IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

DANIEL DEL BRUMIT,	)	
	)	
Petitioner,	)	
	)	
	)	
v.	)	**No. PC-2021-1303**
	)	
STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner appeals the denial of post-conviction relief by the District Court of Grady County in Case No. CF-2006-115. Before the District Court, Petitioner asserted he was entitled to relief pursuant to *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 691-692.

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 request to reexamine this

Court's 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 1st day of April, 2022.

Scott Rowland
SCOTT ROWLAND, Presiding Judge

Robert L. Hudson
ROBERT L. HUDSON, Vice Presiding Judge

GARY L. LUMPKIN, Judge

DAVID B. LEWIS, Judge

William J. Musseman
WILLIAM J. MUSSEMAN, Judge

ATTEST:
John D. Hadden
Clerk
PA

Appendix A1

IN THE DISTRICT COURT OF GRADY COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA
Plaintiff,

vs.

DANIEL DEL BRUMIT,
Defendant.

Case No. CF-2006-115

ORDER DENYING DEFENDANT'S PRO SE APPLICATION FOR POST-CONVICTION RELIEF

This matter comes before this Court upon the Defendant's Pro Se Application For Post Conviction Relief filed on the 25th day of February, 2021 pursuant to **22 O.S. §1080.** The Court considers this matter without hearing, pursuant to **Rule 4(h) of the District Courts of the State of Oklahoma** and **22 O.S. §1083(b).** Neither party appears.

WHEREUPON the Court reviewed the Court file and finds that this Court has jurisdiction of this matter. In addition to the pleadings on file, the Court independently researched the issues presented and typed its own order.

THE COURT FURTHER FINDS that the Defendant was represented by counsel at the time of sentencing, further all issues that could have been raised on direct appeal but were not raised on appeal are waived as a matter of law. **Slaughter v. State,** 2005 OK CR 2; **Carter v. State,** 1997 OK CR 22, 936 P.2d 342; **Thomas v. State,** 1994 OK CR 85; **Richie v. State**, 1998 OK CR 26; **Nguyen v. State**, 1994 OK CR 48; **Coleman v. State**, 1984 OK CR 104. If a defendant has already served his time before the appeal has been decided, it is dismissed. *Jones v. Page* 1968 OK CR 1. A petitioner generally

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must wait until probation has been revoked before seeking relief. **Frazier v. State** 2002 OK CR 33.

Decisions which recognize reservations of the Cherokee Choctaw and Chickasaw reservations shall not apply retroactively. **Oklahoma v. Wallace, 2021 OK CR 21**, *discussing* **McGirt v. Oklahoma, 140 S. Ct 2452.**

In **Murphy v. State,** 2005 OK CR 25 the Oklahoma Court of Criminal Appeals restated the finality of Judgement & Sentences on appeal and through the Post Conviction Procedure Act to wit:

> On numerous occasions this Court has set forth the narrow scope of review available under the amended Post–Conviction Procedure Act. *See e.g., McCarty v. State,* 1999 OK CR 24, ¶ 4, 989 P.2d 990, 993, *cert. denied,* 528 U.S. 1009, 120 S.Ct. 509, 145 L.Ed.2d 394 (1999). The Post–Conviction Procedure Act was neither designed nor intended to provide applicants another direct appeal. *Walker v. State,* 1997 OK CR 3, ¶ 3, 933 P.2d 327, 330, *cert. denied,* 521 U.S. 1125, 117 S.Ct. 2524, 138 L.Ed.2d 1024 (interpreting Act as amended). The Act has always provided petitioners with very limited grounds upon which to base a collateral attack on their judgments. ***Accordingly, claims that could have been raised in previous appeals but were not are generally waived; claims raised on direct appeal are res judicata.*** *Thomas v. State,* 1994 OK CR 85, ¶ 3, 888 P.2d 522, 525, *cert. denied,* 516 U.S. 840, 116 S.Ct. 123, 133 L.Ed.2d 73 (1995).

The Court Further finds that, although the defendant claims to be a member of a federally recognized tribe, and asserts that this crime was committed within the Chickasaw Reservation, this crime occurred before the **McGirt** decision. The Defendant is therefore not entitled to relief.

THE COURT THEREFORE FINDS, ORDERS, ADJUDGES AND DECREES that the Defendant's Pro Se Application For Post Conviction Relief is denied in all respects, for the reasons set out above. **Murphy v. State,** 2005 OK CR 25.

IT IS SO ORDERED this 21 day of Sep 2021.

Kory Kirkland
District Judge

Court Clerk Deliver Copy To: **District Attorney**
Defendant in DOC Custody
Joseph Harp Correctional Center

Appendix A2

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

DANIEL DEL BRUMIT, Petitioner, v. SCOTT ROWLAND, ROBERT L. HUDSON, GARY L. LUMPKIN, DAVID B. LEWIS, WILLIAM J. MUSSEMAN, Respondents.	)	No. 120,359

ORDER

The Court assumes original jurisdiction on Petitioner's Application to Assume Original Jurisdiction and Petition for Writ of Prohibition/Mandamus for the sole purpose of adjudicating whether the Court has jurisdiction to proceed. *Clark v. Farris*, 2015 OK 62, ¶ 3, 358 P.3d 932.

The Court declines to assume original jurisdiction on the merits of Petitioner's claims because they do not invoke any request for relief within this Court's civil original jurisdiction. Okla. Const. Art. VII, § 4. *Dutton v. City of Midwest City,* 2015 OK 51, ¶ 16, 353 P.3d 532.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 23RD DAY OF MAY, 2022.

CHIEF JUSTICE

CONCUR: DARBY, C.J., KANE, V.C.J., KAUGER, WINCHESTER, EDMONDSON, COMBS, GURICH, and ROWE, JJ.
NOT PARTICIPATING: KUEHN, J.

Appendix A3

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

June 23, 2022

Mr. Daniel Del Brumit
Prisoner ID #553078
JHCC
P.O. Bóx 548
Lexington, OK 73051-0548

Re: Daniel Del Brumit
v. Oklahoma
Application No. 21A855

Dear Mr. Brumit:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Gorsuch, who on June 23, 2022, extended the time to and including August 29, 2022.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by

Susan Frimpong
Case Analyst

Appendix B

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

NOTIFICATION LIST

Mr. Daniel Del Brumit
Prisoner ID #553078
JHCC
P.O. Box 548
Lexington, OK 73051-0548

Clerk
Court of Criminal Appeals of Oklahoma
Room 1
State Capitol Building
Oklahoma City, OK 73105

Appendix B

18 U.S.C. § 1162 State jurisdiction over offenses committed by or against Indians in the Indian country

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State of Territory:

State or Territory of	*Indian country affected*
Alaska	All Indian country within the State, except that on Annette Island, the Metlakla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State.
Oregon	All Indian contry within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State.

(b) Nothing in this section shall authorize the alienation, encumberance, or taxation of any real or personal property, including water rights, belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall depreve any Indian or any Indian tribe, band or community of any right, priviledge, or immunity afforded under Federal treaty, agreement or statute with respect to hunting, trapping, or fishing or the control, licensing or regulation thereof.

(c) The provisions of section 1152, 1153 of this chapter shallnot be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

(d) Notwithstanding subsection (c), at the request of an Indian tribe, and after consultation with and consent of the Attorney General—

(1) sections 1152 and 1153 shall apply in the areas of the Indian country of the Indian tribe; and

(2) jurisdiction over those areas shall be concurrent among the Federal Government, State governments, and, where applicable, tribal governments.

25 U.S.C. §1321 Assumption by State of criminal jurisdiction

(a)Consent of theUnited States; force and effect of criminal laws

The consent of the United States is hereby givento any State not having jurisdiction over criminal offenses committed by or against Indians in th areas of Indian country situated within such State to assume, with the consent of the Indian tribe occuppying the particular Indain country or part thereof which bould be affected by such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within the State.

(b) Alienation, encumbrance, taxation, and use of property; hunting, trapping, or fishing

Nothing within this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indain or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against the alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal Treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band or community of any right, privilege, or immunity afforded under Federal Treaty, agreement, or statute with the respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

28 U.S.C. §2244 Finality of determination

(a) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application fro a writ of habeas corpus, except as provided in section 2255.

(b)(1) A claim presented in a second and successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in prior application shall be dismissed unless—

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive ot cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3)(A) Before a second and successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a seconnd or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines tht the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days ager the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be applealable and shall not be the subject of a petition for rehearing or for a writ of certioarari.

(4) A district court shall dismiss any claim presented in a second or successive application the court of appeals has authorized to be filed unless the applicant shows that the following claim satisfies the requirements of this section.

(c) In habeas corpus proceedings brought in behalf of a person in custody pursuant to the judgment of a State court, a prior judgment fo the Supreme Court of the United States on an appealor review by a writ of certiorari at the instance of the prisoner of the decision of such State court, shall be conclusive as to all issues of fact or law with respect to an asserted denial of a Federal right which constitutes grounds for discharge in a habeas corpus proceeding, actually adjudicated by the Supreme Court therein, unless the applicant for the writ of habeas corpus shall plead and the court shall dind the existence of a material and controlling fact which did not appear in the record of the proceeding in the Supreme Court and the court shall further find that the applicant for the writ of habeas corpus could not have caused such fact ot appear in such record by the exercise of reasonable diligence.

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment fo a State court. The limitation period shall run from the latest of—

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application create by a State action in violation of the Constitution or laws of he United States is removed, if the applicant was prevented from filing such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. §2254 State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to a judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absense of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) In any proceeding instituted in a Federal court by the applicant for a writ of habeas corpus by a person in custody pursuant the judgment of a State court, a determination after a hearing on the merits of a factual issue, make by a State court, a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the State or officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit—

(1) that the meris of the factual dispute were not resolved in the State court hearing;

(2) that the factfinding procedure employed by the State court were not adequate to afford a full and fair hearing;

(3) that the material facts were not adequately developed at the State court hearing;

(4) that the State court lacked jurisdiction of the subject matter or over the person fo the applicant in State court proceeding;

(5) that the applicant was an indigent and the State court, in deprivation of his constitutional right, failed to appoint counsel to represent him in the State court proceeding;

(6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding; or

(7) that he applicant was otherwise denied due process of law in State court proceeding;

(8)or unless that part of the record of the State court prodeeding which the determination of such factual issue was made, pertinent to a determination of the sufficiency of the evidence to support such factual determination, is produced as provided for hereinafter, and the Federal courts on a consideration of such part of the record as a whole concludes that such factual

determination of the record as a whole concludes that such factual determination is not fairly supported by the record;

And in an evidentiary hearing in the proceeding in the Federal court, when due proof of such factual derermination has been made, unless the existence of one or more fo the circumstances respectively set forth in paragraphs numbered (1) to (7) inclusive, is shown by the applicant, otherwise appears, or is admitted by the respondent, or unless the court concludes pursuant to the provisions of paragraph numbered (8) that the record in the State court proceeding, considered as a whole, does not fairly support such factual determination, the burden shall rest upon the applicant to establish by convincing evidence that the factual determination by the State court was erroneous.

(e) If the applicant challenges the sufficiency of the evidence adduced in such State court prodeeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produde that part of the record pertinent to a determination fo the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal courts shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(f)A copy of the official record of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing sauch a factual determination by the State court shall be admissable in the Federal court proceeding.

FRCP RULE 60 Relief From Judgment or Order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected with the leave of the appellate court.

(b) Mistakes; inadventence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On the motion and upon such terms are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistakes, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)

(3)fraud (whether heretofore denominated intrinsic or extrinsic)misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(6) any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (1),(2), and (3) not more than one year after the judgment order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court ot entertain an independent action to relieve a party from a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a Title 28, U.S.C. §1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as proscribed in these rules or by an independent action.

Oklahoma Statutes Title 22 Criminal Procedure §22-1080 Post Conviction Procedure Act-Right to challenge conviction or sentence.

Any person who has been convicted of, or sentenced for a crime for, a crime and who claims:

(a) that the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this state;

(b) that the court was without jurisdiction to impose sentence;

(c) that the sentence exceeds the maximum authorized by law;

(d) that there exists evidence of material facts, not previously presented or heard, that requires vacation of the conviction or sentence in the interest of justice;

(e) that his sentence has expired, his suspended sentence, probation, parole, or conditional release unlawfully revoked, or he is otherwise held in custody or other restraint; or

(f) that the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute a proceeding under this act in the court in which the judgment and sentence on conviction was imposed to secure the appropriate relief. Excluding a timely appeal, this act encompasses and replaces all common law and statutory methods of challenging a conviction or sentence.

22 OK Title §22-1081 Commencement of proceedings

A proceeding is commenced by filing a verified "application for post-conviction relief' with the clerk of the court imposing judgment if an appeal is not pending. When such a proceeding arises formthe revocation of parole or conditional release, the proceeding shall be commenced by filing a verified "application for post-conviction relief" with the clerk of the district court in the county in which the parole or conditional release was revoked. Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits including in or attached to the application must be sworn to affirmatively as true and correct. The Court of Criminal Appeals may prescribe the form of the application ad verification. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the district attorney.

22 OK Title §22-1082 Court costs and expenses of representation

If the applicant is unable to pay court costs and expenses of representation, he shall include an affidavit to that effect with the application, which shall then be filed without cost. Counsel necessary in represntation shall be made available to the applicant after filing the application on a finding by the court that such assistance is necessary to provide a fair determination of meritorious claims. If an attorney is appointed to represent such an applicant then the feed and expenses of such attorney shall be paid from the court fund.

22 OK Title §22-1083 Response by state-Disposition of application.

A. Within thirty (30) days after the docketing of the application, or within any further time the court may fix, the state shall respond by answer or motion which may be supported by affidavits. When an applicant asserts a claim of ineffective counsel, the state shall have ninety (90) days after the docketing of the application to respond by answer or by motion. In considering the application, the court shall take account of substance, regardless of defects or form. If the application is not accompanied by the record or portions thereof that are material to the questions raised in the application; or such records may be ordered by the court. The court may allow deposition and affidavits for good cause shown.

B. When a court is satisfied, on the basis of the application, the answer or motion of respondent, and the record, that the applicant is not entitled to post-conviction relief and no purpose whould be served by any further proceedings, it may order the application dismissed or grant leave to file an amended application. Disposition on the pleadings and record is not proper if there exists a material issue of fact. The judge assigned to the case should not dispose of it on the basis of information within his personal knowledge not made a part of the record.

C. The court may grant a motion by either party for summary disposition of the application when it appears from the response and pleadings that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. An order disposing fo an application without hearing shall state the court's findings and conclusions regarding the issues presented.

22 OK Title §22-1084 Evidentiary hearing-Finding of fact and conclusion of law.

If the applicant cannot be disposed of on the pleading of the record, or there exists a material issue of fact, the court shall conduct an evidentiary hearing at which time a record shall be made and preserved. The court may receive proof by affidavits, depositions, oral testimony, or other evidence and may order the applicant brought before it for the hearing. A judge should not preside at such a hearing if his testimony is material. The court shall make specific findings of fact, and state expressly it conclusion of law, relating to each issue presented. This order is a final judgment.

22 OK Title §22-1085 Finding in favor of applicant

If the court finds in favor of the applicant, it shall vacate and set aside the judgment and sentence and discharge or resentence him, or grant a new trial, or correct or modify the judgment and sentence as may appear appropriate. The Court shall enter any supplementary order as to rearraignment, retrial, custody, bail, discharge, or other matters that may be necessary and proper.

22 OK Title §22-1086 Subsequent application.

All grounds for relief available to an applicant under this act must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction

or sentence or in any other proceeding the applicant has taken to secure relief may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the prior application.

22 OK Title §22-1087 Appeal to Court of Criminal Appeals

A final judgment entered under this act may be appealed to the Court of Criminal Appeals on petition in error filed either by the applicant or by the state within thirty (30) days from the entry of the judgment. Upon motion of either party on filing on notice of intent to appeal, within ten (10) days of entering the judgment, the district court may stay the execution of the judgment pending disposition on appeal; provided, the Court of Criminal Appeals may direct the vacation of the order staying the execution prior to final disposition of the appeal.

TREATY OF DANCING RABBIT CREEK

A treaty of perpetual friendship, cession and limits, entered into by John H. Eaton and John Coffee, for and in behalf of the Government of the United States, and the Mingoes, Chiefs, Captains, and Warriors of the Choctaw Nation, begun and held at Dancing Rabbit Creek, on the fifteenth of September, in the year eighteen hundred and thirty.

WHEREAS the General Assembly of the State of Mississippi has extended the laws of said State to persons and property within the chartered limits of the same, and the President of the United States has saud that he cannot protect the Choctaw people from the operation of these laws; Now therefore that the Choctaws may live under their own laws in peace with the United States and the State of Mississippi they have determined to sell their lands east of the Mississippi and have accordingly agreed to the following articles of treaty.

ARTICLE I. Pertetual peace and friendship is pledged and agreed upon by and between the United States and the Mingoes, Chiefs, and Warriors of the Choctaw Nation of Red People; and that this may be considered the Treaty existing between the parties all other Treaties heretofore existing and inconsistent with the provisions of this are hereby declared null and void.

ART. II. The United States under a grant specially to be made by the President of the U.S. shall cause to be onveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork; if in the limits of the west boundary of the United States, or to those limits; thence due south to RedRiver, and down Red River to the west boundary of the Territory of Arkansas; thence north alon that line to the beginning. The boundary of the same ot be agreeable to the Treaty made and concluded at Washington City in the year 1825. The grant to be executed as soon as the present Treaty shall be ratified.

ART. III. In consideration of the provisions contained in the several articles of this Treaty, the Choctaw nation of Indians consent and hereby cede to the United States, the entire country they own or possess, east of the Mississippi River; and they agree to move beyond the Mississippi River. Early as practicable, and will so arrange their removal, that as many as possible of their people not exceeding one half of the whole number, shall depart during the falls of 1831 and 1832; the residue to follow during the succeeding fall of 1833; a better opportunity in this manner will be afforded the Government, to extend to them the facilities and comforts which is desirable should be extended in conveying them to their new homes.

ART IV. The Government and people of the United States are hereby obliged to secure to the said Choctaw Nation of Red People the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation of Red People and their descendants; and that no part of the land granted them shall forever be embraced in any capital Territory or State; but the

U.S. shall forever secure said Choctaw Nation from, and against, all laws except such as from time to time may be enacted by Congress, to the extent that Congress under the Constitution are required to exercise a legislation over Indian Affairs. But the Choctaws, should this treaty be ratified, express a wish that Congress may grant to the Choctaws the right of punishing by their own laws, any white man who shall come into their nation, and infringe any of their national regulations.

