

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

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

**BRIAN L. MELSON,**

**Petitioner,**

**v.**

**THE STATE OF OKLAHOMA,**

**Respondent.**

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SEP 20 2022

JOHN D. HADDEN  
CLERK

**No. PC-2022-427**

**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.

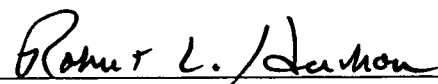
Accordingly, the Court **DECLINES** jurisdiction and **DISMISSES** this matter. Issuance of this order concludes these proceedings before this Court.

**IT IS SO ORDERED.**

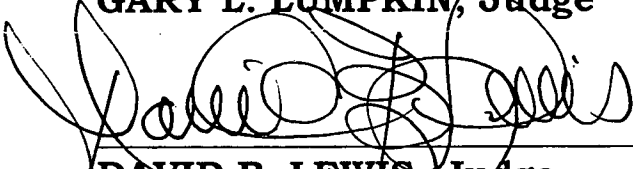
**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this

20th day of September, 2022.

  
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**SCOTT ROWLAND, Presiding Judge**

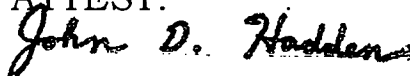
  
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**ROBERT L. HUDSON, Vice Presiding Judge**

  
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**GARY L. LUMPKIN, Judge**

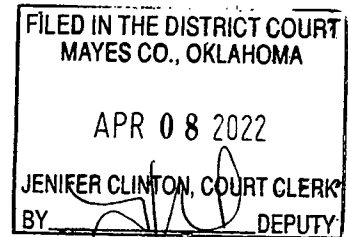
  
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**DAVID B. LEWIS, Judge**

  
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**WILLIAM J. MUSSEMAN, Judge**

ATTEST:

  
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Clerk

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



STATE OF OKLAHOMA,

Plaintiff,

vs.

BRIAN MELSON,

Defendant.

Case Nos. CF-2017-302  
CF-2016-408  
CM-2019-43

**ORDER DENYING POST-CONVICTION RELIEF APPLICATION**

Now on this 7<sup>th</sup> 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 retro-active 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.

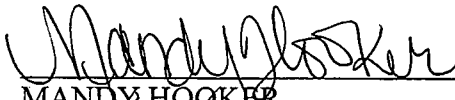
  
HONORABLE SHAWN S. TAYLOR  
JUDGE OF THE DISTRICT COURT

**CERTIFICATE OF MAILING**

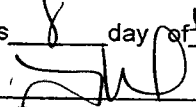
I, Mandy Hooker, Secretary/Bailiff for the Honorable Shawn S. Taylor, District Judge, do hereby certify that on the 8<sup>th</sup> day of April, 2022, a true and correct copy of the foregoing was mailed, postage prepaid, to the following:

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