

21-7727  
No.22-

ORIGINAL

IN The

**Supreme Court of the United States**

Anthony Lyn Kimbrough,  
Petitioner Pro-se,

v.  
The State of Oklahoma ETAL.,  
Respondents.

FILED  
APR 18 2022  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

On Petition for a Writ of Certiorari  
to the Oklahoma Court of Criminal Appeals

**PETITION FOR A WRIT OF CERTIORARI**

Anthony Lyn Kimbrough, Pro-se  
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8607 SE Flower Mound Rd  
Lawton, Oklahoma 73501-9765

## QUESTION PRESENTED

Whether the U.S. Supreme Court decision in **McGirt v. Oklahoma**, 140 S.Ct.2452 (2020) applies retroactively to “all persons” in Indian Territory “irrespective of Race”, and also to their final judgments both civil and criminal when **McGirt** was announced?

## PARTIES TO THE PROCEEDINGS

Petitioner is Anthony Lyn Kimbrough. Pro-se

Respondents are the State of Oklahoma, by and through Steve Kunzweiler, the District Attorney in and for Tulsa County, Oklahoma, and the Honorable Judge in and for Tulsa County, Oklahoma. The respondents filed a response to the Petitioner application for post-conviction relief and the District Judge denied the Petitioner application thereafter the Petitioner filed his Petition in error to the Court of Criminal appeals where John O'Conner the Attorney General ask for the Petitioner application be denied the Oklahoma Court of Criminal Appeals Judges agreed and deny the Petitioner Petition-in-error pursuant to their recent decision in **State ex rel. Matloff v. Wallace**, 2021 OK CR 21, 497 P. 3d 686, cert. Denied, 595 U.S. \_\_\_, No. 21-467 (Jan. 10, 2022), 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 40,497 P.3d at 691-92,694.

## RELATED PROCEEDINGS

Anthony Kimbrough, vs. The State of Oklahoma, 3<sup>rd</sup> Post-Conviction Filed June 8<sup>th</sup> 2021 in case no. Cf-93-1833

Anthony Kimbrough, vs. The State of Oklahoma, Petition-in-error filed September 9<sup>th</sup> 2021 in case no# Pc-2021-938.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Anthony Lyn Kimbrough respectfully petitions for a writ of certiorari to review the judgment of the Oklahoma Court of Criminal Appeals in this case.

### **OPINIONS BELOW**

The Order of the Oklahoma Court of Criminal Appeals denying the Petitioner petition-in-error is not reported but available at (Pet.App.at 1a-3a)

The Trial courts order denying The Petitioner 3<sup>rd</sup> Post-Conviction relief is not published but available at (Pet.App.at 4a-27a)

### **JURISDICTION**

The Oklahoma Court of Criminal Appeals denied the Petitioner Petition in error on January 21<sup>st</sup> 2022. (Pet. App.at 1a-3a) This petition is being filed within (90) days of that denial. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

### **RELEVANT CONSTITUTION AND STATUTORY PROVISIONS**

The Indian Commerce Clause, the Supremacy Clause to the United State Constitution, The Due Process Clause, The Notes to Gholston Rarick Extension, act of May 27<sup>th</sup> 1908 as to Heir's and act of July 27<sup>th</sup> 1908 as to **allottee's** and the Oklahoma Enabling Legislation § 6 of Public Law 280, and the relevant provisions of title 18 and 21 of the U.S. Code and title 22 of the Oklahoma Statutes, are set forth in the appendix (Pet. App.at 28a-29a ).

**INTRODUCTION AND  
SUMMARY OF ARGUMENTS**

A. The U.S. Federal Courts Jurisdiction over Civil and Federal offenses within Indian Territory is Exclusive over state courts jurisdiction **“irrespective of Race.”**

Pursuant to the Act, the **Treaty of 1866** it provided that the United States and the Creek Nation Established a Reservation by Treaty, and it is the Petitioner argument that In **1890**, Congress subjected the **Indian Territory** to specified Federal criminal laws. **Act of May 2, 1890, § 31**, 26 Stat. 96. For offenses not covered by Federal law, Congress did what it often did when establishing a new territory government. It provided that the criminal laws from a neighboring State, here **Arkansas**, would apply. **§ 33**, id., at 96-97. Seven years later, Congress provided that the laws of the United States and Arkansas “**shall apply to all persons**” in Indian territory, **“irrespective of race.”** **Act of June 7<sup>th</sup>, 1897 (1897 Act)**, 30 Stat.83 (emphasis added). In the same Act, Congress conferred on the U.S. Courts for the Indian Territory “**exclusive jurisdiction**” over “**all civil causes in law and equity**” and “**all criminal causes**” for the punishment of offenses committed by “**any person**” in the Indian Territory. Congress reiterated yet again in **1904** that **Arkansas law’s “continued”** To “**embrace all persons and estates**” in the territory **“whether Indian, freedmen, or otherwise.”** **Act of April 28, 1904, Ch. 1824, §2**, 33 Stat. 573 The Petitioner now argue that his crime of First degree Murder was within the **Creek Nation Reservation** and therefore **Federal Jurisdiction and Federal Laws** from the **Arkansas** U.S. District Court or another U.S. District Court should apply to the Petitioner case just as it did between **1890** and **1906** before the State of Oklahoma became a

State: see, **in re Mills**, 135 U.S. 263 (1890). The Prisoner was sentence to hard labor at the United State Penitentiary in **Ohio State** *See Also, C.M.G. vs. State*, 594 P.2d 748 (1979). The State of Oklahoma has never acted pursuant to **Public law 83-280 or Title IV** of the Civil Rights Act to Assume original jurisdiction over the Indian Country within the borders “To this date”, the State of Oklahoma had made no attempt to repeal **article 1, § 3** of the Constitution of the State of Oklahoma which prohibits State Jurisdiction over Indian Country so the Federal Government still has exclusive jurisdiction over Indian Country.

## **STATEMENT**

### **A. The Federal Government’s Promise To The Creek Nation**

As noted by the Supreme Court, in **McGirt**, Creek treaties promised a “permanent home” that would be “forever set apart,” and assured a right to self-government on lands that would lie outside both the legal jurisdiction and geographic boundaries of any state. **McGirt**, 140 S.Ct. at 2461-62 (describing in detail provisions in treaty with the Creeks, arts. I, XII, XIV, XV, Mar.24, 1832, 7 Stat. 366-68;Treaty with the Creeks, preamble, arts. III, IV, IX, Feb.14 1833, 7 Stat. 417,419”Treaty with Creeks and Seminoles, arts. IV, XV, Aug.7,1856, 11 Stat. 699,700, 704”and treaty Between the United States and the Creek Indians, arts. III and IX, June 14, 1866, 14 Stat.785,786,788.

### **B. The Federal Government’s Promise To Cherokee Nation**

1. The Cherokee treaties were negotiated and finalized during the same period of time as the Creek treaties, contained similar provisions that promised a permanent home that would be forever set apart, and assured a right to self -government on lands that would lie outside both the legal jurisdiction and geographic boundaries of any state.(describing in detail provisions in treaty with the Cherokee arts. 1,5,8,19, Feb 14,1833, 7 Stat. 414,7 Stat. 478, 9 Stat. 871 & 14 Stat.799.