ART. V. The United States are obligated to protect the Choctaws from domestic strife and from foreign enemies on the same principles that the citizens of the United States are protected, so that whatever would be a legal demand upon the U.S. for defense or for wrongs committed by an enemy, on a citizen of the U.S. shall be equally binding in favor of the Choctaws, and in all cases where the Choctaw shall be called ypon by a legally authorized officer of the U.S. to fight an enemy, such Choctaw shall receive the pay and other emoluments, which citizens of the U.S. receive in such cases, provided, no war shall be undertaken or prosecuted by said Choctaw Nation but by declaration made in full Council, and to be approved by the U.S. unless it be in self defense against an open rebellion or against an enemy marching into their country, in which cases they shall defend, until the U.S. are advised thereof.

ART. VI. Should a Choctaw or any party of Choctaws commit acts of violence upon the person or property of a citizen of the U.S. or join any war party against any neighboring tribe of Indians, without the authority in the preceding article; and except to oppose an actual threatened invasion or rebellion, such persons so offending shall be delivered up to an officer of the U.S. if in the poweer of the Choctaw Nation, that such offender may be punished as may be provided in such cases, by the laws of the U.S.; but if such offender is not within the control of the Choctaw Nation, then said Choctaw Nation shall not be held responsible for the injury done by said offender.

ART. VII. All acts of violence committed upon persons or property of the Choctaw Nation either by citizens of the U.S. or neighboring Tribes of Red Preople, shall be referred to some authorized Agent by him to be referred to the President of the U.S. who shall examine into such cases and see that every possible degree of justice is done to said Indian party of the Choctaw Nation.

ART. VIII. Offenders against the laws of the U.S. or any individual State shall be apprehended and delivered to any duly authorized person where such offender may be found in the Choctaw country, having fled from any part of U.S. but in all such cases application must be made to the Agent or Chiefs at the expense of his apprehension and delivery provided for and paid by the United States.

ART. IX. Any citizen of the U.S. who may be ordered from the Nation by the Agent and constituted authorities of the Nation, and refusing to obey or return into the Nation without the consent of the aforesaid persons, shall be subject to such pains and penalties as may be provided by the laws of the U.S. in such cases. Citizens of the U.S. traveling peaceably under the authority of the laws of the U.S. shall be under the care and protection of the nation.

ART. X. No person shall expose goods or other articles for sale as a trader, without a written permit from the constituted authorities of the Nation, or authority of the laws of the Congress of the U.S. under penalty fo forfeiting the Articles, and constituted authorities of the ation shall grant no license except to such persons a reside in the Nation and are answerable to the laws of the Nation. The U.S. shall be particularly obliged to assist to prevent ardent spirits from being introduced into the Nation.

ART. XI. Navigable streams shall be free to the Choctaws who shall pay no higher toll or duty than citizens of the U.S. It si agreed further that the U.S. shall establish one or more Post Offices in said Nation, and may establish such military post roads, and posts, as they may consider necessary.

ART. XII. All intruders shall be removed from the Choctaw Nation and kept without it. Private property to be always respected and on no occasion taken for public purposes without the just compensation being made therefor to the rightful owner. If an Indian unlawfully take or steal any property from a white man a citizen of the U.S. the offender shall be punished. And if a white man unlawfully take or steal any thing from an Indian, the property shall be restored and the offender punished. It is further agreed that when a Choctaw shall be given up to be tried for any offence against the laws of the U.S. if unable to imploy counsel to defend him, the U.S. will do it, that his trial may be fair and impartial.

ART. XIII. It is consented that a qualified Agent shall be appointed for the Choctaws every four years, unless sooner removed by the President; and he shall be removed on petition of the constituted authorities of the Nation, the President being satisfied here is sufficient cause shown. The Agent shal fix his residence convenient to the great body of people; and in the selection of an Agent immediately after the ratification of this Treaty, the wishes of the Choctaw Nation on the subject shall be entitled to great respect.

ART. XIV. Each Choctaw head of family being desirous to remain and become citizen of the States, shall be permitted to do so, by signifying his intention to the Agent within six months from the ratification of this Treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one half that quantity for each unmarried child which is living with him over ten years of age; and a quarter section to such child as may be under 10 years of age to adjoin the location of the parent. If they reside upon said lands intending to become citizens of the States for five years after the ratification of this Treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of family, or a portion of it. Persons who claim under this article shall not lose the priviledge of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity.

Art. XV. To each of the Chiefs in the Choctaw Nation (to wit) Greenwood Laflore, Nutackachie, and Mushulatubbe there is granted a reservation of four sections of land, two of which shall include and adjoin their present improvement, and the other two located where they please but on unoccupied unimproved lands; such sections shall be bounded by sectional lines, and with

the consent of the President, they may sell the same. Also, to the three principal chiefs, and to their successors in office, there shall be paid two hundred and fifty dollars, annually while they shall continue in their respective offices; except to Moshulatubbee, who, as he has an annuity of one hundred and fifty dollars, for life, under a former treaty, shall receive only the additional sum of one huundred dollars, while he shall continue in office, as chief. And if in addition to this the Nation shall think properto elect and additional principal chief of the whole to superintend and govern, upon republican principle, he shall receive annually for his services, five hundred dollars, which allowance to the chiefs, and the successors in office, shall continue for twenty years. At any time when in militatary service, and while in service by authority of the United States, the district chiefs, under and by selection of the President, shall be entitled to the pay of Majors; and the chief, under the same circumstance, shall have the pay of a Lieutenant Colonel. The speackers of the three districts, shall receive twenty five dollars a year for four each; and the three secretaries one to each of the Chiefs, fifty dollars each for four years. Each Captain of the Nation, the number not to exceed ninety nine, thirty three from each district, shall be furnished, upon removing to the west, with each a good suit of clothes, and a broad sword, as an outfit, and for four years, commencing with the first of their removal shall each receive fifty dollars a year, for the trouble of keeping their people at order in settling; and whenever they shall be in military service, by authority of the United States, shall receive the pay of a captain.

Art. XVI. In wagons, and in steamboats, as may be found necessary, the United States agree to remove the Indians to their new homes, at their expense, and under the care of discreet and careful persons, who will be kind and brotherly to them. They agree to furnish them with ample corn and beef, or pork for themselves and their families, for twelve months, after reaching their new homes. It is agreed further, that the United States will take all of their cattle, at the valuation of some discreet person to be appointed by the President, and the same shall be paid for in money after their arrival at their new homes, or other cattle, such as may be desired, shall be furnished them; notice being given, through the agent of their wishes upon this subject of removal, that time to supply the demand may be afforded.

Art. XVII. The several annuities and sums secured under former treaties, to the Choctaw Nation and people, shall continue, as though this treaty had never been made. And it is further agreed, that the United States, in addition, will pay the sum of twenty thousand dollars for twenty years, commencing after their removal to the West, of which in the first year after their removal, ten thousand dollars shall be divided and arranged, to such as may not receive reservations under this treaty.

Art. XVIII. The United States shall cause the lands hereby ceded, to be surveyed: and surveyors may enter the Choctae country for that purpose; conducting for themselves properly, and disturbing or interupting none of the Choctaw people. But no person is to be permitted to settle within the Nation, or the lands to be sold, before the Choctaw shall remove. And for the payment of the several amounts secured in this Treaty, the lands hereby ceded, are to remain in a fund pledged to that purpose, until the debt shall be provided for and arranged. *And further is agreed, that in the construction of this treaty, wherever well founded doubts shall arise it shall be construed most favorably toward the Choctaws.*

Art. XIX. The following reservations of land are hereby admitted. To Col. David Fulsom, four sectiond of which two shall include his present improvement, and two may be located elsewhere, on unoccupied, unimproved land. To I. Garland, Col. Robert Cole, Tuppanahomer, John Pitchlynn, Charles Juzan, Johokebetubbe, Eaychahobia, Ofehoma, Two Sections each, to include their improvements, and to be bounded by sectional lines; and the same may be disposed of and sold, with the consent of the President, and that others, not provided for, may be provided for, there shall be reserved as follows: First, one section to each head fo a family, not exceeding forty in number, who during the present year, may have had in actual cultivation with a dwelling house thereon, fifty acres or more. Secondly, three quarters sections after the manner aforesaid, to each head of family, not exceeding four hundred and sixty, as shall have cultivated thirty acres or less than fifty, ot be bounded by quarter sections lines of survey, and to be contiguous and adjoining. Third, one half section as aforesaid to those who shall have cultivated from twenty to thirty acres, the number not to exceed four hundred: Fourth, a quarter section as aforesaid to such as shall have cultivated from twelve to twenty acres, the number not to exceed three hundred and fifty persons. Each of said class of cases, shall be subject to the limitations contained in the first class and shall be so located as to include that part of the improvement, which contains the dwelling house. If a greater number shall be found to be entitled to reservations, under the several classes of this article,than it is stipulated for under the limitations proscribed; then, and in that case the chiefs, seperately or together, shall determine the persons who shall be excluded in the respective districts. Fifth, any captain, the number not exceeding ninety persons, who, under the provisions of this article shall receive less than a section, he shall be entitled to an additional quantity of a half section, he shall be entitled to an additional quantity of half a section, adjoining to his other reservation. The several reservations secured under this article may be sold, with the consent of the President of the United States; but should any prefer it, or omith to take a reservation for the quantity he may be entitled to, the United States will, on his removing, pay fifty cents an acre, agter reaching their new homes; provided, that before the first of January next, they shall provide to the agent, or some other authorized person, to be appointed, proof of his claim and the quantity of it. Sixthe likewise children of the Choctaw Nation, residing in the Nation, who have neither father or mother, a list of which with satisfactory proof of parentage, being filed with the agent in six months to be forwarded to the War Department, shall be entitled to a quarter section of land, to be located under the direction of the President, and with his consent, the same be sold, and the proceeds applied to some beneficial purpose for the benefit of said orphans.

Art. XX. The United States agree and stipulate as follows, that for the benefit and advantage of the Choctaw pwople, and to improve their condition, there shall be educated under the direction of the President, and at the expense of the United States, forty Choctaw youths, for twenty years. This number shall be kept in school; and as they their education others, ot supply therir places shall be received for the period stated. The United States agree also to erect a council house, at some convenient, central point, after the people shall be settled, and a house for each chief; also, a church, for each of the three districts to be used as school houses, until the Nation may conclude to build others; and for these purposes, ten thousand dollars shall be appropriated. Also, fifty thousand dollars (viz) twenty five hundred dollars annually shall be given for the support of three teachers of schools, for twenty years. Likewise, there shall be furnished to the Nation, three blacksmiths one for each district for sixteen years, and a

qualified mill Wright for five years; also there shall be furnished the following articles; twenty one hundred blankets; to each warrior who emigrated, a rifle, moulds, wipers and ammunition; one thousand axes, ploughs, hoes, wheels, and cards each and four hundred looms. There shall also be furnished one ton of iron, and two hundred weight of steel annually to each district for sixteen years

Art. XXI. A few Choctaw warriors yet survive, who marched and fought in the amy of General Wayne; the whole number stated not to exceed twenty. These it is agreed, shall hereafter, while they live, receive twenty five dollars a year; a list of them to be early as practicable, and within six months, made out and presented to the agent, to be forwarded to the War Department.

Art. XXII. The Chiefs of the Choctaws who have suggested that their people are in a state of rapid advancement in education and refinement and have impressed a solicitude that they might have the privilege of a Delegate on the floor of the House of Representatives extended to them. The commissioners do not feel that they can, under a treaty stipulation, accede to the request; but at their desire, present it in the treaty, that Congress may consider of and decide the application. Done and signed and executed by the commissioners of the United States, and the Chiefs, Captains, and head men of the Choctaw Nation, Dancing Rabbit Creek, this 27th day of September, eighteen hundred and thirty.

Jno. H.Eaton, Greenwood Leflore, Nittucachee, his x mark, Hopiaunchahubbee, his x mark, Captainthalke, his x mark, Lyacherhopia his x mark, Archalater, his x mark, Pisinhocuttubbee, his x mark, Little leader, his x mark, Cowwehoomah, his x mark, Imnullacha, his x mark, Shupherunchahubbee, his x mark, Oaklaryubbee, his x mark, Arpalar, his x mark, Hoparmingo, his x mark, Metubbee, his x mark, Issaterhoomah, his x mark, Tunnuppashubbee, his x mark, Hoshhopia, his x mark, Tishahakubbe, his x mark, Pennasha, his x mark, Mottubbee, his x mark, Ishmaryubee, his x mark, Lewis Wilson, his x mark, Hohinshamartarher, his x mark, Emarhinstubbee, his x mark, Thomas Wall, Arlartar, his x mark, Tishonouan, his x mark, Isaac James, his x mark, Aryoshkermer, his x mark, Posherhoomah, his x mark, Arharyotubbee, his x mark, James Vaughan, his x mark, Meshameye, his x mark, Yobalarunehahubbee, his x mark, Robert Cole, his x mark, Lewis Perry, his x mark, Hopeatubbee, his x mark, Jno. Coffee, Musholatubbee, his x mark, Holarterhoomah, his x mark, Zishomingo, his x mark, Pistiyubbee, his x mark, Offahoomah, his x mark, Onnahubbee, his x mark, Tullarhacher, his x mark, Maanhutter, his x mark Pukumna, his x mark, Holber, his x mark, Isparhoomah, his x mark, Tishoholarter, his x mark, Artooklubbtushpar, his x mark, Arsarkatubbee, his x mark, Chohtawmatahah, his x mark, Okocharyer, his x mark, Warsharshahopia, his x mark, Misharyubbee, his x mark, Tushkerharcho, his x mark, Nuknacrahookmarhee, his x mark, James Karnes, his x mark, Narlanalar, his x mark, Inharyarker, his x mark, Narharyubbee, his x mark, James McKing Istonarkerharcho, his x mark, Kinsulachubbee, his x mark, Gysalndalra, bm, his x mark. Sam S. Worcester, Nittahubbee, his x mark, Warsharchahoomah, his x mark, Hopiaintushker, his x mark, Shemotar, his x mark, Thomas Leflore, his x mark, Shokoperlukna, his x mark, Robert Folsom, his x mark, Kushonolarter, his x mark, Phiplip, his x mark, Ishteheka, his x mark, Holubbee, his x mark, Mokelareharhopin, his x mark, Artonamarstubbe, his x mark, Hoshahoomah, his x mark, Chuallahoomah, his x mark, Eyarhocuttubbee, his x mark, John McKolbery, his x. mark, Tikbachahambe, his x mark,

Walking Wolf, his x mark, Big Axe, his x mark, Tushkochaubbee, his x mark, John Garland,his x mark, Ishleyhamube, his x mark, William Foster, Hugh A. Foster, Jno. Pitchlynn, Jr., Sholohommastube, his x mark, Lauwechubbe, his x mark, Ofenowo, his x mark, Hekatube, his x mark, Jerry Carney, his x mark, Panshastubbee, his x mark, Joel H, Nail his x mark, Kocohomma, his x mark, Panshstickubbee, his x mark, Oklanowa, his x mark, Oklanowa, his x mark, James Fletcher, his x mark, William Trahorn, his x mark, Tethatayo, his x mark, Tishoimita, his x mark, Zadoc Brashears, his x mark, Isaac Perry, his x mark, Hiram King, his x mark, Nultahtubbee, his x mark, Kothoantchahubbee, his x mark, Okentahubbe, his x mark, John Jones, his x mark, Isaac Jones, his x mark, Muscogee, his x mark, Joseph Kincaide, his x mark, Heshohomme, his x mark, Benjm. James, his x maek, Aholiktube, his x mark, John Waide, his x mark, Bob, his x mark, Ittabe, his x mark, Folehommo, his x mark, Koshona, his x mark, Jacob Folsom, Ontioerharcho, his x mark, Pierre Juzan, David Folsom, Tesho, his x mark, Hoshehammo, his x mark, Ahekoche, his x mark, Atoko, his x mark, John Washington, his x mark, William Wade, his x mark, Holittankchahubbee, his x mark, Neto, his x mark, Silas D. Pitshlynn, Toshkahemmmitto, his x mark, Emokloshahopie, his x mark, Thomas W. Foster, his x mark, Tuska Hollattuh, his x mark, Eyarpulubbee, his x mark, Living War Club, his x mark, Charles jones, his x mark, Hodklucha, his x mark, Eden Nelson, his x mark,

In presense of—E.Breathitt, secretary to the Commission William Ward, agent for the Choctaws, John pitchlynn, United States interpreter, M. Mackey, United States interpreter, Geo. S. Gaines, of Alabama, R.P. Currin, Like Howard, Sam S. Worcester, Jno. N. Byrd, John Bell, Jno. Bond

Various Choctaw persons have been presented by the Chiefs of the nation, with a desire that they might be provided for. Being particularly deserving, an earnestness has been manifested that provision might be made for them. It is therefore by the undersigned commissioners here assented to, with the understanding that they are to have no interest in the reservations which are directed and provided for under the general treaty to which this is a supplement. As evidence of the liberal and kind feelings of the President and Government of the United States the Commissioners agree to the requests as follows, (to wit) Pierre Juzan, Peter Pitchlynn, G.W. Harkins, Jack Pitchlynn, Israel Fulsom, Louis Laflore, Benjamin James, Joel H. Nail, Hopoynjahubbee, Onorkubbee, Benjamin Laflore, Michael Laflore and Allen Yates and wife shall be entitles to a reservation of two sections of land each to include their improvement where they at present reside, with the exception of the three first named persons and Benjamin Laflore, who are authorized to locate one of their sections on any other unimproved and unoccuppied land within their respective districts.

ARTICLE II

And to each fo the following persons there is allowed a reservation of a section and a half of land, (to wit) James L. McDonald, Robert Jones, Noah Wall, James Campbell, G. Nelson, Vaughn Brashears, R. Harris, Little Leader, S. Foster, J. Vaughn, L Durans, Samuel Long, T. Magagha, Thos. Everge, Giles Thompson, Tomas Garland, John Bond, William Laflore, , and Turner Brashears, the two first named persons, may locate one section each, and one section jointly on any unimproved and unoccupied land, these not residing in the Nation; The others are to include their present residence and improvement. Also one section is allowed to the following

persons (to wit) Middleton Mackey, Wesley Train, Choclehomo, Moses Foster, D.W. Wall, Charles Scott, Molly Nail, Susan James, Samuel Garland, Silas Fisher, D. McCurtain, Oaklahoma, and Polly Fillecuthey, to be located in entire sections to include their present residence and improvements, wtith the exception of Molly Nail and Susan Colbert, who are authorized to locate theirs on any unimproved unoccupied land. John Pitchlynn has lonf and faithfully served the nation in character of the United States interpreter, he has acted as such for forty years,in consideration it is agreed, in addition to what has been done for him there shall be granted to two of his children, (to wit) Silas Pitchlynn and Thomas Pitchlynn one section of land each, to adjoin the location of their father; likewise to James Madison and Peter sons of Mushulatubbee one section of land each to include the old house and improvement where their father formerly lived on the olf military road adjoining a large prairie. And to Henry Groves son of the Chief Natticache ther is one section of land given to adjoin his father's land. And to each of the following persons half a section of land is granted on any unoccupied and unimproved lands in the District where they respectively live (to wit) James D. Hamilton, William Juzan, Tobias Laflore, Jo Doke, Jacob Fulsom, P. Hays, Samuel Worcestor, George Hunter, William Train, Robert Nail and Alexander McKee. And there is given a quarter section of land each to Delila and her five fatherless children, she being a Choctaw woman residing out of the nation; also the same quantity ot Peggy Trihan, another Indian woman residing out of the nation and her two fatherless children; and to the widows of Pushmataha, and Apukshunnubbee, who were formerly distinguished Chiefs of the nation and for their children four quarter sections of land, each in trust for themselves and their children. All of said last mentioned reservations are to be located under and by direction of the President of the United States.

