

OPINION OF THE OKLAHOMA COURT OF CRIMINAL APPEALS

APPENDIX (A)

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAJOR HUDSON III,) DEC - 3 2021
Petitioner,) JOHN D. HADDEN
v.) CLERK
STATE OF OKLAHOMA,) No. PC-2021-944
Respondent.)

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner, *pro se*, appeals the denial of post-conviction relief by the District Court of Oklahoma County in Case Nos. CF-1996-6675 and CF-1997-7173. 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.

To the extent Petitioner raised additional propositions of error, they were properly denied. The District Court did not abuse its discretion in finding the Petitioner's alleged violation of Equal Protection was waived from review. Petitioner offered the District Court no sufficient reason why the claim was not asserted in one of Petitioner's prior applications for post-conviction relief or direct appeal.

Johnson v. State, 1991 OK CR 127, ¶ 7, 823 P.2d 370, 373.

Therefore, the District Court's order denying post-conviction relief is **AFFIRMED**. 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

3rd day of December, 2021.

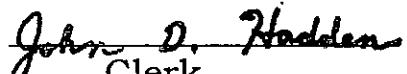
Scott Rowland
SCOTT ROWLAND, Presiding Judge

Robert L. Hudson
ROBERT L. HUDSON, Vice Presiding Judge

Gary L. Lumpkin
GARY L. LUMPKIN, Judge


DAVID B. LEWIS, Judge

ATTEST:


John D. Hadden
Clerk
PA

OPINION OF THE STATE DISTRICT COURT

APPENDIX (B)

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

MAJOR HUDSON, III,) FILED IN DISTRICT COURT
Petitioner,) OKLAHOMA COUNTY
v.)
THE STATE OF OKLAHOMA,) Case Nos. CF-1996-6675 JUL 21 2021
Respondent.) CF-1997-7173
RICK WARREN
COURT CLERK
46 _____

ORDER DENYING SUBSEQUENT APPLICATION FOR POST-CONVICTION RELIEF

This matter comes on for consideration of Petitioner's Application for Post-Conviction Relief filed in the above-referenced cases and the State's Response thereto, and the Court being fully advised finds as follows:

MATERIALS REVIEWED FOR DECISION

1. Petitioner's Post-Conviction Appeal, filed on June 18, 2021.
2. Petitioner's Supplemental Motion, filed on July 2, 2021.
3. The State's Response to Application for Post-Conviction Relief, and attachments thereto, filed on July 19, 2021.

PROCEDURAL HISTORY

CF-1996-6675

Petitioner, represented by counsel, was tried by jury and convicted of the crimes of Rape in the First Degree (Count 1), Burglary in the First Degree, (Count 2), Child Abuse (Count 3), and Threatening a Witness (Count 4), as charged in Oklahoma County Case No. CF-1996-6675. On May 19, 1998, the Honorable Richard Freeman, who presided over the trial, sentenced Petitioner in accordance with the jury's verdict to fifty-three (53) years imprisonment for Count 1, twenty (20) years imprisonment for Count 2, ten (10) years imprisonment for Count 3, and seven (7) years imprisonment for Count 4. Judge Freeman further ordered the sentences to be served consecutively.

Petitioner, by and through counsel, perfected a direct appeal to the Court of Criminal Appeals, raising the following propositions of error:

Proposition I The evidence of other crimes denied Appellant a fair trial.

Proposition II The evidence was insufficient to support a conviction.

Proposition III Defense counsel was ineffective for eliciting an improper reference to Appellant's rights to remain silent and to an attorney for failing to ensure a complete record for appeal.

Proposition IV The sentences imposed are excessive.

After thorough consideration of the issues presented, the Court of Criminal Appeals affirmed Petitioner's Judgment and Sentence. *Hudson v. State*, No. F-1998-695 (Okl. Cr. August 23, 1999) (not for publication).

On February 2, 2000, Petitioner, *pro se*, filed his original Application for Post-Conviction Relief, which he later supplemented. In support of the application, he raised the following claims of error:

Proposition I Petitioner received ineffective assistance of appellate counsel.

