

No. 23-5463 ORIGINAL

IN THE

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SUPPLY, M.R.T. U.S.

SUPREME COURT OF THE UNITED STATES

Dexter Leemon Johnson — PETITIONER
(Your Name)

vs.

Oklahoma — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Oklahoma Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Dexter L. Johnson

(Your Name)

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(Address)

Hominy, Oklahoma 74035

(City, State, Zip Code)

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(Phone Number)

QUESTIONS PRESENTED

1. OKLAHOMA LACKS JURISDICTION IN INDIAN TERRITORY DUE TO ITS STATUS AS A STATE OF THE UNION BEING VOID AS RESULT OF ITS FORMATION, CREATION, AND ADMISSION INTO THE UNION BEING IN VIOLATION OF ART. IV, §. 3, CL. 1 OF U.S. CONSTITUTION.
2. OKLAHOMA'S PROSECUTION OF PETITIONER WAS AN ARBITRARY ACT IN VIOLATION OF 14TH AMENDMENT DUE TO FACT ART. 1, §. 3 OF OK. CONST. PROHIBITS IT FROM EXERCISING JURISDICTION ON FEDERAL PUBLIC AND INDIAN OWNED LANDS WITHIN ITS BOUNDARIES.
3. PETITIONER'S CONVICTION IS VOID AS DENIAL OF DUE PROCESS DUE TO BEING A DIRECT PRODUCT OF BILLS OF ATTAINDER IMPOSED BY U.S. CONGRESS AGAINST CREEK NATION INDIAN TRIBE ET AL.
4. PETITIONER'S 14TH AMENDMENT RIGHT TO ADJUDICATION BY AN IMPARTIAL JUDGE WAS VIOLATED BECAUSE "ALL" OKLAHOMA STATE JUDGES HAVE A DIRECT, PERSONAL, SUBSTANTIAL PECUNIARY INTEREST IN REACHING A CONCLUSION AGAINST PETITIONER.
5. COURTS HAVE IN EFFECT HELD PETITIONER TO A HIGHER STANDARD OF THE LEGAL ART THAN MEMBERS OF THE LEGAL PROFESSION, WHICH CONSTITUTES DENIAL OF DUE PROCESS.
6. CASE NO. WH-2022-3 MANIFESTS THE PRESENCE OF FIVE ISSUES OF FIRST IMPRESSION.

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

- Murphy v. Royal, 875 F.3d 896 (10th Cir. 2017). Judgment entered Nov. 9, 2017.
- McGirt v. Oklahoma, 140 S. Ct. 2452 (2020). Judgment entered July 9, 2020.

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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 unpublished; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the State Trial Court court appears at Appendix B to the petition and is

[] reported at unpublished; 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).

28 U.S.C. § 2403(a) applies. But neither the State trial or appellate court certified to Attorney General that an Act of Congress has been drawn into question. S.Ct. Rule 29(4)(b),

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

The date on which the highest state court decided my case was 5-22-23. A copy of that decision appears at Appendix A.

[] A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (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

12 O.S.A. § 1331	4
12 O.S.A. § 1336	6
OK CONST Art. 1, § 3	5, 11, 12
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STATEMENT OF THE CASE

Petitioner was convicted of one count of Shooting with Intent To Kill in the Muskogee County District Court (in Muskogee, Oklahoma), Case No. CF-1994-995. In April 1996 he was sentenced to 150 years in the custody of the Oklahoma D.O.C.

On May 12, 2022, Petitioner filed a Writ of Habeas Corpus pursuant to 12 Okl. St. Ann. § 1331, Case No. WH-2022-3. The first ~~three~~ propositions in Case No. WH-2022-3 are:

I. Oklahoma Lacks Jurisdiction In Indian Territory Due To Its Status As A State of The Union Being Void As Result Its Formation, Creation and Admission Into The Union Being In Violation of Art. IV, § 3, cl. 1 of U.S. Constitution;

II. Oklahoma Lacks The Authority To Exercise Subject-Matter

Jurisdiction Over Crimes
Committed On Federal Public
Lands and Indian Owned Lands
Due To Being Prohibited From
Doing So By Art. 1, § 3 of
Oklahoma Constitution;

III. My Conviction Is Void As Denial
Of Due Process Due To Being The
Direct Product of Bills of
Attainder Imposed By U.S.
Congress Against Creek Nation
Indian Tribe et al.;

IV. Courts' Determination That
Appellate Counsel Was Constitu-
tionally Effective Gave Petitioner
Good Reason To Believe That The
Herein Presented Claims "Did
Not Occur" or "Were Not
Errors In The Eyes of the law."

