvement. On August 24, 2000, the Oklahoma Court of

Criminal Appeals, hereinafter OCCA, issued a summary opinion affirming the judgement and sentence of the District Court. *Grass v. State*, No.F-1999-1023 (Okla. Crim. App. 2000).

OVERVIEW OF THE STATE COURTS DETERMINATION OF FACTS

On September 29, 2020, Mr. Grass filed the instant application for post-conviction relief in the District Court of Cherokee County based on the U.S. Supreme Court ruling of *McGirt v. Oklahoma*, 148 S. Ct. 2452, 2020 WL 3848063. Mr. Grass' propositions included a claim that the District Court lacked jurisdiction to charge, try, and sentence him. Mr. Grass argued that the district court also lacked jurisdiction to certify him as an adult being that he is a member of the Cherokee Nation, and that his alleged crime occurred within the boundaries of the historic Cherokee Nation Reservation.

On October 16, 2020, the District Court entered an Order denying Petitioner's application without conducting an evidentiary hearing pursuant to 22 O.S.2011 § 1084. The District Court denied Mr. Grass' Post-Conviction Application for lack of Subject Matter Jurisdiction based upon the doctrine of ripeness.

On October 21, 2020, Mr. Grass initiated an appeal to the denial of his application for post-conviction relief by filing a Notice of Intent to Appeal, a Petition in Error, and a Petitioners Brief in Support of Appeal From Denial of Post-Conviction Application to the OCCA.

On February 9, 2021, the District Court of Cherokee County issued a States Response to Defendant's Application for Post-Conviction Relief asking the State of Oklahoma to deny the requested relief until *Hogner v. State*, F-18-138 or *State v. Bosse*, PCD-2019-124 posing the jurisdictional question of whether, under the legal analysis set forth in *McGirt*¹, the Cherokee

¹ *McGirt v. Oklahoma*, 148 S. Ct. 2452, 2020 WL 3848063

Nation reservation was or was not disestablished. Mr. Grass filed a Motion For Clarification To States Response To Petitioners Application For Post-Conviction Relief so that he could properly respond but the District Court never replied.

It would have appeared to Mr. Grass, that the District Court of Cherokee County denied relief once on October 16, 2020², due to the doctrine of ripeness, and then again on February 9, 2021³, because Mr. Grass failed to meet the burden to present *prima facie* evidence that the jurisdiction of the Oklahoma State District Court is defeated in favor of exclusive Federal Jurisdiction and/or Tribal Jurisdiction.

On March 24, 2021, the OCCA issued an order Remanding For Evidentiary Hearing to address Mr. Grass' application on its merits. Mr. Grass was brought before the District Court of Cherokee County to address two separate questions: (1) his Indian status, and (2) whether the crime occurred in Indian Country. This Order⁴ was filed following the prior Order⁵ from the State's response requesting denial of Mr. Grass' Application for an altogether different reason. While Mr. Grass had already filed for a Notice of Post-Conviction Appeal, only considering the original denial under the doctrine of ripeness; Mr. Grass was left with no legal procedure to timely consider the District Courts reason for denying relief. Mr. Grass has become confused in the denial of his Post-Conviction application. Was he denied under the doctrine of ripeness? Or because he did not present *prima facie* evidence?

² Order Denying relief, Cherokee County District Court, Oct. 16, 2020, CF-97-311, Appx.E

³ State's Response to Defendant's Application for Post-Conviction Relief, Cherokee County District Court, Feb. 9, 2021, Appx. F

⁴ Order Remanding for Evidentiary Hearing, Oklahoma Court of Criminal Appeals, PC-2020-827, Mar. 24, 2021. Appx.D

⁵Order Denying relief, Cherokee County District Court, Oct. 16, 2020, CF-97-311, Appx.E