### C. This Court's Decision In McGirt

Pursuant to **McGirt vs. Oklahoma**, 140 S.Ct 2452 (2020) This court held that Oklahoma's "Longstanding practice of asserting Jurisdiction over "Native American" for crimes covered by the MCA was unlawful, 140 S.ct At 2470-71 Oklahoma had prosecuted and convicted **McGirt**, and enrolled member of the Seminole nation of Oklahoma, for three sexual offenses, all of which were committed on the creek reservation,. I.D. at 2459, **McGirt** argued in post-conviction proceedings that the State lacked jurisdiction to prosecute him and that any new trial must take place in Federal court. This court agreed but did not address in **McGirt** or **Murphy** weather Federal jurisdiction should also apply to "all persons" in Indian Territory "irrespective of Race" see, **Murphy vs. Royal**,866 F.3d 1164 (10<sup>th</sup> cir. 2017) as modified recognized that (in 1897 Congress imposed several allotment policy. Congress (1) provided that the body of Federal law is Indian Territory, which included the incorporated Arkansas Laws, was to apply **"irrespective of race."**

### D. The Current Controversy

That on July 9<sup>th</sup> 2020 the U.S. Supreme Court concluded the Muscogee Creek Nation has not been disestablished see, **Jimcy McGirt v. Oklahoma**,140 S.ct 2452 (2020) the same analysis was dictated by the O.C.C.A. for Cherokee Nation see also **Honger vs. State**,2021 OK Cr 4. that it was from theses ruling that the Petitioner filed his Application for 3<sup>rd</sup> Post-conviction relief arguing that the Muscogee Creek Nation and Cherokee Nation never lost there Sovereignty to the State of Oklahoma and therefore the state couldn't try nor convict the Petitioner for any criminal offense with in these (2) **Indian's Territory's** and that the **Mcgirt** case is retroactive to the Petitioner case. that on July 12, 2021 the State District Attorney responded by arguing that the **Mcgirt** ruling should not be applied retroactively to void a conviction that was final on collateral review. The Supreme Court's General rule of Non

-retroactivity was an exercise of the court's power to interpret the federal habeas statute to permit adjusting the scope of federal habeas relief in accordance with equitable and prudential considerations." citing **Danforth vs. Minnesota**, 552 U.S. 264 (2008) and Quoting **Teague vs. Lane**, 489 U.S. 288 (1989). That on July 14<sup>th</sup> 2021 the Trial Judge of Tulsa County filed her Court (Order) agreeing with the above State Response and deny the Petitioner application for Post-conviction relief citing **Teague** stating that the Supreme Court has yet to address whether there exists an exception to the general rule of non-retroactivity in cases such as this (Pet. App. at 11a-20a). On January 22<sup>nd</sup> 2022 the O.C.C.A agree with the state District court citing their recent decision **State Ex rel. Matloff vs. Wallace**, 497 P.3d 686 and stating **McGirt** is a new procedure rule is not retroactive and doesn't void final state court convictions (Pet. app. 1a-3a) and it is from the above court order the Petitioner object and argue that the Petitioner case does fall within the (2) **two Exceptions** of the **Teague vs. Lane**, and therefore the **McGirt** ruling should apply retroactively to the Petitioner final Judgment on collateral review. **In the present case**, at approximately 1:48 am on April 22, 1993 Tulsa police officer Gus Spanos made a routine traffic stop at **5800 N. Cincinnati** in Tulsa, Oklahoma which is located inside **Cherokee Nation reservation**. **Cherokee nation map** (Pet. App. at 39) he identified the license tag, number on the car he stopped as Oklahoma Tag, Ima 754 Two resident's in the neighborhood where the shooting took place observed some of the event's, but neither identified Petitioner as the driver of the pulled over car or anyone else as one of the people at the scene. State witness **S. Wilson** testified she saw the police officer standing beside his patrol car talking to a black or Hispanic man of medium build with short hair, who was sitting in the stopped car in front of the patrol car. According to **S. Wilson**, the unidentified man may have had **someone** with him in the **passenger seat**. In **S. Wilson** account, the man in the car opened the driver's door. Put one leg (clothed in blue jeans) outside the car and pulled

a hand gun outwith his right hand and shot the police officer. The car according to **Wilson**, then turned around in a driveway and drove north on Cincinnati, another car sped by a fraction of a second later going south on Cincinnati **S. Wilson**( Pet.App.at 40a-57a) another eyewitness, **Marion Clifton** who was call by the defense, lived at 214 east 58<sup>th</sup> street just east of the area where officer stopped his patrol car according to **Clifton**, there were **two car's** stopped on 58<sup>th</sup> street. In addition, to the patrol car, a **Dark burgundy car** facing **east** and a **silver car** facing **west**, or in the opposite direction **Clifton** said the person driving the dark burgundy car, the officer, and the person driving the silver car all got out of their vehicle's and talk to one another **Clifton** left his window at this point and went into another room. when **Clifton** looked outside again the person who was driving the car stopped by the officer was getting back into his car, as was the person in the silver car. The silver car drove to the stop sign on Cincinnati and turned right. The dark burgundy car drove down the street, turned into a drive way, backed out, and headed west back to the stop sign at Cincinnati, where the car turned right or north and drove away **Clifton** was not certain about the make of the silver car. he thought it was odd the police car did not move, but he did testify the person that got out of the stop car was not the Petitioner but a bigger and much taller person than the Petitioner **M. Clifton** (Pet.App.at 58a-71a) Three minute's elapsed between the time officer Spanos called the dispatcher to indicate he was making a traffic stop, and the time his backup officer **Charlie Tapper** arrived on the scene and called the dispatcher to report an officer was down. **C. Tapper** (Pet. App. at 72a-76a) The officer was not **(D.O.A.)** dead on arrival, but never regained consciousness before being transported by **(EMSA)** to the Tulsa Regional Medical Center now known as Oklahoma St. Medical University 744 west 9<sup>th</sup>st Tulsa, Oklahoma. which is located well inside the Muscogee Creek Nation reservation. See, Creek Nation map (Pet. App.at 77a) the State medical examiner **Dr. Hamphill** Testified that the officer died at

Tulsa Regional medical center at 12:26 pm April 23<sup>rd</sup> 1993 From a single gun shot wound to his head that he receive some (36) hour's earlier **Dr. Hamphill** (Pet.App.at 78a-84a) that the amended Drug Trafficking and failure to obtain a drug stamp took place from a search of William Kimbrough house which produced two Kleenex box's containing plastic baggie's of Cocaine J. Cash (Pet.App.at 85a-88a) according to the testimony there were (37) bag's each containing about (14) gram's of cocaine for a total of about (515) gram's or half a kilo of cocaine in William. Kimbrough house, One of Petitioners fingerprint's was **allegedly** found on a baggy with (15) points of Identification and one off the Kleenex box, a third unidentified palm print was also found on a Kleenex box. (State fingerprint expert Bob Yerton (Pet. App. at 89a-95a) there were no tax stamp's on the baggie's William Kimbrough house is located at 4142 N. Iroquois Avenue Tulsa, Oklahoma. (Pet. App. at 96a-98a) which is inside the **Cherokee Nation Reservation** see **Cherokee Nation map** (Pet. App.at 39a) over defense counsel demur and motion to sever counts on September 7,1993 citing **Glass vs, State**, 701 P. 2d 765 1985 as authority for the severance. The state argued they would be prejudice if they couldn't argue both case's together that Petitioner committed first degree murder to avoid lawful arrest or prosecution and that the victim was a police officer killed in the performance of a duty. The trial judge allowed the drug's to be admitted to show **motives** for the death of the police officer jury selection began on May 16<sup>th</sup> as scheduled and first stage proceeding's concluded on May 25, 1994. The Jury returned verdict's of guilty on all three count's and sentencing proceeding's were held on May 26<sup>th</sup> and 27<sup>th</sup> 1994 the jury recommended sentences of **Life imprisonment with the possibility of parole** and a \$100,000.00 fine on trafficking in Illegal drug's conviction and **Five year's imprisonment** and a \$10,00.00 fine for failure to obtain a drug stamp. The jury found two of the three aggravating circumstance's alleged by the state murder to avoid lawful arrest or prosecution and the victim was a police officer killed in

the performance of a duty, but dead-locked on punishment for the first degree murder conviction, so the trial judge imposed a sentence of Life without the possibility of parole running consecutively. (Pet.App.at 4a) Given the above known fact's of the case, the Petitioner asserts this court is required to dismiss this case for want of jurisdiction for the following two (2) reason's: First the Petitioner claim he is Indian and/or has (Indian Status) thru **Tribal Law's** that is **recognized** by the **Five Civilized Tribe's**, And Second the Petitioner is **Indian** because he is **eligible** to become a **member** of **Cherokee Nation** thru his **lineal descent**. See, 25 U.S.C. § 2201 (2)(A) First on the Petitioner **Paternal** side of his family, Petitioner first Grandmother **Lete Kolvin Kimbrough** a **Full Blood Creek Women** who is an original enrollee listed on the **Dawes commission** Roll no.#8092 who husband is Petitioner Grandfather **Addie Kimbrough**, their only son **Sylvester Archie Kimbrough** is petitioner uncle that under **Tribal Laws** the Petitioner would inherit some **royalty(s)** of their **Special Estate** which produce **Oil and Gas** in 1915 to this present date.<sup>1</sup> see **Baze vs. Scott**,106 F.2d

