

**IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA**

**FILED**  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

**DARRYLL JUSTIN LEE REED,**

**Petitioner,**

**v.**

**STATE OF OKLAHOMA,**

**Respondent.**

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APR 19 2022

JOHN D. HADDEN  
CLERK

**No. PC-2021-1392**

**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-2016-5386. Before the District Court, Petitioner asserted that the District Court 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. We decline Petitioner's invitation to revisit our holding in *Matloff*.

For the first time on appeal, Petitioner also raises a number of additional propositions alleging various errors unrelated to the jurisdictional claim raised in his post-conviction application. This Court will not consider new allegations that have not first been presented to the District Court for resolution. See Rule 5.2(A), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2022) ("The appeal to this Court under the Post-Conviction Procedure Act constitutes an appeal from the issues raised, the record, and findings of fact and conclusions of law made in the District Court in non-capital cases.").<sup>1</sup>

Petitioner has failed to demonstrate an abuse of discretion by the District Court. 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

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<sup>1</sup> See also *Brown v. State*, 1997 OK CR 1, ¶ 36, 933 P.2d 316, 325 (where post-conviction applicant fails to first present an issue to the district court, "he has waived it for consideration in this Court" as an "appeal from denial of a Motion for Post-Conviction Relief is not, among other things, an opportunity to raise novel issues.").

**MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

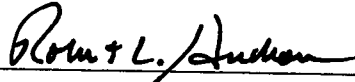
**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this

19th day of April, 2022.



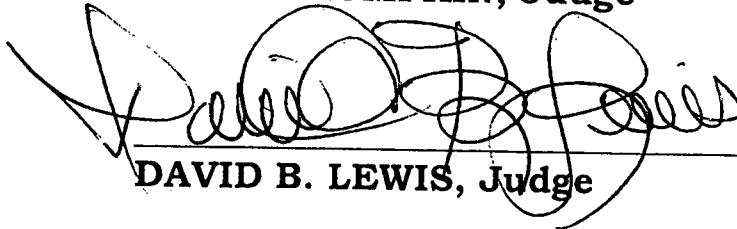
**SCOTT ROWLAND, Presiding Judge**



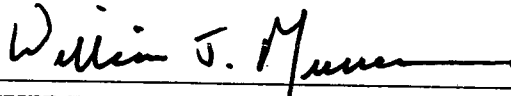
**ROBERT L. HUDSON, Vice Presiding Judge**



**GARY L. LUMPKIN, Judge**

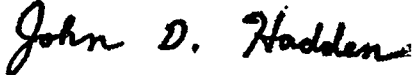


**DAVID B. LEWIS, Judge**



**WILLIAM J. MUSSEMAN, Judge**

ATTEST:



Clerk

PA

# Appendix B

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

**DARRYLL JUSTINLEE REED**

Petitioner,

vs.

**STATE OF OKLAHOMA,**

Respondent.

CF-2016-5386

Judge Smith

**DISTRICT COURT  
FILED**

**OCT 22 2021**

**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 Oct 19<sup>th</sup>, 2021 pursuant to the "Application for Post Conviction Relief Appeal Out of Time" ("Application") and Petitioner's Motion for Evidentiary Hearing filed by Petitioner Darryll Justinlee Reed ("Petitioner") on December 3, 2020, the Supplement Brief in Support/Motion for Immediate Release ("Supplement") he filed on February 24, 2021, and the Motion for Leave to Proceed in Forma Pauperis Without Pre-Payment of Fees and Supporting Affidavit Pursuant 57 O.S. § 566.3 for Prisoner Cases he filed on March 29, 2021.

### **STATEMENT OF THE CASE**

On August 23, 2017, Petitioner plead guilty to and was found guilty of Manslaughter-First Degree in Tulsa County District Court Case CF-2016-5386. The District Court sentenced Petitioner to thirty-five years in the Department of Corrections. Although Petitioner was advised of his appeal rights, he did not appeal this judgment and sentence

Petitioner has now filed his Application, wherein he claims that the State lacked jurisdiction to prosecute him, pursuant to *McGirt v. Oklahoma*, 140 S.Ct. 2452, 2482-2483, 207 L.Ed.2d 985 (2020), because the offense Victim was a citizen of the Cherokee Nation and his offense occurred within Indian Country. See Application at p. 5; Supplement at p. 2.

## **FINDINGS OF FACTS**

1. A representative of the Cherokee Nation Citizenship Office would testify that the Victim of the offense was a member of the Cherokee Nation on the date of the offense on September 30, 2016. This representative would testify the Victim became enrolled as a member of the Cherokee Nation on February 27, 1988.
2. A representative of the Cherokee Nation Citizenship Office would testify that the Victim has some degree of Indians 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**

### **I. *MCGIRT* SHOULD NOT BE APPLIED RETROACTIVELY TO VOID A CONVICTION THAT WAS FINAL AT THE TIME *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*.”<sup>1</sup> *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 final state conviction, . . .”<sup>2</sup> *Id.* at ¶¶ 6, 40.

The Tulsa County District Court found Petitioner guilty on August 23, 2017 and sentenced him accordingly. Since Respondent did not appeal within the ten-day time limit following this decision, his conviction became final on September 2, 2017. *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-

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<sup>1</sup> *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020).

<sup>2</sup> *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.



conviction proceeding to void her final conviction. *See Wallace*, 2021 OK CR 21, at ¶¶ 6, 40. Accordingly, the Court hereby denies Petitioner's Application on this basis.

## II. AN EVIDENTIARY HEARING IS NOT NECESSARY

Section 1084 of the Post-Conviction Procedure Act provides that an evidentiary hearing may be had where the application cannot be disposed of on the pleadings or where there is a material issue of disputed fact. 22 O.S.2011, § 1084. "[A petitioner] has no constitutional or statutory right to an evidentiary hearing on post-conviction review unless his application cannot be disposed of on the pleadings and the record or a material issue of fact exists." *Fowler v. State*, 1995 OK CR 29, ¶ 8, 896 P.2d 566, 566; *see also Logan*, 2013 OK CR 2, ¶¶ 20–22, 293 P.3d at 978. Here, a request for a hearing contains no material dispute for which an evidentiary hearing is necessary to resolve because, as discussed herein, consideration of Petitioner's claims may be disposed of on the record and as a matter of law. *See* 22 O.S.2011, § 1083(C). Therefore, this Court declines Petitioner's request for an evidentiary hearing. *See* Petitioner's Motion for Evidentiary Hearing.

Based on the foregoing, **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Petitioner's application for post-conviction relief and request for evidentiary hearing are hereby **DENIED**.

SO ORDERED this 19 day of Oct, 2021.

  
CLIFFORD SMITH  
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:

Darryll Justin Lee Reed  
Lawton Correctional Facility  
8607 SE Flower Mound Road  
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: Alana Higgins  
DEPUTY COURT CLERK