On April 29, 2021, Mr. Grass appeared before the District Court of Cherokee County pro se. The District Court of Cherokee County issued its stipulations in which the State agreed to Mr. Grass' Indian status and that the crime **did** occur within the Cherokee Nation completing the showing of *prima facie* evidence. The Stipulations⁶ were hand delivered to Mr. Grass immediately following his appearance.(Emphasis added)

On April 29, 2021, the same day that State Stipulations were filed, the District Court of Cherokee County also issued a States Pre-Evidentiary Hearing Brief on Indian Country Remand⁷ in which the district court claims Mr. Grass' Jurisdictional claim is waived and that Mr. Grass did not file a proper challenge to the States exercise of jurisdiction until his post-conviction appeal.

On May 5, 2021, The OCCA issued a Request For Enlargement Of Time In Which To Complete Remanded Evidentiary Hearing⁸. The State requested an extension until June 10, 2021, in which to complete the remanded evidentiary hearing.

On May 21, 2021, the OCCA issued an Order Granting Motion For Extension Of Time In Which To Hold Evidentiary Hearing⁹.

On June 1, 2021, the OCCA issued a Motion To Stay And Abate Proceedings, by and through Mike Hunter, Attorney General of the State of Oklahoma, due to ongoing litigation in *Bosse v. State*, supra, and *State ex re. District Attorney v. Wallace*, 2021 OK CR 15, ¶ 6, ___ P.3d ___, ___. The States new argument claims that Mr. Grass' jurisdictional claim was waived

⁶ Stipulations, Cherokee County District Court, CF-1997-311, PC-2020-827, Apr. 29, 2021, Appx. G

⁷ States Pre-Evidentiary Hearing Brief on Indian Country Remand, CF-1997-311, PC-2020-827, Apr. 29, 2021, Appx. H

⁸ Request for Enlargement of Time in Which to Complete Remanded Evidentiary Hearing, CF-1997-311, PC-2020-827, May 5, 2021, Appx. I

⁹ Order Granting Motion For Extension Of Time, PC-2020-827, May 21, 2021, Appx. C

and barred by the doctrine of laches¹⁰ rather than the doctrine of ripeness as previously mentioned.

On, June 22, 2021, the OCCA issued an Order Staying Proceedings¹¹ until issues pending before the United States Supreme Court (*Bosse v. State*, 2021 Ok CR 3, 484 P.3d 286) and the OCCA (*State ex rel. District Attorney v. Wallace*, 2021 OK CR15, ___ P.3d ___) are resolved.

On August 17, 2021, the OCCA, by and through Attorney General John M. O'Connor, issued a Notice Of Decision In State Ex Rel District Attorney V. Wallace, 2021 OK CR 21, And Request To Affirm The District Courts Denial Of Post-Conviction Relief¹². Pursuant to *Wallace*, the State claims Mr. Grass is not entitled to relief.

On, October 1, 2021, the OCCA issued an Order Affirming Denial Of Post-Conviction Relief¹³.

The District Court Of Cherokee County has yet to send Mr. Grass an official denial but he has received a Service Copy of a Mandate¹⁴ from the Oklahoma Court of Criminal Appeals to the District Court of Cherokee County ordering the District Court to make a disposition in the instant case.

¹⁰ Motion to Stay and Abate Proceedings, Oklahoma Court of Criminal Appeals, PC-2020-827, Jun. 1, 2021, Appx. J

¹¹ Order Staying Proceedings, Oklahoma Court of Criminal Appeals, PC-2020-827, Jun. 22, 2021, Appx. B

¹² Notice Of Decision In *State Ex Rel District Attorney V. Wallace*, 2021 OK CR 21, And Request To Affirm The District Courts Denial Of Post-Conviction Relief, Oklahoma Court of Criminal Appeals, PC-2020-827, Aug. 17, 2021, Appx. K

¹³ Order Affirming Denial of Post-Conviction Relief, Oklahoma Court of Criminal Appeals, PC-2020-827, Oct. 1, 2021, Appx. A