ARTICLE III.

The Choctaw people now that they have ceded their lands are solicitous to get their new homes early as possible and accordingly they wish that a party may be permitted to proceed this fall to ascertain whereabouts will be most advantageous for their people to be located. It is therefore agreed that three or four persons (from each of the three districts) under the guidance of some discreet and well qualified person or persons may proceed during this fall to the west upon examination of the country. For their time and expense the United States agree to allow the said twelve persons two dollars a day each, not to exceed one hundred days, which is deemed to be ample time to make an examination. If necessary, pilot acquainted with the country will be furnished when they arrive west.

ARTICLE IV.

John Donly of Alabama who has several Choctaw grand children and who for twenty years has carried mail through the Choctaw Nation, a desire by the Chiefs is expressed that he may have a section of land, it is accordingly granted, to be located in one entire section, on any unimproved and unoccuppied land. Allen Grover and George S. Gaines licensed Traders in the Choctaw Nation, have accounts amounting to upwards of nine thousand dollars against the Indians who are unable to pay their said debts without distressing their families; a desire is expressed by the chiefs that two sections of land be set apart to be sold and the proceeds thereof to be applied toward the payment of the aforesaid debts. It is agreed that two sections of land be

set apart to be sold and the proceeds thereof to be applied toward the payment of the aforesaid debts. It is agreed that two sections of any unimproved and unoccuppied land be granted to George S. Gaines who will sell the same for the best price he can obtain and apply the proceeds thereof to the credit of the Indians on their accounts due to the before mentioned Glover and Gaines; and shall make the application to the poorest Indian first. At the earnest and particular requests fothe Chief Greenwood Laflore ther is grante to David Haley one-half section of land to be located in a half section on any unoccupied and unimproved land as a compensation, for a journey to Washington City with dispatches to the Government and returning others to the Choctaw Nation. The foregoing is entered into as sullpemental to the treaty concluded yesterday. Done at Dancing Rabbit Creek the 28th day of September, 1830.

Jno. H. Eaton, [L.S.]Jno. Coffee, [L.S.] Greenwood Leflore, [L.S.] Nittucachee, his x mark, [L.S.] Mushulatubbee, his x mark, [L.S.] Offahoomah, his x mark [L.S.] Eyarhoeuttubbee, his x mark, [L.S.] Iyaeherhopa, his x mark, [L.S.] Holubbee, his x mark, [L.S.] Onarbubbee, his x mark, [L.S.]Robert Cole, his x mark, [L.S.] Hopiaunchahubbee, his x mark, [L.S.] David Folsom, his x mark, [L.S.] John Garland, his x mark, [L.S.] Hopiahoomah, his x mark, [L.S.] Captain Thalko, his x mark, [L.S.] Pierre Juzan, his x mark, [L.S.] Immarstarher, his x mark, [L.S.] Hoshimhamartar, his x mark, [L.S.]

In presence of –E. Breathitt, Secretary to Commissioners, W. Ward, Agent for Choctaw, M. Mackey, United States Interperter, R.P. Currin, Jno. W. Byrn, Geo S. Gaines

IN THE DISTRICT COURT OF GRADY COUNTY STATE OF OKLAHOMA

DANIEL DEL BRUMIT

Petitioner

Vs. Case No. CF-2006-115

THE STATE OF OKLAHOMA

Respondents

APPLICATION FOR POST CONVICTION RELIEF

PART A

I, Daniel Del Brumit, whose present address is 16161 Moffet Rd., Lexington, OK 73051-0548 hereby, apply for relief under the Post Conviction Procedures Act, Section 1080 et. Seq. of Title 22.

The sentence from which I seek relief is as follows:

1. (a) Court in which sentence was rendered: Grady County

Case Number (b) CF-2006-115

2. Date of Sentence: January 16, 2007

3. Terms of sentence: Counts One (1) through Five (5): Sentenced to a term of 20 years in the Oklahoma Department of Corrections; Counts One (1) and Two (2) to run consecutive; Counts Three (3), Four (4), and Five (5) to run concurrent with each other and consecutive to counts

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One (1) and Two (2). Counts Three (3), Four (4), and Five (5) suspended under rules given on Exhibit B of Judgment and Sentencing Rules and Conditions of Probation for Sex Offenders.

4. Name of Presiding Judge: Honorable Richard G. Vandyck, District Judge

5. Are you in custody serving this sentence? Where? Yes, Joseph Harp Correctional Center

6. For what crimes were you convicted? Counts One through Five: Lewd or Indecent proposals or acts to a child under 16, Felony 21 O.S. §§1123 (A) (1)

7. When was the finding of guilty made? After a plea of nolo contendere

8. Not Applicable

9. Name the lawyer that represented you in trial court: Ryland Rivas I and Ryland Rivas II

10. Was your lawyer hired by you or your family? Yes.

11. Did you appeal the conviction? Yes.

12. (a) Did a lawyer represent you for the appeal? Yes.

(b) Was it the same lawyer as in No. 9 above? No.

(c) If "No", what were the lawyers' names? Albert Hoch represented Mr. Brumit in the District Court of Grady County; Danny G. Lohmann represented Mr. Brumit in the Oklahoma Court of Criminal Appeals (O.C.C.A.)

(d) Address? Mr. Albert Hoch, 603 North Portland, Suite 300, Oklahoma city, OK 73112; Danny G. Lohmann B.A. #14902, Appellate Defense Counsel, P.O. Box 928 Norman, OK 73070

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13. Was an opinion written by the appellate court? Yes, unpublished: Case No. C-2007-123

14. Did you seek any further review of or relief from you conviction at any time in any other court? No.

PART B

If you have more than one proposition for relief, attach a separate sheet for each proposition. Answer the questions below as to each additional proposition as such: PROPOSITION ONE, PROPOSTION TWO, PROPOSITION THREE, etc.

I believe that I have one (1) proposition for relief from the conviction described in part A of this post-conviction application:

PROPOSITION ONE: Oklahoma did not possess jurisdiction to invoke Oklahoma law towards convicting and executing sentence on Mr. Brumit for Major Crimes which occurred within the boundaries of the Indian reservation(s) of the Choctaw and Chickasaw Nations.

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PROPOSITION ONE

1. Of what legal right do you believe you were deprived in your case? Oklahoma violated Article 6 Clause 2 (supremacy clause) and 18 U.S.C. §1153 which deprived Mr. Brumit's 14th Amendment rights. Mr. Brumit is politically immune from state conviction and terms of sentence for Major Crimes in Indian Country.

2. In the facts of your case, what happened to deprive you of your legal right or privilege and who made the error of which you complain? "It has been written, '[perhaps in no other state has there been more confusion over who has jurisdiction in Indian Country than in the State of Oklahoma.' K. Kickingbird, Indian Jurisdiction p.63 (1983)" Richardson v. Malone 762 F. Supp. 1463 (N.D. Okla. 1991) As a whole, what happened to deprive Mr. Brumit of his legal rights is a systematic issue of "doctra ignorantia" (learned or educated ignorance). For example: the Tuttle police department had a duty to determine Indian status. U.S. v. Patch 114 F.3d 131 (9th Cir. 1997) Duro v. Reina 495 U.S. 676,697 (1990) Deputy Guy Huggins ignored and should have reported into evidence that Mr. Brumit raised his Choctaw citizenship while in route to the Grady County jail. See U.S. v. Hester 719 F.2d 1041,1043 (9th Cir. 1983) The Grady County jail had a duty to determine Mr. Brumit's Indian citizenship. (OK Title 22§§171.2 states, "a reasonable effort shall be made to determine citizen status of the person so confined.") The state prosecutors had a duty to prove the state had jurisdiction. Sweden v. State 172 P.2d 432,435 (Okla. Crim. App. 1946) And all of this would have probably occurred if Oklahoma had acknowledged the Chickasaw Nation's reservation boundaries. The Supreme Court recently addressed the [docta ignorantia] of Oklahoma and Indian country in McGirt v. Oklahoma 2020WL3848063(2020). In *Mcgirt,* the Supreme Court acknowledged that "until the 10th Circuit's Murphy decision a few years ago, no

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court embraced that possibility. (the possibility any of the Five Civilized Tribes' lands were part of a reservation) *McGirt,* 591 U.S.____ (2020); 2020WL3848063

However, albeit there are many points of error, the ultimate responsibility to determine whether the site of offense was Indian country rests on the courts. U.S. v. Cook 922 F.2d 1026 (1991) ("Determining of whether the site of an offense is Indian country have been held to be for the courts alone.") The court failed to see that 18 U.S.C. §§ 1151,1153 are applicable to Mr. Brumit and Oklahoma never had jurisdiction to convict or to execute sentence on him. The court had a duty to ensure that the arrest was legal, (OK Title 22§§222) and that the crimes were triable in the county. (OK Title 22§§258) It had an independent duty to ensure jurisdiction was proper despite the *docta ignorania* of all the parties involved. Louisville and Nashville R. Co. v. Mottley 29 S.Ct. 42 (1908)

3. List by name and citation any case or cases that are very factual to yours as examples of the error(s) you believe occurred in your case. McGirt v. Oklahoma 591 U.S. ____ (2020) Murphy v. Royal 875 F.3d 896 (10th Cir. 1997, certiorari granted 138 S.Ct. 2026 (2018)

4. How do you think you could now prove the facts you have stated in answer to Question No. 2 above? Attach supporting affidavits. This case centers on a jurisdictional legal issue and as such, "State, not defendant, must prove it has jurisdiction over a case" Sweden v. State 172 P.2d 432,435 (Okla. Crim. App. 1946) The Major Crimes Act 18 U.S.C.§1153 states that certain crimes committed by or against an Indian(s) within the boundaries of an Indian reservation 18 U.S.C.§1151 are under the exclusive jurisdiction of the federal government. Petitioner will provide legal proof of Indian citizenship, maps, the Treaty of Dancing Rabbit Creek, and a Brief in Support which will simplify and assist the State to realize it has no jurisdiction to convict or carry out sentence against Mr. Brumit.

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5. If you did not timely appeal the original conviction, set forth facts showing how you were denied a direct appeal through no fault of your own. As mentioned in Part A Questions 11 through 13, the original conviction and sentence were appealed and an unpublished opinion can be viewed: Case No. C-2007-123. The direct appeal is discussed in more detail in the Brief in Support's Procedural Background.

6. Is this a proposition that could have been raised on Direct Appeal? Explain. Petitioner cannot fathom this proposition could have been raised on Direct Appeal and does not believe the issue, of whether it could have been raised, is relevant. Appeal lawyers, Mr. Hoch and Mr. Lohman (Part A Question 2) were unaware of Mr. Brumit's Indian status or that the alleged crimes occurred in Indian country. Neither spoke to Mr. Brumit about the case and the *docta ignorantia* obscured any facts which would have initiated a proposition on Direct Appeal. There is confusion about jurisdiction within Indian country in Oklahoma, and before the opinion in *McGirt* (2020) the suggestion of applying §1153 to the Choctaw/Chickasaw reservation was novel. However petitioner states whether this could have been raised on Direct Appeal does not matter since subject matter jurisdiction can never be waived and can be raised at any time; Wallace v. State 935 P.2d 366 (1997) Johnson v. State 611 P.2d 1137, 1145 (1980) and subject matter jurisdiction gives a court its power to convict and pass sentence. Arbaugh v. Y & H Corp. 126 S.Ct. 1235 (2006) Furthermore, U.S.C.A. Const. Art. 6 cl. 2 state the "[S]upremacy clause is applicable to international treaties and Indian alike." U.S. v. State of Mich. 471 F.Supp. 192 (U.S. Dist. Court W.D. Mich N.D. 1979) and it "creates an independent right of action where a party alleges preemption of state law by federal law." Lewis v. Alexander 685 F.3d 325 (3rd Cir. 2012) Petitioner therefore claims and petitions the court that until and after a decision concerning subject matter jurisdiction and his 6th Amendment claim is final, the court be obliged to set aside

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any other standard which would otherwise be applicable. "[J]urisdiction issues are reviewed *de novo*" U.S. v. Burch 169 F.3d 666 (10th Cir. 1999)

PART C

I understand that I have absolute right to appeal to the Court of Criminal Appeals from the trial court's order entered in this case, but unless I do so within (30) days after the entry of the trial judge's order I will have waived my right to appeal as provided by section 1087 of Title 22.

PART D

I have read the forgoing application and assignment(s) of error and hereby state under oath that there are no other grounds which I am aware of at this time upon which I wish to attach the judgment and/or sentence under which I am presently convicted. I realize that I cannot later raise or assert any reason or ground known to me at this time or which could have been discovered by me by the exercise of reasonable diligence. I further realize that I am not entitled to file a second or subsequent application for post-conviction relief based upon facts within my knowledge or which I could discover with reasonable diligence at this time.

PART E

I hereby apply to have counsel appointed to me. I believe that I am entitled to relief. I do not possess money or property except the following: NONE

Dated_____

Signature_____

STATE OF OKLAHOMA

COUNTY OF CLEVELAND

I,_____, being first sworn under oath, states that I have signed the foregoing application in front of a notary public and that the statements therein are true to the best of my knowledge and belief.

Signature:_____

Subscribed and sworn to before me on this _____day of_____,2020

Notary Public:_____

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IN THE DISTRICT COURT OF GRADY COUNTY STATE OF OKLAHOMA

DANIEL DEL BRUMIT

Petitioner

Vs. Case No. CF-2006-115

THE STATE OF OKLAHOMA

Respondents

BRIEF IN SUPPORT OF APPLICATION FOR POST-CONVICTION RELIEF

Comes now, Daniel Brumit, acting as *pro se* petitioner/appellant until such time as when court appoints counsel, in accordance with Title 22§1080 (b), moves that this court grant Mr. Brumit's Application for Post-Conviction Relief and vacate his conviction and sentence on counts 1-5 Lewd or Indecent Proposals or Acts with a Child Under 16, Felony 21 O.S. §1123 (A)(1) on the grounds the State of Oklahoma was without jurisdiction to prosecute and execute sentence against him due to, "[M]ajor crimes involving Indians in Indian country is federally exclusive. 18 U.S.C. §1153 U.S. v. Sands 968 F.2d 1058 (10th Cir. 1992) U.S. v. VanChase 137 F.3d 579 (8th Cir. 1998)

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The proposition in this Post-Conviction Application is not addressing Mr. Brumit's guilt or innocence, "[W]hether the crime(s) occurred in Indian country was thus a jurisdictional fact susceptible of determination without reference to any facts in determining...guilt or innocence.". U.S. v. Cook 922 F.2d 1026 (10th Cir. 1991) This is a matter of law and how it employs subject matter jurisdiction and 18 U.S.C. §1153.

Mr. Brumit is acting as *pro se* petitioner/appellant, with no training in matters of law and moves that this court liberally construe his Brief In Support, pursuant Hall v. Bellman 935 F.2d 1106,1110 (10th Cir. 1991) citing Haines v. Kerner, supra. The Supreme Court held that *pro se* litigant's pleadings are to be liberally construed and held to a less stringent standard required from a member of the Bar.

AUTHORITIES FOR MOTION

A. This motion is filed under Title 22 O.S. § 1080 which reads:

> Any person who has been convicted of, or sentenced for, a crime and who claims:
>
> **a.) that the conviction or the sentence was in violation of the Constitution of the United States or the Constitution of the laws of this state;**
>
> **b.) that the court was without jurisdiction to impose sentence;**
>
> c.) that the sentence exceeds the maximum authorized by law;
>
> **d.) that there exists evidence of material fact, not previously presented and heard, that requires vacation of conviction or sentence in the interest of justice;**
>
> e.) that the sentence has expired, the suspended sentence, probation, parole, or conditional release unlawfully revoked, or **he is otherwise unlawfully held in custody or restraint; or**
>
> **f.) that the conviction or sentence is otherwise subject to collateral attack upon ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy;**

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> may institute a proceeding under this act in the court in which the judgment and sentence on conviction was imposed to secure the appropriate relief. Excluding a timely appeal this act encompasses and replaces all common law and statutory methods of challenging a conviction or sentence. (See Title 22§1080 (b) emphasis added)

B. Subject Matter Jurisdiction Authority

This motion is founded on a subject matter jurisdictional error. Subject matter jurisdictional error(s) allow unrestricted address and demand redress of mistakes by the court. Johnson v. State 611 P.2d 1137,1145 (1980) Wallace v. State 935 P.2d 366 (1997) Also see Arbaugh v. Y & H Corp. 126 S.Ct. 1235 (2006) "[A] conviction is predicated on insufficient evidence when, as a matter of law, the court has no jurisdiction to try him for alleged offense." U.S. v. Olano 507 U.S. 725, 732 (1993) Subject matter jurisdictional issues, as with all jurisdictional issues because they apply to a court's license to adjudicate, must be considered before all other standards. "[J]urisdictional issues are reviewed *de novo.* U.S. v. Burch 169 F.3d 666 (10th Cir. 1999)

C. Indian Treaties and Constitutional Law Authority

This motion is founded on a violation of the Treaty of Dancing Rabbit Creek, 7 Stat. 333 and the U.S. Constitution at U.S.C.A. Art. 6 cl. 2 which reads

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. U.S.C.A. Const. Art. 6 cl. 2

The "[T]reaty of Dancing Rabbit Creek is a part of Supreme law..." U.S. v. State Tax Comm'n of Miss. 525 F.2d 300 (5th Cir. 1976) (See Treaty of Dancing Rabbit Creek) The "[S]upremacy clause creates an **independent** right of action where a party alleges preemption of state law by federal law." Lewis v. Alexander 685 F.3d 325 (3rd Cir. 2012) (emphasis added) Independent means [not subject to control of others] and must be construed before any other standard.

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(bracketed from Merriam Webster's Collegiate Dictionary, 10th Ed. 1999) Therefore, violations of the Treaty of Dancing Rabbit Creek are reviewed *de novo.*

D. Conclusion to Authorities

The District Court of Grady County, State of Oklahoma, has the jurisdiction to provide remedy under well-established State and Federal Common and Constitutional Law.