Proposition II Evidence of other crimes should not have been admitted at trial.

On July 6, 2000, the Honorable Virgil C. Black denied the application. The Court of Criminal Appeals declined jurisdiction and dismissed Petitioner's attempted post-conviction appeal as untimely. *Hudson v. State*, No. PC-2000-1040 (Okl. Cr. October 11, 2000).

On December 15, 2000, Petitioner, *pro se*, filed his Second Application for Post-Conviction Relief, seeking a post-conviction appeal out-of-time. Judge Black denied the application on March 5, 2001, and the Court of Criminal Appeals affirmed. *Hudson v. State*, No. PC-2001-329 (Okl. Cr. August 1, 2001).

On April 14, 2003, Petitioner, *pro se*, filed his Third Application for Post-Conviction Relief, essentially requesting post-conviction discovery. Judge Black denied the request on November 25, 2003. Petitioner did not appeal.

On May 27, 2015, Petitioner, *pro se*, filed a Motion Requesting Post-Conviction DNA Testing, pursuant to the Post-Conviction DNA Testing Act, 22 O.S. § 1373, *et seq.* In addition to his request for DNA testing, he also asserted that the State failed to disclose critical exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). On March 17, 2016, the Honorable Bill Graves denied both the request for DNA testing and the independent request for collateral relief. The Court of Criminal Appeals affirmed. *Hudson v. State*, (Okl. Cr. June 1, 2016).

On January 19, 2018, Petitioner, *pro se*, filed a subsequent Application for Post-Conviction Relief, raising the following propositions of error:

Proposition I Appellate counsel was ineffective for not showing that trial counsel was ineffective by not requesting a lesser-included

offense instruction and for not showing the court's abuse of discretion resulting in structural error.

Proposition II Appellate counsel was ineffective for not showing court's abuse of discretion by not instructing on a lesser-included offense and allowing a misinstruction [sic] on the range of penalties, resulting in structural error.

Judge Graves denied the application by an Order filed on July 3, 2018, and the Court of Criminal Appeals affirmed. *Hudson v. State*, No. PC-2018-745 (Okl. Cr. February 19, 2019). The Court further found that "Petitioner has exhausted his State remedies regarding the issues raised on direct appeal and in the applications for post-conviction relief. Subsequent application on these issues is barred."

CF-1997-7173

On May 13, 1998, Petitioner, represented by-counsel, entered a negotiated plea of guilty to three counts of Forgery in the Second Degree, as charged in Oklahoma County Case No. CF-1997-7173. Judge Freeman accepted the plea and sentenced Petitioner in accordance with the plea agreement to seven (7) years imprisonment for each offense, to be served concurrently with each other but consecutively to Petitioner's sentence in CF-1996-6675. Petitioner did not appeal.

On December 12, 2016, Petitioner, *pro se*, filed a pleading styled as "Motion for Modification of Sentence," wherein he alleged that he was entitled to sentencing relief based on an intervening change in law that had reduced the range of punishment for forging an instrument valued at less than \$1,000. The Honorable Timothy R. Henderson summarily denied the motion by an Order filed on December 13, 2016. Petitioner perfected a post-conviction appeal, and the Court of Criminal Appeals affirmed the denial of relief. *Hudson v. State*, No. PC-2016-1164 (Okl. Cr. April 4, 2017).

Present Post-Conviction Proceedings

On June 18, 2021, Petitioner, *pro se*, filed the instant Application for Post-Conviction Relief, styled as "Post-Conviction Appeal," in both of the above-referenced cases. He raises the following propositions of error therein:

Proposition I The trial court lacked subject matter jurisdiction to prosecute in this case, where the United States owns or retains exclusive jurisdiction on such lands.

Proposition II The State trial court violated the Treaty of 1830 Dancing Rabbit Creek.

On July 2, 2021, Petitioner filed a "Supplemental Motion," raising the following additional proposition of error:

Proposition III Prosecutions based on race violates the Equal Protection Clause of the 14th Amendment.