¹⁴ Mandate, Oklahoma Court of Criminal Appeals, PC-2020-827, Oct. 1, 2021, Appx. L

REASONS FOR GRANTING THE WRIT

Mr. Grass filed a Post-Conviction Application based on the recent U.S. Supreme Court ruling in *McGirt vs. Oklahoma*, 140 S.Ct. 2454 (2020). Due to the OCCA'S ruling in *Matloff vs. Wallace*, 2021 OK CR 21, the district court erroneously ruled that the ruling in *McGirt* created new procedural rules and that the ruling was not retroactive to the cases that have been adjudicated beyond direct appeal. However, no new rule was created by the *McGirt* ruling and this ruling did not circumvent the fact that jurisdictional issues cannot be waived.

Despite being clearly presented with this issue, the decision *Matloff* did not address the issue of whether the rule in *McGirt* is substantive. "New substantive rules generally apply retroactively" while "[n]ew rules of procedure... generally do not." *Schrivo v. Summerlin*, 542 U.S. 348, 351-52 (2004)

New rules of criminal procedure generally apply to cases pending on direct appeal when the rule is announced, with no exception for cases where the rule is a clear break with the past law." See *Carter v. State*, 2006 OK CR 42, § 4, 147 P.3d 243, 244 (citing *Griffith v. Kentucky*, 479 U.S. 314, 323 (1987)) (applying new instructional rule of *Anderson v. State*, 2006 OK CR 6, 130 P.3d 273) citing *Matloff vs. Wallace*, 2021 OK CR 21.

By holding that *McGirt* is a mere procedural rule, that is not retroactive to cases on collateral review, the OCCA has sought to preserve legally void convictions that the state never had authority to impose.

McGirt gave effect to a fundamental structural principle governing criminal jurisdiction over Indian-Country crimes: states have no authority to prosecute crimes covered by the Major Crimes Act. 18 U.S.C. § 1153.

Following *Teague v. Lane*, 489 U.S. 288 (1989) and its progeny, we would apply a new *substantive* rule to final convictions if it placed certain primary (private) conduct beyond the power of Legislature to punish, or categorically barred certain punishments for classes of persons because of their status (capital punishment of persons with insanity or intellectual disability, or **juveniles**, for example.) See, e.g., *Pickens v. State*, 2003 OK CR 16 § 8-9, 74 P.3d 601, 603 (retroactively applying *Atkins v. Virginia*, 536 U.S. 304 (2002) because Atkins barred capital punishment for persons with intellectual disability). (Emphasis added)

" Substantive rules" of constitutional law for criminal cases, which are not subject to the *Teague* general bar on retroactively applying new constitutional rules of criminal procedure to convictions that were final when the new rule was announced, included rules forbidding criminal punishment of certain primary conduct, as well as rules prohibiting a certain category of punishment for a class of defendants because of their status or offense. *Montgomery v. Louisiana*, 570 U.S. 190, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016). A conviction under a unconstitutional law is not merely erroneous, but it is illegal and void, and cannot be a legal cause of imprisonment. *Ibid.*

If, however, the Constitution establishes a rule and requires that the rule have retroactive application, then a state court's refusal to give the rule retroactive effect is reviewable by this Court. *Griffith v. Kentucky*, 479 U.S. 314, 328, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987) citing *Montgomery, supra*.

The State of Oklahoma had no jurisdiction to charge, try, or sentence Mr. Grass due to his arrest being within the boundaries of the Cherokee Nation and because of his tribal citizenship in the Cherokee Nation. The State of Oklahoma never notified the Cherokee Nation

of his arrest and charges and never had the jurisdiction to certify Mr. Grass as an adult pursuant to 25 U.S.C. § 1912(a).

