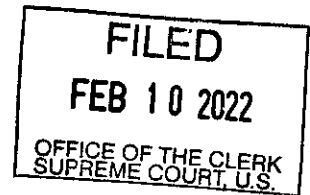


No. 21-7201 ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

Michael Dewayne Jones — 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

Michael Dewayne Jones  
(Your Name)  
Davis Correctional Facility  
6888 East 133rd Road  
(Address)

Holdenville, OK 74848  
(City, State, Zip Code)

(405) 379-6400  
(Phone Number)

## QUESTION(S) PRESENTED

- 1.) Did the State of Oklahoma violate Petitioner's Fourth and Fourteenth Amendment rights when they Prosecuted this Petitioner's Crime which happened on a federal enclave under the exclusive Jurisdiction of the United States.
- and
- 2.) Is Article 1, § 3 of the Oklahoma Constitution a waiver of all of its State's rights to Prosecute any race on a federal Enclave since Oklahoma failed to take advantage of Public Law 280.



## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ 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:

## RELATED CASES

District Court of Stephens County Case NO: CF-2013-403

Oklahoma Court of Criminal Appeals Case NO: P.C.-2021-922

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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**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; 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☐ is unpublished.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 \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; 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☐ is unpublished.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 A to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; 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 Nov. 15<sup>th</sup>, 2021.  
A copy of that decision appears at Appendix A.

☐ 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

The Fourth Amendment and the Fourteenth Amendment's Due Process Clause, the 1906 Oklahoma Enabling Act, and the 1907 Oklahoma Constitution, relevant provisions of Public Law 280, and the relevant provisions of title 22 of the Oklahoma Statute.

## STATEMENT OF THE CASE

Petitioner is Challenging Jurisdiction in this Case under the 1906 Oklahoma Enabling act Passed by Congress to allow Oklahoma to become a state. In this Act, Congress retained exclusive jurisdiction over Indian lands. Congress made Oklahoma put a Waiver of Jurisdiction in their State Constitution in Article 1, §3, which ceded all Jurisdiction to the United States no matter what the Race of the Individual is charged with a crime on these Oklahoma Indian lands.

"Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject-matter, the Court shall dismiss the action." *Kontick v. Ryan*, 540 U.S. 443 (2004), see also *Image Software, Inc. v. Reynolds & Reynolds Co.*, 459 F.3d 1044 (10<sup>th</sup> Cir 2006) "Whether subject-matter jurisdiction exist and may raise the Issue at any stage of the litigation". And that's exactly what Petitioner did by filing a Post Conviction under Oklahoma statute 22 O.S. § 1080 (B) which allows for a challenge of the State Jurisdiction on Collateral review.

This Petitioner was Convicted in Stephens County District Court for the State of Oklahoma for the Crime of 2nd Degree Murder. Stephens County lies Inside the Tribal boundaries of the Chickasaw Tribal Nation. Unto which this Court in *Choctaw & Chickasaw Nation v. Oklahoma*, 397 U.S. 620 (1970)

ruled that the Chickasaw Tribal Nation still existed thru treaties and had not been disestablished.

Petitioner in his Post Conviction Exhibit #1 presented the State with a federal map which showed the tribal boundaries of the Chickasaw Nation which shows Stephens County, where petitioner's crime was committed, lying inside those tribal boundaries.

This Court has recognized that only Congress and the President is over the Tribes. And "it is Congress's intent that must govern our decision". *Solem*, 565 U.S. at 479 n.23.

This Court has said "Whenever, upon the admission of a State into the Union, Congress has Intended to except out of it an Indian reservation, or the sole and exclusive jurisdiction over that reservation, it has done so by express." *United States v. McBratney*, 104 U.S. 621 (1882). And Congress did just that when it passed the 1906 Enabling Act which allowed the proposed State of Oklahoma to become a state.

The Oklahoma Enabling Act, ch. 3335, 34 Stat. 267 (1906) clearly preserved the authority of the federal Government over Indians and their lands and required the State of Oklahoma to disclaim "all right and title" to such lands. see id §§ 1, 3, 34 Stat. at 267-68, 270.

