

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

FILED

IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

CHARLES DEON LADD,

MAR 15 2022

Petitioner,

JOHN D. HADDEN
CLERK

v.

No. PC-2021-1168

STATE OF OKLAHOMA,

Respondent.

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-2010-874. 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, 40, 497 P.3d at 691-92, 694.

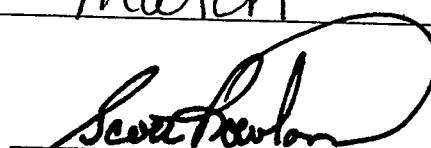
The conviction in this matter was final before the July 9, 2020, decision in *McGirt*, and the United States Supreme Court's holding in *McGirt* does not apply.

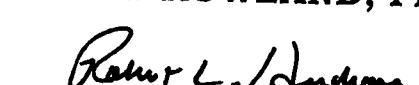
Therefore, the District Court's order denying post-conviction relief is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2022), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

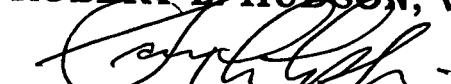
IT IS SO ORDERED.

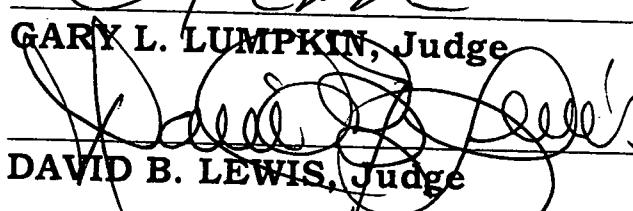
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this

15th day of March, 2022.


SCOTT ROWLAND, Presiding Judge


ROBERT L. HUDSON, Vice Presiding Judge


GARY L. LUMPKIN, Judge


DAVID B. LEWIS, Judge

ATTEST:

John D. Hadden

Clerk

PA

IN THE COURT OF CRIMINAL APPEALS

FILED

STATE OF OKLAHOMA

IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT 25 2021

CHARLES DEON LADD,,
Appellant,

JOHN D. HADDEN
CLERK

vs.

THE STATE OF OKLAHOMA,
Appellee.

)
)
)
)
Case No. CF-2010-0874
)

PC 2021 1168

PETITION IN ERROR

**BRIEF FOR RELIEF AND REQUEST TO VACATE AND SET ASIDE THE JUDGEMENT AND
SENTENCE BECAUSE THE COURT LACKED SUBJECT MATTER JURISDICTION**

BRIEF IN SUPPORT

That this motion is prepared Pro-Se without the aid or assistance of a trained counsel of law and ask that this court will give any syntax structural errors and liberally construe to Appellant's Charles Deon Ladd. Pro-Se Motion in accordance to Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991), that is now being brought before this Honorable Court in the Interest of Justice. The Tenth Circuit has described that it is the court's responsibility in this regard, "[I]f the court can reasonably read the pleadings to state a valid claim on which the defendant could prevail, it should do so despite the defendant's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." Id. {emphasis added bold, underlined and quotation marks}. That the rule in Hall; as applied to prisoners is binding on the courts of this State. Oklahoma Constitution article 1,§ 1; See also Haines v. Kerner, 404 U.S. 519, 520-521, 92 S. Ct. 594, 596, 30 L.Ed. 2D 652 (1972).

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

CHARLES DEON LADD,

)

Petitioner,

)

vs.

)

STATE OF OKLAHOMA,

)

Respondent.

)

CF-2010-0874

Judge Priddy

DISTRICT COURT
FILED

SEP 03 2021

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

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

This matter came on for consideration on August 25, 2021 pursuant to the "Petitioners Application for Post-Conviction Relief pursuant to Oklahoma Statute Title O.S. 1080(A), (B), and (D) ("Application") filed by Petitioner Charles Deon Ladd (hereinafter "Petitioner") on September 24, 2020, Petitioner's Motion for Evidentiary and Motion for Immediate Release filed on January 25, 2021. The Petitioner filed a Letter Requesting to add Degree of Blood Certificate to his Post-Conviction file on January 29, 2021 and a Supplemental Brief in Support filed on February 9, 2021. The State filed a Response to Petitioner's Application on March 1, 2021. On March 15, 2021, Petitioner filed Petitioners Reply to the State's Response to Application for Post-Conviction Relief. On May 6, 2021, the Court Granted the Application for Post-Conviction Relief over the State's Objection. Petitioner filed a Second Motion for Summary Disposition Vacating the Conviction and Dismissing the Charges on May 15, 2021. Petitioner filed a Motion for Judicial Review on July 21, 2021 which the Court denied on August 27, 2021.

