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IN THE

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**Supreme Court of the United States**

Anthony Lyn Kimbrough,  
Petitioner Pro-se,  
v.  
The State of Oklahoma Et AL.,  
Respondents.

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**PETITION FOR A REHEARING**

Anthony Lyn Kimbrough,Pro-se  
D.O.C. #224852  
Lawton Correction Facility  
8607 SE Flower Mound Rd  
Lawton, Oklahoma. 73501-9765

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## **PETITION FOR REHEARING**

Petitioner Anthony Lyn Kimbrough respectfully file his Petition for Rehearing from the denial of his Petition 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) The Petitioner Petition for writ of certiorari is denied at (Pet. App. At 192a)

### **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).

The Supreme Court of the United States denied the Petitioner Petition for writ of Certiorari on June 27<sup>th</sup>, 2022 This Petition for Rehearing is being filed within (25) days of that denial. This Court has Jurisdiction Pursuant to S.ct rule 44(1)-(6). attached (Pet. Appendix-NN 192a) and Letter by Court Clerk Office to the Petitioner to correct and resubmit Petition for Rehearing in 15 days from date of Letter Pursuant to S.ct rule 44(6)(Pet.Appendix-OO 193a)

## **PROPOSITION-1**

**THE MUSCOGEE CREEK NATION AND CHEROKEE NATION NEVER LOST THERE SOVEREIGNTY TO THE STATE OF OKLAHOMA THEREFORE FEDERAL JURISDICTION OVER THE OFFENSE'S COVERED BY THE INDIAN MAJOR CRIME'S ACT IS EXCLUSIVE OVER STATE JURISDICTION AND SHOULD APPLY RETROACTIVELY TO THE PETITIONER FINAL JUDGMENTS.**

The Petitioner has made three claims in this case first was that **Mcgirt** should apply to Non-Indians in which the Petitioner admits was a fatal mistake see **Castro vs. Huerta**, No.21-429 This United State Supreme court has recently ruled that **Mcgirt** shouldn't apply to non-Indians. How ever the Petitioner has also argued through out his State appeal process and through out his petition for writ of certiorari that the Petitioner is **(Indian)** and/or has **(Indian Status)<sup>1</sup>** and that **Civil Consequences could be enormous or it could be not?** In the present case, the Petitioner argued that (Exclusive Jurisdiction) of Creek Indian (Will's) shall be approved only through the acknowledgment by a **Judge of the United State Court of the Indian territory** or a **United State Commissioner** not through a **State County Judge**. And that (Exclusive Jurisdiction) of Creek Indian Civil cases in an amount over \$100.00 would be re-tried in Creek Nation Tribal Supreme Court. that pursuant to the **Oklahoma Indian welfare act (OIWA) act of June 26<sup>th</sup> 1936** as codified in **25 U.S.C. §§ 501-509** Which provides that acts or parts of the acts inconsistent with it are (Repealed). The Petitioner argues that **§ 509** repealed any prior acts which interfered with its right to maintain a Tribal court system. Such as the **Curtis Act of June 28<sup>th</sup> 1898** which provided for the forced allotment, the termination of tribal land ownership and made tribal laws for the Creek Indian unenforceable in the United State Court for Indian Territory. the (OIWA) **§ 509** also repealed Section **§ 8** act of May 27<sup>th</sup> 1908 which amended section **§ 23** the act of April 26<sup>th</sup> 1906 <sup>2</sup> that Section **§ 8** act of May 27<sup>th</sup> 1908 Provides that such (will) may be approved by the Judge of a county court of Oklahoma. That the Petitioner argument is the (OIWA) General repealer clause

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<sup>1</sup> **U.S. vs . Drewry**,365 F.3d 957 ,961 (10<sup>th</sup> cir .2004) whether an individual is recognized by an considered under the four factors: (1) tribal enrollment (2) government recognition formally and informally through receipt of assistance reserved only to Indians (3) enjoyment of the benefits of tribal affiliation and (4) Social recognition as an Indian through residence on a reservation and participation in Indian social life. see also **State vs. Sebastian**, 701 A.2d 13, 24 n . 28 (Conn. 1997) most recent federal cases consider whether the Tribe to which a defendant of victim claims membership or affiliation by the federal government).

<sup>2</sup> The **act of April 26<sup>th</sup> 1906** **§23** provides: "Every person of lawful age and sound mind may by last will and testament devise and bequeath all of his estate, real and personal, and all interest therein: Provided that no will of a full-blood Indian, devising real estate shall be valid if such will and testament disinherits the parent, spouse or children of such full-blood Indian unless acknowledged before and approved by a Judge of the United State Court for the Indian territory, or a United States commissioner."