FINDINGS OF FACT & CONCLUSIONS OF LAW

The Court of Criminal Appeals has made very clear that the Post-Conviction Procedure Act, 22 O.S. §1080, *et seq.*, is neither a substitute for a direct appeal nor a means for a second appeal. *Maines v. State*, 1979 OK CR 71, ¶ 4, 597 P.2d 774, 775-76; *Fox v. State*, 1994 OK CR 52, ¶ 2, 880 P.2d 383, 384. The scope of this remedial measure is strictly limited and does not allow for litigation of issues available for review at the time of direct appeal. *Johnson v. State*, 1991 OK CR 124, ¶¶ 3-4, 823 P.2d 370, 372; *Castro v. State*, 1994 OK CR 53, ¶ 2, 880 P.2d 387, 388. “Issues that were previously raised and ruled upon [by the Court of Criminal Appeals] are procedurally barred from further review under the doctrine of res judicata; and issues that were not raised previously on direct appeal, but which could have been raised, are waived for further review.” *Logan v. State*, 2013 OK CR 2, ¶ 3, 293 P.3d 969, 973.

“There are even fewer grounds available to a petitioner to assert in a subsequent application for post-conviction relief.” *Stevens v. State*, 2018 OK CR 11, ¶ 15, 422 P.3d 741, 746. “[Title 22,] Section 1086 limits the grounds for relief asserted within subsequent petitions to only those grounds which for sufficient reason were not asserted or were inadequately raised.” *Id.* To overcome the procedural bar, Petitioner must show that some impediment external to the defense prevented him and counsel from properly raising the claim in the prior proceeding. *Johnson v. State*, 1991 OK CR 124, ¶ 7, 823 P.2d 370, 373; *Robinson v. State*, 1997 OK CR 24, ¶ 17, 937 P.2d 101, 108.

Petitioner offers no sufficient reason for this Court to consider the equal protection claim raised in Proposition III. This issue could have been raised at any time over the last couple of decades, including in timely direct or collateral appeals. It is now waived for post-conviction review. Accordingly, Proposition III is denied as a matter of law.

The Court further finds that Petitioner has failed to adequately raise a reviewable claim of error in Proposition II. While he asserts in the heading of that proposition that the State has violated the 1830 Treaty of Dancing Rabbit Creek, he presents no facts, argument, or analysis whatsoever to support the claim. See *Logan*, 2013 OK CR 2, ¶ 23, 293 P.3d at 978-79; *Rider v. State*, 1972 OK CR 56, ¶ 9, 494 P.2d 347, 350. Proposition II is therefore denied.

Finally, although Petitioner’s jurisdictional attack in Proposition I would ordinarily be waived from post-conviction review because it could have been previously raised, the Court of Criminal Appeals has held that the issue of “whether [a] crime occurred in Indian Country and so is beyond the jurisdiction of the State of Oklahoma” is not subject to waiver. *Magnan v. State*, 2009 OK CR 16, ¶ 2, 207 P.3d 397, 401; see also *Bosse v. State*, 2021 OK CR 3, ¶ 22, 484 P.3d 286, 294. Accordingly, the Court reviews Proposition I on the merits.

District courts in Oklahoma have unlimited original jurisdiction over all justiciable matters unless otherwise provided by the Oklahoma Constitution. Okla. Const. Art. VII, § 7. As a matter of federal preemption, however, the States generally do not have jurisdiction over crimes

committed by or against an Indian in Indian Country. *McGirt v. Oklahoma*, 140 S.Ct. 2452, 2459 (2020); *Klindt v. State*, 1989 OK CR 75, ¶ 3, 782 P.2d 401–403. See also 18 U.S.C. §§ 1152, 1153.

To establish the trial court lacked criminal jurisdiction in these matters, Petitioner must first make a *prima facie* showing that: (1) he or his victims were Indian for purposes of federal law, and (2) he committed his crimes in Indian country. *See Bosse*, 2021 OK CR 3, ¶ 6, 484 P.3d at 289; *Hogner v. State*, 2021 OK CR 4, ¶ 4. If he can make both showings, then the burden shifts to the State to prove it has jurisdiction. *Id.*

Petitioner satisfies neither requirement in these matters. To begin with, he does not allege that he or his victims have any Indian blood or have ever been recognized as Indian by a tribe or the federal government. *Klindt*, 1989 OK CR 75, ¶ 3, 782 P.2d at 403; *Parker v. State*, 2021 OK CR 17, ¶ 32; *United States v. Rogers*, 45 U.S. (4 How.) 567, 573 (1846). For this reason alone, his claim fails. *See United States v. McBratney*, 104 U.S. 621, 624 (1882).