OVERVIEW OF PROPOSITIONS

Petitioner presents one (1) proposition before this court which is married to the Major Crimes Act, 18 U.S.C. §1153,(hereafter MCA or §1153) which reserves exclusive federal jurisdiction for the crime to which Petitioner maintains Mr. Brumit has been illegally convicted and forced to endure the conditions of sentence by the State. See Exhibit A: Judgment and Sentence Proposition One (1) explains that the Choctaw/Chickasaw reservation(s) and treaties are still valid today, and Oklahoma overstepped its authority when it scrutinized Mr. Brumit under Oklahoma law.

PROCEDURAL BACKGROUND

In February, 2006 Mr. Brumit was arrested within the boundaries of his property by the City of Tuttle police department. note[1] Then, on February 28th, 2006, Mr. Brumit was formally charged by Grady County with five(5) counts of Lewd or Indecent Proposals or Act to a Child

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note[1] The property where Mr. Brumit was arrested is 2800 E. Silver City Rdg.; Tuttle, OK 73089. Its legal description is 30-10-05-005 NW/4 NW/4 NE/4 lot size 108400 sq. ft. (2.5 acres). It is located in the northern district of the Chickasaw Nation's Pontotoc Legislative district. (See Exhibit C: Map of Tuttle; and Exhibit E: Map of Chickasaw Nation of Oklahoma Legislative district or go to www.chickasaw.net/our nation/government/geographic-information.aspx

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Under 16, 21 O.S. 1123 (A)(1). On October 24th, 2006, Mr. Brumit's lawyer, Ryland Rivas I, requested the court to recuse the District Six Prosecutor's office from Mr. Brumit's criminal case because Bret Burns admittedly had selectively or vindictively created a departmental policy against plea bargain offers to any clientele of Mr. Rivas and his firm. Honorable Judge Van Dyke did not grant Mr. Brumit's lawyer's request. CF-06-115 Partial Transcript of Hearing (D.C. Grady County, 24 Oct. 2006) Mr. Brumit pled *Nolo Contendere.* On January 16, 2007, he was sentenced to 20 years per count: Counts 1 and 2 to be ran consecutively in the custody of the Oklahoma Department of Corrections; the remaining 3 counts to be ran concurrent with each other, but consecutive with counts 1 and 2; counts 4 and 5 were suspended.

On February 8th, 2007, Indigent Defense Attorney Albert Hock filed a motion to withdraw Mr. Brumit's plea, but Honorable Judge VanDyke dismissed the motion. Thenceforwards, Counsel Danny G. Lohmann filed a direct appeal for Mr. Brumit with the following four (4) propositions:

1. Mr. Brumit's pleas were entered as a result of a misunderstanding of the legal process.
2. Mr. Brumit was denied his right to effective assistance of counsel at his plea hearing.
3. Mr. Brumit's sentences are excessive and should be modified.
4. Reversible error occurred when the trial court accepted Mr. Brumit's plea without informing him of the elements of each offense charged.

The Oklahoma Court of Criminal Appeals denied the direct appeal; however, Honorable Judge J. Chapel disagreed with the decision in part saying, "I would modify the judgment to run sentences on all counts concurrently."

For a complete description of each step of the illegal process against Mr. Brumit go to:

http://www.oscn.net/dockets/GetCaseInformation.aspx

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MAJOR CRIMES ACT 18 U.S.C. §1153

18 U.S.C. §1153 declares and guarantees:

> Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, **a felony under Chapter 109A (sexual abuse)**...shall be subject to the same laws and penalties as all other persons committing any of the above offenses, **within the exclusive jurisdiction of the United States.** See 18 U.S.C. §1153 (emphasis and Chapter Title description added.)

The State of Oklahoma is without subject matter jurisdiction to convict or execute sentence against any "Indian" in "Indian country" for certain crimes which Congress has indicated to be "Major Crimes." Jurisdiction to convict or execute sentence against Mr. Brumit, if anyone, belonged to the federal government, exclusive of state. [see State v. Klindt 782 P.2d 401,403 (Okla. Crim. App. 1989) Oklahoma does not have jurisdiction over crimes committed by or against and Indian in Indian country.] [see U.S. v. Sands 968 F.2d 1058 (10th Cir.(Okla.)(1992) and U.S. v. VanChase 137 F.3d 579 (8th Cir. 1998) each noting that exclusive federal jurisdiction in §1153 exists if any portion of crime is in Indian country.]

INDIAN STATUS

The Indian Major Crimes Act, 18 U.S.C. §1153, does not specifically define who is an "Indian." Where the word "Indian" is used without explanation, the courts have decided an "Indian" is a person who has both Indian blood and is regarded as an Indian by his tribe or community. "For a criminal defendant to be subject to §1153 [the Indian Major Crimes Act], (a) court must make factual findings that the defendant (1) has some Indian blood; and (2) is recognized as an Indian by a tribe or by the federal government." Scrivner v. Tansy 68 F.3d 1234 (10th Cir. 1995) (Internal quotes omitted; See U.S. v. Prentis 273 F.3d 1277, 1282 (10th Cir.

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2001) (affirming validity of Scrivner's two part test for determining who is an "Indian" for the purpose of federal law.) Mr. Brumit meets both provisions of the Scrivner's test.

Mr. Brumit is a citizen of the Choctaw Nation of Oklahoma with a degree of Choctaw blood percentage of 1/8th (See Exhibit B: Adult Tribal Membership Card) Cf. Prentis 273 F.3d 1283-83 (connecting cases and noting that certificates of tribal enrollment are recognized proof of membership to permit prosecution of crimes.)

Secondly, the Choctaw Nation of Oklahoma is a federally recognized tribe located in modern day southeastern Oklahoma.

Thus having met the requirements of the Scrivner tests, Mr. Brumit is an Indian within the intent of 18 U.S.C. §1153.

INDIAN COUNTRY 18 U.S.C §1151

In 1948, Congress amended the Major Crimes Act and codified the definition of "Indian country." Act of June 25th, 1948. Ch. 645, 62 Stat. 683, 757 see Alaska v. Native Village of Venetie Tribal Gov't, 522 U.S. 528-30 (1998) (discussing term's case law origins) Within the definition, Congress included the boundary-based concept of reservations (formal and informal), dependent Indian communities, and allotments, that have developed in case law under the Major Crimes Act. Indian country is outlined in 18 U.S.C. §1151 as:

> (a) all land within the limits of any Indian reservation, under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including, right of way running through the reservation,
>
> (b) all dependent Indian communities within the borders of the United States whether within the original, or subsequently acquired territory thereof, and whether within or without the limits of a state, and

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(c) all Indian allotments, the Indian titles to which have not been extinguished, including right of way running through the same. See 18 U.S.C. §1151 (paragraph break added)

If an area qualifies under any of these definitions, it is Indian country. "[C]ongress has defined Indian country broadly to include formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States." Okla. Tax Comm'n v. Sac and Fox Nation, 508 U.S. 114, 123 (1993) "[A] formal designation of Indian land is not required for them to have Indian country status." Indian country U.S.A. Inc. v. Okla. Tax Comm'n 829 F.2d 973 (10th Cir. 1987) "[W]e stated that the test for determining whether land is Indian country does not turn upon whether that land is denominated 'trust land' or reservation. Rather, we asked whether the area has been validly set apart for the use of Indians as such, under the superintendence of the Government." Okla. Tax Comm'n v. Citizen Band of Potawatomi Indian Tribe of Oklahoma 111 S.Ct. 905 (1991) "[C]onveyance of land to Indian nations pursuant to treaties were to the Nations as political societies and not as persons and any well founded doubt regarding boundaries must be resolved in their favor." Choctaw Nation v. Okla. 397 U.S. 620 (1970)

INDIAN COUNTRY, PROPOSITION ONE

"[T]he dictionary defines 'reservation' to be a 'tract of public land set aside for a particular purpose (as for schools, forest, or the use of Indians.)' Webster 3rd new Intl dictionary 1930 (1933) This definition surely encompasses both the trust lands and formally designated reservations. Nothing in the United States Code is clearly to the contrary, for the term 'reservation' has no rigid meaning as suggested by petitioner. See 7 U.S.C. §1985(e) (1) (A) (i:) 25 U.S.C.§1452 (d) 33 U.S.C. § 1377 (h) (1) Sault Ste Marie Tribe of Chippewa Indians v. U.S. 576 Supp. 2.d 838 (W.D. Mich. 2008)

Also see, i.e. 25 U.S.C.A. §3202 Def. (9), 29 U.S.C.A.§741, 25 U.S.C.A. §3103, and 25 U.S.C.A. §2206 (where Congress has passed and/or amended U.S. Code which incorporates

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former Indian reservations of Oklahoma as reservations.)note[2]

The land where Oklahoma claimed the crimes occurred were within the boundaries of the Choctaw/Chickasaw reservation(s) as described in §1151(a) and utilized in §1153. The Choctaw/ Chickasaw reservation is established by treaty. Treaty of Dancing Rabbit Creek 7 Stat. 333 The area where Oklahoma claimed the crimes occurred is within the Chickasaw district of the Choctaw/Chickasaw reservation. As relevant, the relationship between the United States and the Nations are:

> "[D]uring the 1820's, the federal government adopted a policy to forcible remove the Five Civilized Tribes from the southeastern United States and relocated them west of the Mississippi river, in what is today Oklahoma." Indian Country U.S.A. 829 F.2d 967 (10th Cir. 1987)
>
> "[T]here is no dispute about the facts. They are substantially as follows: by treaty of Oct. 20, 1832 [7 stat. at L.381] the Chickasaw Indians ceded to the United States, for the purpose of sales, their land east of the Mississippi river, and later were permitted to migrate west of the river. By the treaty between Choctaw and Chickasaw tribes of June 17, 1832, the Chickasaw tribe was permitted to occupy, with the Choctaw tribe, certain territory within the United States, the United States confirming the treaty and such occupation by a treaty with the tribes June 22, 1855 [11 stat. at L.611] By this treaty the lands were guaranteed 'to the members of the Choctaw and Chickasaw Tribes, their heirs and successors, to be held in common,' so that each and every member of either tribe shall have an equal undivided interest in the whole. 'By said treaty the said tribes leased to the United States 'all portion of their territory west of the 98th degree of west longitude' for the settlement of the Wichita and other tribes of Indian. The leased territory was also open to settlement by Choctaw and Chickasaws. This is the 'leased district,' hereafter referred to.. The Choctaw and Chickasaw are separate nations. Upon the breaking of the Civil War they entered into relations with the Southern confederacy, and took up arms against the United

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Note[2] Where Congress specified, in the federal U.S.C, that former Indian reservations of Oklahoma were reservations by definition; they failed to set any other perimeter other than the boundaries of Oklahoma. This introduces an issue to whether Congress meant the 1866 Treaties to the Five Civilized Tribes or previous Treaties. One possible solution can be found at 1998WL471223 I.R.S. (Defines Former Indian Reservation) However, if the court is to construe most liberally in favor of Indians, the 1830 Choctaw Treaty and the 1832 Chickasaw Treaty would define the Nations' "informal" reservation. In either case, the area to which Oklahoma alleges the crimes occurred would still be Indian country and Mr. Brumit would still fall under the jurisdiction of the Federal Government and it would not interfere with the Tribe's current interpretation of their reservation boundaries.

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States." U.S. v. Choctaw Nation 48 L.Ed. 640 (1904)

"[I]n 1866, the negotiations between the U.S. and the Choctaw and Chickasaw nations were resumed at Washington. The result was the treaty concluded April 28th, 1866 (14 Stat. at L.769) U.S. v. Choctaw Nation 45 L.Ed. 291 (1900)

"[I]n 1866, the United States reaffirmed (the obligations of previous treaty) stating that: all rights, privileges, and **immunities** heretofore possessed by said nation or **individuals** thereof, or to which they were entitled under the treaties and legislation heretofore made and had in connection with them shall be, and hereby declared to be, in full force, so far as they are consistant with the provisions of this treaty.' Treaty of April 28, 1866, 14 stat. 769, Art. XLV; Id. Art. X. These obligations were confirmed in 1871, which **reaffirmation stands to this day.** See 25 U.S.C.A. §71 (West Supp. 1994) (See also Oklahoma Enabling Act §1, 34 stat. 267, 267-68) (1906) (Nothing contained in [the Oklahoma Constitution] shall be construed to limit or impair the right of person or property to the Indians of said Territories..." Chickasaw Nation v. State Ex. Rel. Oklahoma Tax Comm'n 31 F.3d 964 (10th Cir. 1994) (emphasis added)

Congress made and reaffirmed treaties with the Choctaw and Chickasaw Nations. The Treaty of Dancing Rabbit Creek is still valid. See Chickasaw Nation v. State 31 F.3d 964 (10th Cir. 1994) The Treaty of Dancing Rabbit Creek is the Supreme Law of the Land. U.S. v. State Tax Comm'n of Mississippi 532 F.2d 300 (5th Cir. 1976) The Treaty guarantees that courts must resolve any ambiguity in favor of the Indians and their tribes. "Indeed, the Treaty of Dancing Rabbit Creek itself provides that, 'in the construction of this Treaty wherever will founded doubt shall arise, it shall be constued most favorably toward the Choctaws.' 7 stat. 336 Choctaw Nation v. Okla. 25 L.Ed. 615 (1970) The treaty demands:

"[T]he Government and people of the United States are hereby obliged to secure to said [Chickasaw] nation of Red People the jurisdiction and government of all persons and property that may be within their limits west, so that no territory, or state shall ever have a right to pass laws for the government of the [Chickasaw] nation of Red People and their descendants...but the United States shall forever secure said [Chickasaw] nation **from and against all such laws.**' Treaty of Dancing Rabbit Creek, Sept. 27, 1830, Art. 4, 7 stat. 333-334" Okla Tax. Comm'n v. Chickasaw Nation 132 L.Ed.2d 400 (1995) (emphasis added) See Exhibit I (Treaty of Dancing Rabbit Creek)

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The Treaty of Dancing Rabbit Creek, amended after the Civil War, agreed to the following territorial limits for the Choctaw and Chickasaw Nations:

> "[B]eginning at a point on the Arkansas River, one hundred paces east of old Fort Smith, where the western boundary line of the State of Arkansas crosses the river, and running thence due south to the Red River; thence up Red River to the point where the meridian of one hundred degrees west longitude crosses the same; thence north along said meridian to the main Canadian River; thence down said river to its junction with the Arkansas River; thence down said river to the place of beginning.'
>
> Out of this a district for the Chickasaws was established, described as follows:
>
> 'beginning on the north bank of the Red River, at the mouth of Island Bayou, where it empties into the Red River, about twenty six miles on a straight line, below the mouth of the False Washitta; thence running a northwesterly course along the main channel of said bayou, to the junction of the three prongs of said bayou, nearest the dividing ridge between Wachitta and Low Blue Rivers, as laid down in Capt. R.L. Hunter's map; thence northerly along the eastern prong of Island Bayou to its source; thence due north to the Canadian River; thence west along the main River to the beginning." The Choctaw and Chickasaw Nations v. Seay 235 F.2d 30 (10th Cir. 1956)

See Exhibit F (ODOT Territory Map),Exhibit G (Historic Society Map) and Exhibit H(45 L.Ed. 291 Map)

When Oklahoma was admitted into the Union as a State, the Choctaw and Chickasaw reservations were protected by the Treaty of Dancing Rabbit Creek and remained Indian country within the new state. See U.S. Exp. Co. v. Friedman 191 F.673 (8th Cir., 1911) and Evans v. Victor 294 F.361 (U.S. Dist. Court, 1912) Since then, and until today, only Congress possesses the power to disestablish or diminish a reservation. Lonewolf v. Hitchcock 187 U.S. 553 (1903) also see Solem v. Bartlett 465 U.S. 463 (1984), and any such disestablishment or diminishment by Congress must be plain and clear. South Dakota v. Yankton Sioux tribe 522 U.S. 343 (1998) McGirt (2020),but Congress has not repudiated the Treaty of Dancing Rabbit Creek or the territories described in it. "[T]he dispositive point is that throughout a period of 145 years the Congress **has never passed** an act specifying a purpose to supersede the Treaty of Dancing Rabbit Creek." U.S. v. State Tax Comm'n of Miss. 541 F.2d 469 (5th Cir. 1976) (emphasis

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added) The Choctaw and Chickasaw reservation boundaries and the area inside of those boundaries are Indian country.

> "[U]nited States treaty grants of land to the Choctaw [and Chickasaw] (7 stat. 333-334, 1830)..., and the patents issued there under, which describe the boundaries of the granted territory in such terms as 'thence down the Arkansas to that point...' convey those portions of the Arkansas River bed that form the boundary line, **as well as those portions entirely within the boundaries."** Choctaw Nation of Oklahoma 25 L.Ed.2d 615 (1970) (emphasis and brackets added)

The Chickasaw Nation, a federally recognized "Indian Nation",also known as one of the Five Civilized Tribes, is located in Oklahoma in the United States. See Indian Country U.S.A. Inc. v. Okla. Tax Comm'n 829 F.2d 967n. 2 (referring to Five Civilized Tribes) As the thirteenth largest federally recognized tribes, it has a population of more than 60,000 enrolled members and includes 7,648 square miles of south central Oklahoma, encompassing all or part of the thirteen counties of Byran, Carter, Coal, Garvin, **Grady**, Jefferson, Johnston, Love, McClain, Marshall, Murray, Pontotoc, and Stephens. See 2015 WL 5813847 (D.O.I.) (Department of Interior Press Release) and Exhibit (D) Chickasaw National Map (via www.chickasaw.net) With approval from Congress, the Chickasaw Nation governs its Indian community with its Chickasaw Constitution. See Chickasaw Constitution (includes geographical area and D.O.I. approval) Also see 360 N.L.R.B. No. 1 (2013) National Labor Relations Board report (acknowledging Chickasaw Nation and Constitution) Their Constitution and community are a result of Congressional law and the continued recognition of past treaties. Section 3, Oklahoma Indian Welfare Act 25 U.S.C §503

Therefore, since the land where Oklahoma claimed Mr. Brumit , an "Indian," committed the crime is Indian country, under § 1151(a), Oklahoma did not possesses the necessary jurisdiction, under §1153 or other statute, to convict or impose sentence on him.

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INDIAN COUNTRY OPPORTUNITY IGNORED

> "Congress has the power to change the division of jurisdiction among the Federal, Tribal and State governments. On many occasions it has passed statutes affecting jurisdiction over specific tribes or even over all tribes within a given State." American Indian Law In A Nutshell, 6th Ed. Senior Judge William C. Canby, Jr. pg. 265 (2015)

The State of Oklaoma has assumed jurisdiction of everything within its boundaries despite the fact that no Federal statute, to date, has given Oklahoma authority over Major Crimes in Indian Country.

