

KIM LYNN MASON,

Petitioner,

V.

JIM FARRIS, WARDEN,

Respondent.

No. 22-6896

**PETITION FOR REHEARING OF ORDER
DENYING PETITION FOR CERTIORARI**

Kim Lynn Mason presents his petition for rehearing of this Court's order dated May 1, 2023, denying the petition for certiorari to the Oklahoma Court of Criminal Appeals, pursuant to the Rules of the Supreme Court of the United States Rule 44(B), Petitioner's Petition is limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented and, in support thereof respectfully shows:

GROUND ONE

THE OKLAHOMA COURT OF CRIMINAL APPEALS LACKED JURISDICTION TO HEARING PETITIONER'S DIRECT APPEAL BECAUSE THE TRIAL COURT ALSO LACKED JURISDICTION TO PROSECUTE PETITIONER A INDIAN WHO'S CRIMES OCCURRED IN INDIAN COUNTRY

The Craig County District Court's orders did not constitute final judgments because the court lacked jurisdiction to prosecute Petitioner, and the Oklahoma Court of Criminal Appeals lacked jurisdiction over Petitioner's direct appeal, and therefore were not subject to enforcement pursuant to full faith and credit principles. 28 U.S.C.A. § 1738. Only final judgments are subject to enforcement pursuant to full faith and credit principles. Being that the trial court lacked subject-matter jurisdiction to prosecute defendant, who was Indian and crime occurred in Indian Country, the trial court's orders did not constitute final judgments, and are not subject to enforcement pursuant to full faith and credit principles, which also constitutes that the appellate court does not acquire jurisdiction over the subject-matter on defendant's appeal. Can a ground of lack jurisdiction in the Oklahoma Court of Criminal Appeals be called to that court's attention at any time? *Samford v. State*, 173 P.2d 749 (1946). In defendant's case OCCA had no jurisdiction to hear and determine defendant's direct appeal filed, because the trial court lacked jurisdiction to prosecute defendant, an Indian whose crime occurred in Indian

Country. The State of Oklahoma has stipulated to facts of defendant being a member of Shawnee Tribe of Oklahoma, and having some Indian blood, and being federally recognized by the Federal Government as a Indian and that the crimes occurred in the historical boundary of the Cherokee Nation Reservation. This being true, then the OCCA never acquired jurisdiction of defendant's appeal and should have dismissed defendant's appeal for lack of jurisdiction, being that the district court lacked subject-matter jurisdiction over the defendant's case in the first place.

It has been held by this Court in *Iowa Mut. Ins. Co. v. La Pante*, 107 S.Ct. 971 (1987) that the Court of Appeals lacks appellate jurisdiction when the district court lacks subject-matter jurisdiction. Also in *U.S. v. Certain Land Situated in City of Detroit*, 301 F.3d 305 (6th Cir. 2004) also *Hunter v. Underwood*, 362 F.3d 468 (8th Cir. 2004). If a trial court lacks jurisdiction to enter an order, an appellate court does not have acquire jurisdiction over the subject-matter on appeal. In *re Marriage of Sandhu*, 207 P.3d 1067 (2009) Kan. App... When the trial court lacks jurisdiction, the appellate court also lacks jurisdiction. *Newton v. State*, 453 S.W. 3d 125, 2014 Ark. Priutt v. State, 2014 Ark. 25, 2014 WL 2465502. If the trial court lacks jurisdiction to make a ruling, an appellate court does not acquire jurisdiction over the subject-matter on appeal. *Kinsley v. Kansas Dept, of Revenue*, 288 Kan. 390, 204 P.3d 562 (2009). In Petitioner's case OCCA did not have jurisdiction over Petitioner's direct appeal from district court of Craig County because the trial court lacked jurisdiction prosecute Petitioner, an Indian, and crime occurred in Indian Country.

Petitioner's judgment in his cases are not final, even though the U.S. Supreme Court decided *McGirt*, thereby reaffirming that *Webb* and *Ramsey* applied in Oklahoma at the time Petitioner's crimes occurred within the Cherokee Nation Reservation and the prosecution of the Petitioner by the State of Oklahoma. Defendant filed a successive application for post-conviction relief pursuant to Oklahoma Criminal Procedure Act § 1080(b) which provides that the court was without jurisdiction to impose sentence. The Act permits a successive application for post-conviction relief if "the court was without jurisdiction to impose sentence, if applicable to the defendant's case, would probably overturn the defendant's judgment or sentence." Petitioner has argued that *McGirt* was significant in that the trial court was without jurisdiction to impose a sentence on him for crime that occurred Indian Country by a Indian, 18 U.S.C.A. §§ 1151(a), 1153, because it "had transformative effects on previously binding Oklahoma law.

The Oklahoma Court of Criminal Appeals denied Petitioner relief after holding that *McGirt* was "not a significant change in the law. The order of the Craig County District Court based upon the Court decision in *Matloff v. Wallace*, 2012 OK CR 21, 497 P.3d 686, *cert. denied*. As the OCCA itself noted, it had interpreted § 1080(b) require "some transformative event, a clear break from the past.' Under Post-Conviction

Procedure Act, this section, relief is available to any person convicted of or sentenced for a crime in the state of Oklahoma. *Roselle v. State*, Okla. Crim. App., 509 P.2d 486 (1973). Petitioner's post-conviction relief application was denied, the order further stated that regardless of the "Indian status of the parties and whether the crime occurred on a reservation, violated Petitioner's constitutional guarantees of due process and equal protection under Federal and State Constitutions. U.S.C.A. Const. Amend. 14, Const. Oklahoma Const. Art. 2, §§ 2, 6. Section 10 of Article 7 of the Oklahoma Constitution provides: "The district courts, or any judge thereof, shall have the power to issue writ of habeas corpus.

This Court should agree with Petitioner that the trial court lacked subject matter jurisdiction to prosecute him, a Indian who committed a crime in Indian Country, and that the Oklahoma Court of Criminal Appeals also lacked subject matter jurisdiction over the defendant's direct appeal. This fact should determine that Petitioner's Craig County judgment in Case Number CF-2007-30 and CF-2007-33 can never be considered to be a final judgment under state law or federal law and that Petitioner's Craig County Judgments and Sentences must be set aside as void.

For the foregoing reasons it is respectfully urged that this petition for rehearing be granted, is grounded on limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented and in good faith and not for delay, and that, upon further consideration, a Writ of Certiorari issue to the Oklahoma Court of Criminal Appeals for the State of Oklahoma to reverse any and all orders affirming Petitioner's Judgments and Sentences in Case Number CF-2007-30 and CF-2007-33 and remand to the District Court of Craig County Oklahoma to dismiss al all charges against the Petitioner.

Dated: June 15, 2023



Kim Lynn Mason DOC #123881

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Petitioner

CERTIFICATE OF COUNSEL-PRO SE

I, Kim Lynn Mason, Pro Se the above-named Petitioner hereby certify that the foregoing petition for rehearing is grounded on limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented and in good faith and not for delay.

Dated: June 15, 2023

A handwritten signature in cursive script, reading "Kim Lynn Mason", is written over a horizontal line.

Kim Lynn Mason DOC #125881

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