Section three of the Enabling Act reads as follows: "That the people inhabiting said Proposed State do agree and declare, that they forever disclaim all right and title in or to any

Unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, Tribe, or Nation, and that until the title to any such public lands shall have been extinguished by the United States, the same shall be and remain subject to the Jurisdiction, disposal, and Control of the United States," see Oklahoma Enabling Act § 3, 34 Stat. at 270.

The state can NOT cite any act of Congress that has divested the federal and tribal Jurisdiction over Chickasaw tribal lands and confer such authority on the state of Oklahoma.

Now Petitioner has clearly shown that thru Congress's own Express words they retained Exclusive Jurisdiction over the Chickasaw Nation Tribal lands.

With Petitioner being white and the victim in this case being white does not matter because the McBratney rule does not apply here because of the acts of Congress to retain Exclusive Jurisdiction over these Indian lands.

Furthermore the Supreme Court Ruling in McBratney concerned the state of Colorado and Oklahoma being the Tribal Indians dumping Grounds for the U.S. Government; Congress then Express words retained Exclusive Jurisdiction over Indian tribal lands, one of which is the Chickasaw Nation where this Petitioner Crime Happened.

This Court in *U.S. v. Antelope*, 430 U.S. 641 (1977) stated "We have previously observed that Indians indicted under the Major Crimes Act enjoy the same procedural benefits and privileges as all other persons within federal Jurisdiction" and "were therefore subjected to the same body of law as any other individual, Indian or non Indian, charged with first degree murder committed on a federal Enclave".

Black's Law Dictionary (10<sup>th</sup> ed 2014) states: "Federal Enclave - Territory or land a state has ceded to the United States. Examples of federal Enclaves are military bases, national parks, federally administered Highways, and federal Indian Reservations.

The U.S. Government has exclusive authority and jurisdiction over federal enclaves." Black's law dictionary would not print something that is not true. When it says exclusive jurisdiction it means what it says. The late Supreme Court Justice Scalia said "that verbal Gymnastics will not be tolerated by this Court and we will apply the words as they are written to give them their true meaning."

Now a Case was decided by this Court after the Oklahoma enabling Act was passed by this Court, *Pickett v. U.S.*, 216 U.S. 436 (1910) where a African American killed another African American on the Osage reservation. This Court in *Pickett* stated "it would have not mattered if this crime happened before or after Oklahoma became a state. You were tried in the Western District federal Court which was the proper venue." The race of the victim or perpetrator does not

matter.

And since Congress retained Exclusive jurisdiction over this Federal Enclave this petitioner was on when he committed his crime, This Petitioner's Fourth Amendment rights under the U.S. Constitution to be free from illegal search and seizure has been violated and his Fourteenth Amendment right to due process has clearly been violated when this Petitioner was denied the Equal treatment of a congressional Act that placed him outside the confines of Oklahoma's jurisdiction to Prosecute him, that of the Oklahoma Enabling Act Passed by Congress in 1906.

B. The State of Oklahoma lacked subject-matter Jurisdiction because of Oklahoma's Constitution's Article I, §3 Ceded "exclusive jurisdiction" to the United States regardless of race and there is not a Court of Competent Jurisdiction to address this Conflict of Jurisdiction other than the United States Supreme Court.

Any Oklahoma State District Court in Indian Country or Unassigned lands are deprived of subject matter jurisdiction to hear any Claim Civil or Criminal because the State Ceded Jurisdiction to the United States upon entry into the Union.

Oklahoma's Constitution's Article I, §3 reads:

"The people Inhabiting the state do agree and declare that they forever disclaim all right and title in or to any unappropriated lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, Tribe, or Nation; and

that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States."

This is a waiver of Jurisdiction and the Oklahoma Courts have agreed with this in the past; see *C.M.G. v. State*, 594 P.2d 799 (1979), "To date the State of Oklahoma has made no attempt to repeal Article 1, § 3 of the Oklahoma Constitution of the State of Oklahoma, which prohibits state jurisdiction over "Indian Country", so the federal government still has exclusive Jurisdiction over "Indian Country" located within Oklahoma boundaries."