STATEMENT OF THE CASE

The State of Oklahoma charged Charles Deon Ladd ("Petitioner") by felony information on March 5, 2010. The Information charged Petitioner with (Count One) Felony Murder, in violation of 21 O.S. § 701.8, (Count Two) Arson – First Degree, in violation of 21 O.S. § 1401, and (Count 3) Manufacturing Controlled Dangerous Substance, in violation of 63 O.S. § 2-401 G.

Petitioner was tried by jury and convicted and sentenced for the offense of Count I, Murder in the Second Degree. Petitioner perfected a direct appeal proceeding from his Judgment and Sentence to the Oklahoma Court of Criminal Appeals (OCCA), which affirmed Petitioner's Judgment and Sentence in an unpublished summary opinion. See *Charles Deon Ladd v. State of Oklahoma*, F-2011-881.

The Petitioner has now filed an application for post-conviction relief wherein he contends that based on *McGirt v. Oklahoma*, 140 S. Ct. 2452, 207 L. Ed. 2d 985 (2020) the courts of the State of Oklahoma lacked subject matter jurisdiction to enter a Judgment and Sentence against him.

FINDINGS OF FACTS

1. A representative of the Cherokee Nation Citizenship Office would testify that Petitioner was a citizen of the Cherokee Nation on the date of the offense on October 24, 2009. This representative would testify Petitioner became enrolled as a citizen of the Cherokee Nation on July 20, 2001.
2. A representative of the Cherokee Nation Citizenship Office would testify that Petitioner has 1/64 degree of Cherokee blood.
3. The Cherokee Nation 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

MCGIRT SHOULD NOT BE APPLIED RETROACTIVELY TO VOID A CONVICTION THAT WAS FINAL WHEN THAT CONVICTION 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).

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

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 final state conviction, . . .”² *Id.* at ¶¶ 6, 40.

A jury found Petitioner guilty and the District Court sentenced him on September 26, 2011. Following Petitioner’s appeal, the OCCA affirmed the judgment and sentence of the District Court on December 13, 2012. Since Respondent did not file a petition for a writ of certiorari with the United States Supreme Court within the ninety-day time limit following this decision, his conviction became final on March 13, 2013. *See U.S. Sup. Ct. Rule 13, 28 U.S.C.A.*

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 denies Petitioner’s Application on this basis.

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.

Based on the foregoing, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's application for post-conviction relief is hereby DENIED.

SO ORDERED this 2nd day of September, 2021.



TRACY PRIDDY

JUDGE OF THE DISTRICT COURT

CERTIFICATE OF MAILING/DELIVERY

I certify that on the date of filing, a file stamped certified copy of the above and foregoing Order was mailed to:

CHARLES DEON LADD #507488
LAWTON C.F. – UNIT 8-BRAVO-207
8907 S.E. FLOWER MOUND RD.
LAWTON, OK 73501
Petitioner, pro se

And I further certify that on the date of filing, a file stamped certified copy of the above and foregoing Order was hand delivered to:

Marianna E. McKnight, Esq.
Assistant District Attorney
Tulsa County District Attorney's Office
800 County Courthouse
500 S. Denver Ave.
Tulsa, OK 74103

DON NEWBERRY
TULSA COUNTY COURT CLERK


BY: _____
DEPUTY COURT CLERK

GWYANDBE TRIBAL REGISTRATION LOOKUP

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Welcome



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DEPARTMENT OF TRIBAL REGISTRATION

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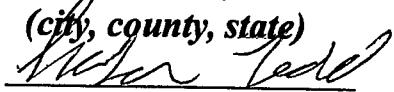
Preferred Name **CHARLES** Middle Name **DEON** Last Name **LADD** Suffix **SUMM**

OKLAHOMA COURT OF CRIMINAL APPEALS
State of Oklahoma

Application to File in Forma Pauperis

I, Charles Deon Ladd, #507488, state that I am heretofore a poor person without funds, property, or relatives willing to assist me in paying for filing the within instrument. I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

Signed this 21st day of October, 2021, at Lawton, Comanche, Oklahoma

(city, county, state)


Signature of Affiant
Charles Deon Ladd #507488
Print Name

RECEIVED
OCT 25 2021
CLERK'S OFFICE