

APPENDIX A

ORDER DENYING FROM THE OKLAHOMA COURT OF CRIMINAL APPEALS



IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

RICHARD DWAYNE BLALOCK,

Petitioner,

v.

STATE OF OKLAHOMA,

Respondent.

IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
FILED

MAR - 2 2022

JOHN D. HADDEN
CLERK

No. PC-2022-98

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner, pro se, appeals the denial of post-conviction relief by the District Court of Tulsa County in Case No. CF-2009-3294. Before the District Court, Petitioner asserted that the State lacked jurisdiction to convict and punish him. *See McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). In *State ex rel. Matloff v. Wallace*, 2021 OK CR 21, 497 P.3d 686, *cert. denied*, 142 S.Ct. 757 (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, 497 P.3d at 691-92, 694.

The convictions in this matter were final before the July 9, 2020, decision in *McGirt*, and the United States Supreme Court's holding in

McGirt does not apply. We decline Petitioner's invitation to revisit our holding in *Matloff*.

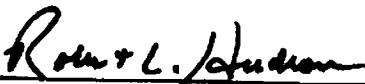
Therefore, the District Court's order denying post-conviction relief is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2022), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

IT IS SO ORDERED.

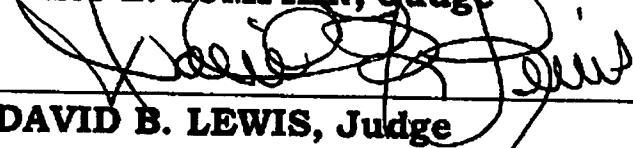
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this

2nd day of March, 2022.

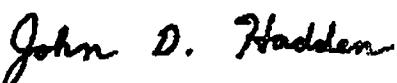

SCOTT ROWLAND, Presiding Judge


ROBERT L. HUDSON, Vice Presiding Judge


GARY L. LUMPKIN, Judge


DAVID B. LEWIS, Judge

ATTEST:



Clerk

PA

APPENDIX B

ORDER DENYING FROM THE TULSA COUNTY DISTRICT COURT

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

RICHARD DWYANE BLALOCK,)
Petitioner,)
vs.)
STATE OF OKLAHOMA,)
Respondent.)

CF-2009-3294

Judge Smith

Certified copy to Defendant

DISTRICT COURT
FILED

JAN 11 2022

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

**ORDER DENYING PETITIONER'S APPLICATION
FOR POST-CONVICTION RELIEF**

This matter came on for consideration on 1-6, 2021 pursuant to the Application for Post-Conviction Relief, for Appointment of Counsel, and an Evidentiary Hearing ("Application") filed by Petitioner Richard Blalock ("Petitioner") on May 14, 2021.

STATEMENT OF THE CASE

Petitioner Richard Blalock ("Petitioner") pled guilty and was found guilty on August 24, 2009 in the District Court of Tulsa County, Case No. CF-2009-3294 of Count One (1): Shooting with Intent to Kill, Count Two (2): Possession of a Firearm After Former Conviction of a Felony, Count Three (3): Endeavoring to Manufacture Controlled Drugs, and Count Four (4): Unlawful Possession of Controlled Drug. The District Court sentenced Petitioner to thirty-five (35) years in the Department of Corrections for Count One, fifteen (15) years in the custody of the Department of Corrections for Count Two, twenty-five (25) years in the custody of the Department of Corrections, and fifteen (15) years in the custody of the Department of Corrections for Count Four. All counts were ordered to run concurrent and this sentence was ordered to run concurrent with Tulsa County District Court Case CF-2009-2332. Although Petitioner was advised of his appeal rights, he did not appeal this judgment and sentence. Petitioner has now filed his first application for post-conviction relief, wherein he claims that the State did not have jurisdiction to prosecute

him, pursuant to *McGirt v. Oklahoma*, 140 S.Ct. 2452, 2482-2483, 207 L.Ed.2d 985 (2020), because he is “Indian” and the offense occurred in “Indian Country.”

FINDINGS OF FACTS

1. A representative of the Peoria Tribe of Indians of Oklahoma Enrollment Office would testify that Petitioner was a citizen of the Peoria Tribe of Indians of Oklahoma on the dates of the offenses July 4, 2009 and July 6, 2009. This representative would testify Petitioner became enrolled as a citizen of the Peoria Tribe of Indians of Oklahoma on March 5, 1983.
2. A representative of the Peoria Tribe of Indians of Oklahoma Enrollment Office would testify that Petitioner has some degree of Indian blood.
3. The Peoria Tribe of Indians of Oklahoma is a federally recognized tribe.
4. A representative of the Tulsa Police Department would testify that Petitioner committed the offenses he was convicted of within Tulsa County.
5. A representative of the Muscogee Creek Nation or a representative of the Cherokee Nation, or an expert witness testifying on Petitioner’s behalf, would testify that the location of the offense Petitioner was convicted of in the above case occurred within the Muscogee Creek Nation and/or the Cherokee Nation.

