

No. 21-7593

ORIGINAL

Supreme Court, U.S.
FILED

MAR 31 2022

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

David T. Young — 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

David T. Young
(Your Name)
Davis Correctional Facility
6888 East 133rd Road
(Address)

Holdenville, Oklahoma 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.
- 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.
- 3) Does the 1786 Treaty with the Choctaw Indian Tribe Place this Petitioner outside the Jurisdiction of Both the federal and State Courts to Prosecute this Petitioner.

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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

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Oklahoma Court of Criminal Appeals Case NO: P.C.-2021-982

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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☐ is unpublished.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☐ is unpublished.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 Jan. 6th, 2022.
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 ~~of~~ and the Fourteenth Amendment's Due Process Clause, the 1906 Oklahoma Enabling Act, the 1907 Oklahoma Constitution, relevant Provision of Public law 280, and the relevant Provision of 18 U.S.C. § 1151(a), 18 U.S.C. § 1152, and the relevant provisions of 22 O.S. § 1080 of the Oklahoma Post Conviction Act.

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. This honorable Court has said "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." *Kontrick v. Ryan*, 540 U.S. 443 (2004). see also *Image Software, Inc. v. Reynolds & Reynolds Co.*, 459 F.3d 1044 (10th cir. 2006) "whether subject-matter jurisdiction exist and may raise the Issue at any stage of the litigation." That's exactly what this Petitioner did by filing a Post Conviction under Oklahoma Statute 22 O.S. § 1080 (B) which allows for a Challenge of the States Jurisdiction on Collateral review.

This Petitioner is African American and the victims in this Case are African American, unto which Petitioner's alleged crime happened in McClurtain County of the State of Oklahoma. McClurtain County lies Inside the Tribal Boundaries of the Choctaw Nation. This Court in *Choctaw & Chickasaw Nation v. Oklahoma*, 397 U.S. 120 (1970) ruled that the Choctaw Tribal Nation still existed

then 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 ~~Choctaw~~ Choctaw Nation which shows McCurtain 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 Tribe. 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, it has done so by express words." *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 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 acts of Congress that has divested the federal and Tribal Jurisdiction over Choctaw 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 Choctaw Nation Tribal lands.

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

Furthermore the Supreme Court ruling in McBratney concerned the State of Colorado NOT Oklahoma which was the Tribal Indian dumping Grounds for the U.S. Government. But Congress thru Express words retained Exclusive Jurisdiction over Oklahoma Indian Tribal land which is the Choctaw Nation where this Petitioner's Crime Happened.

This Court in U.S. v. Antelope, 430 U.S. 641 (1977) stated "We have previously observed that Indian indicted under the Major Crimes Act Enjoy the same procedural benefits and privileges as all other person 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 (10th 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 jurisdiction and authority 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 Congress. In *Pickett v. U.S.*, 216 U.S. 456 (1910) where an 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 in Oklahoma 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 right under the the U.S. Constitution to be free from illegal search and seizure has been violated and his Fourteenth Amendment right to due process has 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 Oklahoma's Constitution Article 1, §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.

Oklahoma's Constitution Article 1, §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 Court 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. Article 1, §3 make clear Oklahoma disclaims all rights to Indian lands and in doing so created a federal Enclave which make federal law 18 U.S.C. § 1152 the only applicable law in the Choctaw Tribal Nation.

In 1953 Congress contacted Oklahoma and told them they need to take advantage of Public law 83-280 to permit the state to assume limited civil and Broad Criminal jurisdiction in Indian Country, see Act of Aug. 15th, 1953, ch. 505 67 stat 588 (Public law 280). The Congressional committee stated that Oklahoma's disclaimer over Indian land, and stated the "effect of the disclaimer of Jurisdiction over Indian land within the boarder of these States with such disclaimer, in absence of consent being given for future action to assume jurisdiction, is to retain exclusive 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 boundries 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 unnecessary because in thier view Oklahoma already had full jurisdiction over Indians and thier lands. The states 1953 position that Public law 280 was unnecessary for Oklahoma has been reject by Both- federal and State Courts, see Indian Country, U.S.A., 829 F.2d at 980, n.6 (10th cir. 1987)

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

The States ruling by the Oklahoma Court of Criminal Appeals in this case is wrong. McGirt does not apply to my case because Petitioner's case falls squarely under this Court's ruling in Pickett.

And how can the state say a act of Congress passed in 1906 and the 1907 Oklahoma Constitution is not retroactive? Its the same now as it was in 1906 and 1907.

So McGirt v. Oklahoma, 140 S.Ct. 2452 (2020) or Matloff v. Wallace, 2021 OK Cr. 21, ___ P.3d ___ has no bearing on this Petitioner's case. Furthermore

C. The State of Oklahoma and United States Courts Do Not have Jurisdiction in this case because the 1786 Treaty with The Choctaws Conveys Jurisdiction to the Choctaws to try this Petitioner.

The 1786 Treaty with the Choctaws Provided that "if any Citizen of the United States... shall attempt to settle on any of the lands hereby allotted to the Indians to live and hunt on, such person shall forfeit the protection of the United States of America, and the Indians may punish him or not as they Please", see, e.g., Treaty with the Choctaws, Art IV, 7 Stat. 22 (1786).

The State of Oklahoma is in violation of Article 6, section 2 of the United States Constitution's Supremacy Clause which states:

"This Constitution, and the laws of the United States which shall be made in Pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme law of the land; and Judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding."

Now this clearly means that ALL State Court Judges must honor all treaties and their Articles and sections contained in those treaties.

In the 1830 Treaty of Dancing Rabbit Creek with the Choctaws Article IV states: "...and that no part of the land granted them shall ever be embraced in any territory or state,..."

Then the Treaty with the Choctaws, Ratified June 28th, 1866, clearly preserved all previous Treaty provisions, see Article 45 of said treaty which states:

"All the rights, privileges, and immunities heretofore possessed by said Nations or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had in Connection with them, shall be, and are hereby declared to be, in full force, so far as they are consistent with the provisions of this treaty."

Therefore the State or the United States Courts did not have the right to try this Petitioner because the right was conveyed to the Choctaws in the 1786 Treaty at Article IV, 7 stat. 22.

The Indian Civil Rights Act of 1968 provides for "a trial by a jury of not less than six (6) persons," 25 U.S.C. § 1302(10), but the tribal Court is not explicitly prohibited from excluding non-Indians from the jury even where a Non Indian is being tried.

Therefore this Petitioner's 4th Amendment right to be free from illegal search and seizure has been violated with his 14th Amendment right of Due Process and equal protection of the U.S. Constitution's "Supremacy Clause" Article 6, § 2 which makes treaties the Supreme law of the land.

United States as Congress stated in its report, see S. Rep NO: 699, 83 Congress, 1st sess, reprinted in 1953 U.S. Code Cong. & Admin. News 2409, 2412; see Also Public law 280, § 6, 67 Stat. at 590.

And does the 1786 Treaty with the Choctaw Nation place this Petitioner crime into the Jurisdiction of the Choctaw tribal Courts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

David Young

Date: 3-30-2022

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

Executed on March 30, 2022.

s/ David Young
David T. Young # 206515