1 See, Lete Kolvin **Kimbrough** #8092 and **Addie Kimbrough** History and the fight over the estate. worth as high as 15 million dollar's in 1920 and in 1920 Addie Kimbrough received \$50,000 from an **Oil company** to sign a **quit claim deed** to the **property** see **Henryetta News paper** (**Henryetta again in Spotlight** in another "Big Money" Indian Case (Pet.App.at 99a) On or around August 16,1916 Lete Kolvin **Kimbrough** was **Murder**, her husband **Addie Kimbrough** was charge convicted and sentence to life in prison at the Oklahoma State Prison for his wife murder, while in prison their only son **Sylvester Archie Kimbrough** age-6 inherit his mom's estate, but he died 1-year after his mother death, after spending more then 7-years in prison On Jan 24<sup>th</sup> 1923 Addie Kimbrough was given a **Full Pardon** by Oklahoma Governor John C. Jack **Walton** see, Addie Kimbrough **Full Pardon** for the murder of his wife(Pet.App.at 100a-102a) That on June 11<sup>th</sup> 1930 a woman of the name Lete Kolvin **Steven** claiming to be the deceased Lete Kolvin **Kimbrough** enter inside the Tulsa County court house and probated a (will) using the deceased Lete Kolvin **Kimbrough** name and Roll no. #8092 in case no.#8552 see **Forge will** (Pet.App.at 110a-111a) that one month after probating the (will) Lete Kolvin **Steven** became mysteriously ill and died, and her husband Joseph Steven died a few months after her death see **Funeral expenses payed for by her executor James Isaiah Wallace**(Pet.App.at 107a) and (Pet.App.124a at 128a) that thru the use of the **Forge** (will) a law suit was filed and commenced on the 17<sup>th</sup> day of Sept 1930 in the **District Court of Creek county** case no #19179 styled Jame's Isaiah Wallace, executor of the estate of Lete Kolvin Steven's, deceased vs. Nancy Barnett, defendant's. And on the 24<sup>th</sup> day of Oct 1941 Judgment was rendered in the action awarding \$8,375,000.00 in stay bonds and Title of the estate to (48) Interveners, (Pet.App.112a at 123a) on April 11<sup>th</sup> 1944 Intervener's **Floyd and willie Mayweather** filed a **Petition-in-error** arguing that the Estate should be distributed to them as the true **Heirs** see, **Petition-in-error** in case no.#31790 (Pet.App.103a-105a) On July 18<sup>th</sup> 1945 In Tulsa County Court House a Decree approving final account, Barring Creditor's and Heir's And Decreeing Distribution was filed by the Executor of the (will) in case no.#8552 (Pet.App.at 106a-109a) See **Angie Debo, and Still the Waters Run: the betrayal of the Five Civilized Tribes** 86-87,117-118(1940) Certain historians have argued, for example, that the loss of Creek land ownership was accelerated by the discovery of oil in the region during the period at issue here. A number of the federal officials charged with

365 under **Tribal Laws** the statute gave to the Petitioner was the **surface rights** and the **royalties reserved** under the **lease** during the Petitioners Life time. see **U.S. vs. Prentiss**, 273 F.3d 1277,1283 fn.4 (10<sup>th</sup> cir. 2001) the court stated: our decision does not fore close reliance on Tribal Laws, to prove **(Indian Status)**. For example if the government established: **(a)** that a tribe's constitution provided that some degree of Indian blood was a requirement for tribal membership, and **(b)** that the victim or the defendant was a tribal member, then such evidence, unless properly controverted, would be sufficient to prove **(Indian Status)** under §1152. while, Congress does not define term "Indian" in criminal Jurisdiction statute's the term is defined elsewhere in the **Federal code** and includes persons **eligible** for membership See, 25 U.S.C. § 2201(2)(A) in the context of Indian land consolidation, "Indian" means **any** person who is a member of any Indian Tribe **(or)** is **eligible** to become a member of any Indian Tribe **or** is an **owner** as of (Oct 27<sup>th</sup>, 2004) of a **Trust or Restricted interest in land**". To prove the Petitioner is the **owner** of a **Trust or Restricted interest in land**. In 1920 the Petitioner Grandfather now **widower** of his deceased wife Lete Kolvin Kimbrough Roll no.#**8092** and the father of their only child/Sylvester A. Kimbrough also deceased received **\$50,000.00** from a Oil company to **sign a quit claim deed to the property**.<sup>2</sup> see (News paper clipping, Henryetta again in Spotlight in another "Big Money" Indian case (Pet.App.at 99a) thereafter on August 6<sup>th</sup> 1949 Petitioner Grandfather filed in Okmulgee County Court House his **Petition for letters of administration**, reclaiming/recovering his son Sylvester A. Kimbrough **Special estate** Probate case no.#**5730** (Pet.App.at 131a) and on January 19<sup>th</sup> 1951 Petitioner Grandfather filed a claim against Sinclair Refining Company and others for **oil/gas** and any **Royalties** illegally produced from his son **Special estate** the illegal drilling was during

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implementing the laws of Congress were apparently openly conflicted, holding shares or board positions in the very **oil companies** who sought to deprive Indians of their lands.

2 The South west quarter (sw1/4) of section 16, T-18-N, R-7E, of the **Restricted Indian Base meridian**.

the child life time, **Baze**, 106 F.2d at 365 supra, and that the court found that it was in the best interest of the deceased child, that his administratrix **Cynthia A. Bankhead** appointed by the Trail Judge be authorized to employ an attorney to Prosecute all claim's against the oil and gas Company's<sup>3</sup> (Pet.App.at 136a) on February 29<sup>th</sup> 1952 a Final report of the administratrix was given, and a **Order** by the trail Judge allowing final account and discharging the administratrix was made (Pet.App.at 137a-138a) to further prove the Petitioner is Indian and/or has (Indian Status) it is the Petitioner Contention that the State of Oklahoma knew there would be civil consequences in fact the State argued in **Carpenter vs. murphy** that the State of Oklahoma trained considerable Rhetorical fire in **murphy** on the child welfare act of 198, 25 U.S.C. §§ 1901 et seq claiming that child custody determination's would be undone in the event of an affirmance, that the Petitioner would argue the same would be true in the Present case, by the Petitioner being a descending heir to his Grandparents and uncle **Special estate**, that pursuant to the **Mcgirt** "retroactive" decision it will now allow the Petitioner to reclaim/recover his part of the \$8,375,000.00 Plus Title to the Speical estate<sup>4</sup> in which **Judge Beaver** the District Judge of Creek County awarded to (48) intervenors<sup>5</sup> in which the Petitioner say it never belong to <sup>6</sup> see the (will) is void). see also **Harjo vs. Kleppe**, 420 F.supp 1110 (1976) Creek Nation Tribal Supreme Court tried all civil cases involving any amount of money

3 Pursuant to Act of May 27<sup>th</sup> 1908 as to Heirs, and July 27<sup>th</sup> 1908 as to Allotees Infra. When Lete Kolvin Kimbrough died in 1916 her land descended to her only child/Sylvester A. Kimbrough the land then became a **Special estate** because it produced both oil and gas during her life time and when her child died in 1917 part of his **Special estate** descended to his mother side of his family the other part to his father Addie Kimbrough and when he died in 1988 his part of the **Special estate** descended to his children and to his grandson the Petitioner because the Petitioner father Lynwood Kimbrough died in 1971. see, the Petitioner birth certificate (Pet.App.at 133a) and father death certificate (Pet.App.at 135a)