> "[s]everal States have asserted civil and criminal jurisdiction in Indian country...despite the fact that no Federal statute of relinquishment and transfer had been enacted[,] [including Michigan, Oklahoma, North Carolina, and Florida] Jurisdiction has also been asserted [sic] by certain counties in such States as Washington, Nevada, and Idaho....Officials of both Oklahoma and North Carolina have contended in letters to this Department that they have criminal jurisdiction over Indians of their State irrespective the fact they do not have jurisdiction under a specific Federal statute. Carpenter v. Murphy Supplemental Brief for Respondent

Congress has given Oklahoma opportunity to take criminal jurisdiction over Indians in Indian country through the federal statute known as Public Law 280, 67 Stat. 588, as amended by the Indian Civil Rights Act of 1968, 82 stat. 77, but the State has failed to perform the necessary modifications and proper agreements required. In fact, during the P.L. 280 deliberations, Congress identified Oklahoma as one of eight States that would need to amend the "express disclaimer [ ] of jurisdiction over Indian lands in its Constitution before obtaining criminal authority over Indian country in Oklahoma. S. Rep. No. 83-699 at 7 (1953) Also see McClanahan v. Arizona State Tax Comm'n 411 U.S. 164 (1973)

> "[T]o date, the State of Oklahoma has made no attempt to repeal Article 1§3 of the Constitution of the estate of Oklahoma, which prohibits State jurisdiction over Indian country, so Federal Government still have exclusive jurisdiction over Indian country within Oklahoma boundaries." State v. Littlechief 573 P.2d 263 (Okla. Cir., 1978)

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Oklahoma has failed to do what the Federal Government has required, and, consequently does not exercise jurisdiction over Indian country pursuant to P.L.280. 1973) note[3] See Okla. Tax Comm'n v. Sac and Fox Nation 508 U.S. 114,125 (1993) (citing, "the State's 1953 position that Public Law280 was unnecessary for Oklahoma...[has] been rejected by both Federal and State courts." Id. Citing 10th Cir. and Oklahoma cases.) Also see, State v. Burnett 671 P.2d 1165 (1983); Cravat v. State 825 P.2d 277 (Okla. Crim. App. 1992) and Indian Country U.S.A. Inc. 829 F.2d 967n.6 (all detailing Oklahoma failed to utilize P.L. 280 and the Federal Government

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Note[3] In 1905, as the date of Oklahoma's statehood approached, delegates from the Five Civilized Tribes joined to form a Constitution for an Indian controlled American State called Sequoyah. The State of Sequoyah, introduced by James Norman, was a widely popular alternative to combining the Indian and Oklahoma Territories, but it was rejected by Congress. (See "And Still the Water Runs" by Angie Debo p. 162-64) However, Congress included many of the Sequoyah delegates to participate in the new State Convention to form the Oklahoma Enabling Act and Oklahoma Constitution. (See *McGirt* p.20 Robert's dissent) Therefore, it should be no surprise that both documents provided the dignity of reaffirming Congress's Treaty promises to the "Indians." Within the law, Congress agreed and enacted an outcome better than those proposed by the Sequoyah Convention by increasing the geographical area to the boundaries of the new State. By law Congress created a State where any land owned or possessed individually or communally by Indian(s) would operate outside of Oklahoma control. Congress achieved this with the Oklahoma Enabling Act §3:

> "[T]hird. That the people inhabiting said proposed 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 land shall have been extinguished by the United States." Okla. Enabling Act §3, emphasis added)

The Oklahoma Enabling Act is a contract by which the State of Oklahoma agreed to certain things in order to belong and become a part of the United States. It is Oklahoma's burden to fulfill the constraints or be guilty of a breach of contract. The State of Oklahoma agreed to the terms in §3 and enacted the same language in their Constitution. Okla. Const. Art 1 §3

Congress was well aware of how to spell and use the term "allotments," however, they chose to honor all lands owned or **held** by Indian(s) throughout Oklahoma within or outside of reservations or allotments. Congress was well aware that the Indians would eventually sell and move from their allotments and it recognized that wherever Indians held land, those Indians would still need the protection of the U.S. government from State abuses. It could be argued that the entire State is an Indian reservation. See Oklahoma Tax Comm'n v. Citizen Band Potowatomi Tribe of Oklahoma 111 S.Ct. 905 (1991) (indicating Indian country is broad and far reaching)

However, even if this were not so, the main issue is not as much as to the extent of these laws throughout the State since it would not prohibit the Major Crimes Act within the reservations of the Five Civilized Tribes contained in this post-conviction. Whatever the case, the area to which Oklahoma alleges the crimes occurred would still be Indian country and Mr. Brumit would still fall outside the jurisdiction of the Oklahoma and it would not interfere with the Tribe's current interpretation of their reservation boundaries.

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still retains authority.) Furthermore, Congress has codified and listed those states it recognizes as having civil and criminal jurisdiction over Indian country and Oklahoma is not listed. See 28 U.S.C. §1360 and 18 U.S.C §1162

Petitioner acknowledges that the State of Oklahoma has presumed over criminal cases unobservant of 18 U.S.C. §1153, with minimal opposition, since statehood (113 years). Nevertheless, the state has acted illegally and no amount of time can make it legitimate. See McGirt (2020) p. 1 The Supreme Court has explained that even when a State's exercise of jurisdiction goes unquestioned, lands retain their Indian country status and Federal protection until Congress decides otherwise. See U.S. v. John 437 U.S. 634 (1978); Indian Country U.S.A. Inc. 829 F.2d 974 (1987) (reinforcing failures to challenge Oklahoma over jurisdiction in Indian country does not divest Federal exclusive authority or Congressional intent.) Also see, Nebraska v. Parker 136 S.Ct. 1072 (2016) (Indian reservation was decided to be under Federal protection despite almost nonexistent tribe and no Federal assertion for 120 years)

CONCLUSION

Before the Supreme Court decided "McGirt" this year, the State of Oklahoma had a legacy of convicting and imposing sentences against Indians without a thought as to the MCA. As a result of McGirt, now the Creek Nation's reservation is once again recognized and major crimes by or against Indian(s) will no longer be prosecuted by the State of Oklahoma. Similarly, Petitioner comes now before this court with the claim that in one or more ways the MCA is applicable to the Choctaw and Chickasaw Nations Reservations and Case No. CF-2006-115. See McGirt v. State 2020WL3848063

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Petitioner alleges the State of Oklahoma failed to apply clearly established Federal Law and was without subject matter jurisdiction to convict and execute sentence against Mr. Brumit. Petitioner alleges the error of the State infringed on Mr. Brumit's 6th and 14th Amendment rights when they violated State and Federal Laws. This Post-Conviction Application was filed under Title 22 §1080 which grants access to the courts and gives this court the authority to provide remedy. Subject matter jurisdictional issues, such as have been presented, can never be waived or forfeited and should be reviewed *de novo.* Alleged Indian Treaty violations, gives Petitioner an independent right of action where Federal Law trumps State laws. Petitioner has introduced One (1) Proposition and it is tied to the MCA. The MCA says certain crimes committed by or against an Indian(s) within Indian country are Federal, exclusive of State. Petitioner has shown this court that the crime to which he was convicted and is now serving sentence is indexed within §1153. Petitioner has proven Mr. Brumit is an Indian. He is a citizen of the federally recognized Choctaw Nation of Oklahoma. Petitioner concurs "that in no other State has there been more confusion over who has jurisdiction in Indian country than the State of Oklahoma." Richardson 762 F.Supp. 1463 (N.D. Okla. 1991) Therefore, this proposition considers the employment of Indian country 18 U.S.C. §1151. "Indian country" as Congress comprehends it includes formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States. Petitioner believes that one or more of the definitions of Indian country in §1151 are applicable to the land where Oklahoma claimed the crimes had occurred. Petitioner claims Oklahoma has never had jurisdiction in Indian country and has forsaken given means to gain that authority. Therefore, because Case Number CF-2006-115 should be considered null and void as a matter of Law under the MCA, in the interest of

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justice and Judicial Economy, Mr. Brumit requests the court vacate said sentence as *void ab initio*, and order release and void of conditions of sentence.

Signature_____

J.H.C.C. P.O. BOX 548

16161 MOFFAT ROAD

LEXINGTON, OKLAHOMA 73051-0548

CERTIFICATE OF MAILING

I,_____, verify, certify, declare that the foregoing Brief in Support, was placed in the outgoing institutional legal mail system on the _____ day of _____,2020 Postage prepaid, addressed to:

_____

_____

_____

Signature _____

Mr. Daniel Del Brumit

J.H.C.C. Unit B-1-115

P.O. Box 548, 16161 Moffat Road

Lexington, Oklahoma 73051-0548

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IN THE DISTRICT COURT OF GRADY COUNTY

STATE OF OKLAHOMA

THE STATE OF OKLAHOMA Prosecutor	]]	
Vs.	]	Case No. **CF-2006-115**
DANIEL DEL BRUMIT Defendant	]]	

DEFENDANT'S TRAVERSE TO CHIEF JUDGE'S ABEYANCE OF SUMMARY DISPOSITION UNTIL AFTER BOSSE

Comes now, Daniel Brumit, acting as *pro se* petitioner until such time as when the Court appoints counsel, traverses the abeyance by Chief Judge Kory S. Kirkland of Case No. CF-2006-115 based on misinformation of facts and erroneous use of law. Mr. Brumit is acting as *pro se* petitioner, with no training in matters of law and moves this court liberally construe his traverse against Chief Judge Kory S. Kirkland.

HOW THIS CAME TO BE

On July 20th, 2021, Chief Judge Kory S. Kirkland declared a stay on Case No. CF-2006-115 until September 28th, 2021 because the Chief Judge opined that he could not decide the case at hand until the Supreme Court ruled on "Bosse." The defendant, pro se, Mr. Brumit advised the Chief Judge he was not a co-defendant to Bosse. He also advised he was not filing a direct appeal, but a collateral attack based on the principles set in "McGirt" where the Supreme Court ruled, "Oklahoma has put aside whatever procedural defenses it might have," and any argument by Oklahoma was waived or exhausted. Defendant stumbled in his speech and tried to say, Collateral estoppel and res judicata

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must be applied against the State." Chief Judge Kirkland said he was aware, but that there was a part discussed in McGirt where Bosse may have application to whether procedural bars are applicable to Post Convictions.

DEFENDANT WILL QUALIFY HIS ALLEGATIONS BY SHOWING THE COURT THE FOLLOWING:

1.} Common law prevails, when the procedure, practice, or pleading in the courts of record of the state, in criminal actions or in matters of criminal nature, are not specifically provided for in this code, shall be in accordance with the procedure, practice and pleadings of the common law. *Title 22 O.S. 1910, §9*

2.} Therefore, this instant Traverse is properly before the Court as a common law pleading used to correct misinformation and erroneous use of law by Chief Judge Kirkland in his application of "Bosse" for the purposes of abeyance, which if not corrected, adversely affects the petitioner and amounts to a constructively fraudulent adjudication and attacks defendants and the Choctaw and Chickasaw Nations of Oklahoma's protectorate relationship with the United States.

3.} Mr. Brumit is politically immune from previous, present, and future State laws until Congress says otherwise. *Morton v. Mancari 417 U.S. 552-53 & n. 24 (1974) U.S. v. Antelope 430 U.S. 641 (1971) (See Also, Post-Conviction Application and Brief in Support: Mr. Brumit uses the Treaty of Dancing Rabbit Creek as an authority.)*

4.} Bosse is a non-Indian and is not protected by Treaty. Mr. Brumit is a member of the proud Choctaw Nation of Oklahoma and is protected by the Treaty of Dancing Rabbit Creek. Generally, States have authority over non-Indians in Indian Country, unless there is a conflict with federal law. *State ex rel May v. Seneca-Cayuga Tribe of Oklahoma 711 P.2d 77 (1985)* However, States have no authority over Indians in Indian Country unless it is expressly conferred by Congress. *C.A. OKL. 1980*

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Murphy v. Royal (quoting Rice v. Olson 324 U.S. 786,789, (1945) Williams v. Lee 358 U.S. 219,220 (1959)

5.} Ordinarily, an Indian protected by Treaty is not required to seek relief from State courts, but Congressional Acts can abrogate Treaty rights. *Lone Wolf v. Hitchcock 187 U.S. 553 (1903)* In Mr. Brumit's case, 18 U.S.C. § 2254 instructs the State Defendant to exhaust state remedy before addressing the Federal Courts, and Mr. Brumit applies "Lone Wolf" accordingly.

6.} However, §2254 is instruction to the Defendant, but not license for the State Court. No Congressional Act has given Oklahoma that authority, *(1st Principle of McGirt, pg.1)* And any ambiguities in §2254 must be decided most favorably in favor of the Indian defendant. *Hagen v. Utah 510 U.S. 399 (1994) Carpenter v. Shaw 280 U.S. 363 (1930) Winters v. U.S. 207 U.S. 564 (1908)*

7.} Therefore, the Court is still obligated to the Treaty, and, unlike non-Indian Bosse, this court is left with two possibilities: to provide remedy or to exhaust remedy. *"Jurisdiction to determine jurisdiction is not defeated by a subsequent determination that a court does not have subject matter jurisdiction over the issue in controversy." Lundahl v. Halabi 600 Fed Appx 596 (10th Cir. 2014)*

8.} Issues of criminal law application are different for non-Indians verses Indians. Indians have more defenses and rights. Non-Indians may only argue the application of 18 U.S.C. § 1151, 1153; and subject matter jurisdiction can never be waived, i.e. *Wallace v. State 935 P.2d 366 (1997)* But in addition to that, Indians may argue political immunity by Treaty protected by the U.S. Constitution Supremacy Clause, Art. 6 cl. 2.) and argue,"If state court jurisdiction over Indians or activities on Indian lands would interfere with tribal sovereignty and self-government, the state courts are generally divested of jurisdiction as a matter of law. *Iowa Mutual Insurance Co. v. LaPlante 480 U.S. 9,15 (1987)* and argue 25 U.S.C.A. et al. and other Indian law.

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9.} "Each Tribe's Treaty must be considered on their own terms." *McGirt principle, pg. 37* The "[T]reaty of Dancing Rabbit Creek is a part of Supreme law." *U.S. v. State of Mississippi 525 F.2d 300 (5th Cir., 1976)* The "[S]upremacy Clause creates an independent right of action where a party alleges preemption of State law by Federal law." *Lewis v. Alexander 685 F.3d 325 (3rd Cir. 2012)* Defendant, Mr. Daniel Del Brumit, invokes the Treaty of Dancing Rabbit Creek, Sept. 27, 1980, Art 4, 7 Stat. 333-334, which provides in pertinent part: "The Government and the People (including Chief Judge Kirkland) of the United States are hereby obligated to secure to said Nation of Red People...that no territory or state (including Oklahoma) shall EVER (yesterday, today, and tomorrow) have a right to pass laws for the government of the Nation of Red People and their descendants (not merely tribal members at the time or before conviction)...but the United States shall FOREVER secure said Nation from, and against, all such laws (procedural bars, latches, stays, tolling, Post-Conviction Procedures Act) *(Adapted and amplified from Okla. Tax Comm'n v. Chickasaw Nation 132 L.Ed.2d 400 (1995)*

10.} Therefore, where non-Indian Bosse may face, "Supreme Court can limit retroactive application of subject matter ruling;" *U.S. v. Cuch 79 F.3d 987 (10th Cir. 1996)* non-Indian Bosse is unlike Indian Brumit, protected by Indian Treaty who can claim, "retroactive application of substantive rules of federal constitutional rule does not implicate a State's weighty interests in ensuring finality of convictions and sentences that (the Supremacy Clause of) the Constitution deprives the State of power to impose. *Montgomery v. Louisiana 577 U.S. 190 (2016)(in quotes added))*

11.} Therefore, Indian defendant, Mr. Brumit is not similarly situated as non-Indian Bosse because Indians own more defenses and rights, and Bosse cannot be a controlling case for an Indian.

12.} Mr. Brumit is not a co-defendant listed with Bosse. Mr. Brumit's name, nor et al., appear on the Bosse case.

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13.} Chief Justice Kirkland's "boss", the Supreme Court, Did NOT Mandate Mr. Brumit's case be abeyed pending Bosse as Chief Justice implied to other defendants present.

14.} The abeyance does not meet the threshold set by the Supreme Court set in *Nken v. Holder 566 U.S. 418 (2009)* nor *Deerleader v. Crow Case No. 20-CV-0172-JED-CDL (District Court, N.D. OK, 2021)* For example: a. State not likely to succeed on merits in Bosse or set precedent for Indians. b. State, interested parties, and public interests already adjudicated in McGirt pgs. 36-42 c. No further proceedings are afforded to the State by Congress.

15.} In order for an abeyance to be Constitutional, the Chief Judge must show (1) Congressional Act(s) which gives the State authority over Mr. Brumit. (2) The Chief Judge must use a compelling case similarly situated in all aspects.

16.} Other cases do exist since it is well known by both the Chief Judge and the Defendant that multiple rulings have occurred throughout Oklahoma since McGirt involving Indians who have filed collateral attacks based on McGirt, as well as defendants before McGirt involving Indian law, so this Court is withholding justice without bases and is using "abeyance" as a means to deny justice. *Goforth 344 P.2d 144 (1982), Burnett 671 P.2d 1165 (1983), Klindt 782 P.2d 401 (1989), Sands 968 F.2d 1058 (1992) Magnan 719 F.3d 1159 (2013) Murphy (2020)*

17.} This is a collateral attack based on the principles of McGirt; Oklahoma has waived or exhausted all procedural defenses and collateral estoppel and res judicata must be applied before an abeyance can be issued.

18.} Defendant requested Summary Disposition on April 19th, 2021 and is still owed due process and not one fits all, scripted, sham procedure based on unrelated cases such as Bosse or others as such: sham stay pending Housewife v. Supermarket (25th Civ. Cir. 2052)

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19.} This is not a harmless error: It encroaches on the civil rights of the defendant; maintains a conviction and sentence that is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. (Montgomery v. Louisiana 136 S.Ct. 718 (2016); and attempts to abrogate the protectorate relationship of the Federal Government over the Choctaw and Chickasaw Nations of Oklahoma protected by Treaty and the U.S. Constitution. The Chief Judge decisions to stay in Case No. CF-2006-115 are in violation of Constitutional Supremacy Clause.

20.} Defendant surrenders NO rights.

21.} Defendant, as a ward of the United States, cannot surrender Treaty rights which only Congress may abrogate.

22.} Mr. Brumit has a right to file a complaint with the federal courts when a Treaty violation has occurred, may seek damages, and gives notice. *Lewis v. Alexander* The Nations may be notified.

CONCLUSION

WHEREFORE, the defendant asks this court to strike Chief Judge Kory S. Kirkland's abeyance pending "Bosse" and moves that, on the record, he be held to give account to the facts of each of the issues discussed in this traverse, and that he be prevailed to enter into immediate Summary Disposition when he fails.