CONCLUSIONS OF LAW

I. *MCGIRT SHOULD NOT BE APPLIED RETROACTIVELY TO VOID A CONVICTION THAT WAS FINAL WHEN *MCGIRT* WAS DECIDED.*

A. Application of Retroactivity Principles to Indian Country Claims

United States v. Cuch, 79 F.3d 987 (10th Cir. 1996) is the most relevant decision to the specific issue, presented by this case, of the proper forum for prosecution after the issuance of a new decision, regarding disestablishment or diminishment of an Indian reservation. In *Cuch*, the Tenth Circuit considered the question of whether it should

retroactively apply the Supreme Court's decision in *Hagen v. Utah*, 510 U.S. 399 (1994), that a reservation's boundaries had been diminished, to vacate convictions that were made final prior to that decision. See *Cuch*, 79 F.3d at 989-90. The Tenth Circuit started by noting "[t]he Supreme Court can and does limit the retroactive application of subject matter jurisdiction rulings," citing the Court's decision in *Gosa v. Mayden*, 413 U.S. 665 (1973). *Cuch* 79 F.3d. at 990. The *Cuch* court recounted the principles that underlie retroactivity analysis: "finality and fundamental fairness." *Cuch*, 79 F.3d at 991. "A subset of the principle of finality is the prospect that the invalidation of a final conviction could well mean that the guilty will go unpunished due to the impracticability of charging and retrying the defendant after a long interval of time." *Id.*

The *Cuch* court also considered that the issue of fairness to petitioners did not support retroactivity: "There is no question of guilt or innocence here" and these cases "involved conduct made criminal by both state and federal law." *Id.* at 992. The petitioners do not "assert any unfairness in the procedures by which they were charged, convicted, and sentenced" and the Supreme Court's recent reservation boundaries decision does not "bring[] into question the truth finding functions of the ... courts that prosecuted Indians for acts committed within the historic boundaries of the ... Reservation." *Id.* Similarly, *Cuch* distinguished cases where courts retroactively applied decisions holding the crime at issue could not be constitutionally punished by any court or where the acts committed were not actually criminalized by the statute of conviction. *Id.* at 993-94. There is not "complete miscarriage of justice to these movants that would mandate or counsel retroactive application of *Hagen* to invalidate these convictions." *Id.* at 994 (internal marks omitted).

Rather, the question solely "focuses on *where* these Indian defendants should have been tried for committing major crimes." *Id.* at 992. As a result, the court found "the circumstances surrounding these cases make prospective application of *Hagen* unquestionably appropriate in the present context." *Id.* at 994.

Cuch also rejected the argument that a decision on reservation boundaries "did not effect a 'change' in federal law, but merely clarified what had been the law all along." *Id.* The *Cuch* court dismissed "the Blackstonian common law view that courts do no more than discover the law," noting that in *Linkletter v. Walker*, 381 U.S. 618 (1965), the Supreme Court recognized under American law "such a rule was out of tune with actuality." *Id.* at 994-95. In other words, "the Supreme Court admitted that '[t]he past cannot always be erased by a new judicial declaration.'" *Id* at 995 (quoting *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 374 (1940)). "While the jurisdictional nature of a holding makes the retroactivity question more critical, the nature of the case alone does not dispense with the duty to decide whether the Court may in the interest of justice make the rule prospective where the exigencies of the situation require such application." *Cuch*, 79 F.3d at 995. (citations and internal marks omitted). Instead, "the rule of law is strengthened when courts, in their search for fairness, giving proper consideration to the facts and applicable precedent, allow the law to be an instrument in obtaining a result that promotes order, justice and equity." *Id.* (citation and internal marks omitted).

B. *McGirt* Shall Not Apply Retroactively to Void a Final State Conviction

In *State ex rel, District Attorney v. Wallace*, 2021 OK CR 21, __ P.3d __, 2021 WL 3578089, the Oklahoma Court of Criminal Appeals ("OCCA") recently stated that it found persuasive the analysis and authorities provided by the United States Court of Appeals for the Tenth Circuit in *Cuch*, in considering the "independent state law question of collateral non-retroactivity for

*McGirt.*¹ *Id.* at ¶ 26. The OCCA also explained that new rules of criminal procedure “generally do not apply retroactively to convictions that are final, with a few narrow exceptions.” *Id.* at ¶ 8 (emphasis in original).

Related to its analysis of the *McGirt* decision under these principles, the *Wallace* court first determined that the holding in *McGirt* only imposed procedural changes and was “clearly a procedural ruling.” *Id.* at ¶ 27. Second, the *Wallace* court held that the “procedural rule announced in *McGirt* was new.” *Id.* at ¶ 28. Third, the court explained in detail in *Wallace* that the OCCA’s “independent exercise of authority to impose remedial constraints under state law on the collateral impact of *McGirt* and post-*McGirt* litigation is consistent with both the text of the opinion and the Supreme Court’s apparent intent.” *Id.* at ¶ 33. Ultimately, the OCCA held that “*McGirt* and our post-*McGirt* reservation rulings shall not apply retroactively to void a conviction that was final when *McGirt* was decided.”² *Id.* at ¶ 15. See ¶¶ 6 and 40.

As discussed above, the Tulsa County District Court found Petitioner guilty August 24, 2009 and sentenced him accordingly. Since Petitioner did not appeal this judgment and sentence within the ten-day time limit, his conviction became final on September 3, 2009. See O.S. T. 22, Ch. 18, App., Rule 2.1.

Since Petitioner’s conviction was final long prior to the July 9, 2020 decision in *McGirt*, this Court holds that the *McGirt* decision does not apply retroactively in Petitioner’s state post-conviction proceeding to void his final conviction. See *Wallace*, 2021 OK CR 21, at ¶¶ 6, 40. Accordingly, the Court also denies Petitioner’s Application on this basis.

¹ *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020).

² *Teague v. Lane*, 489 U.S. 288, 295 (1989) defines “a final conviction as one where judgment was rendered, the availability of appeal exhausted, and the time to petition for certiorari had elapsed.” *Wallace*, 2021 OK 21, at ¶ 2, n.1.