In accordance with 25 U.S.C. § 1912(a) legal notice regarding on Indian Child under ICWA must be sent to Cherokee Nation Indian Child Welfare¹⁵. The District Court of Cherokee County never had subject matter jurisdiction in Mr. Grass' case to ever charge Mr. Grass with a crime or hold proceedings to certify him as an adult, effectively ignoring the Treaty with the Cherokee, 1866, Article 13 which states in part:

"The Cherokees also agree that a court or courts may be established by the United States in said Territory, with such jurisdiction and organized in such a manner as may be prescribed by law; *provided*, that the judicial tribunals of the nation shall be allowed to retain **exclusive** jurisdiction in all civil and criminal cases arising within their country...."(Emphasis added)

Since the State of Oklahoma had no jurisdiction to prosecute crimes that occurred at Indian school, which met definition of dependent Indian community, proceedings in which juvenile was certified as adult to stand trial on charge of murder in the first degree were void *ab initio*. 18 U.S.C.A. §§ 1151, 1152. "As we find that the State of Oklahoma has no jurisdiction to prosecute crimes which occur at Chilocco, the certification proceedings in this case were void *ab initio*, and we will not consider any errors alleged to have occurred in those proceedings. Accordingly, we REVERSE and REMAND this case with instructions to DISMISS. *C.M.G. v. State*, 594 P.2d 798, 1979 OK CR 39 (1979).

The State of Oklahoma 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. "The retroactive application of substantive rules of federal constitutional

¹⁵ Letter from the Cherokee Nation Office of the Attorney General, Mar. 31, 2021. Appx. M

rule does not implicate a State's weighty interests in ensuring the finality of convictions and sentences; no resources marshaled by a State could preserve a conviction or sentence that the Constitution deprives the State of power to impose." Quoting *Montgomery v. Louisiana*, 570 U.S. 190, 136 S.Ct. 718, 193 L.ed.2d 599 (2016)

REASONS FOR GRANTING THE PETITION

For nearly all of its history, the State of Oklahoma has ignored or violated the United States Constitution (USCA Const. Art. VI § 2), treaties with Indian tribes, federal statutes (18 U.S.C. 1151-1153), decisions of this High Court, and most ashamedly, its own constitution (OK Const. Art. I § 3) when it comes to the prosecution of Indians. Sadly, federal authorities responsible for holding Oklahoma to the rule of law have been complicit in Oklahoma's rebellion.

As recently as the October 2018, this Court held that treaties matter. *Washington State Department of Licensing v. Cougar Den*, 139 S.Ct. 1000 (2019).

In Mr. Grass' Post-Conviction Application he claimed that only his tribe or the Federal Government had the authority to prosecute him through treaties established with the Cherokee Nation based on this Court's ruling in *McGirt*.

In 1835, articles of the Treaty of Echota, Article 5 states:

"The United States hereby covenant and agree that the lands ceded to the Cherokee Nation in the forgoing article shall, in no future time without their consent, be included within the territorial limits or jurisdiction of any state or territory."

See also, The Treaty of the Cherokee, 1866, Article 13, which states:

"The Cherokees also agree that a court or courts may be established by the United States in said Territory, with such jurisdiction and organized in such a manner as may be prescribed by law; *provided*, that the judicial tribunals of the Nation shall be allowed to retain exclusive jurisdiction in all civil and criminal cases arising within their country in which members of the nation, by nativity or adoption, shall be the only parties, or where the cause of action shall arise in the Cherokee Nation, except as otherwise provided in this treaty."

As Justice Neil Gorsuch explained in a concurring opinion, "'We are charged with adopting the interpretation most consistent with the treaty's original meaning.' *Eastern Airlines, Inc. v. Floyd*, 499 U.S. 530, 534-535 (1991)." He further explained, "'When we're dealing with a tribal treaty, too, we must 'give effect to the terms as the Indians themselves would have understood them.' *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 196 (1999).'"

This Court's responsibility is to state "what the law is," *Madison v. Marbury*, 5 U.S. 137 (1803) and that no State is above the law. The law states that only the federal government or the Cherokee Nation may prosecute a Cherokee Indian for crimes in the State of Oklahoma. In no case, does the State of Oklahoma possess the right to prosecute a Cherokee Indian.