The Plain language of Okla. Const. Art. 1, § 3 makes clear Oklahoma disclaimed all rights to such lands and in doing so created a federal Enclave, which makes 18 U.S.C. § 1152 the only applicable law in the Chickasaw Tribal Territory. None of which has been disestablished by Congress.

In 1953 Congress contacted Oklahoma and told them they needed to take advantage of Public law 83-280 to permit the state to assume limited and broad criminal jurisdiction in

Indian Country. see Act of Aug. 15<sup>th</sup>, 1953, Ch. 505, 67 Stat. 588 (Public law 280). The Congressional Committee stated that Oklahoma's disclaimer over Indian lands, and stated the "effect of the of the disclaimer of Jurisdiction over Indian land within the border of these State with such disclaimer, in absence of consent being given for future action to assume jurisdiction - is to retain exclusive ~~jurisdiction~~ federal

'jurisdiction until Indian title in such lands is extinguished.' S. Rep No. 699, 1953 U.S. Code Cong & Admin. News at 2412.

So even Congress in 1953 recognized Oklahoma did not have jurisdiction over Indian Country inside the boundaries of the State of Oklahoma, and that it was still under exclusive jurisdiction of the federal Government.

Oklahoma chose not to take advantage of Public law 280 to assert Jurisdiction because state officials regarded the law as unnecessary because in their view Oklahoma already had full jurisdiction over Indians and their lands. The states 1953 position that Public law 280 was unnecessary for Oklahoma has been rejected by both federal and state courts, see *Indian Country, U.S.A.*, 829 F.2d at 980, n.6 (10<sup>th</sup> cir. 1987).

Therefore because a Act of Congress thru the Oklahoma Enabling act of 1906 retained exclusive jurisdiction over Indian Tribal lands and the citizens of The state of Oklahoma's state Constitution in Article 1, §3 Waived all rights on those Indian lands, the State of Oklahoma was without Jurisdiction to Prosecute this Petitioner.

The states ruling by the Oklahoma Court of Criminal Appeal in this case is wrong. *McGirt* does not apply to me ~~me~~ and how can the state say a act by congress passed in 1906 and the 1907 Oklahoma Constitution not retroactive.

So *McGirt v. Oklahoma*, 140 S.Ct. 2462 (2020) or *Matloff v. Wallace*, 2021 OK Cr. 21, — P.3d — has no bearing on ~~my~~ <sup>Petitioner's Case,</sup>

## REASONS FOR GRANTING THE PETITION

The 1.9 million Oklahomans whom live inside the Five Civilized Tribes Tribal boundaries, Now everytime they have contact with a state law enforcement agent for the state of Oklahoma their Fourth Amendment right to be free from illegal search and seizure is violated because the state has no subject matter Jurisdiction in those lands.

These citizens are being denied equal treatment of a Congressional act in violation of the Fourteenth Amendment of the U.S. Constitution.

This will be a good case for the Court to decide retractivity on Jurisdictional Issues on Oklahoma's Indian Country as the case law and acts of Congress are over 100 years old.

It will give this Court the opportunity to interpret the Acts of Congress in the Oklahoma Enabling Act of 1906 and apply those acts to the "Indian Country" inside Oklahoma's boundaries of its State.

It will give it the opportunity to decide if Article 18 of the Oklahoma Constitution is a Waiver to prosecute any race of person on these Indian lands.

It will give it the opportunity to rule if Oklahoma failed to take advantage of Public law 280, to obtain jurisdiction

Over these Tribal lands, if it is still "exclusive jurisdiction" of the United States as Congress stated in its report, see S. Rep. No. 699, 83 Congress, 1<sup>st</sup> sess. reprinted in 1953 U.S. Code, Cong. & Admin. news 2409, 2412; see Also Public law 280, § 6, 67 Stat. at 590.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Jones

Date: 2-9-22

I declare under penalty of Perjury that the foregoing is true and Correct.

Executed on February 10<sup>th</sup>, 2022.

Michael Jones