4 The South west quarter (sw1/4) of section 16, T-18-N, R-7E, of the **Restricted Indian Base meridian**.

5 Intervenors names: **Anderson Steven's** and **Izora Alexander lee** group of intervenors Lete Kolvin Stevens, Joseph Steven, James Isaiah Wallace, Charlotte S. Wallace, Joseph E. Thompson, Floyd and Willie Mayweather and Charles B. Roger's Power of Attorney for the Maywathers,

6 **Judge Bevers** of Creek County District Court ruled the (will) that was written on June 11th 1930 and probated in the Tulsa County Court house in case no. #8552 by Lete Kolvin **Stevens** was (void) due to the (will) being forge. See, The Oil and Gas defense counselor argument about **Judge Bevers** ruling that the (will) is void in Case no. #19179 (Pet.App.129a-130a).

over \$100.00.<sup>7</sup> by the Petitioner being a descending **heir** to his Grandparents and uncle **Special estate** the Petitioner is entitled to the **earnings** and **income** from the **royalties** during the Petitioner Grandparents and uncle **life time**, this will also include during the Petitioner **life time**<sup>8</sup> thus Petitioner has proven he is Indian and/or has **(Indian Status)** by **Tribal Law's** That is **recognized** by the **Five Civilized Tribe's**. **Baze**,106 F.2d at 365 *supra*, **Kimbrow et al vs. Harper**, 238 P. 840, **Take vs. Miller**, 281 P. 576 see also **Notes to Gholston-Rarick Extension** Quoting: **Act of May 27,1908** effective **May 27<sup>th</sup>,1908** as to **Heir's** and **July 27<sup>th</sup> 1908** as to **Allottee's**. "Section 9, That the death of any allottee of the **Five Civilized Tribes** shall operate to remove all restrictions upon the alienation of said allottee's land: provided, that no conveyance of any interest of any **full-blood** Indian heir in such land shall be valid, unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee: Provided, further, that if any member of the **Five Civilized Tribes** of one-half or more Indian blood shall die, leaving issue surviving, born since March 4,1906, the homestead of such deceased allottee shall remain inalienable, unless restrictions against alienation are removed therefrom by the Secretary of the Interior in the manner provided in **Section 1** hereof, for the use and support of such issue, during their life or lives, until April 26<sup>th</sup> 1931; But if no such issue survives, then such allottee, if an adult, may dispose of his homestead by will free from all restrictions. If this be not done, or in the event the issue herein before provided for die before April 26,1931,then the land shall then descend to the **heirs**, according to the laws of descent and distribution of the State of Oklahoma, free from all restriction **Prentiss**, is clear

<sup>7</sup> Pursuant to **42 U.S.C. § 1983** the statute of limitation is 2 years in the State of Oklahoma. That the Petitioner wish to file a **§1983** or any law suit against the oil and gas companies and reclaim/recover the **\$8,375,000.00**, any and all monies plus **title** awarded to the 48 intervenors, how ever the Petitioner is un-skilled and out- matched by the **oil and gas** attorneys in such filings see, the Petitioner **Motion for the Appointment of Counsel**. (Pet.App.139a-148a)

<sup>8</sup> See, Oil and Gas company's lease agreements in the Petitioner deceased Grandmother Lete Kolvin name from **1915** to **2010** (Pet.App.187a-191a)) compare with **25 U.S.C. § 2201(2)(A)** the Petitioner is **Indian** if he is an **owner** as of **Oct 27<sup>th</sup> 2004** of a **Trust or Restricted interest in land**.

that the courts must consider **Tribal Law's**, Failing to consider the **Tribal Laws** greatly infringe upon the Tribes **Sovereignty**. That Petitioner crime's happen inside (2) two different Indian Reservation's see, **Muscogee Creek Nation Reservation Map** which show's both the scope of the holdings of the **Creek Nation** throughout eleven (11) Counties (Pet.App.a77a) see also, **Cherokee Nation reservation map** which shows there scope of holding's of the Cherokee Nation throughout the (14) fourteen county area which include Tulsa the now officially designated Indian land (Pet.app.39a) as we are all aware **subject matter jurisdiction** cannot be waived nor to confer jurisdiction on a court lacking the power to adjudicate a particular type of controversy. see **Mcgirt**, 140 S.ct 2452 (2020) State procedure bar don't apply so long as petitioner appeal his conviction before (July 9<sup>th</sup> 2021). That the testimony by State Medical Examiner **Dr. Hamphill** that the Police Officer **died** at the **Tulsa Regional Medical Center** now know as **Oklahoma st. Medical University**,744 West 9<sup>th</sup> st Tulsa, **Oklahoma**. Proves the officer **death** was **within** the **Muscogee Creek Nation Reservation**. See, **Creek Nation Map** (Pet.App.at 77a) and Testimony by state fingerprint expert **Bob Yerton** that the fingerprint upon the drugs belongs to Petitioner **(right Thumb)** with a minimum (15) point's of Identification only **bolstered** the state **Drug Trafficking and Murder** case against Petitioner. The juror's deliberated hours before sending out a note to the trial judge asking for the cassette player to re- play the 911 tape for time frame purposes the D.A. argued that the tape should be admitted into evidence to narrow the time frame down to his state witness **S. Wilson** testimony and not to defense witness **M. Clifton** testimony **D.A. Moss** (Pet.app.153a-168a) that (10) ten year's after Petitioner conviction and sentence's did a independent Fingerprint expert **(Thomas Ekis)** from Texas **re-check** the same fingerprint by state expert **Bob Yerton** and determined the fingerprint found upon the drugs belong to Petitioner **(left Thumb)** which is in **direct conflict** of state fingerprint expert **Bob Yerton** see

Thomas Ekis Fingerprint Report (Pet.App.164a-166a)) compare with state fingerprint expert **Bob Yerton** Jury trial testimony(Pet.App.89a-95a) <sup>9</sup> That Petitioner **Drug trafficking** and **failure to obtain a drug stamp** charge's came from drug's found inside William Kimbrough house on **4142 N, Iroquois ave Tulsa Oklahoma.** which is inside **Cherokee Nation reservation** See **Cherokee Nation Map** (Pet.App.39a) Congress has not specifically erase **(Cherokee Nation)** Boundaries or disestablished the reservation. Once a reservation is established, it retains that status until congress explicitly indicate otherwise **Mcgirt**,140 S.ct at 2469 Oklahoma can point to no congressional statute where congress specifically erased the Cherokee Nation boundaries and disestablished the Cherokee Nation Reservation. By applying the retroactive decision in **McGirt** to the **Cherokee Nation** this court must find that the Cherokee Nation Reservation is **Indian country** under Title **18 U.S.C.§ 1151(a)** see **Hogner vs. State**, 2021 OK CR 4 That the Petitioner would also argue that both the Muscogee Creek Nation and Cherokee Nation are both Federally recognized by the Federal legislation Cherokee, Muscogee Creek, Choctaw, Chickasaw, and Seminole Nation's historically referred to the Five Civilized Tribes or Five Tribe's. see **84 C.F.R.§ 1200 (2019)**. By the state district court convicting and sentencing the Petitioner to life without the possibility parole for Murder in violation of **21 O.S. 1991 §701.7**, life with the possibility of parole for Drug trafficking in violation of **63 O.S. 1991 § 2-415** and (5) five year's for failure to obtain a drug stamp in violation of **68 O.S. 1991 § 450.1** running **consecutively** see, (Pet. App.at 4a) it's decision is in direct conflict with **The Major Crime's Act, The General Crime's Act** also known as the

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<sup>9</sup> See, First defense counsel Richard O' Carroll **summary witness** list in which he listed **Don Cravens-Crime Scene/Finger Expert** as his defense witness an wrote in his summary that **Don Cravens** will testify regarding his independent analysis of State's fingerprint expert **Bob yerton's** evaluation and to the **possibility of the placement** of the defendant's **fingerprints at the drug-crime scene**. but before defense counsel was able to call his defense witness to testify in Petitioner behalf defense counsel was force-ably remove from Petitioner case. See (Defense counsel witness summary list as (Pet.App.167a). see, also the States objection to the Petitioner **4<sup>th</sup> motion of continuance** as (Pet.app.168a-169a).