According to the Major Crimes Act¹⁶, certain crimes committed by Indians in Indian Country are within the exclusive jurisdiction of the federal government. "A state or local police officer who arrested an individual for the commission of a federal crime **would** have to turn that individual over to the appropriate federal authorities. The crime must still be prosecuted in the appropriate sovereigns' tribunal, and according to that sovereign's laws." See *AG Opinion 90-32*,

¹⁶ 18 U.S.C. 1153

WL 567868. "...Generally speaking, primary jurisdiction over land that is Indian Country rests with the Federal Government and the Indian tribe inhabiting it and now with the states." See *AG Op. No. 06-6*, 2006 WL 768662. "...It being understood that any prosecution would have to occur in the Federal Court." See *AG Op. 79-216*, 1979 WL 37653. (Emphasis added)

The state court has no authority to pronounce a valid judgment. Therefore to rule against Mr. Grass' Federal claims would be equally void, as it had no jurisdiction in the first instance, as this case involves questions of federal law and statutes. The Oklahoma Supreme Court noted that, "...the lack of judicial power inheres in every stage of the proceedings by which color of authority is sought to be imparted to the void judgment, and a subsequent order by the same court denying a motion to vacate such void judgment, is likewise void for the same reasons."

Neal v. Travelers Ins. Co., 188 Okla. 131, 106 P.2d 811, 1940 OK 314

As Judge Easterbrook succinctly observed, "...subject matter jurisdiction in every federal criminal prosecution comes from 18 U.S.C. § 3231 'that's the beginning and the end of the jurisdictional inquiry..." *Hugi v. United States*, 164 F.3d 378, 380 (7th Cir. 1999) quoting *United States v. White Horse*, 316 F.3d 769 (8th Cir. 2015).

U.S. Const. Art. VI cl. 2 Supreme Law of the land states,

"This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land, and the Judges in every State shall be bound thereby in any Thing in the Constitution or Laws of any States to the Contrary notwithstanding."

The Indian Treaties are still in force and preserved as this Court noted in *U.S. v. Lara*, 541 U.S. 193, 124 S.Ct. 1628, 158 L.Ed 2d 420(2004), "We recognize that in 1871 Congress ended the practice of entering into treaties with the Indian Tribes. 25 U.S.C. § 71, stating that

tribes are not entities “with whom the United States may contract by treaty.” But the statute saved existing treaties from being “invalidated or impaired,” *ibid.*, and the Supreme Court has explicitly stated that the statute “in no way affected Congress’ plenary powers to legislate on problems of Indians,” *Antoine v. Washington*, 420 U.S. 194, 203, 95 S.Ct. 944, 43 L.Ed. 2d 129 (1975). Any state argument to the contrary cannot withstand the voluminous evidence that the federal government today treats Oklahoma Tribes and their territory the same as it treats tribes and their lands elsewhere.

One important law enacted in 1953, Public Law 83-280, 67 Stat. 588 (1953)(hereinafter, Public Law 280) addressed state jurisdiction. It allowed some states to assert limited civil and broad criminal jurisdiction in Indian country. *Indian Country, U.S.A.*, 829 F.2d at 980 (Ch. 505, 67 Stat. 588 (1953)(codified as amended at 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1326, 28 U.S.C. § 1360)). Public Law 280 delegated to five, later six states, jurisdiction over most crimes throughout most of the Indian country within their borders. *Cohen* at 537. It offered any other state the option of accepting the same jurisdiction until a 1968 amendment made subsequent assumptions of jurisdiction subject to Indian consent. *Id.* at 537-538; see 25 U.S.C. §§ 1321(a), 1322(a) & 1326.

