

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

HERMAN J. SNELL, II,

NOV 12 2021

Petitioner,

JOHN D. HADDEN
CLERK

v.

No. PC-2021-1076

STATE OF OKLAHOMA,

Respondent.

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner, pro se, appeals the denial of post-conviction relief by the District Court of Mayes County in Case No. CF-1994-257. Before the District Court, Petitioner asserted he was entitled to relief pursuant to *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). 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 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 District Court's order denying

APPENDIX A

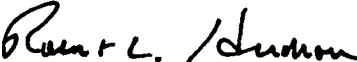
post-conviction relief is **AFFIRMED**. Petitioner's request to **supplement** the record on appeal and request for **stay** are **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2021), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

IT IS SO ORDERED.

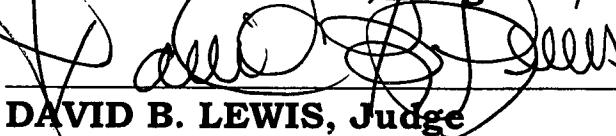
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this

12 day of November, 2021.

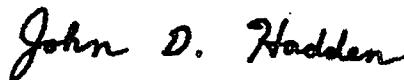

SCOTT ROWLAND, Presiding Judge


ROBERT L. HUDSON, Vice Presiding Judge


GARY L. LUMPKIN, Judge


DAVID B. LEWIS, Judge

ATTEST:


John D. Hadden

Clerk

PA

- Exhibit - A -

IN THE DISTRICT COURT IN AND FOR MAYES COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT MAYES CO., OKLAHOMA
SEP 13 2021
JENIFER CLINTON, COURT CLERK BY <i>Amber</i> DEPUTY

STATE OF OKLAHOMA,)
vs.)
Plaintiff,)
vs.) Case No. CF-1994-257
HERMAN J. SNELL, II,) Fed No. 21-CR-0211-CYE -
Defendant.)

ORDER LIFTING STAY AND
DENYING POST-CONVICTION RELIEF APPLICATION

Now on this 13th day September, 2021, after having reviewed the file and pleadings herein and the post-conviction relief application of the Petitioner and any response filed on behalf of the State of Oklahoma, the Court finds as follows:

1. At the time of Petitioner's initial filing for post-conviction relief, a final determination of the effect of *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), in Oklahoma had not occurred.
2. The case of *Oklahoma v. Bosse*, 2021 OK CR 3, that appeared to be controlling, was appealed to the United States Supreme Court. Its implementation as controlling law in Oklahoma was stayed by the Oklahoma Court of Criminal Appeals while the case was being reconsidered.
3. As a result of the Oklahoma Court of Criminal Appeal's stay order, this Court stayed its decision regarding Petitioner's post-conviction relief application, awaiting further instruction regarding the interpretation of *McGirt* on post-conviction relief applications. Petitioner's application claimed this Oklahoma court lacked jurisdiction to hear Petitioner's case, therefore the Petitioner's original conviction should be vacated.
4. Since this Court's stay order, the Oklahoma Court of Criminal Appeals has issued *State v. Wallace*, 2021 OK CR 21. In *Wallace*, the Oklahoma Court of Criminal Appeals held that,

“*McGirt* and our post-*McGirt* reservation rulings shall not apply retroactively to void a final state conviction.” *Wallace* at ¶40.

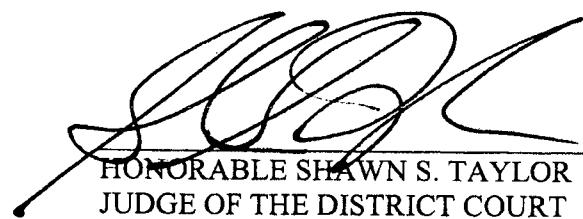
5. In addition to issuing the Order in *Wallace*, the Oklahoma Court of Criminal Appeals vacated *Bosse* and other cases that were inconsistent with their holding in *Wallace*. (See, *Bosse v. State*, 2021 OK CR 23, *Bench v. State*, 2021 OK CR 24, *Ryder v. State*, 2021 OK CR 25, *Cole v. State*, 2021 OK CR 26).

6. Petitioner’s application for post-conviction relief is necessitated upon the retroactive application of *McGirt* to support the claim that Oklahoma did not have subject matter jurisdiction over Petitioner at the time of the disposition of Petitioner’s case.

7. This Court finds, as a matter of law, based upon the Oklahoma Court of Criminal Appeals decision in *State v. Wallace*, 2021 OK CR 21, that Petitioner’s post-conviction relief application should be denied. Regardless of the “Indian” status of the parties and whether the crime occurred on “a reservation,” *Wallace* precludes the application of *McGirt* retroactively to void a final state conviction.

Petitioner’s post-conviction relief application is hereby denied. The hearing previously set for September 27, 2021, is hereby stricken as moot.

IT IS SO ORDERED.



HONORABLE SHAWN S. TAYLOR
JUDGE OF THE DISTRICT COURT

CERTIFICATE OF MAILING

I, Mandy Hooker, Secretary/Bailiff for the Honorable Shawn S. Taylor, District Judge, do hereby certify that on the 13th day of September, 2021, a true and correct copy of the foregoing was mailed, postage prepaid, to the following:

Herman J. Snell, II, DOC #237674
Dick Conner Correctional Center
129 Conner Road
Hominy, OK 74035

Matthew J. Ballard
MAYES COUNTY DISTRICT ATTORNEY'S OFFICE
Mayes County Courthouse
One Court Place, Suite 250
Pryor, OK 74361



MANDY HOOKER,
Secretary/Bailiff

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