Additionally, Petitioner fails to demonstrate that these crimes were committed in Indian country. 18 U.S.C. § 1151. While Petitioner suggests that the crimes occurred on either the Creek Nation or Seminole Nation Reservations, no part of Oklahoma actually falls within those reservation boundaries recently found to still exist. *See McGirt*, 140 S.Ct. at 2482; *Grayson v. State*, 2021 OK CR 8, ¶¶ 6-12, 485 P.3d 250, 251–54. Furthermore, because federal law does not confer federal jurisdiction over the lands in question, Petitioner’s contention that Article I, Section III of the Oklahoma Constitution deprives the State of criminal jurisdiction is also without merit. *Goforth v. State*, 1982 OK CR 48, ¶ 8, 644 P.2d 114, 116.

Petitioner has presented no sufficient legal or factual basis from which this Court could conclude that the state court lacked jurisdiction over these criminal actions. Therefore, Proposition I is denied for lack of merit.

This Court has disposed of Petitioner’s application based upon the pleadings and as a matter of law. There is no issue of material fact for which an evidentiary hearing is necessary to resolve. 22 O.S. §§ 1083, 1084; *Fowler v. State*, 1995 OK CR 29, ¶ 8, 896 P.2d 566, 566; *Logan*, 2013 OK CR 2, ¶¶ 20-23, 293 P.3d at 978-79.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner’s Application for Post-Conviction Relief, as supplemented, is **DENIED**.

Dated this 21st day of July, 2021.


SUSAN STALLINGS
DISTRICT JUDGE

CERTIFIED COPY
AS FILED OF RECORD
IN DISTRICT COURT

JUL 21 2021

RICK WARREN COURT CLERK
Oklahoma County


NOTICE OF RIGHT TO APPEAL

A final judgment under the Post-Conviction Procedure Act may be appealed to the Court of Criminal Appeals on petition in error filed either by the applicant or the State within thirty (30) days from entry of the judgment. Upon motion of either party on filing of notice of intent to appeal, within ten (10) days of entering the judgment, the district court may stay the execution of the judgment pending disposition on appeal; provided the Court of Criminal Appeals may direct the vacation of the order staying the execution prior to final disposition of the appeal. 22 O.S. § 1087. The party desiring to appeal from the final order must file a Notice of Post-Conviction Appeal with the Clerk of the District Court within twenty (20) days from the date the order is filed in the District Court. Rule 5.2(C)(1), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18 App. (2021).

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July, 2021, I mailed a certified copy of the above and foregoing order, with postage thereon fully prepaid, to:

Major Hudson, III, DOC #264410
James Crabtree Correctional Center
216 N. Murray Ave.
Helena, OK 73741

PETITIONER, PRO SE

and that a true and correct copy of the above and foregoing order was hand-delivered to:

Jennifer M. Hinsperger, Assistant District Attorney
Oklahoma County District Attorney's Office

COUNSEL FOR RESPONDENT


Juice J. Salas
Deputy Court Clerk

AFFIDAVIT OF PETITIONER MAJOR HUDSON III AND DECLARATION

APPENDIX (C)

AFFIDAVIT

I MAJOR HUDSON III, waive any right to having the honorable Justice Gorsuch recuse himself from my case, I would like full participation from all of the Justices in the decision making in this petition herein.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 18 /2022.

28 USCA § 1746

Major Hudson III
Major Hudson III, # 264410

JCCC 216 N. Murray

Helena, Ok 73741

MAP OF THE UNASSIGNED LANDS

APPENDIX (D)

OKLAHOMA LAND OPENINGS



Oklahoma Historical Society *Research Center*

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