

22-7836 ORIGINAL
No. _____

FILED
JUN 15 2023

OFFICE OF THE CLERK
SUPREME COURT U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

TONY MICHAEL JULIEN — PETITIONER
(Your Name)

vs.

STATE OF OKLAHOMA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE OKLAHOMA COURT OF CRIMINAL APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tony Michael Julien #95196
(Your Name)
Oklahoma State Reformatory, Unit G2-203
P.O. Box 514
(Address)

Granite, Oklahoma 73547
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

1. Can the mere passage of time retroactively confer jurisdiction on a court that did not and does not otherwise have jurisdiction?
2. Does the legal maxim clearly established by this court in *Lambert v. California*, 355 U.S. 225 (1957), that ignorance of the law is not an excuse in criminal prosecutions apply equally to both parties or is it to be applied solely to the defendant?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Julien v. Oklahoma, No. PC-2022-986, Oklahoma Court Of Criminal Appeals, Judgment entered Mar. 22, 2023.

Julien v. Oklahoma, No. CF-1977-2864, District Court Of Tulsa County, State Of Oklahoma, Judgment entered Oct. 7, 2022.

Julien v. Holmes, No. MA-2022-775, Oklahoma Court Of Criminal Appeals, Judgment entered Sept. 16, 2022.

Oklahoma v. Julien, No. CRF-1977-2864, District Court Of Tulsa County, State Of Oklahoma, Judgment entered Jun. 19, 1978.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Tulsa County District court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was Mar. 22, 2023. A copy of that decision appears at Appendix A.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. United States Constitution, Amendment 14, Due Process Clause:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive a person of life, liberty, or property, without due process of law..."

2. Title 18, United States Code, Section 1153(a):

"Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder... within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States."

STATEMENT OF THE CASE

Petitioner, an enrolled Cherokee Indian, was prosecuted and convicted in the District Court of Tulsa County, State of Oklahoma, in 1978 for a murder that happened on Indian land in 1976. Based on that conviction, the State of Oklahoma has kept Petitioner incarcerated ever since.

On June 7, 2022, Petitioner filed an Application for Post-Conviction Relief in the District Court of Tulsa County, State of Oklahoma. In it, Petitioner pointed out that the State never had jurisdiction because 18 U.S.C. § 1153 gave exclusive jurisdiction to the federal government.

On October 12, 2022, the District Court of Tulsa County dismissed Petitioner's post-conviction application. In doing so, the district court seemed to rely on its own ignorance of the fact that 18 U.S.C. § 1153 gave exclusive jurisdiction at the time it convicted Petitioner to the federal government (an argument that the State raised and this Court rejected in *McGirt v. Oklahoma*, — U.S. —, 140 S.Ct. 2452, 207 L.Ed.2d 985 (2020)) and that a sufficient amount of time had passed since it convicted Petitioner to somehow retroactively bestow jurisdiction to the State.

On November 9, 2022, Petitioner appealed the district

court's dismissal of his post-conviction application to the Oklahoma Court of Criminal Appeals (OCCA). In his appeal, Petitioner pointed out two issues that are relevant to the questions now before this Court. First, that this Court clearly established in *Lambert v. California*, 355 U.S. 225, 228, 78 S.Ct. 240, 243, 2 L.Ed.2d 228 (1957) that in criminal prosecutions, ignorance of the law is not an excuse. Had the State exercised due diligence it would have discovered the boundaries of the Indian lands in eastern Oklahoma laid out in the various treaties between the federal government and the Five Civilized Tribes before Oklahoma was even a state, that there was nothing in the law that disestablished or diminished those lands, and that the federal government (not the State) had exclusive jurisdiction. Second, in *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938), this Court clearly established that a conviction pronounced by a court without jurisdiction is void. Therefore, since the State did not have jurisdiction to convict Petitioner in the instant case, the entire sequence of the State's actions since pronouncing a void conviction (including Petitioner's current incarceration) were and are void and illegal.

On March 22, 2023, the OCCA affirmed the district court's dismissal of Petitioner's post-conviction application.

REASONS FOR GRANTING THE PETITION

This case hinges on two very important questions. The first involves whether or not the mere passage of time is sufficient to bestow jurisdiction on a court that otherwise lacked jurisdiction. Petitioner brings this question because the Oklahoma Court of Criminal Appeals (OCCA) is currently bestowing jurisdiction retroactively on Oklahoma state courts that never had jurisdiction due to the jurisdictional provision of 18 U.S.C. § 1153 in order to keep Indians who allegedly committed certain crimes on Indian land incarcerated in Oklahoma's state prison system. This practice of retroactively bestowing jurisdiction on courts that did not have it is in direct violation to the clearly established law that a conviction pronounced by a court without jurisdiction is void.

See *Johnson v. Zerbst*, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). It also affects every Indian who is or has been incarcerated in Oklahoma's state prison system for a crime committed on Indian land from the time Oklahoma was granted statehood to the present. Further, if allowed to continue this practice, what's to prevent Oklahoma, after a sufficient amount of time has passed, from legally executing a person based solely on a death sentence pronounced by a court without jurisdiction.

The second question involves whether or not the law that this court clearly established in *Lambert v. California*, 355 U.S. 225, 228, 78 S.Ct. 240, 243, 2 L.Ed.2d 228 (1957), that in criminal prosecutions ignorance of the law is not an excuse, applies solely to the defendant or applies equally to both the defendant and the people the taxpayers pay to know and properly apply the law. Petitioner brings this question because since being granted statehood Oklahoma has consistently prosecuted, convicted, and incarcerated Indians for crimes occurring on Indian land without ever having the jurisdiction to do so. Oklahoma claims it was ignorant of its lack of jurisdiction and, rather than taking responsibility for its actions and correcting them, it continues to keep the Indians it illegally prosecuted and convicted incarcerated. A criminal defendant is legally required to exercise due diligence. If he fails to do so he pays for it, usually by being barred from raising issues that he could have discovered. Shouldn't fundamental fairness require that the prosecution be held to the same standard?

Had the prosecution in the instant case exercised due diligence it would have found that: First, the federal government, in the various treaties with the five civilized tribes, gave much of land in eastern Oklahoma, including

the land they were claiming to have jurisdiction over, to the indian tribes. Second, that there was and is nothing in the law that disestablished or diminished those indian lands. Third, that as far back as 1962, this court had clearly established that the states have no jurisdiction in cases involving indians committing crimes on indian land. See: Seymour v. Superintendent Of Washington State Penitentiary, 368 U. S. 351, 82 S.Ct. 424, 7L.Ed.2d 346 (1962). And finally, that in cases involving indians committing crimes on indian land, 18 U.S.C. § 1153 gives the federal government exclusive jurisdiction. In short, had the state done its due diligence it would have known it lacked jurisdiction. For the state to claim that it didn't know it lacked jurisdiction is in conflict with the spirit of this Court's decision in Lambert, *supra*. For the state to be allowed to continue to punish people for convictions that it had no authority to pronounce is a travesty of justice and makes a mockery of the entire judicial system. Because of that, it not only affects the indians of Oklahoma, it affects every person who expects to be treated fairly by the courts in this country.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Tony M. Julier

Date: June 15, 2023