Indian Country Crime's Act which has Exclusive jurisdiction over state court's. That Pursuant to U.S. Federal Law, Petitioner range of punishment would Carrie a minimum of **(20) year's to Life, Life or Death, 21 U.S.C. § 848 (e)(1)(B)** the death of a police officer in the commission of drug trafficking.

### Summary Arguments

A. The U.S. Federal Courts Jurisdiction over Civil and Federal offenses within Indian Territory is exclusive over State Jurisdiction “irrespective of race.”

Pursuant to the Act, the Treaty of 1866 it provided that the United States and the Creek Nation Established a Reservation by Treaty, and it is the Petitioner argument that In 1890, Congress subjected the **Indian Territory** to specified Federal criminal laws. **Act of May 2, 1890, § 31**, 26 Stat. 96. For offenses not covered by Federal law, Congress did what it often did when establishing a new territory government. It provided that the criminal laws from a neighboring State, here **Arkansas**, would apply. **§ 33**, id., at 96-97. Seven years later, Congress provided that the laws of the United States and Arkansas “shall apply to all persons” in Indian territory, “irrespective of race.” **Act of June 7<sup>th</sup>, 1897 (1897 Act)**, 30 Stat.83 (emphasis added). In the same Act, Congress conferred on the U.S. Courts for the Indian Territory “exclusive jurisdiction” over “all civil causes in law and equity” and “all criminal causes” for the punishment of offenses committed by “any person” in the Indian Territory. Congress reiterated yet again in 1904 that Arkansas law's “continued” To “embrace all persons and estates” in the territory “whether Indian, freedmen, or otherwise.” **Act of April 28, 1904, Ch. 1824, §2, 33 Stat. 573** The Petitioner now argue that his crime of First degree Murder was within the **Creek Nation Reservation** and therefore **Federal Jurisdiction and Federal Laws** from the **Arkansas** U.S. District Court or another U.S. District Court should apply to the Petitioner case just as it did between **1890** and **1906** before the State of Oklahoma became a

State, see, **in re Mills**, 135 U.S. 263 (1890). The Prisoner was sentence to hard labor at the United State Penitentiary in **Ohio State** *See Also C.M.G. vs. State*, 594 P.2d 748 (1979). The State of Oklahoma has never acted pursuant to **Public law 83-280 or Title IV** of the Civil Rights Act to Assume original jurisdiction over the Indian Country within the borders "To this date", the State of Oklahoma had made no attempt to repeal **article 1, § 3**, of the Constitution of the State of Oklahoma which prohibits State Jurisdiction over Indian Country so the Federal Government still has exclusive jurisdiction over Indian Country. **In the present case**, by the State District court convicting and sentencing the Petitioner to life without the possibility of Parole of Murder in violation of **(21 O.S. 1991 § 701.7)** and life with the possibility of Parole for Drug Trafficking in violation of **(63 O.S. 1991 § 2-415)** and five years for Failure to obtain a drug stamp in violation of **(68 O.S. 1991 § 450.1)**. running consecutively (Pet.app. at 4a) its decision is in direct conflict with the **Major Crime's Act**, the **General Crime's Act**, also known as the **Indian Country Crime's Act** and its decision is also in direct conflict with U.S. Federal Law **21 U.S.C. § 848(e)(1)(B)** in which the Petitioner range of punishment would carried a minimum of **(20) years to life, life, or Death § 848 (e)(1)(B)**. the death of a Police Officer in the commission of Drug trafficking See, **Teague vs. Lane**, 489 U.S. 288 (1989) The General bar on retroactivity and the Two exceptions, **Teague**, First exception recognized new **Substantive rules**-those "forbidding criminal punishment of certain primary conduct "prohibiting a certain category of punishment for a class of defendant's because of their status or offense" are not subject to the general retroactivity bar. **U.S. vs. Hopkins**, 930 F.3d 690 , **Montgomery vs. Louisiana**, 136 S.ct 718(2016) a rule is substantive rather than procedural if it alters the range of conduct or class of persons that the law punishes. **Thus** in the present case, the Petitioner has met the First exception of **Teague**.

## REASONS FOR GRANTING THE PETITION

A. Because of the Oklahoma Enabling act, all of Oklahoma State District Courts are deprived of subject-matter jurisdiction to hear any claim Civil or Criminal to “all Persons” in Indian Territory “irrespective of Race”.

The Petitioner states any Oklahoma State District Court in Indian Territory is deprived of subject-matter jurisdiction to hear any claim, civil or criminal and “irrespective of race” see, **McGirt**, 140 S.Ct at 2476-78 (Oklahoma doesn’t claim to have complied with the requirement to assume jurisdiction voluntarily over “Creeks”.) The State ceded jurisdiction to the United States upon entry into the Union. **Oklahoma Const. art 1 § 3**, the Enabling Act,<sup>10</sup> which must be interpreted by a plain language reading of the text to arrive at a meaning of what the framers intended. These assertions are reinforced with text where there can be no other meaning when analyzed by a plain language reading of the text. Important to the claims raised is the Enabling Act [**59<sup>th</sup> Congress, Session 1, Chapter 3335, pg. 279, (1906)**] that is embodied into **art. 1 § 3** and was not addressed in **McGirt or Murphy<sup>11</sup>**, Art. 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 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 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**.

Land belonging to citizens of the United States residing without the limits of the State shall never be taxed at a higher rate than the land belonging to residents thereof. No taxes shall be

<sup>10</sup> *In re Initiative Petition No.* 363, 1996 OK 122, 927 P.2d. 558

<sup>11</sup> *Murphy v. Royal*, 866 F.3d 1164 (10<sup>th</sup> Cir. 2017) as modified recognized that (in 1897, Congress imposed several measures to force the Creek Nation’s agreement to the allotment policy. Congress (1) “provid[ed] that the body of Federal law in Indian Territory, which included the incorporated Arkansas laws, was to apply irrespective of race.”)

imposed by the State on lands or property belonging to or which may hereafter be purchased by the United States or reserved for its use.

There are three methods by which the United States obtains exclusive or concurrent jurisdiction over Federal lands in a State; the third method is that clarified by **art. 1, § 3**, a reservation of Federal jurisdiction upon the admission of a State into the Union. *See Collins v. Yosemite Park & Curry Co.*, 304 U.S. 518 (1938). The Courts in this State have addressed the Enabling Act since as early as statehood, Petitioner points to *Higgins v. Brown*, 1908 OK 28, 20 Okla. 355, 94 P. 703, and applying *stare decisis*, the Court discussed in great detail a comparison of laws with other states and determined the lands were exclusively under the jurisdiction of the United States. The Oklahoma Enabling Act and State Constitution remain the same today as from their inception as addressed in *Higgins*.<sup>¶ 164</sup> By the same process of reasoning followed by the Supreme Court of the United States in cases of *U.S. v. McBratney*, 104 U.S. 621 (1882), and *Draper v. U.S.*, 164 U.S. 240 (1896), we conclude that the Congress, upon the admission of Oklahoma as a State, where it has intended to except out of such state an Indian reservation, or the sole and exclusive jurisdiction over that reservation, it has done so by express words. It is not contented that the alleged crime was committed on any such excepted reservation, or in any place where the United States has the sole and exclusive jurisdiction since the admission of the State. Now, mark you the language, "had they been committed within a State would have been cognizable in the Federal Courts," contained in section 16, as amended March 4, 1907, of the Oklahoma Enabling Act. Does not that mean in a State similarly circumstanced as one with Enabling Act like ours? When you consider this language in connection with section 39 of the same Enabling Act pertaining to Arizona and New Mexico, *supra*, it seems that Congress was recognizing the existing conditions and the bringing in of an organized and unorganized territory as one State, and that it was laying down the rule that if such offense had been committed **after the admission of the State it would have been cognizable in the Federal Court, that then such Federal Court would have**

**jurisdiction; otherwise not.** Any other conclusion can be reached only by reasoning against the apparent and reasonable literal meaning. *See, also*, the following authorities heretofore cited: ***Moore v. U.S.***, 85 F. 465 (8<sup>th</sup> Cir. 1898); ***U.S. v. Kagama***, 118 U.S. 375, (1896); ***Ward v. U.S.***, 28 F. Cas. 397, 1 Kan. 601 (1863); ***Ward v. Race Horse***, 163 U.S. 504 (1896); ***U.S. v. Bailey***, 1 McLean 234, 24 F. Cas. 937 (1834); ***State v. Doxtater***, 47 Wis. 278, 2 N.W. 439. I.d.