On April 19, 2023, District Judge
Stuart Tate issued an order denying
Habeas Corpus Case No. WH-2022-3.

Therein Judge Tate pointed out that no service was made on the opposing party. See Appendix B. But 12 O.S.A. § 1336 charges the sheriff with the duty of serving the opposing party. See 12 O.S.A. § 1336.

Petitioner appealed Judge Tate's denial to Oklahoma Court of Criminal Appeals (OCCA), Case No. HC-2023-445. The sole ground was, "Habeas Judge Abused His Discretion By Failing To Recuse Himself Due To Having A Direct, Personal, Substantial Pecuniary Interest In Reaching A Conclusion Against Petitioner." On May 22, 2023 the OCCA issued an order declining jurisdiction for failure to serve opposing party (12 Okl. St. Ann. § 1336 charges the sheriff with the duty of service). The judgment was entered on June 9, 2023.

Question One

Petitioner's claim that Oklahoma lacks jurisdiction in Indian Territory is based on an opinion by U.S. Attorney General Edward Bates that was issued in 1862 and based on facts cited by the Tenth Circuit in *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017).

The said opinion specified that, "Congress, by Art. IV, § 3 of the Constitution, has power to 'admit' new States into the Union, but cannot make, form, or create new states. A free, American state can be made only by its component members — the PEOPLE"; "Congress cannot admit into this Union any territory, district, or other political entity, less than a State. And such State must exist, as a separate, independent body politic, 'before'

it can be admitted under that clause of the Constitution (Art. IV, § 3, cl. 1), and there is no other clause."²² See *Act For The Admission of West Virginia Into The Union*, 10 U.S. Op. Atty. Gen. 426, 426, 427 (1862).

According to facts adduced by the Tenth Circuit in *Murphy v. Royal*,²³ In 1890, Congress carved the Territory of Oklahoma out of the western half of the Indian Territory. The Territory of Oklahoma became the State of Oklahoma in 1907.²⁴ *Murphy*, *supra*, 875 F.3d at 933-936. That act by Congress in 1890 proves that it did indeed form and create the State of Oklahoma out of land from the Indian Territory.

From the date it was admitted into the Union to the present day, the State

of Oklahoma has never been a separate independent body politic. Because it has always and still is governed by the Territory of Oklahoma and by Tribal Governments. See, e.g., Murphy, *supra*, 875 F.3d at 936, 924 (“The Enabling Act also provided that the laws in force in the Territory of Oklahoma, as far as practicable, shall extend over and apply to said new State”); “the Creek Nation, historically and traditionally, is a confederacy of autonomous tribal towns, or Talwa, each with its own political organization and leadership”²²). Both the Murphy and McGirt decisions conclusively prove that the State of Oklahoma is still governed by at least two different governments and hence is not a separate independent body politic.

Accordingly, Congress exceeded the power granted to it by Art. IV, § 3, cl. 1 of U.S. Constitution when it formed the Territory of Oklahoma in 1890 and admitted it into the Union in 1907 "as a political entity that is less than a state due to not being a separate independent body politic." See Act For The Admission of West Virginia Into The Union, 10 U.S. Op. Atty. Gen. 426, 427 (1862). Also see: 72 AM. JUR. 2d State, Etc. § 1 (A state is "A" political community of free citizens, occupying a territory of defined boundaries, organized under "A" government...).

Question Two

Art. 1, § 3 of OK. CONST. specifies in germane part: "The people inhabiting the State do agree and declare 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..." See OK. Const. Art. 1, § 3.

The U.S. Supreme Court has construed "forever disclaim" clauses in State constitutions to mean that "a state is excluded from exercising jurisdiction over or interest in whatever land the State forever disclaims right and title to." See, e.g., *Pollard v. Hagan*, 44 U.S. 212, 234 (1845) (That the disclaimer of Alabama, to all right and title in

the waste lands, or in the unappropriated lands, lying within the State, excludes her from any interest in the soil, is too manifest for debate).

Petitioner was convicted in the Muskogee County District Court in Muskogee, Oklahoma. The Tenth Circuit and U.S. Supreme Court both have determined that Muskogee, Oklahoma is Indian owned land. See Murphy v. Royal, 875 F.3d 896 (10th Cir. 2017); McGirt v. Oklahoma, 140 S.Ct. 2452 (2020). Hence Oklahoma exceeded its jurisdiction by prosecuting Petitioner on land where its own Constitution (Art. 1, § 3) prohibits it from exercising jurisdiction on or over.