IT IS SO PRAYED.

Respectfully submitted,

/s/_____
Daniel Brumit #553078
Joseph Harp Correctional Center
P.O. Box 548
Lexington, OK 73051-0548
(Petitioner, pro se)

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Court Clerk, please send copy to the following:

Chief Judge Kory S. Kirkland
District Attorney's Office

CERTIFICATE OF MAILING

This is to certify that on this _____day of July, 2021, a true and correct copy of the above and foregoing was placed in the prison mailbox, postage prepaid to:

Lisa Hannah
Grady County Court Clerk
Post Office Box 605
Chickasha, OK 73023

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IN THE OKLAHOMA COURT OF CRIMINAL APPEALS

STATE OF OKLAHOMA

DANIEL DEL BRUMIT, Defendant,

Vs.

STATE OF OKLAHOMA, Prosecutor.

Case No. CF-2006-115

PC 2021 1303

PETITION IN ERROR

COMES NOW, the Defendant, *pro-se,* Daniel Del Brumit, pursuant to Rule 5.2 of the Rules of the Court of Criminal Appeals and 22 O.S. §1087, and appeals the denial of his Application for Post-Conviction Relief. In support of said appeal Defendant would show the following:

1. The trial court and trial court case number: Grady County District Court, Case No. CF-2006-115.
2. The crime and statute under which you were convicted: Five (5) counts : Lewd or Indecent Proposals or Acts with a Child under 16, Felony 21 O.S. §§ 1123 (A) (1)
3. The date of Judgment and Sentence: January 16, 2007
4. The name and address of the facility in which you are incarcerated: Joseph Harp Correctional Center, P.O. Box 548, Lexington, Oklahoma, 73051-0548
5. The Defendant filed an Application for Post-Conviction relief with the District Court of Grady County in Case No. *CF-2006-115* which was denied on the *21st day of September, 2021.*
6. The Defendant now brings an Appeal pursuant to *Title 22 O.S. §1087,* from the final judgment entered in the District Court. *A certified copy of said denial is attached hereto and made part hereof.*

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7. Defendant has further annexed in his Brief in Support; a copy of his Application for Post-Conviction Relief; and notice of the State's Response; and a certified copy of the Notice of Intent to Appeal. *All of the aforementioned documents are attached hereto and made part hereof.*

WHEREFORE, the Defendant seeks review of the District Court's denial of His Application for Post-Conviction Relief based on an abuse of discretion, and erroneous and invalid conclusion of law, and an unreasonable determination of facts and law in light of the evidence presented and present. The Defendant seeks reversal and remand to the District Court for further instructions and/or an evidentiary hearing for the reasons more specifically set forth in the attached Brief in Support of Petition in Error.

Dated: November 12th, 2021

Signature: Daniel Del Brumit

Printed Name: Daniel Del Brumit

Joseph Harp Correctional Center
P.O. Box 548
Lexington, Oklahoma 73051-0548
(Petitioner, *pro-se*)

CERTIFICATE OF MAILING

This is to certify that on this 12th day of November, 2021, a true and correct copy of the above and foregoing was placed in the prison mailbox, postage prepaid to:

Clerk of the Appellate Courts
Oklahoma Judicial Center
2100 N. Lincoln Blvd., Ste. 4
Oklahoma City, Oklahoma 73105-4907

Signature: Daniel Del Brumit

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3. Information concerning reservation status was not affirmative defense to Defendant at the time of conviction and must be considered unattainable information as described in 22 O.S. §1080 (d)

4. The District Court created a structural error when it wrongfully assumed jurisdiction in opposition to preemption doctrine.

5. The District Court applies defenses against the Defendant that are Res Judicata on collateral review for State.

6. The District Court applies defenses which are analytically contradictive and are individually defeated by well-established State and Federal precedent.

IN THE COURT OF CRIMINAL APPEALS

STATE OF OKLAHOMA

THE STATE OF OKLAHOMA, **Prosecutor,**	]	
v.	]	**Case No. CF-2006-115**
DANIEL DEL BRUMIT, **Defendant.**	]	

BRIEF IN SUPPORT OF PETITION IN ERROR

¶1 COMES NOW, Daniel Brumit, Defendant *pro-se* filing appeal, from the Grady County District Court to this Honorable Court, seeking review of the denial of his Application for Post-Conviction relief based on abuse of discretion, erroneous and invalid use of law, and unreasonable determination of facts and law in light of evidence presented and present. The Defendant is *pro*-se and moves this Court liberally construes his Appeal. The Defendant seeks reversal and remand to the District Court for further instruction and/or evidentiary hearing for the reasons henceforth.

PROCEDURAL HISTORY

¶2 In 2006, Mr. Brumit was convicted and sentenced by Oklahoma for five (5) counts of Lewd or Indecent Proposals or Acts to a Child under 16, Felony 21 O.S. §§ 1123(A)(1). In February, 2021, Defendant's Post Conviction Application (PCA) and Brief in Support (BIS) were docketed with the Trial Court and, in May 2021, a Motion for Summary Disposition was also filed. In July, 2021, Defendant appeared for an Indian Country Jurisdictional Docket to determine evidence of Indian status and to set the case in abeyance until Sept. 28th, 2021 and pending "Bosse" awaiting certiorari in the Supreme Court (SCOTUS). *Bosse v. State 2021 OK CR 3*

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(removed from SCOTUS docket) Defendant promptly filed a Traverse to the Trial Court to address Defendant's rights and Court error, but the Traverse was never answered. The State Prosecutor has faithfully never filed any opposition, and is time-barred otherwise. *22 O.S. §1083*

The Defendant filed one (1) Proposition on his PCA:

> Proposition One: Oklahoma did not possess jurisdiction to invoke Oklahoma law toward convicting and executing sentence on Mr. Brumit for Major Crimes which occurred within the boundaries of the Indian Reservation(s) of the Choctaw and Chickasaw Nations.

On September 21, 2021 Chief Judge Kirkland denied Defendant's PCA in short due to:

1. The Oklahoma Court has jurisdiction
2. Issues not raised on direct appeal are waived
3. McGirt is not retroactive

Defendant now brings Appeal, pursuant to *Title 22 O.S. §1087*, from final judgment entered in the District Court of Grady County. (final judgment attached)

INTRODUCTION

¶3 The Defendant stands by his claim given within his *pro-se* PCA and BIS. The Defendant was politically immune from *21 O.S. §§1123(A)(1)* at the time of conviction. Defendant claims the State did not have subject matter jurisdiction over his case. The Defendant claims that systematic "docta ignorantia" (learned of educated ignorance) of his political immunity was obscurred from all parties involved. Defendant is a member of the proud Choctaw Nation of Oklahoma and is continuously and substantively protected from Oklahoma law in Indian Country by Const. Art VI, cl 2; Treaty of Dancing Rabbit Creek, Sept. 27, 1830, Stat. 333-334; 18 U.S.C. §§ 1151,

1153 (hereafter §1151, MCA or §1153); and Okla. Const. Art. 1 §3. Defendant claims subject matter jurisdiction, because it involves court's power to hear a case, can never be forfieted or waived, can be raised on collateral appeal, and is reviewed *de novo.* *Arbaugh v. Y & H Corp. 126 S.Ct. 1235 (2006), Wallace v. State 935 P.2d 366, 372 (1997) Johnson v. State 611 P.2d 113, 1145 (1980) Magnan v. Trammell 719 F.3d 1159 (10th Cir. 2017) Bosse v. State 2021 CR3 (OCCA, 2021)* Defendant claims his conviction and sentence is invalid by one or more of the conditions as dictated by *22 O.S. §§1080 (a) through (f)* Nothing within this appeal should be construed otherwise.

¶4 When *Murphy v. Royal 875 F.3d 986 (10th Cir. 2017)* was still unanswered, Defendant and others discussed whether Indian inmates should file their appeals with the State or Federal Courts. Note 1 Ordinarily, in Indian country, an Indian protected by Treaty is not required to seek relief from the State courts, but Congressional Acts can abrogate or amend Treaties. *Lone Wolf v. Hitchcock 187 U.S. 553 (1903)* In Mr. Brumit's case, 18 U.S.C.A. §2254 instructs the State Defendant to exhaust State remedy before addressing federal courts, and Mr. Brumit applied *Lone Wolf* accordingly. However, *§2254* is instruction to the Defendant and does not grant license for the State courts over Indians. No Congressional Act has ever given Oklahoma that authority. *McGirt v. Oklahoma 140 S.CT. 2452, 2478 (2020)* [n]or has Congress ever passed a law conferring jurisdiction on Oklahoma. As a result, the MCA applies to Oklahoma according to its usual terms." And any ambiguity in §2254 must be decided most favorably to the Indian

Note 1 Defendant, *pro-se,* admits precautionary filing of PCA and BIS in light of *Lone Wolf,* but is aware of conflicting dicta in *Magnan v. Trammell 719 F.3d 1159,1178 (10th Cir.,2013)* "[C]ertainly the comity considerations that animated AEDPA does not apply to prosecutions that usurped exclusive federal jurisdiction." Defendant takes the approach Congress envisioned Honorable Courts were fully capable of vacating cases *void ab initio* due to *ultra visres* over Indian affairs, and yet Oklahoma Courts have proven Congress a fool.

Defendant. *Carpenter v. Shaw 280 U.S. 363 (1930 Winters v. U.S. 207 U.S. 564 (1908)* Therefore, the Defendant's appeal to the State is proper, but the District Courts ruling is "repugnant to the Constitution, laws, and treaties of the United States." *Worcester v. Georgia 31 U.S. (6 Pet) 515,539 (1832)* "The policy of leaving Indians free from state jurisdiction and control is deeply rooted in this Nation's history." *McGirt p. 2488 (quoting Rice v. Olson 324 U.S. 786, 789 (1945)*

¶5 The Defendant proceeds on the claims the District Court created multiple errors in conflict with well established law which resulted in denial of relief to Mr. Brumit's PCA:

1. The District Court failed to apply a liberal standard to Defendant's *pro-se* PCA and BIS. ¶6

2. The District Court provided a most liberal standard to Prosecutor by acting for, or what might be deemed [] as the Prosecutor. ¶7

3. Information concerning reservation status was not affirmative defense to Defendant at the time of conviction and must be considered unattainable information as described in *22 O.S. §1080 (d)* ¶¶ 8-10

4. The District Court created a structural error when it wrongfully assumed jurisdiction in opposition to preemption doctrine. ¶¶ 11-18

5. The District Court applies defenses against the Defendant that are Res Judicata on collateral review for the State. ¶¶ 19-22

6. The District Court applies defenses which are analytically contradictive, and are individually defeated by well established State and Federal precedent.¶¶ 23-25

LIBERALLY CONSTRUED

¶6 Within Mr. Brumit's PCA and BIS, the Defendant *pro-se* illustrates in great detail legal concepts which illumenate the Proposition that Oklahoma lacked jurisdiction over his case. The Defendant has no training in matters of law and, therefore, does not use legal terms such as Preemption Doctrine, Substantive law, Plain error, Structural error, Due Process Clause, or Ultra Vires. However, it is clear that these standards are the reviewing authorities described in the Defendant's post conviction, even if the Defendant does not use them correctly or use them by name. *Hall v. Bellman 935 F.2d 1106, 1110 (10th Cir. 1991) citing Haines v. Kerner supra.* There is nothing within the Chief Judge's denial that would suggest a comprehensive liberal examination and application of the Defendant's PCA and BIS demanded be applied to the Defendant.

¶7 The Chief Judge instead applies law for, and what may be construed [] as the Prosecutor.

> "Due Process is offended when the judicial institution functions as both as organ of enforcement and adjudication, since concentrating power of judge and prosecutor in same person or body poses unreasonable high risk of compromising protected and cherished value of judicial detachment and neutrality." *Tweedy v. Okla. Bar Association. Okla 624 P.2d 1049 (1981)*

The Government consists of three branches: Legislative, Executive, and Judicial. A judge cannot do the job of Judge and Prosecutor. It is a conflict of interest and unconstitutional. *U.S. Const. Art. III, Okla Const. Art. IV §1* The Prosecutor filed nothing in opposition to the Defendant's PCA and the District Court was aware the Prosecutor was time barred otherwise. *22 O.S. §1083* If a defense was available, the Prosecutor was given ample time to present that defense. Nonetheless, the Chief Judge exceeded his authority and introduced elements and proceeded to deny relief based on those introductions. This a violation of the Defendant's 14 Amendment right because those elements were never introduced until the time of denial and Defendant was

not given his right to redress those grievances. Therefore, it is clear the Judge did not intend to grant relief to the Defendant, but to present an argument to this OCCA where the Defendant would bear the responsibility to defend his Just Cause. This denial and other harmless errors cumulatively add up to the standard of Plain Error and prove bias by the Court against the Defendant. *Black v. Workman 682 F.3d 880 (10th Cir. 2012)* Note 2

DOCTA IGNORANTIA

¶8 Defendant's claim of subject matter jurisdiction was unavailable at the time of Defendant's direct appeal. *See ¶22 Bosse v. State 2021 OK CR 3* As the Defendant claimed from the start, "docta ignorantia" (learned or educated ignorance) prevailed over all partied involved. Defendant, a Moore High School alumni, was compulsively indoctrinated by State educators that the reservations were things of the past. Defendant does not claim ineffective assistance, as others, because he does not believe he can satisfy Strickland's "reasonable" stipulation.

Note 2 Defendant filed a Motion for Summary Judgment in May but was delayed until July when the Chief Judge illegally set the Defendant case in abeyance pending *"Bosse."* *See State v. Harris 560 P.2d 991 (OCCA, 1997) discussing Rule 3.15* Defendant filed other motions, most importantly a Traverse, which were ignored by the Judge. The Judge did not answer the Defendant's Traverse because to do so would render his denial frivilous. When "Bosse" was finalized, the Judge denied the Defendant's PCA using the three explanations in this Brief. However, the Judge's denial is in direct opposition to *"Bosse,"(OCCA, 2021)* and his decision did not occur until after State v. Wallace (2021) So it is obvious there was bias and the Judge was waiting for "something or anything" that might allow him to deny the Defendant justice through relief. What is more, the Defendant is aware the Judge's denial is nothing more than a form letter with specifics added without regard to the issues brought forth in each PCA and BIS. *See Okla. v. Scott CF-01-375 (Grady Co.) and compare to each Defendant's PCA and BIS* The Chief Judge abused his discretion, and as a result of what is obvious bias, Defendant questions if the Judge should be over any future PCAs. *Mitchell v. State 136 P.3d 671 (OCCA, 2006)*

Strickland v. Washington 104 S.Ct. 2052 (1984) At the time of Direct Appeal, it was not reasonable to use *18 U.S.C.A. §1151(a)* as an affirmative defense in Oklahoma courts. *See U.S. v. Murphy 2021WL646775 (USDC E. Okla. 2021)*

> "[U]ntil 2017, no court believed the Oklahoma courts were unable to prosecute individuals like (Murphy) and only in July 2020 did the Supreme Court declare that Oklahoma lacked jurisdiction to charge (Murphy)."

Even though it is an element of a crime in Indian country, the officers who arrested Mr. Brumit were unaware they should investigate Indian Status. *U.S. v. Patch 141 F.3d 131 (9th Cir. 1997) State v. Cruz 554 F.3d 840 (9th Cir., 2009)* Grady County jail failed to investigate Mr. Brumit's Indian-citizenship. *OK Title 22 §§171.2* It was not the Defendant's duty to prove the state did not have jurisdiction; it was the job of the Prosecutor to prove it and the independent duty of the court to insure it.

¶9 However, in regard to the reservation question, the gravest of "docta ignorantia" that affected Defendant's Trial and Direct Appeal was from this Honorable OCCA. In Murphy v. Royal, the 10th Circuit noted the OCCA's refusal to apply *Solem v. Bartlett 465 U.S. 463 (1984)*

> "We do not read the OCCA's final sentence '(If the federal court's remain undecided on this particular issue, we refuse to step in and make a finding here)' as a refusal to decide the reservation question at all but rather as a refusal to decide in Mr. Murphy's favor." *Murphy v. Royal 875 F.3d 896,945,913 (10th Cir. 2017)*

To be blunt, the doctra ignorantia was a direct result of this OCCA's abuse of discretion in 2004 and every PCA and BIS involving Major Crimes in Indian country is the direct result of the perpetuation of ignorance by this Court. "Court has independent obligation to determine whether subject matter jurisdiction exists, even in absense of challenge from any party." *Arbough v. Y &*

H Corp. 126 S.Ct. 42 (2005) Whether by the Prosecutor or the Court, it should not matter who obscures evidence; it should only matter that due process was not afforded to the Defendant as a result. On *de novo* review the District court should have recognized Defendant's procedural history would have been of federal nature and not of state nature, had this OCCA done its duty in 2004. It is for this reason Defendant bolded *22 O.S. §1080 (d)* in his BIS, but there is no evidence within District court's denial *§1080-(d)* was applied.

¶10 In *State v.Wallace (2021)* the OCCA ignores the accusations in *Murphy v. Royal* and declares ignorance of the existence of reservations as does the U.S.D.C. in *U.S. v. Murphy (2021)* However, ignorance is a hard sell. In *Sizemore v. State 485 P.3d 867 (OCCA, 2021)* the OCCA acknowledges, "[N]othing we have said thus far is in any way new, as these federal statutes asserting federal jurisdiction in Indian country are more than one hundred years old." Likewise, Oklahoma was a party in *Indian Country U.S.A., inc. v. Okla. Tax Comm'n 829 F.2d 969 (10th Cir. 1983); Okla. Tax Comm'n v. Chickasaw Nation 132 L.Ed.2d 400 (1995) Choctaw Nation v. Oklahoma 397 U.S. 620 (1970)* and was aware of *Solem v. Bartlett 465 U.S. 463, 470 (1984)* which established the existence of reservation, reservation boundaries, treaty rights, and the test to determine the limits of each. Then SCOTUS points this is not the first time Oklahoma has misapplied criminal law in Indian country. *McGirt p. 2470, 2472 Also see State v. Klindt 782 P.2d 401, 404 (OCCA, 1989); U.S. v. Sands 968 F.2d 1058, 1062,63; State v. Burnett 671 P.2d 1165 (OCCA, 1983) Cravatt v. State 825 P.2d 205(OCCA, 1992); State v. Littlechief 573 P.2d 263 (OCCA, 1978); Ex Parte Wallace 162 P.2d 205(OCCA, 1945); Magnan v. Trammell 719F.3d 1159 (10th Cir. 2013)* Even more to the contrary of ignorance, SCOTUS points out, "the state of Oklahoma has afforded full faith and credit to (tribal jurisdiction as defined by 1866 Treaty) since at least 1994." *McGirt 2467* Therefore, should a jury be employed, scandalous

diregard or derelection of duty could be better suited than the latin term "*docta ignorantia*" If ignorance of the law is no excuse, the Court is far more guilty than the Defendant. Those laws applicable to the favor of Defendant's case were in place at the time of his conviction, but were obstructed from use by this Honorable Court.

