

**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,**

**Petitioner,**

**v.**

**STATE OF OKLAHOMA,**

**Respondent.**

DEC - 3 2021

**JOHN D. HADDEN  
CLERK**

**No. PC-2021-944**

**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, Presiding Judge**

  
\_\_\_\_\_  
**ROBERT L. HUDSON, Vice Presiding Judge**

  
\_\_\_\_\_  
**GARY L. LUMPKIN, Judge**

A large, stylized handwritten signature in black ink, appearing to read "David B. Lewis", written over a horizontal line.

**DAVID B. LEWIS, Judge**

ATTEST:

*John D. Hadden*  
Clerk

PA

**OPINION OF THE STATE DISTRICT COURT**

**APPENDIX (B)**



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 (Okla. 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 (Okla. 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 14<sup>th</sup> 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 21<sup>st</sup> 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 21<sup>st</sup> 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

  
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 / 8 /2022.

28 USCA § 1746

Major Hudson III  
Major Hudson III, # 264410

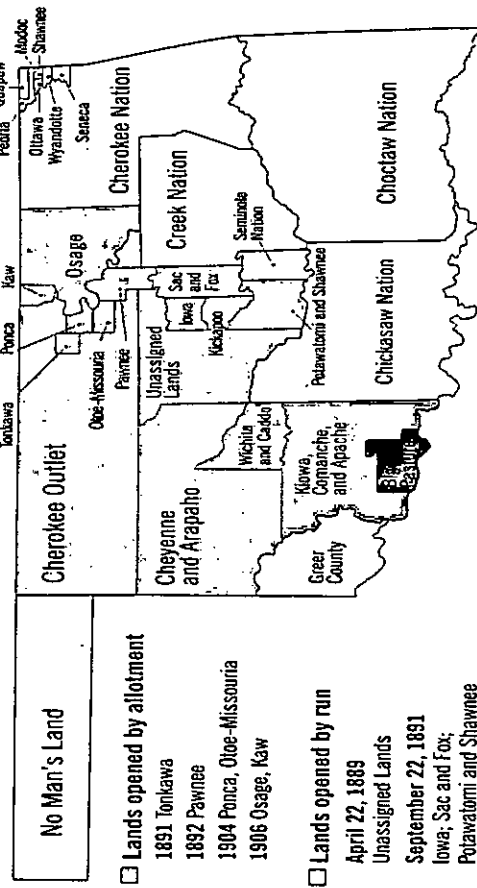
JCCC 216 N. Murray

Helena, Ok 73741

**MAP OF THE UNASSIGNED LANDS**

**APPENDIX (D)**

# Oklahoma Land Openings





Oklahoma Historical Society ***Research Center***

Oklahoma History Center  
800 Nazih Zuhdi Drive  
Oklahoma City, OK 73105

Research Center  
405-522-5225  
research@okhistory.org

[WWW.OKHISTORY.ORG](http://WWW.OKHISTORY.ORG)