Oklahoma's flagrant failure and refusal to comply with its own Constitution (Art. 1, § 3) in its

its prosecution of Petitioner constituted an arbitrary act that denied him due process in violation of 14th Amendment. See, e.g., *Hurtado v. California*, 110 U.S. 516, 527, 4 S.Ct. 111 (1884) (the words "by the law of the land" from the Magna Carta were "intended to secure the individual from the arbitrary exercise of the powers of government"); *Dent v. West Virginia*, 129 U.S. 114, 124, 9 S.Ct. 231 (1889) (In this country the requirement of DUE PROCESS is intended to secure the citizen against any arbitrary deprivation of his rights, whether relating to his life, liberty or property); *Wolff v. McDonnell*, 418 U.S. 539, 558, 94 S.Ct. 2963 (1974) (The touchstone of due process is protection of the individual against arbitrary action of government).

Denial of due process renders a judgment void. See *Wade v. Mayo*, 334 U.S. 672, 683, 68 S.Ct. 1270 (1948) (denial of due process renders void the judgment and commitment under which Petitioner is held); also 46 AM.JUR.2d Judgments § 25 (A judgment can be void not only for lack of jurisdiction, but also where the court acts in a manner contrary to due process).

Question Three

The U.S. Supreme Court defines bill of attainder as follows: "A bill of attainder is a legislative act which inflicts punishment without judicial trial and includes any legislative act which takes the life, liberty, or property of a particular named or easily ascertainable group of persons because legislature thinks them guilty of conduct which deserves punishment." *Cummings v. Missouri*, 71 U.S. 277, 323 (1866).

In *Murphy v. Royal* the Tenth circuit adduced the following FACTS from congressional records and reports: "In 1893, reflecting federal policies to forcibly assimilate Indians into non-Indian culture and to eventually

create a new State in the Indian Territory, Congress created the Dawes Commission to negotiate with the Five Civilized Tribes... The Five Civilized Tribes, however, refused to negotiate with the Dawes Commission, and Congress—still unsure of the scope of its authority to forcibly dispose of tribal lands—began to force the issue by placing restrictions on the Indian governments... In 1897, Congress imposed several measures to force the Creek Nation's agreement to the allotment policy (Allotment Acts were laws designed to force Indians onto individual allotments carved out of reservations and to open up unallotted lands for non-Indian settlement, Murphy, *supra*, 875 F.3d at

919)... An 1898 law, the Curtis Act, continued the campaign for allotment by abolishing the existing Creek court system and rendering then-existing tribal laws unenforceable in federal courts. It also provided for forced allotment and termination of tribal land ownership without tribal consent unless the tribe agreed to allotment," Murphy, *supra*, 875 F.3d at 934.

The above quoted facts from Murphy manifest that the retaliatory punitive measures imposed by Congress against Creek Nation in 1897 and 1898 were in effect bills of attainder in the sense defined and described by U.S. Supreme Court in *Cummings v. Missouri*, *supra*, 71 U.S. at 323. They also prove beyond doubt that the state of Oklahoma as it is

currently constituted, operated, and governed, would not exist had Congress not enacted bills of attainder in 1897 and 1898 to force Creek Nation et al. to agree or submit to allotment. Accordingly, Muskogee County would not be a part of the State of Oklahoma absent passage of said bills of attainder in 1897 and 1898. That means Petitioner would have been prosecuted by a different sovereign under different elements of crime with different sentencing guidelines. Since Muskogee County is both Federal public and Indian owned land (see, e.g., Murphy, *supra*, 875 F.3d 896 (10th Cir. 2017) and *McGirt v. Oklahoma*, 140 S.Ct. 2452), Petitioner's case would have been governed by tribal or federal law.

Under tribal or federal law petitioner would not have received 150 years for attempted murder as a first offender—the federal statute for attempted murder (18 U.S.C. § 1113) carries a “maximum of 20 years.”

Clearly, the bills of attainder imposed by Congress against Creek Nation in 1897 and 1898 had the effect of drastically altering the course of history and the administration of justice and law in the Indian Territory between 1897 and 2023.

More importantly, passage of bills of attainder is prohibited by Art. I, sections 9 and 10 of U.S. Constitution.

Question Four

In the first three propositions presented in Case No. WH-2022-3, Petitioner made valid, colorable, viable challenges to the constitutionality of Oklahoma's status as a member of the Union. All three propositions involve jurisdictional defects stemming from either Congress's enactment of unconstitutional laws or Oklahoma's arbitrary enforcement or outright disregard of its own laws. Resolution of either of said propositions in favor of Petitioner would, as an inevitable legal consequence, render void Oklahoma's status as a state of the Union. Loss of its status as a state of the Union would cause Oklahoma to lose

ALL political power over and in the whole territory or political community known as the State of Oklahoma.