The State of Oklahoma apparently has never acted pursuant to Public Law 83-280 or *Title IV* and assumed jurisdiction over the Indian country within its borders. See *Confederated Bands of the Yakima Indian Nation v. Washington*, 550 F.2d 443 (9th Cir. 1977) at note 3. Quoting *State v. LittleChief*, 573 P.2d 263, 1978 OK CR 2 (OCCA). The *LittleChief* court also stated that a determination of issue by United States federal district court judge was binding on State unless and until determination was overturned by United States Court of Appeals or this Court, in view of the fact that issue involved construction and application of federal statutes. *Civil Rights Act of*

1968 §§ 401-406I, 25 U.S.C.A. §§ 1321-1326. When Oklahoma became a state, *Proclamation of November 16, 1907*, 35 Stat. 2160-2161, it was already well settled that the authority of the United States to prosecute crimes not committed by or against Indians on reservations ended at statehood. *United States v. McBratney*, 104 U.S. 621, 624 (1881); *Draper v. United States*, 164 U.S. 240 (1896).

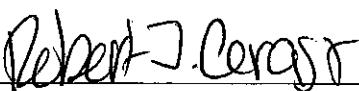
Despite having no legal basis, federal and state officials acted as if statehood also marked the end of federal authority over prosecution of all crimes by or against Indians in Indian country under the General Crimes Act and on reservations under the Major Crimes Act. This viewpoint was contrary to an early Oklahoma Supreme Court decision, *Higgins v. Brown*, 94 P.2d 703, 730 (1908). Although *Higgins* did not involve claims that the crime occurred on a reservation, it provided guidance regarding any future cases involving Indian country jurisdiction. The Court found that § 1628 of the Enabling Act was intended to vest in the federal courts the continued prosecution of criminal cases of a federal character and to continue in the state courts, the prosecutions of a local or municipal character. *Id.* at 725.

It accordingly found that prosecutions under a general law relating to crime against the United States of which a federal court would have had jurisdiction even had the crime been committed within a state, were to be transferred to the federal courts. *Id.* at 725. See also *Ex parte Buchanen*, 94 P. 943, 944-945 (Okla. Crim. App. 1908); *Ex parte Curlee*, 95 P. 414 (Okla. Crim. App. 1908)(of course, non-pending actions of a federal character would necessarily vest in the United States courts in the other states.) A few years after these Oklahoma decisions, the Supreme Court ruled that **Oklahoma statehood did not change the Indian country status of lands in Indian territory or the applicability of federal criminal laws on those lands.** *United States v. Wright*, 229 U.S. 226 (1913). In *Wright*, the United States charged the defendant in

Federal Court in Oklahoma for violation of Rev. Stat. § 2139, which prohibited introduction of liquor into Indian country. *Id.* at 226-227. The Supreme Court concluded that § 2139 was applicable to Indian country throughout the states and territories generally, and that the Enabling Act did not repeal its applicability in Oklahoma. *Id.* at 238; See also *United States Exp. Co. v. Friedman*, 191 Fed. 673, 678-679 (8th Cir. 1911)(rejecting broad contention “Indian Territory ceased to be Indian country upon the admission of Oklahoma as a state”); and *Southern Surety Company v. State of Oklahoma*, 241 U.S. 582, 585-586 (1916)(The test of the jurisdiction of the state courts was to be the same that would have applied had the Indian Territory been a state when the offenses were committed.)

Conclusion

The District Court of Cherokee County along with the OCCA has denied Mr. Grass relief relying on cases that never justify the legal questions of Federal law that specifically address Subject Matter Jurisdiction. The State of Oklahoma is simply delaying the inevitable by denying applications for post-conviction that argue subject matter jurisdiction, by simply stating that retroactivity cannot be applied. At first, the State of Oklahoma argued that congress essentially disestablished the reservations at statehood then later went on to argue in other application denials that retroactivity does not and cannot apply to the *McGirt* analysis. Mr. Grass is asking this Honorable Court to GRANT the Writ and REMAND with instructions to Dismiss.

/s/ 

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