

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

BRIAN L. MELSON,

SEP 20 2022

Petitioner,

JOHN D. HADDEN
CLERK

v.

No. PC-2022-427

THE STATE OF OKLAHOMA,

Respondent.

ORDER DECLINING JURISDICTION

Petitioner has appealed to this Court from an April 8, 2022, order of the District Court of Mayes County, denying his application for post-conviction relief in Case Nos. CF-2016-408, CF-2017-302, and CM-2019-43. The notice of post-conviction appeal was due to be filed with the clerk of the trial court in each case on or before April 28, 2022. According to the record, a notice of post-conviction appeal was filed in each case on May 5, 2022.

Rule 5.2(C)(1), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2022), mandates the filing of the written notice of post-conviction appeal with the trial court clerk within twenty days from the date the order is filed in the trial court. The filing of the notice of post-conviction appeal with the trial court clerk is jurisdictional and

failure to timely file constitutes waiver of the right to appeal. *See also Pershall v. State*, 2017 OK CR 13, 400 P.3d 871.

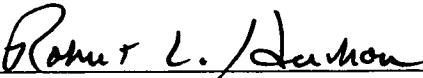
Accordingly, the Court **DECLINES** jurisdiction and **DISMISSES** this matter. Issuance of this order concludes these proceedings before this Court.

IT IS SO ORDERED.

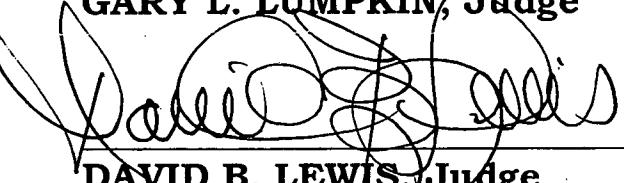
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this

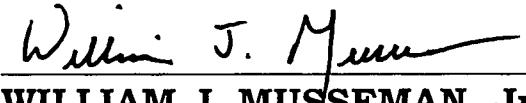
20th day of September, 2022.


SCOTT ROWLAND, Presiding Judge


ROBERT L. HUDSON, Vice Presiding Judge


GARY L. LUMPKIN, Judge


DAVID B. LEWIS, Judge


WILLIAM J. MUSSSEMAN, Judge

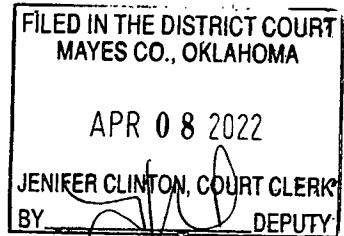
ATTEST:


John D. Hadden

Clerk

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

STATE OF OKLAHOMA,)
vs.)
Plaintiff,)
BRIAN MELSON,)
Defendant.)
Case Nos. CF-2017-302
CF-2016-408
CM-2019-43



ORDER DENYING POST-CONVICTION RELIEF APPLICATION

Now on this 7th day April, 2022, after having reviewed the file and pleadings herein and the post-conviction relief application of the Petitioner and any response filed on behalf of the State of Oklahoma, the Court finds as follows:

1. The Oklahoma Court of Criminal Appeals has issued *State v. Wallace*, 2021 OK CR 21. In *Wallace*, the Oklahoma Court of Criminal Appeals held that, “*McGirt* and our post-*McGirt* reservation rulings shall not apply retroactively to void a final state conviction.” *Wallace* at ¶40.
2. In addition to issuing the Order in *Wallace*, the Oklahoma Court of Criminal Appeals vacated *Bosse* and other cases that were inconsistent with their holding in *Wallace*. (See, *Bosse v. State*, 2021 OK CR 23, *Bench v. State*, 2021 OK CR 24, *Ryder v. State*, 2021 OK CR 25, *Cole v. State*, 2021 OK CR 26).
3. Petitioner’s application for post-conviction relief is necessitated upon the retroactive application of *McGirt* to support the claim that Oklahoma did not have subject matter jurisdiction over Petitioner at the time of the disposition of Petitioner’s case.
4. This Court finds, as a matter of law, based upon the Oklahoma Court of Criminal Appeals decision in *State v. Wallace*, 2021 OK CR 21, that Petitioner’s post-conviction relief application should be denied. Regardless of the “Indian” status of the parties and whether the

crime occurred on "a reservation," *Wallace* precludes the application of *McGirt* retroactively to void a final state conviction.

Petitioner's post-conviction relief application is hereby denied.

IT IS SO ORDERED.



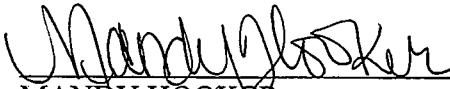
HONORABLE SHAWN S. TAYLOR
JUDGE OF THE DISTRICT COURT

CERTIFICATE OF MAILING

I, Mandy Hooker, Secretary/Bailiff for the Honorable Shawn S. Taylor, District Judge, do hereby certify that on the 8th day of April, 2022, a true and correct copy of the foregoing was mailed, postage prepaid, to the following:

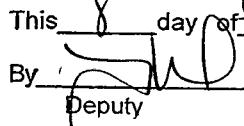
Brian Melson, DOC #835327
Oklahoma State Reformatory
P.O. Box 514
Granite, OK 73547-0514

Matthew J. Ballard, District Attorney
Zach Cabell, Assistant District Attorney
MAYES COUNTY DISTRICT ATTORNEY'S OFFICE
Mayes County Courthouse
One Court Place, Suite 250
Pryor, OK 74361



MANDY HOOKER,
Secretary/Bailiff

I, Jenifer Clinton, Court Clerk For Mayes County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears of record in the Court Clerk's Office of Mayes County, Oklahoma.

This 8 day of April 2022
By  Jenifer Clinton
Deputy Court Clerk