The Oklahoma Constitution was created by an Act of Congress which defined the congressional intent as determined in ***Higgins***. However, because Oklahoma never acted on **Public Law 280** it cannot exercise jurisdiction. In ***Higgins v. Brown***, 1908 OK 28, 20 Okla. 355, 94 P. 703, the Oklahoma Supreme Court specifically concluded “that the Congress, upon the admission of Oklahoma as a State, where it has intended to except out of such state an Indian reservation, or **the sole and exclusive jurisdiction over that Reservation, it has done so by express words.**”

#### Oklahoma is Not A Public Law 83-280

#### As Recognized by C.M.G. vs.State, Infra.

The State of Oklahoma has never acted pursuant to **Public Law 83-280 or Title IV** of the Civil Rights Act to assume jurisdiction over the “Indian Country” within its borders. *See, C.M.G. v. State*, 1979 OK CR 39, ¶ 2, 594 P.2d 798, cert. denied, 444 U.S. 992 (1979) “To date, the State of Oklahoma had made no attempt to repeal **art. 1, § 3**, of the Constitution of the State of Oklahoma, which prohibits State jurisdiction over Indian Country, so **the Federal Government still has exclusive jurisdiction over Indian Country....**” *Id.*, citing ***State v. Littlechief***, 1978 OK CR 2, 573 P.2d 263; ***State v. Burnett***, 1983 OK CR 153, ¶ 10, 671 P.2d 1165. “The land in question is Indian Country within the meaning of **18 U.S.C. § 1151(c)**, and outside the jurisdiction of the District Court.” ***State v. Burnett***, *supra*, at ¶ 11. ***Cravatt v. State***, 1992 OK CR 6, 825 P.2d 277. That “Congress has also created the opportunity for six specific states to exercise jurisdiction over crimes committed in Indian Country by

enacting **Public Law 280**. Act of Aug. 15, 1953; **Pub. L. No. 67**, Stat. 588, codified at **18 U.S.C. § 1162**, **25 U.S.C. § 1321-26**; **18 U.S.C. § 1162(a)**. In a separate provision, **P.L. 280** created a framework for other states to assume jurisdiction over crimes committed in Indian Country, with the consent of the affected tribe; the State and the Federal Government may have concurrent jurisdiction if the affected tribe requests it and with the consent of the Attorney General. **25 U.S.C. § 1321(a)**. Oklahoma has not exercised the options for criminal jurisdiction afforded by **P.L. 280**. **Cravatt**, at ¶ 15, 825 P.2d at 279. The Tenth Circuit in **Murphy v. Royal**, 866 F.3d 1164 (10<sup>th</sup> Cir. 2017), also held that Oklahoma chose not to use **Public Law 280** to assert jurisdiction. State officials regarded the law as unnecessary because, in their view, Oklahoma already had full jurisdiction over Indians and their lands. Indian Country, **USA v. Oklahoma Tax Com'n**, 829 F.2d 967, 980 n.6 (10<sup>th</sup> Cir. 1987). But “[t]he State’s 1953 position that **Public Law 280** was unnecessary for Oklahoma...[has] been rejected by both Federal and State Courts.” *Id.* **U.S. v. Burnett**, 777 F.2d 593 (10<sup>th</sup> Cir. 1985), cert. denied, 476 U.S. 1106, 106 S.Ct. 1952, 90 L.Ed.2d 361 (1986); **Ahboah v. Housing Auth. Of the Kiowa Tribe**, 1983 OK 20, 660 P.2d 625; **State v. Burnett**, *supra*; **C.M.G.**, *supra*; **Littlechief**, *supra*. Oklahoma has not obtained tribal consent following the 1968 amendment and has **thus never acquired jurisdiction over Indian Country through Public Law 280**. See **Cravatt**, *supra*, (“The State of Oklahoma has never acted pursuant to **Public Law 83-280**.” Quoting **State v. Klindt**, 1989 OK CR 75, 782 P.2d 401, 403) See, **Felix S. Cohen's Handbook of Federal Indian Law** 60 at 537-38 & n.47 (Nell Jessup Newton ed., 2012). Further, analyzing an Oklahoma Supreme Court opinion **Hoover v. Kiowa Tribe of Oklahoma**, 1998 OK 23, 957 P.2d 81<sup>12</sup>, wherein the Tenth Circuit upheld dissenting opinions of Kauger and **Summers**, by reversing the majority’s opinion. The dissent determined: ¶ 9 Despite the language

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<sup>12</sup> **Kiowa Indian Tribe of Oklahoma v. Hoover**, 150 F.3d 1163 (10<sup>th</sup> Cir. 1998) the Court reversed: (The District Court’s decisions to dismiss the Tribe’s § 1983 action pursuant to the Rooker-Feldman doctrine and to deny the Tribe a preliminary injunction pending prosecution of the claim are REVERSED. The case is REMANDED to the District Court for further consideration consistent with this opinion and in light of any subsequent action taken by the Oklahoma State Courts in response to the Supreme Court’s holding in **Manufacturing Tech.**)

of Oklahoma's enabling legislation, specifically protecting the rights of Native Americans in Indian Territory, **section 6 of P.L. 280**, 67 Stat. 590 (1953) provides:

Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State Constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: Provided, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State Constitution or statutes as the case may be.

“Oklahoma has not amended its Constitution, nor has it complied with the conditions set forth in **P.L.280** to invoke jurisdiction over Indian tribes. It also has not assumed economic responsibility for tribal services currently provided by Indian nations, i.e., health care, indigent relief, road improvements, etc. The majority’s reliance on a statement by Governor Johnston Murray, who served from 1951 to 1955, for the proposition that adoption of **P.L. 280** in Oklahoma would make no difference to Native Americans in Oklahoma is unconvincing. Had the State passed legislation or amended its Constitution in conjunction with the Federal statute —**which it has not, civil and criminal jurisdiction could have been extended over Indian Country**. However, the window has closed on Oklahoma’s opportunity to assume jurisdiction under **P.L. 280** as originally enacted. The portion of the Federal statute allowing for the assumption of the jurisdiction was repealed in 1968.”

Oklahoma Courts have no subject-matter jurisdiction over any matter on tribal land or any land secured to a homesteader by way of land patent. There is absolutely no Act of Congress which has conferred jurisdiction to Oklahoma. There is no decision from the State’s highest Court or the United States Supreme Court determining that the Oklahoma Constitution is void or otherwise unenforceable.

## There Can Be No Finality of Judgment

## If it is Void Ab Initio

Where a judgment is void for want of jurisdiction, habeas corpus will lie, and may be issued by any Court or judge invested with supervisory jurisdiction in such case. See *Ex parte Royall*, 117 U.S. 241, 253 (1886) (citing *Ex Parte Lange*, 85 U.S. 163, 21 L.Ed. 872 (1873)). The only way that a judgment can become final it would mandate that notice, and a hearing, or an opportunity to be heard, before a Court of competent jurisdiction, according to established modes of procedure, is “due process” in the constitutional sense *Moore v. Dempsey*, 261 U.S. 86, 95, 43 S.Ct. 265, 67 L.Ed. 543 (1923). Therefore if a Court lacked subject-matter jurisdiction the Court would not be a Court of competent jurisdiction. See also *Benton v. Maryland*, 395 U.S. 784 (1969),