PREEMPTION DOCTRINE

¶11 The District Court failed to apply Preemption Analysis or, if it did, it did so incorrectly. Preemption analysis and Federal Indian Law go hand in hand and are deeply rooted in our Country's history. *See Worcester v. Georgia 31 U.S. (6 Pet.) 515,556 (1832)* and even though the analysis has changed over time, *See McClanahan v. Arizona Tax Comm'n 411 U.S. 164, 172 (1973)* the failure to apply or correctly apply preemption analysis is a structural error and affects Constitutional rights plenary to Congressional control.

¶12 SCOTUS made it clear, "serious crimes by Indians in Indian country were matters that arose under the MCA and thus belonged in federal court from day one, wherever, they arose in the new state. *McGirt p. 2477* and any perception that *21 O.S. §§ et al.* was valid law for the Defendant at the time of conviction is:

> "of little value because the Supreme Court has explained when a state's exercise of jurisdiction goes unquestioned, lands retain their Indian country status until Congress decides otherwise. In *U.S. v. John 437 U.S. 634 (1978)*, the Supreme Court rejected an argument by the State of Mississippi that the federal government's failure to assert jurisdiction had made the State's exercise of jurisdiction proper." *Murphy v. Royal 875 F.3d 896, 1022 (10th Cir., 2017) affirmed 140 S.Ct. 2412 (2020)*

Again this same concept is in McGirt,

"Unlawful acts, preformed long enough and with sufficient vigor, are not enough to amend the law. To hold otherwise would be to elevate the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right." *McGirt p. 2497*

¶13 Defendant amply supplied evidence to these facts within his PCA and BIS. The Choctaw 1830 Treaty, 18 U.S.C.A. §§ 1151, 1153, U.S. Const. Art. VI cl. 2, Oklahoma Const. Art. 1§3, and those laws Public law 280 as amended by the Indian Civil Rights Act (67 Stat. 588,590, 1953)(25 U.S.C.A. §§1321(a) 1322(a), 1326) were in full force at the time of Defendant's conviction and sentencing. *See State v. Bosse 2021 OK CR 3* They were the controlling laws that should have been employed towards the Defendant's PCA.

" The Constitution of the United States declares a treaty to be Supreme law of the land, of consequence, its obligations on the Courts of the United States must be admitted... Where a treaty is the law of the land and as such affects the rights of parties litigating in courts, the treaty, as such binds those rights, and is as much to be regarded by the courts as an act of Congress. *U.S. v. Schooner Peggy 1 Cranch 103 (1801)*

"A Treaty is Supreme law of the land and even State law must yield when it is inconsistent with or impairs policy or provisions of a treaty." *Oregon Pacific Forest Product Co. v. Welsh Panel Co. 248 F.Supp. 903 (USDC D Oregon, 1965)*

¶14 The State of Oklahoma was preempted by the Choctaw 1830 Treaty and U.S. Const. Art. VI cl. 2 The "Treaty of Dancing Rabbit Creek is a part of Supreme law." *U.S. v. Mississippi 525 F.2d 300 (5th Cir. 1976)* Unlike federal courts, state courts exercise inherent and general adjudicatory jurisdiction, "subject only to limitations imposed by the Supremacy clause" and their own laws. *Tafflin v. Levitt 493 U.S. 455, 458,59 (1990)* and each tribe's treaty must be considered on their own terms. *McGirt p.2479* Upon this Court, Daniel Del Brumit introduces

and invokes the *Treaty of Dancing Rabbit Creek, Sept. 27, 1830, Art. 4, Stat. 333-334* which provides and demands in pertinent part:

> "The Government and the People (including each sworn Judge of this Court) of the United States are hereby obligated to secure to said Nation of Red People...that no territory or state (ergo, Oklahoma) shall ever (yesterday, today, tomorrow, retroactively, and proceedingly) have the right to pass laws for the government of the Nation of Red People and their descendants (including Brumit)...but the United States shall forever (except by Congressional Act) secure said Nation from, and against, all such laws. (i.e. Felony 21 O.S. § et al., common and statutory alike) *Okla. Tax Comm'n v. Chickasaw Nation 132 L.Ed.2d 400 (1995) adapted and amplified in parenthesis*

¶15 The State was preempted by 18 U.S.C. §1153. At times it may be necessary for Congress to abrogate a treaty. *Lone Wolf p.564,65* However, Scotus tells us,

> "When Congress adopted the MCA, it broke many treaty promises that had once allowed tribes...to try their own members. But in return, Congress allowed only the federal government, not the States, to try tribal members for major crimes. All our decision does today is vindicate that **replacement** promise." *McGirt p.2493,94*

The *MCA* grants a special status for Indians which gives exclusive jurisdiction of Indians to the federal government. A neighboring statute *18 U.S.C. §1152* includes language which provides jurisdiction over all persons, but the MCA is limited by the status of the Indians involved. This status, like those in treaty, have the same substantive substance as the 6th Amendment right to counsel and/or emancipation protected by the 13th Amendment. These rights are so basic that the denial of such is, "an error that infects the entire criminal trial mechanism and a right so basic it defies harmless error analysis." *Ferrill v. State 902 P.2d 113 (OCCA, 1995)*

¶17 The State is preempted by *Oklahoma Const. Art. 1 §3* and *Public law 280* as amended by the *Indian Civil Rights Act of 1968*. Defendant's BIS and SCOTUS has explained that Oklahoma has

not, "complied with the requirements to assume jurisdiction...Nor has Congress ever passed a law conferring jurisdiction to Oklahoma." *McGirt p. 2491, See State v. Littlechief 573 P.2d 263 (OCCA, 1978)* This Court should make no mistake: in 1968, *P.L. 280* was amended by the *Indian Civil Rights Act* so that NO state could assume jurisdiction without a vote of tribal members in favor of state jurisdiction. Presumption of jurisdiction at the time of conviction is not valid Assumption of jurisdiction. 25 U.S.C.A. §§1321(a),1322(a),1326 *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering 476 U.S. 877 (1986)*

> "[C]ongress specifically considered issues of retrocession but did not provide disclaimers of jurisdiction lawfully acquired other than under federal statute; thus State of North Dakota's disclaimer of jurisdiction...was preempted by federal statute.

¶18 Therefore, had proper preemption doctrine been preformed, the District court would have discovered the State was preempted by layers of protection of federal and state laws. It would have illumenated it did not have jurisdiction and the conviction and sentencing of the Defendant was *void ab initio* and that the continuance of the Defendant's incarceration in State custody is a violation of his *5th Amendment Rights* and demanded automatic reversal due to structural error. *Greer v. U.S. 141 S.Ct. 2090 (2021) and U.S. v. Gary 954 F.3d 194,204 (4th Cir. 2020)*

> "A conviction or sentence imposed in violation of substantive rule of constitutional law is not only erroneous but contrary to law, and, as a result, void, and it follows, as a general principle, that a court has no authority to leave in place a conviction or sentence that becomes final before a rule was announced." *Montgomery v. Louisiana 136 S.Ct. 718 (2016) see also Montgomery's ruling concerning finality concerns*

RES JUDICATA

¶19 The Prosecutor's absense of opposition to Defendant's PCA was proper. *OK ST RPC rule 3.8(a)* Defendant's PCA could easily be decided as a direct attack, but is a collateral attack based

on the principles of *McGirt*. SCOTUS illumenated, "But seeking to defend the state's judgment below, Oklahoma has put aside whatever procedural defenses it might have and asked us to..." *McGirt p.2460* and any and all defenses against *McGirt* were exhausted or waived to *McGirt's* benefit and for all collateral attacks forthcoming. The State was not acquience that collateral attacks, "might be used by other tribes to vindicate similar treaty promises" and might, "unsettle an untold number of convictions" so there is no excuse for the Prosecutor to present procedural defenses against the Defendant's PCA because such defenses are collaterally RES JUDICATA. Accordingly, the procedural defenses which the District Court applied in denial to Defendant's PCA are invalid because the Prosecutor did not and could not present those issues, and the Judge had no right of law to submit or entertain them. Unbeknownst to the lower court, Res Judicata works both ways. *See Collins v. Youngblood 497 U.S. 37 (1990) (defenses waived are not available to State on collateral attack)*

"[S]ince Texas has chosen not to rely on Teague, the merits of the respondent's claim will be considered...Eleventh Amendment defenses need not be raised and decided by the Court on its own motion."

¶20 The Defendant also attacks *State v. Wallace* on the same premise of Res Judicata. *State v. Wallace 21 OK CR 21(used in denial)* Not only for issues brought up in *McGirt*, but also when SCOTUS decided *McGirt* they also collaterally decided *Murphy v. Royal* which invalidates the presumption of new law.

> "a case does not announce a new rule under Teague when it is merely an application of principles that governed a prior decision to a different set of facts.' *Chaidez v. U.S. 133 S.Ct. 1103,1107(2013)*(bracketed and quotations omitted) '[A] rule of general application' that is 'a rule designed for the specific purpose of evaluating a myriad of

factual contexts,' will only 'infrequent[ly]...yield [] a result so novel that it will forge a new rule, not dictated by precedent' Id. (quotations omitted) When a court 'app[ies] a general standard to the kind of factual circumstances it was meant to address [the resulting decision] will rarely state a new rule for the Teague purposes." *Id.*; see also *id* at 1107-08 *Murphy v. Royal 875 F.3d 896 n.36 (10th Cir., 2017) affirmed Sharp v. Murphy 140 S.Ct. 2412 (2020)*

¶21 The OCCA declared *McGirt* to be a new rule from SCOTUS, but fails to assert what that new rule is. Instead explains things have changed and that makes it new. That is because the OCCA knows it is not relying on the *McGirt* ruling, but the dissent. In *Sizemore v. State 485 P.3d 867 (2021)* the OCCA states, "What has recently changed is the definition of Indian country within the borders of Oklahoma, for the purposes of these statutes." However, those statute's definitions are the same in Oklahoma as it is in any other State so the only thing that changed was Oklahoma's disobedience to those laws. SCOTUS made it clear, "All our decision today does is vindicate that replacement promise." *McGirt p.2480* Vindication implies a set standard, not a new rule, that justifies those in the right and demands repentance from the wrongdoer. The whole new law theory is offensive to repentance because it is the wrongdoer living in denial and shifting blame. This is not a good standard for any court.

¶22 The District Court should have realized the application of Res Judicata to collateral attacks and should have voided and vacated Defendant's PCA for lack of evidence. *U.S. v. Olano 507 U.S. 725,732 (1993)*

ANALYTICAL CONTRADICTION

¶23 The District Court's denial is contradictive. On the one hand, "all issues that could have been raised on direct appeal, but were not raised on direct appeal are waived..."*22 O.S. 1080* On the other hand the court applies Oklahoma v. Wallace which employs the standard of subject

matter jurisdiction is never waived. *State v. Wallace 2021 OK CR21, U.S. v. Cuch 79 F.3d 987 (10th Cir. 1996) See also Johnson v. State 611 P.2d 1137, 1145 (1980) Wallace v. State 935 P.2d 366 (1997)* The District court's use of *Wallace (2021)* annuls the idea certain issues are nonwaivable. *See Magnan v. Trammell 719 F.3d 1159 (10th Cir., 2013)* and if the Defendant's issues are waivable, then the Court's use of *Wallace (2021)* becomes *moot ab initio* because it is an application of Ferrill, like that of Teague. *Ferrill v. State 902 P.2d 1113 (OCCA, 1995)* Even if it could be debated both arguments might result in the same denial from the District court, an argument is not a decision; common law based in contradiction can never be the standard. Therefore, the District Court's denial should be ruled invalid with further instruction.

SEPERATELY DEFEATED

¶24 The District Court's application of "issues not previously presented are waived" is easily defeated. The Chief Judge illegally set Defendant's PCA in abeyance pending "*Bosse*"; However, when the request of certiorari to SCOTUS was retracted, the Chief Judge failed to apply the standard set into precedence by this Court in "*Bosse*." *Bosse v. State 21 OK CR 3* The OCCA made clear and settled the fact, "Subject matter jurisdiction can never be waived or forfeited." *Bosse ¶¶21,22* When *Bosse* no longer served the Chief Judge's purpose of denying the Defendant's PCA, he abused his discretion and disregarded it despite previously alleging *Bosse* as being the controlling case over the Defendant's PCA.

¶25 The District Court's application of State v. Wallace (2021) and nonretroactivity is far more complicated yet defeated just the same. Wallace is based on an unreasonable determination of facts and, as such, will fail if any of the following conditions are met.

a.) *McGirt* is not a new procedural rule, but only declares what the law meant from the date of its enactment. *Ibid Res Judicata ¶ 20 Murphy v. Royal 875 F.3d 896 n.36 (10th Cir. 2017) U.S. v. Dashney 52 F.3d 298 (10th Cir., 1995) Covey v. U.S. 109 F.Supp.2d 1135 (USDC S.Dak. S.Div., 2000)*

b.) Previous common law precedent from the OCCA and lower U.S. District Courts suggesting the lack of reservation status is moot to *de novo* review because Congress, not the courts, have plenary powers over Indian affairs. Congress alone has the authority to determine when reservation status is not in effect. *Chaidez v. U.S. 568 U.S. 342 (2013) Ex Parte Barnett 94 P.2d 18 (OCCA, 1939) U.S. v. Lara 541 U.S. 193,194 (2004)* Oklahoma has not complied with the Indian Civil Rights Act of 1968 and is forfeit from assuming it without Indian approval. *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering 476 U.S. 877 (1986), Kennerly v. District Court 400 U.S. 423 (1971)*

c.) SCOTUS can make a new rule retroactive to cases on collateral review through multiple holdings that logically dictate the retroactivity of the new rule and, if it is new rule, have done so by deciding *McGirt* and collaterally applying the decision to Patrick Murphy. *Cannon v. Mullins 297 F.3d 989 (10th Cir., 2002) Sharp v. Murphy 140 S.Ct. 2412 (2020)*

d.) If nonretroactivity is applicable, Defendant's Indian status is a substantive claim and fits within the exceptions to nonretroactivity doctrine because, "it was beyond the power of the law making authority to proscribe." *Ibid Preemption Doctrine ¶¶ 11-22, U.S. Const. Art. VI cl. 2, Choctaw Treaty Stat. 333-334, Okla. Const. Art. 1 §3, Indian Civil Rights Act of 1968, Teague v. Lane 489 U.S. 288,307 (1989) Ferrill v. State 902 P.2d 1113 (1995) Montgomery v. Louisiana 577 U.S. 190 (2016)*

e.) *Wallace (2021)* is a violation of Indian policy. Even the OCCA acknowledges their ruling in *Wallace (2021)* is based on the "Supreme Court's apparent intent" *Wallace* ¶¶33,34 However, all arbitrary dicta within the *McGirt* ruling involving Indian policy must be decided in favor of the Indian Defendant and against the State. *Deoteau v. Dist. Cty. Court for the Tenth Dist. 420 U.S. 425, 447 (1975) Murphy v. Royal 875 F.3d 896, 930 (2017) Carpenter v. Shaw 280 U.S. 363 (1930) New Mex. v. Mescalero Apache Tribe 462 U.S. 324, 334 (1983) See also McGirt apparent intent FOR retroactive application:*

"[W]hen Oklahoma won statehood in 1907, the MCA applied immediately to its plain terms." *McGirt P.2477* "[O]klahoma asks us to defer to its usual practices instead of federal law, something we will not and may never do." *McGirt p. 2478* "[N]or has Congress ever passed a law conferring jurisdiction on Oklahoma. As a result, the MCA applies to Oklahoma according to its usual terms." *McGirt p.2478* "[E]ach Tribe's treaty must be considered on their own terms." *McGirt p.2479* "[W]hat's more a decision for either party today risks upsetting some convictions." *McGirt p.2480* [U]nlawful acts, preformed long enough and with sufficient vigor, are never enough to amend the law, both rewarding the wrong and failing those in the right." *McGirt p.2482*

f.) Nonretroactivity does not apply to collateral attacks based on the principles set in *McGirt*. *Ibid Res Judicata ¶ 19, Collins v. Youngblood 497 U.S. 37 (1990)*

g.) The Treaty of Dancing Rabbit Creek Article IV must be considered on its own terms and it demands retroactive application of all State common and statutory laws. *Ibid Preemption Doctrine ¶14 McGirt p. 2459, 2479*

h.) Oklahoma did not have competent jurisdiction, *ultra vires,* over Defendant's case and it was void *ab initio* so that nonretroactive issues are moot.

"The provisions of Habeas Corpus Act excluding from its benefit persons committed or detained by virtue of any process issued on final judgment of a court of competent jurisdiction only applies when court had jurisdiction to render particular judgment." *In re.*

Knight 131 P.2d 506 (OCCA, 1942) See also Ex Parte Barnett 94 P.2d 18 (OCCA, 1939), and Deerleader v. Crow Case No. 2020 WL7345653 (USDC N.D. Okla., 2020)

"[H]ere the State can only correct its unlawful prosecution of Deerleader by releasing him from State custody because he is incarcerated pursuant to judgment and sentence that was obtained without jurisdiction"

If any one of the preceeding eight (8) defenses (a) through (h) are true, then the District court's use of *Wallace (2021)* is invalid and moot and this OCCA should reverse the District court's denial and remand for further instruction.

CONCLUSION

¶26 Defendant reminiscences what he quoted in His PCA,

"It has been written, 'perhaps in no other state has there been more confusion over who has jurisdiction in Indian country than in the state of Oklahoma.' K. Kingbird, Indian Jurisdiction p.63 (1983) Richardson v. Malone 762 F. Supp. 1463 (USDC N.D Okla., 1991)

When SCOTUS ruled on *McGirt* it should have cleared up Oklahoma's erroneous and invalid presumption of jurisdiction over those whom it never had jurisdiction. The Oklahoma courts are now experiencing the grief cycle. They have moved from shock to denial and anger, but will eventually learn acceptance. It is the natural order of things. However, the process can have less diminutive effect with good leadership to foster the process forward. This Court is charged with that responsibility. As much as *McGirt* was an upset for this Court, it was far less an injustice than the Trail of Tears and the abuses which occurred during allotment and the days that followed. This Court cannot continue to deny the Treaties and the laws Congress established for the benefit of the Indians. It is repugnant to the Constitution of the United States and the Oaths of every Judge.

