

APPENDIX

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

FILED

IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

THOMAS ALLEN TWOBABIES,

NOV 19 2021

Petitioner,

JOHN D. HADDEN
CLERK

-vs-

No. PC-2021-973

STATE OF OKLAHOMA,

Respondent.

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner, pro se, appealed to this Court from an order of the District Court of Canadian County in Case No. CF-2010-500 denying his request for post-conviction relief based upon issues addressed in *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 trial court's denial of post-conviction relief is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the*

Appendix A - 1

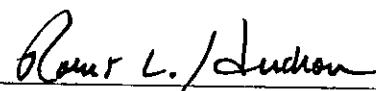
Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2021), the
MANDATE is **ORDERED** issued upon the delivery and filing of this
decision.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this
19th day of November, 2021.



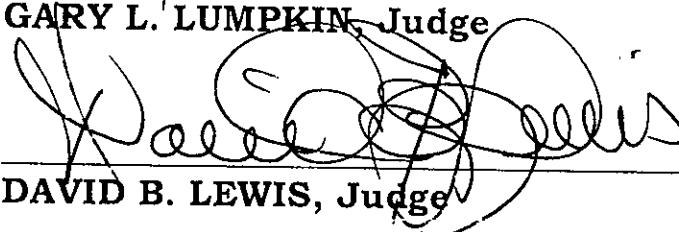
SCOTT ROWLAND, Presiding Judge



ROBERT L. HUDSON, Vice Presiding Judge

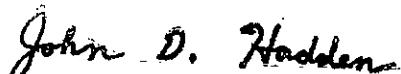


GARY L. LUMPKIN, Judge



DAVID B. LEWIS, Judge

ATTEST:



John D. Hadden

Clerk
PA

IN THE DISTRICT COURT OF CANADIAN COUNTY
STATE OF OKLAHOMA

FILED
MARIE HIRST COURT CLERK
CANADIAN COUNTY, OKLAHOMA

AUG 13 2021

BY Karen Headly
DEPUTY

THE STATE OF OKLAHOMA,)
Plaintiff,)
)
vs.) Case No. CF-2010-500
)
THOMAS ALLEN TWOBABIES,)
Defendant.)

ORDER DENYING SECOND APPLICATION FOR POST-CONVICTION RELIEF

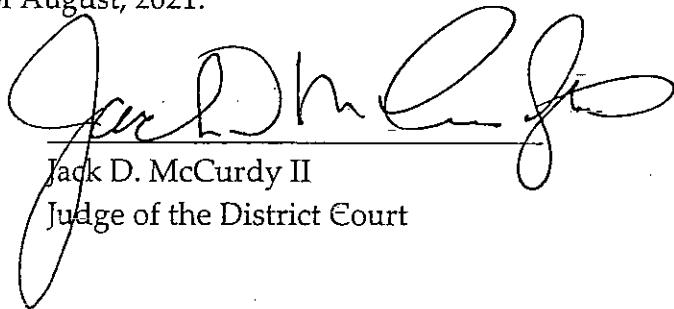
Pending before the Court is the Defendant's Application for Post-Conviction Relief filed herein on August 6, 2020. The Defendant's sole proposition of error is that this Court lacked jurisdiction over his crime because he is an Indian and the crime occurred in Indian Country. This is the same issue that the Defendant raised in his first application for post-conviction relief filed on August 15, 2019. The Court denied the Defendant's first application by order filed on December 6, 2019. In that order, the Court found that the Defendant had not provided proof that the crime occurred in Indian Country.

The Defendant's instant application includes the following evidentiary materials to support his proposition of error: (1) a "Certificate of Indian Blood" purportedly issued by the Cheyenne and Arapaho Tribes, (2) a print-friendly version of a treaty between the United States and the Cheyenne and Arapaho tribes, and (3) a map of Oklahoma. There is a presumption of regularity in the trial court proceedings in this case. *Brown v. State*, 1997 OK CR 1, ¶ 33, 933 P.2d 316, 324-25. The Defendant in a post-conviction proceedings has the burden of presenting sufficient evidence to rebut this presumption. *Id.* The

Defendant has presented prima facie evidence as to his legal status as an Indian, but not that that his crime occurred in Indian Country as that term is defined by federal law. The Defendant has not met his burden of proof to show that he is entitled to relief.

IT IS THEREFORE ORDERED BY THE COURT that the Defendant's Application for Post-Conviction Relief filed on August 6, 2021, is DENIED. The court clerk is directed to mail a certified copy of this order to the Defendant, the Court of Criminal Appeals and to provide a copy to the Office of the District Attorney.

IT IS SO ORDERED this 13th day of August, 2021.



Jack D. McCurdy II
Judge of the District Court

CERTIFICATE OF MAILING

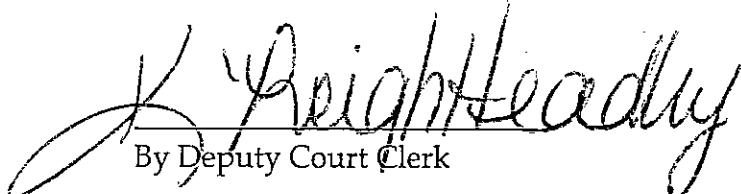
I, Marie Hirst, Court Clerk for Canadian County, hereby certify that on the 5th day of August, 2021, a true and correct copy of the foregoing Order was mailed to the following:

Thomas Twobabies, DOC # 424716, Dick Conner Correctional Center, 129 Conner Road, Hominy, OK 74035

Austin Murrey, Canadian County District Attorney, 303 N. Choctaw, El Reno, OK 73036

Oklahoma Court of Criminal Appeals, Oklahoma Judicial Center, 2100 N. Lincoln Blvd., Suite 2, Oklahoma City, OK 73105-4907

Marie Hirst, Court Clerk


By Deputy Court Clerk

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