ALL Oklahoma State judges are employed and paid by the State of Oklahoma. See OK. CONST. Art. 7, § 11 (salaries and expenses--Retirement).

Hence a favorable ruling for Petitioner would cause ALL Oklahoma State judges to lose their employment, pension, and other benefits that comes with their State employment. Accordingly, ALL Oklahoma State judges are 'disqualified' from adjudicating Case No. WH-2022-3 due to "having a direct, personal, substantial pecuniary interest in reaching a conclusion against Petitioner."

The U.S. Supreme Court has

determined as clearly established federal law that, "it is a denial of due process of law if a criminal defendant's life, liberty, or property is subjected to the judgment of a court, the judge of which has a direct, personal, substantial interest in reaching a conclusion against him in his case."² See *Tumey v. Ohio*, 273 U.S. 510, 523, 47 S. Ct. 437, 441 (1927); *In re Murchison*, 349 U.S. 133, 136, 75 S. Ct. 623 (1955) (A fair trial in a fair tribunal is a basic requirement of due process. Thus no man is permitted to try cases where he has a direct, substantial pecuniary or personal interest in the outcome).

Denial of due process renders judgment void. *Wade*, 334 U.S. at 683.

Question Five

The U.S. Supreme Court has determined as clearly established Federal law that, "Courts cannot impose on prisoners the high standards of the legal art which they might place on members of the legal profession." Price v. Johnston, 334 U.S. 266, 292, 68 S.Ct. 1049 (1948).

State trial and appellate courts both held that appellate counsel was constitutionally effective. Such a determination in effect excused appellate counsel for omission of any reversible errors that appear on the face of the judgment roll.

But every time petitioner

presents a court with a nonfrivolous substantive or procedural claim that was omitted on direct appeal by constitutionally effective appellate counsel, the reviewing holds that said claims are barred for failure to raise them on direct appeal.

When a court excuses appellate counsel's omission of reversible errors (e.g., jurisdictional defects) on direct appeal but then in the same instance fatally penalize a criminal defendant for presenting said omitted claims during proceedings after direct appeal, the court in effect holds the prisoner to a HIGHER standard of the legal art than members of the legal profession are held to. Because such a result evinces that courts require prisoners to perform the

esoteric legal art "more effectively" than members of the legal profession. It is a denial of due process and of fundamental fairness to require prisoners to equal or exceed the legal performance of members of the Bar. See, e.g., Price, *supra*, 334 U.S. at 292 (courts cannot impose on prisoners the high standards of the legal art which they might place on members of the legal profession); *Holiday v. Johnston*, 313 U.S. 342, 350, 61 S. Ct. 1015 (1941) (pro se petition for habeas corpus ought not be scrutinized for technical nicety); *Rice v. Olson*, 324 U.S. 786, 791-792, 65 S. Ct. 989 (1945) (same).

STATE'S LAWS ARE VOID"

in Question-fixation, reaction,
and admission into the Union

The first three propositions raised
in Case No. W.H. 20.22.53 manifest(s)

the presence of five issues of
Third, NO CRIMINAL DEFENDANT in

first impression.

ANY OTHER PARTY is judging

First, NO COURT has ruled on the
constitutional validity of Congress's

formation, creation, and

admission of a State into

the Union "prior to or after"

Fourth, these issues are not addressed

in Act for the Admission of

West Virginian into the

Union; 10 U.S. 10, Atty. Behr

426 (1862) is to the

Second, No criminal defendant has

ever challenged his or her

conviction based on the

argument that "ALL OF A

REASONS FOR GRANTING THE PETITION

Due to all of the substantiated acts and examples of pervasive governmental corruption cited in support of his claims, this case "raises issues of systemic consequences for the development of the law and the administration of justice." Hence it would be in the interest of justice for this Court to declare and demonstrate to the public what's superior out of the three Branches of Government and the U.S. Constitution.

The answer needs to be
DEMONSTRATED TO THE PUBLIC.

Considering that Petitioner's claims are supported by substantiated acts and examples of unchecked governmental corruption found in Congressional records, this Court's failure to adjudicate the merits

will inevitably show the United States of America to be a dictatorship or authoritarian regime in the same sense America perceives Russia, China, and North Korea to be.

Is that the message and image the Court wants to send the public?

Or has the Court become so politicized, dogmatized, and indoctrinated that it doesn't even feel the slightest need, concern, or responsibility to demonstrate justice to the public?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,
Dexter L. Johnson

Date: August 9, 2023

31.5