## B. The Decision Below Is Incorrect

The Petitioner had argued in his 3<sup>rd</sup> Post-conviction application and Petition-in-error That the **McGirt** ruling applied retroactively to his case and therefore the state court was without jurisdiction to imposed his sentence of life with the possibility of parole for drug trafficking, (5)years for failing to obtain a drug stamp and life with out the possibility of parole for murder in the first degree all sentences to run consecutive, the Petitioner had also explain that his case should have been tried **Federally** and that his range of punishment would have been a **minimum of 20 years to Life, Life, or Death** citing 21 U.S.C. § 848 (e)(1)(B) see U.S. vs. **Villarreal**,943 F.2d 725 (5<sup>th</sup> cir.1992) the Oklahoma Court of Criminal Appeals refused to apply **McGirt** retroactively in the Petitioner case and asserted, the rule is procedural citing **State ex rel. Matloff v. Wallace**, 2021 OK CR 21,497 P. 3d 686 (Okla. Crim. App. 2021) cert. Denied, Jan 10<sup>th</sup> 2022 (Pet.App.at 1a-3a)That conclusion is wrong and because of its incorrect decision the Petitioner conviction is illegal, New substantive rules generally apply

retroactively" while New rules of procedure...generally do not." **Schrivo vs. Summerlin**, 542 U.S. 348,351-52 (2004) The rule announced in **McGirt** is substantive, Substantive rules include those that "alter the range of conduct or the class of person(s) that the law punishes. I.d. at 352 "such rules apply retroactively because they necessarily carry a significant risk that a defendant...Faces a punishment that the Law cannot impose upon him," I.d. "quoting **Bousley vs. United States**,523 U.S.614,620 (1998) In these cases "when a state enforces a proscription or penalty barred by the constitution, The resulting conviction or sentence is, by definition, unlawful" and "void see, **Montgomery vs. Louisiana**, 577 U.S. 190, 200-03 (2016) as **Montgomery** explained when a new substantive rule of constitutional law controls the outcome of a case, The constitution requires state collateral review courts to give retroactive effect to that rule." 577 U.S. at 200 see **McGirt**, This court determined that the Creek land qualified as a reservation under duly ratified Treaties and that congress had not disestablished the reservation, That principle applies equally to the **Cherokee** reservation, for the same reason's, see, **Hogner vs. State**,2021 OK CR 4 see also **Worcester vs. Georgia**,31 U.S. 515,561 (1832) that under the Supremacy Clause, the Federal divestiture of state jurisdiction is the "Supreme law of the land," U.S. Const., art.VI, cl.2 because Oklahoma has no jurisdiction to proscribe and punish the Petitioners conduct, the state is holding the Petitioner without any valid authority to do so, a Jurisdiction ruling of that character is necessarily retroactive as a matter of Federal law, and the Oklahoma Court of Criminal Appeals incorrect decision to the contrary merits this courts review to resolve this conflict.

### C. The Decision Below Implicates Vitally Important Interests

This courts intervention is warranted not only to correct a fundamental legal error by the court below but also because the Oklahoma court(s) decision undermines this court's decision in **McGirt**, diminishes federal authority, disregard's individual rights, and threatens to leave in place a significant number of Civil and Criminal cases that never had any valid legal basis.

#### **Civil Consequence's could be enormous or it could be not?**

Pursuant to **McGirt** that the State of Oklahoma Trained considerable rhetorical Fire in **Murphy** on the **Child welfare Act of 1978**, **25 U.S.C. §§ 1901 et seq.** claiming that child custody determination's would be un-done in the event of an affirmance.<sup>13</sup> That it is the Petitioner argument that the same would be true in oil and gas case's dealing with native American deceased family member's (**wills**) and (**lease agreements**) in the present case, the Petitioner grandmother Lete Kolvin is a full blood Creek Indian woman and a enrolled member of creek nation with a Dawes commission Roll no.# **8092** she was murder in **1916** leaving her estate worth as high as **15 million dollar's** her husband and baby father of her only child was the Petitioner Grandfather Addie C. Kimbrough he was charge convicted and sentence to life in prison at the Oklahoma State Prison for his wife murder, after serving 7 years in prison the Oklahoma Governor Jack C. Walton gave Addie Kimbrough a Full pardon for his wife murder and in 1923 Addie signed a quick claim deed to the property for the amount of 50,000.00, thereafter in 1930 a woman of the name Lete Kolvin Steven calming to be the Petitioner deceased Grandmother Lete Kolvin Kimbrough enter inside the Tulsa county

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<sup>13</sup> That Oklahoma has failed to assume criminal and civil jurisdiction under Public Law 280, **25 U.S.C. § 1321**, before it was amended to require tribal consent, and has thus never acquired jurisdiction over Indian country through that law. **Indian Country. U.S. A.**, 829 F.2d at 980 n.6; see **Cravatt v. State**, 1992 OK CR 6, 825 P.2d 277,279 (Okla. Crim. App. 1992)(The State of Oklahoma has never acted pursuant to Public Law 83-280," quoting **State v. Klindt**, 1989 OK CR 75, 782 P.2d 401,403 (Okla. Crim. App. 1989). See also **McGirt**, 140 S.Ct. at 2478 ("Oklahoma doesn't claim to have complied with the requirements to assume jurisdiction voluntarily over Creeks").

court house and forged a (Will) using the deceased Lete Kolvin Kimbrough name and Roll#8092 <sup>14</sup> that one month after probating the (Will) Lete Kolvin Steven became mysteriously ill and died <sup>15</sup> that threw the forge (Will) a multi-million dollar law suite was filed and commenced on the 17<sup>th</sup> day of September 1930 in the District court of Creek County in case no #19179 Styled **James Isaiah Wallace, executor of the estate of Lete Kolvin Steven's deceased vs. Nancy, Barnett, defendant's** and on the 24<sup>th</sup> day of Oct 1941 the Honorable Judge Beavers, ruled that the (will) in which the deceased Lete Kolvin Steven had written was forged <sup>16</sup> but awarded \$8,375.000.00 dollar's and the title to the estate to the intervenors in the said case.<sup>17</sup> to this present date Oil and Gas company's are producing Oil and gas threw the forge (Will) and the leases are in the name of the Petitioner deceased grandmother Lete Kolvin Roll #8092 that the Petitioner would argue that if McGirt is held to apply retroactively to State court **civil cases** that were final when it was decided because it announced a substantive rule, then the Petitioner will be entitled to reclaim his surface rights and his part of the royalties reserved under the leases see, **Baze vs. Scott**,106 F.2d 365, **Take vs. Miller**, 281 P. 576 (1929) a white woman intermarried to Bluford Take, a Full blood Cherokee man she would be entitled to her husband homestead but must be within the Tribal Laws "irrespective of race" quoting Quoting: **Act of May 27,1908 effective May 27<sup>th</sup>,1908** as to **Heir's and July 27<sup>th</sup> 1908** as to **Allottee's.**

14 See, Tulsa County Probate case no# 8552

15 Lete Kolvin Steven attorney was Wash E. Hudson ex-senator and founder of the KKK in Tulsa County during the 1920(s)news article by **The Frontier Effort** underway to change name of lake named for Tulsa Klansman by Kevin Hassier Associate Editor.<https://www.enidnews.com> see also, See **Angie Debo, and Still the Waters Run: the betrayal of the Five Civilized Tribes** 86-87, 117-118(1940) Certain historians have argued, for example, that the loss of Creek land ownership was accelerated by the discovery of oil in the region during the period at issue here. A number of the federal officials charged with implementing the laws of Congress were apparently openly conflicted, holding shares or board positions in the very oil companies who sought to deprive Indians of their lands.

16 **Judge Bevers** ruling that the (will) is void in Case no. #19179 (Pet.App.at 129a-130a).

17 Intervenors names: **Anderson Steven's and Izora Alexander lee** group of intervenors **Lete Kolvin Stevens, Joseph Steven, James Isaiah Wallace, Charlotte S. Wallace, Joseph E. Thompson, Floyd and Willie Mayweather and Charles B. Roger's Power of Attorney** for the **Maywathers**,

“**Section 9**, That the death of any allottee of the **Five Civilized Tribes** shall operate to remove all restrictions upon the alienation of said allottee’s land: provided, that no conveyance of any interest of any **full-blood** Indian heir in such land shall be valid, unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee: Provided, further, that if any member of the **Five Civilized Tribes** of one-half or more Indian blood shall die, leaving issue surviving, born since March 4, 1906, the homestead of such deceased allottee shall remain inalienable, unless restrictions against alienation are removed therefrom by the Secretary of the Interior in the manner provided in **Section 1** hereof, for the use and support of such issue, during their life or lives, until April 26<sup>th</sup> 1931; But if no such issue survives, then such allottee, if an adult, may dispose of his homestead by will free from all restrictions. If this be not done, or in the event the issue herein before provided for die before April 26, 1931, **then the land shall then descend to the heirs, according to the laws of descent and distribution of the State of Oklahoma, free from all restriction.**

See also, **Harjo vs . Kelpper**, 420 F. supp 1110 (1976) all Civil cases over \$100.00 would half to be tried in Creek Nation’s Tribal Supreme Court.