§ 509 Prohibited the Tulsa county Judge subject-matter Jurisdiction to approve the forged (will) in the Petitioner deceased grandmother Lete Kolvin Kimbrough case<sup>3</sup> and /or the power to make a final determination of descent of distribution of the heirs of the forged (Will) in 1945 (Pet. Appendix-R at 106-109a) that the (OIWA) general repealer clause §509 also prohibited the Creek county district Judge which ruled the (will) was forged the power to award \$8,375,000.00 to the (48) intervenors plus title of the estate. (Pet. Appendix at 129a-130a) see **Harjo vs. Klepp**, 420 F.supp 1110 (1976) Creek Nation Tribal Supreme Court tried all civil cases involving any amount of money over \$100.00 Quoting **Montana vs. Black tribe of Indian**, 471 U.S. 759 (1985) statutes are to be construed liberally in favor of Indians with ambiguous provisions interpreted to their benefit. That the Petitioner identified him self as **Indian** and/or has (**Indian Status**) and explain 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>4</sup> see (News paper clipping, Henryetta again in Spotlight in

3 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 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.

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

another “Big Money” Indian case<sup>5</sup> see **Baze vs. Scott**, 106 F.2d 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. 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 restrictions, that it is the Petitioner argument that the above languish within this statute free from all restrictions, prohibit the state of Oklahoma the power to enforce any state **statute of limitations** upon the right of the Petitioner and if the State statute are in conflict with a Federal statute then of course the act of Congress must prevail and the Judgement of the trial court must be reversed, see **Montana** 471 at 759 **supra** and as we are aware subject matter jurisdiction cant be waived nor to confer jurisdiction on a court lacking the power to adjudicate a particular type of controversy and can be raised for the first time on appeal see, **McGirt** 140 S.Ct 2452 (2020) That Procedure bar don’t apply.

#### **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 would not have subject-matter Jurisdiction over crimes committed in the State see, **McGirt**, 140 S.Ct at 2476-78

<sup>5</sup> See, Brexico Oil and Gas company’s lease agreements in the Petitioner deceased Grandmother Lete Kolvin name from 1915 to 2010 and Keystone gas company.

(Oklahoma doesn't claim to have complied with the requirement to assume jurisdiction voluntarily over "Creeks".) See also **Okla. Const. art 1 § 3**, which 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 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. And the State of Oklahoma decision do not comply with the requirements of the enabling act its decision is in direct conflicted with other State Court decisions of last resort compare with **Negonsott vs. Samuels**, 507 U.S. 99 (1993) and in the present case, 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** (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 Indian Country Crime's Act** which has Exclusive jurisdiction over state court's. 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**. That It was 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.”<sup>577</sup> 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)**.

## **SUMMARY ARGUMENTS**

See, **Hall vs. Bellmon**, 935 F.2d 1106 (10<sup>th</sup> cir. 1991) this rule means that if the court can reasonably read the Pleading to state a valid claim on which the Petitioner could prevail, it should do so despite the Petitioner failure to site proper authority, his poor syntax and sentence construction, or unfamiliarity with pleading requirements.

## **Verification**

I Anthony Kimbrough Certify on this 11<sup>th</sup> day of August swear under oath that this **Petition for rehearing** is stating it’s ground for relief and are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented. and that this Petition for rehearing is presented in good faith and not for the purposes of delay. S.ct rule 44.6

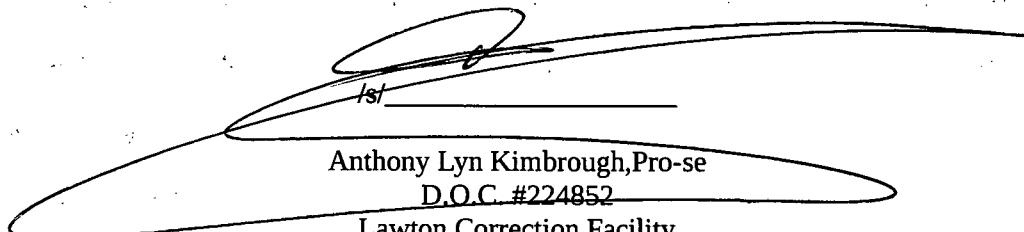
## **CONCLUSION**

For the foregoing reasons the Petitioner Pray that his petition for rehearing 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 August -11-2022 to the  
Court Clerk Office of the U.S. Supreme Court and First Class Postage has been Prepaid.

  
/s/  
Anthony Lyn Kimbrough, Pro-se  
D.O.C. #224852

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