¶28 Today, the Defendant stands by the facts in His PCA, BIS, and those documents collateral to them because they are true, lawful, and binding. It is most evident that the Trial Court abused its

discretion; its use of law was erroneous and invalid; and there was unreasonable determination of facts in light of evidence presented and present. Mr. Brumit is a member of the proud Choctaw Nation of Oklahoma and is substantially protected by treaty and layers of federal and state laws. *Ibid ¶¶ 1-27 and notes* Nothing within Oklahoma law, statutory or common, can overcome this truth and the Defendant is still owed due process. *U.S. Const. Amendments 5,14*

¶29 WHEREFORE, the Defendant, *pro-se,* **Daniel Del Brumit**, case no. **CF-2006-115** prays that this Honorable Court, under oath of office, would consider and grant the relief He has requested: Defendant seeks reversal and remand to the District Court for further instruction and/or evidentiary hearing for the reasons set aforehand.

Signature: Daniel Del Brumit

Daniel Brumit, *pro-se,* #553078
Joseph Harp Correctional Center
P.O. Box 548
Lexington, Oklahoma, 73051-0548

CERTIFICATE OF MAILING

I, Daniel Del Brumit, the undersigned hereby certify that on 12th day of November, 2021, I mailed a true and correct copy of the foregoing document by placing same into the institutional legal mail system at JOSEPH HARP CORRECTIONAL CENTER, LEXINGTON, OKLAHOMA with postage prepaid thereon to:

Clerk of the Appellate Courts
Oklahoma Judicial Center
2100 N. Lincoln Blvd. Ste. 4
Oklahoma City, Oklahoma 73105-4907

Signature: Daniel Del Brumit

CERTIFICATE OF MAILING

I certify that on the 21 day of September, 2021 a true and correct copy of the foregoing document was mailed, postage prepaid.

Office of the District Attorney
Grady County Courthouse
Chickasha, OK 73018

Joseph Harp Correctional Center
PO Box 548
Lexington, OK 73051

Daniel Brumit
PO Box 548
Lexington, OK 73051

LISA HANNAH, COURT CLERK

By: _____
Deputy

Appendix D3

IN THE SUPREME COURT OF THE

STATE OF OKLAHOMA

DANIEL DEL BRUMIT Petitioner	]]	
Vs.	]	Case No. **PC-2021-1303**
SCOTT ROWLAND **ROBERT L. HUDSON** **GARY L LUMPKIN** **DAVID B. LEWIS** **WILLIAM J. MUSSEMAN** Respondents	]]]]]]	

NOTICE OF ORIGINAL JURISDICTION SUPREME COURT PROCEEDINGS

Notice to:

The Members of the Oklahoma Criminal Court of Appeals:

Scott Rowland, Presiding Judge

Robert L Hudson, Vice Presiding Judge

Gary L. Lumpkin, Judge

David B. Lewis, Judge

William J. Musseman, Judge

2100 N. Lincoln Blvd., Ste 4

Oklahoma city, Oklahoma 73105-4907

CERTIFICATE OF MAILING TO PARTIES

I certify that a true and correct copy of the Notice of Original Jurisdiction Supreme Court Proceedings was mailed on ____day of _____, 2022 to:

Scott Rowland, Presiding Judge
Robert L. Hudson, Vice Presiding Judge
Gary L. Lumpkin, Judge
David B. Lewis, Judge
William J. Musseman, Judge
Supreme Court of the State of Oklahoma
Clerk of the Appellate Courts
Oklahoma Judicial Center
2100 N. Lincoln Blvd., Ste. 4
Oklahoma City, Oklahoma 73105-4907

Appendix D4

IN THE SUPREME COURT OF THE

STATE OF OKLAHOMA

DANIEL DEL BRUMIT Petitioner	]	
Vs.	]	Case No. **PC-2021-1303**
SCOTT ROWLAND **ROBERT L. HUDSON** **GARY L LUMPKIN** **DAVID B. LEWIS** **WILLIAM J. MUSSEMAN** Respondents	]	

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Members of the Oklahoma Criminal Court of Appeals:

David B. Lewis, Judge

Appendix D4

Gary L. Lumpkin, Judge

William J. Musseman, Judge

Robert L. Hudson, Vice Presiding Judge

Scott Rowland, Presiding Judge

Oklahoma Judicial Center

2100 N. Lincoln Blvd., Ste. 4

Oklahoma City, Oklahoma, 73105-4907

TABLE OF AUTHORITIES

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QUESTION PRESENTED

Has any act of Congress ever given the OCCA the jurisdiction to make common law determinations in regards to direct appeal or post-conviction involving Indians in Indian country? p. 7

IN THE SUPREME COURT OF THE

STATE OF OKLAHOMA

DANIEL DEL BRUMIT Petitioner	]	
Vs.	]	Case No. **PC-2021-1303**
SCOTT ROWLAND **ROBERT L. HUDSON** **GARY L LUMPKIN** **DAVID B. LEWIS** **WILLIAM J. MUSSEMAN** Respondents	]	

APPLICATION TO ASSUME ORIGINAL JURISDICTION AND PETITION FOR WRIT OF PROHIBITION/MANDAMUS

Comes now, Daniel Brumit, Petitioner, *pro se*, applies to this Court to assume original jurisdiction and grant his petition of prohibition and mandamus prohibiting those Judges of the Oklahoma Criminal Court of Appeals (OCCA)(Respondents) from exercising any jurisdiction in the action entitled Case No. PC-2021-1303, and remand said case back to the OCCA for further instructions and/or an evidentiary hearing for the reasons more specifically set forth in the attached application and petition.

The Defendant is *pro-se,* with no training in matters of law. The prison where he resides has no legal clerk and the law librarian is unqualified to assist him in his legal work. Additionally, due to a lack of staff, increased prison violence, and Covid, Oklahoma prisons are resorting to lock down status so that the law library is unavailable, except through the limitations of electronic tablets. Therefore, Petitioner moves this court most liberally construe his appeal, pursuant *Hall v. Bellman 935 F.2d 1106,1110 (10th Cir. 1991) citing Haines v. Kerner, supra.* The Supreme Court held that *pro se* litigant's pleadings are to be liberally construed and held to a less stringent standard required from a member of the Bar.

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STATE THE REASON FOR ASSUMING ORIGINAL JURISDICTION

This action is brought in the Oklahoma Supreme Court because the Oklahoma Supreme Court has general superintending control over all inferior courts and has jurisdiction to issue writ of prohibition under Okla. Const. Art. 7 §4 When the OCCA acts outside of its jurisdiction, this Court is the appropriate venue to seek relief. *Schlagenhauf v. Holder 379 U.S. 104,110 (1964)* This action is proper because this Court owes no faith or credit to a judgment rendered by a court without jurisdiction. *V.L. v. E.L. 577 U.S. 404,407 (2016)* This action is proper because this Court is honorable in its application of law. "The Supreme Court does not consider the propriety, desirability, or wisdom in a statute. *Burns v. Cline 382 P.3d 1048 (Okla., 2016)* The federal system is not the proper remedy concerning State issues until this Court has opportunity to correct jurisdictional lines in its inferior courts. *Burt v. Titlow 571 U.S. 12,19 (2013)*The OCCA has unlawfully and improperly exercised jurisdiction over this action below despite motion to dismiss for lack of jurisdiction. Any remedy on appeal would be wholly inadequate, and therefore, Petitioner has no adequate remedy at law. "Supreme Court has superintending control over the Criminal Court of Appeals and may issue remedial writs to keep it within its jurisdiction." *Dancy v. Owens 258 P. 879 (Okla. 1927)*

IDENTIFY THE NATURE OF THE REMEDY OR RELIEF SOUGHT

Petitioner requests this Court to assume original jurisdiction and issue a writ of prohibition prohibiting Scott Rowland, Robert L Hudson, Gary L. Lumpkin, David B. Lewis, and William J. Musseman, Judges of the OCCA, (1) from exercising any jurisdiction which is preempted by Indian Treaty, law, and federal Indian policy, pursuant Okla. Const. Art. 1 §1 and Art. 1 §3, in the action entitled Case No. PC-2022-1303 and (2) to impeach and remand back Case No.

PC-2022-1303 to the OCCA with instruction that the OCCA, within its exclusive criminal jurisdiction, shall make their decision within the limited scope of their appellate exclusive criminal jurisdiction.

STATE FACTS ENTITLING THE PETITIONER TO THE REMEDY OR RELIEF SOUGHT

1. Petitioner, Daniel Del Brumit, is a defendant, currently incarcerated, in a criminal action filed by the State, in the District Court of Grady County, entitled CF-2006-115.

2. Respondents, Scott Rowland, Robert L Hudson, Gary L. Lumpkin, David B. Lewis, and William J. Musseman, are duly elected Judges of the Oklahoma Criminal Court of Appeals.

3. On denial of Petitioner's Post-Conviction Application from the District Court of Grady County, on November 19th, the Petitioner filed a timely Notice of Post-Conviction Appeal on Nov. 19th, 2021 arguing Oklahoma lacks jurisdiction to prosecute or sentence politically immune Indians. Denial attached

4. This action entitled CF-2006-115 was retitled PC-2021-1303.

5. On April 1st, 2022, the Respondent's issued a void order denying the Petitioner's appeal based on an independent state procedural rule, pursuant *State ex rel. Matloff v. Wallace 497 P.3d 686 (OCCA, 2021)* "A state cannot refuse to give foreign nationals their treaty rights because of fear that valid international agreements may possibly not work completely to the satisfaction of state authorities." *Kolovrat v. Ore. 366 U.S. 187,198 (1961)*

6. Whether a claim should have been dismissed for lack of subject matter jurisdiction is a question of law that the Supreme Court reviews *de novo*. *Samson Resources Co. v. Newfield Exploration Mid-Continent Inc. 281 P.3d 1278 (Okla., 2012)*

7. The OCCA's order was a violation of due process. "No State shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the United States." *U.S. Const. Amend. 14*

8. The OCCA has the exclusive appellate jurisdiction over criminal matters that arise in the State of Oklahoma. However, this Application and Petition to this Court is not a criminal matter, but how the OCCA has acted outside beyond the scope of their limited jurisdiction in Case No. PC-2021-1303.

9. The OCCA has always been bound by Oklahoma Const. Art. 1 §1 which provides that the OCCA is limited and preempted by the Supremacy Clause. U.S. Const. Art. 6 §2 *Coalition for Reproductivity v. Cline 292 P.3d 27 (Okla. 2012)Lewis v. Sac and Fox of Okla. Housing Auth. 896 P.2d 503 (Okla., 1994)* "[S]tate sovereignty is concurrent with that of the federal government, subject only to the limitations imposed by the Supremacy clause."

10. Though not enforced, the Respondents have always been preempted by Indian Treaty, federal law, and federal Indian policy from applying Oklahoma common law practices against a politically immune Indian. *Okla. Const. Art. 1§1; Treaty of Dancing Rabbit Creek, Sept. 27, 1830, Art. IV, Stat. 333-334; Public Law 280, 67 Stat. 588 in conjunction with Indian Civil Rights Act of 1968; Indian Reorganization Act, 48 Stat 984, Oklahoma Indian Welfare Act, 49 Stat. 1907; 18 U.S.C.A. §§1151,1153 See Eaves v. State 795 P.2d 1060, 1064 (OCCA, J.*

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Lumpkin, 1990) Indian Country U.S.A. inc. v. Okla. Tax Comm'n 829 F.2d 967(1987); Okla. Tax Comm'n v. Chickasaw Nation 515 U.S. 450 (1995); Rice v. Olson 324 U.S. 786, 789 (1945); Iowa Mutual Ins. Co. v. Laplante 480 U.S. 9,15 (1987) Magnan v. Trammell 719 F.3d 1159, 1177-1178 (10th Cir., 2013); Wilson v. Harlow 860 P.2d 793,799 (Okla. 1993) In re Question 807 Initiative etition No. 807 (2020) Kennerly v. Dist. Ct. of 9th Dist. Div. of Montana 400 U.S. 423, 428 (1971) Three Affiliated Tribes of Berthold Res. V. Wold Engineering 476 U.S. 877, 885 (1986) Video Gaming Tech. Inc. v. Roger's County Board of Tax Roll Correction 475 P.3d 824 ¶36 (Okla., 2019 Cleveland v. Piper Air Craft Corp. 985 F.2d 1438, 1441 (10th Cir., 2013) "[I]t is well recognized that 'state law' as used in preemption analysis, includes not only the positive enactments of a state but also common law rules of liability as determined by state judicial decisions."

11. Ordinarily, an Indian protected by Treaty is not required to seek relief from State courts, but Congressional Acts can abrogate Treaty rights. *Lone Wolf v. Hitchcock 187 U.S. 553 (1903) Cook v. U.S. 288 U.S. 102, 119 (1933)*

12. In Mr. Brumit's case, Petitioner believes 28 U.S.C. § 2254 partially abrogates Petitioner's Treaty rights and instructs the State Defendant to exhaust state remedy before addressing the Federal Courts, and Mr. Brumit applies "Lone Wolf" accordingly. *Engle v. Isaac 456 U.S. 107 (1982) U.S. v. Tyler 269 U.S. 13, 17-18 (1925)*

13. However, §2254 is instruction to the Defendant, but not license for the State Court. No Congressional Act has given Oklahoma that authority. *Waltrip v. Osage Million Dollar Elm Casino 290 P.3d 741 n. 7 (Okla. 2012)*

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> "It is a rule in construing treaties and laws to give a sensible meaning if practicable to all their provisions, and an interpretation which would render a treaty null or ineffective cannot be admitted; on the contrary it ought to be interpreted in such a manner as that it may have its effect and not be proven vain and nugatory." *DeGeofroy v. Riggs 33 L.Ed. 642(1890)*
>
> "Every treaty made by authority of the United States is superior to the Constitution and laws of any individual state. If a law of a state is contrary to a treaty, it is void." *Hauenstein v. Lynham 25 L.Ed. 628(1879) Also see Iowa Mutual Insurance Co. v. LaPlante 480 U.S. 9,15 (1987)*

14. AEDPA is no silk purse, but any ambiguities in §2254 must be decided most favorably in favor of the Indian defendant. *Hagen v. Utah 510 U.S. 399 (1994) Carpenter v. Shaw 280 U.S. 363 (1930) Winters v. U.S. 207 U.S. 564 (1908)* The OCCA was still responsible to the treaty and could not invoke Oklahoma common and statutory laws and rules against an Indian Defendant in Indian Country. To put it plainly, the Petitioner was procedurally required to exhaust State remedies, but the State could not apply State statutes or common law because State law is repugnant to the Constitution(s).

15. I invoke upon this Court the Treaty of Dancing Rabbit Creek, Sept. 27, 1980, Art 4, 7 Stat. 333-334, which states in pertinent part:

> "The Government and the People (including the OCCA) of the United States are hereby obligated to secure to said Nation of Red People...that no territory or state (including Oklahoma) shall EVER (yesterday, today, and tomorrow) have a right to pass laws for the government of the Nation of Red People and their descendants (giving Petitioner independent right of action)...but the United States shall FOREVER secure said Nation from, and against, all such laws (procedural bars, latches, stays, tolling, Post-Conviction Procedures Act) *(Adapted and amplified from Okla. Tax Comm'n v. Chickasaw Nation 132 L.Ed.2d 400 (1995)*

16. The OCCA had opportunity to obtain jurisdiction over the Chickasaw/Choctaw lands to apply its statutory and common law rules, pursuant Public law 280. However, Public law 280

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was amended by the Indian Civil Rights Act of 1968 *(25 U.S.C.A. §1321)* and State jurisdiction over Indians in Indian Country was closed to the OCCA without a majority vote from the Tribe(s). *Indian Country U.S.A. Inc. v. Okla Tax Comm'n 829 F.2d 967 n. 6 (1987) Littlechief v. State 573 P.2d 263 (OCCA, 1978) Lewis v. Sac & Fox Tribe of Okla. Housing Auth. 846 P.2d 503 (Okla., 1994) U.S. v. Sands 968 F.2d 1058 Ute Indian Tribe of the Uintah and Ouray v. Lawrence 22 F.4th 892 n. 11 (10th Cir. 2022)* "A court of competent jurisdiction is one having authority of law to do the particular act." *Ex Parte Justus 104 P. 933 (OCCA, 1942) In re Knight 131 P.2d 506 (OCCA, 1942) DeGeofroy v. Riggs 133 U.S. 258, 267 (1890)* "The effect of every judgment must depend upon the power of the court to render that judgment." *National Exchange Bank v. Wiley 195 U.S. 257, 263 (1904)*

17. Has any act of Congress ever given the OCCA the jurisdiction to make common law determinations in regards to direct appeals or post-convictions involving Indians in Indian country?

18. The Choctaw and Chickasaw Nations of Oklahoma have never given the OCCA jurisdiction over Indians within their Nation's jurisdictional boundaries to apply State statutory and common laws. 18 U.S.C.A. §1162 *Ross v. Neff 905 F.2d 1349 (10th Cir. 1990)*

19. The only jurisdiction the OCCA has is to procedurally default the Petitioner's case due to lack of subject matter jurisdiction. *U.S. v. Springer 875 F.3d 968, 983 (10th Cir., 2017) quoting U.S. v. Cotton 535 U.S. 625, 630 (2002)* The OCCA always has the jurisdiction to determine its own want of jurisdiction. *Safe Streets Alliance v. Hickenlooper 859 F.3d 865 896 (10th Cir., 2017)*

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20. Concerning Petitioner's criminal matter, because petitioner does not know if those arguments may be nontransferable to this Court, reserves all defenses aforementioned in the OCCA case No. CF-2006-115 and PC-2021-1303 for further appeal in accordance with federal law. This Application and Petition are independent of the criminal defenses in the aforementioned case.

CONCLUSION

WHEREFORE, in **Case No. PC-2021-1303,** the Petitioner, pro se, **Daniel Del Brumit,** begs this Court to prohibit the judges of the **Oklahoma Criminal Court of Appeals** (1) from exercising any jurisdiction and which is preempted by Indian Treaty, law, and federal Indian policy, pursuant Okla. Const. Art. 1 §1 and Art. 1 §3, in the action entitled Case No. PC-2022-1303 and (2) to impeach and remand back Case No. PC-2022-1303 to the OCCA with instruction that the OCCA, within its exclusive criminal jurisdiction, shall make their decision within the limited scope of their appellate exclusive criminal jurisdiction. The OCCA has become a rogue Court and this Court cannot continue to allow it to run amuck in the interest of the integrity of the Oklahoma judicial system.

Signature Daniel Del Brumit

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Petitioner, pro se

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CERTIFICATE OF MAILING TO PARTIES

I certify that a true and correct copy of the Application to Assume Original Jurisdiction and Petition for Writ of Prohibition/Mandamus was mailed on ____day of _____, 2022 to:

Scott Rowland, Presiding Judge
Robert L. Hudson, Vice Presiding Judge
Gary L. Lumpkin, Judge
David B. Lewis, Judge
William J. Musseman, Judge
Supreme Court of the State of Oklahoma
Clerk of the Appellate Courts
Oklahoma Judicial Center
2100 N. Lincoln Blvd., Ste. 4
Oklahoma City, Oklahoma 73105-4907

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