#### **Criminal Consequences could be enormous or it could be not?**

The State of Oklahoma knew or should have known by it’s failure to exercise jurisdiction over crimes committed in Indian Territory by enacting **Public law 280**. the State of Oklahoma prison population which house more then 22 thousand and less then 23 thousand prisoners are at risk of being overturn and retried in federal court’s that Oklahoma currently rank with in the nation top #3 of incarceration of prisoners, rank #1 in the nation in incarcerating their women and currently have (40) prisoners on death row and (1) woman awaiting their execution’s, How ever pursuant to **McGirt**, 140 S.Ct at 2479 (defendants may choose to finish their state sentences rather than risk re-prosecution in federal court where sentences can be graver”)

See also, **Castro-Huerta**, no. 21-429 The state has thus far filed petition in only thirty-one and there is no indication in the state court dockets that this number will grow exponentially, compare with **Ramos vs. Louisiana**,140 S.Ct 1390,1406 (2020) Hundreds of direct appeal cases would be impacted. And in the present case the Petitioner himself faces Federal prosecution in a new trial see, **21 U.S.C. § 848(e)(1)(B)** The death of a police officer in the commission of drug trafficking carries a minimum of 20 years to life, life, or death. See, **U.S. vs. Villarreal**,963 F.2d 725 (5<sup>th</sup> cir. 1992) But by any measure the sheer number of conviction's at stake gives the issue in this case the degree of practical significance that warrants this courts review to resolve this conflict.

#### D. This Case Provides An Excellent Vehicle To Address

##### The Retroactivity Of McGirt

**McGirt** retroactivity was preserved throughout the Petitioner appellate proceeding's and was thoroughly considered by the courts below.<sup>18</sup>

1. In the Petitioner 3<sup>rd</sup> Post-conviction Application and Petition-in-error the Petitioner preserved his claim that **McGirt** applies Retroactively under Federal Law as the petitioner explained the State of Oklahoma knew there would be Civil consequences in fact the State argued in **Carpenter vs. Murpy** that the State of Oklahoma trained considerable rhetorical fire in **Murphy** on the child welfare act of 198,25 **U.S.C. §§ 1901** claiming that child custody determinations would be undone in the event of an affirmance, that the petitioner argued the same would be true in the present case by the Petitioner being a descending Heir to his Grandparents and uncle special estate, that pursuant to the **McGirt retroactive** decision it will now allow the Petitioner to reclaim/recover his part of the \$8,375,000.00 plus Title to the special estate, citing **Baze vs. Scott**, 106 F.2d at 365 what remained restricted against

<sup>18</sup> See, The Petitioner motion for evidentiary hearing and brief in support of Petition-in-error as (Pet.App.177a-184a) see also, The Petitioner motion for the Appointment of Counsel or Trustee (Pet.app.139a-140a).

alienation for the use and support of Lodie Baze was the surface rights in the home stead and the Royalties reserved under the lease. See also, **Take vs. Miller**, 281 P. 576 a white woman claiming and selling her deceased husband a Full blood Cherokee man estate **Quoting act of May 27, 1908 as to Heirs and July 27<sup>th</sup> 1908 as to allottees**. See also, **Harjo vs. Kleppe**, 420 F.supp 1110 (1976) Creek Nation tribal Supreme Court tried all Civil cases involving any amount of money over \$100.00

2. The Petitioner also preserved his claim's in both his 3<sup>rd</sup> Post-conviction and Petition-in-error that the **McGirt** ruling applies retroactively to his case under federal Law, by applying the "Retroactive" decision in **McGirt** to the Cherokee Nation this court must find that the Cherokee Nation Reservation is Indian Country under **18 U.S.C. §1151(a)** see, **Hogner vs. State**, 2021 OK Cr. 4 That the Petitioner had argue that both Muscogee Creek Nation and Cherokee Nation are both Federally recognized by the Federal legislation **Cherokee, Muscogee Creek, Choctaw, Chickasaw, and Seminole** Nation's historically referred to the Five Civilized Tribes or Five Tribes, see **84 C.F.R. § 1200** (2019). and by the State District court convicting and sentencing the Petitioner to life without the possibility of Parole of Murder in violation of **(21 O.S. 1991 § 701.7)** and life with the possibility of Parole for Drug Trafficking in violation of **(63 O.S. 1991 § 2-415)** and five years for Failure to obtain a drug stamp in violation of **(68 O.S. 1991 § 450.1)**. running consecutively (Pet.App.4a) its decision is in direct conflict with the **Major Crime's Act**, the **General Crime's Act**, also known as the **Indian Country Crime's Act** and its decision is also in direct conflict with U.S. Federal Law **21 U.S.C. § 848(e)(1)(B)** in which the Petitioner range of punishment would carried a minimum of (20) years to life, life, or Death **§848(e)(1)(B)**. the death of a Police Officer in the commission of Drug trafficking see, **U.S. vs. Villarreal**, 963 F.2d 725 (5<sup>th</sup> Cir.1992)

3. — The Petitioner had also preserved that he has **(Indian Status)** Indian status has been defined as a person that is not Indian by blood but can receive Indian benefits as if he/she is Indian by blood see **Take vs. Miller**, supra. That on January 21<sup>st</sup> 2022 Pc-2021 -938 the O.C.C.A filed their order affirming the denial of the Petitioner 3<sup>rd</sup> Post-Conviction relief and citing their recent decision **State ex rel Matloff vs. Wallace**, 497 P.3d 686 stating this court determination that the U.S. Supreme Court decision in **McGirt** is a new procedural rule is not retroactive and does not void final State convictions. The convictions in this matter were final before the July 9<sup>th</sup> 2020 decision in **McGirt** and the U.S. Supreme Courts holding in **McGirt** doesn't apply we decline the Petitioner invitation to revisit our holding in **Matloff**. It is the Petitioner argument Although The Oklahoma Court of Criminal appeals asserts that State law rules barred relief for the Petitioner that is not an adequate and independent barrier to this courts review, and for the following reason if **McGirt** is a substantive, Constitutional rule, as the Petitioner contends that under **Montgomery vs. Louisiana**, it is retroactive as a matter of Federal law. As **Montgomery** explained "if...the constitution establishes a rule and requires that the rule have retroactive application, then a State court's refusal to give the rule retroactive effect is review-able by this court."577 U.S. at 197. and by the Oklahoma Court of Criminal Appeals reliance only on a new procedural rule for not applying **McGirt** retroactively to the Petitioner conviction on final Judgment and not on any waiver principle, the state cannot now invoke a waiver rationale to shield its decision, because no such principle would be consistently or regularly applied **Johnson vs. Mississippi**, 486 U.S. 578,588-89 (1988) see also, **McGirt** 140 S.ct at 1501 n.9 (Roberts, C.J. dissenting) noting that under Oklahoma Law jurisdictional objections are never waived and can there fore be raised on a collateral appeal" and as a result if **McGirt** is held to apply retroactively to Oklahoma State Court convictions

that were final when it was decided because it announced a substantive rule, the Petitioner will be entitled to Post-conviction relief see, 22 O.S. § 1080(a)-(f).

### **CONCLUSION**

For the foregoing reasons the Petition for writ of certiorari should be granted.

### **Certificate of Mailing**

I'm a prisoner at the (L.C.F.) in the State of Oklahoma, I declare under the Penalty of perjury that the foregoing is True and correct with copies attached and was mailed on 4-18-2022 to the Court Clerk Office of the U.S. Supreme Court and First Class Postage has been Prepaid.

/s/ \_\_\_\_\_