

23-6073
No. 23-6044

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM SHIRLEY IV
Petitioner,

v.

STATE OF OKLAHOMA
Respondent

FILED
SEP 20 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

On Petition for Writ of Certiorari
to the United States Court of Appeals for the Tenth Circuit

Pro Se

William Shirley IV

OK. DOC#: 828193

8607 S.E. Flower Mound Rd.

Lawton, Oklahoma 73501

QUESTION(S) PRESENTED

- 1.) Have petitioner's Fifth(5th) and Fourteenth(14th) Constitutional Amendment Rights been violated?
- 2.) Has the State of Oklahoma violated the M.C.A. 18 U.S.C. § 1153(a)?
- 3.) Is Petitioner in State custody against Clearly Established Federal Law?
- 4.) Has the United States Court For The Tenth Circuit not entered a decision in conflict with the United States Supreme Court on the same matter?
- 5.) Has the United States Court For The Tenth Circuit not departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power?
- 6.) Has petitioner compelled this Court to grant relief?

PARTIES TO THE PROCEEDINGS

The parties of this action are stated in the caption.

RELATED PROCEEDINGS

The District Court Of Okmulgee County entered an order on **September 24th, 2018** without jurisdiction case no. **Cf-16-487**.

Petitioner filed for **Post-Conviction Relief** on **December 16th, 2020**

On February **2nd, 2021** Petitioner filed for **Mandamus Relief** requesting an **Evidentiary Hearing** in The Oklahoma Court Of Criminal Appeals.

On **February 24th, 2021** The District Court Of Okmulgee County informally responded to Petitioner's Application For Post-Conviction Relief.

On **March 5th, 2021** The Oklahoma Court Of Criminal Appeals issued an **Order Directing Response** to the Okmulgee District Court.

On **April 26th, 2021** an Order Dismissing Petitioner's Mandamus Request as Moot in the Oklahoma Court Of Criminal Appeals was filed **MA-2021-95** but it wasn't until **May 18th, 2021** that the Oklahoma Court Of Criminal Appeals mandated an Evidentiary Hearing from The Okmulgee District court to relieve Petitioner's Mandamus Claim. **No. MA-2021-400** titled **Order Denying Extraordinary Relief**.

Then Petitioner was indicted by the FBI for the same case on **June 23rd, 2021**. See **CR21-243-Raw**.

Petitioner was not released by the FBI until January of 2022.

After 6 months in Federal Custody/Detainment it wasn't until then that on **January 11th, 2022** the Okmulgee District Court finally decided to file their **Order Denying Application For Post-Conviction Relief. CF-16-487**

Petitioner's **Notice Of Post-Conviction Appeal** was filed **January 27th, 2022**

Petitioner filed **another Notice Of Intent To Appeal** on **February 2nd, 2022**

On March 15th, 2022 The Oklahoma Court Of Criminal Appeals filed an Order Denying Jurisdiction **No. PC-2022-203**

Petitioner filed an **Subsequent Application For Post-Conviction Relief** on **April 11th, 2022** requesting **Appeal Out Of Time** proving Petitioner's Notice Of Intent To Appeal was timely and denied through no fault of his own.

On April 14th, 2022 In The District Court Of The Twenty-Fourth Judicial District Of The State Of Oklahoma Sitting In And For Okmulgee County responded to Petitioner's Application For Post-Conviction Relief filed April 11th, 2022.

On April 19th, 2022 The District Court Of The Twenty-Fourth Judicial District Of The State Of Oklahoma Sitting In And For Okmulgee County filed an Order Denying Application For Post-Conviction Relief Without Necessity Of A Hearing.

On April 25th, 2022 Petitioner filed Notice Of Intent To Appeal Subsequent Application For Post-Conviction Relief.

On May 26th, 2022 Petitioner filed for **Appeal Out Of Time** In The Oklahoma Court Of Criminal Appeals In The State Of Oklahoma. **PC-2022-490.**

On June 17th, 2022 The Court Of Criminal Appeals Of The State Of Oklahoma issued an **Order Granting Post-Conviction Appeal Out Of Time. PC-2022-490.**

On October 10th, 2022 In The Court Of Criminal Appeals For The State Of Oklahoma the Court filed an Order Affirming Denial Of Post-Conviction Relief. **No. PC-2022-593.**

On December 9th, 2022 Petitioner motioned for a Writ of Habeas Corpus Relief under 28 U.S.C. § 2254 In The United States District Court For The Western District Of Oklahoma.

On **January 5th, 2023** In The United States District Court For The Western District Of Oklahoma respondent Steven Harpe filed a **Report and Recommendation. No. CIV-22-1049-J.**

Petitioner does not remember when his objection to the Report and Recommendation was filed but it was timely filed In The United States District Court For The Western District Of Oklahoma. **See Case No. CIV-21-571-SLP.**

On **March 14th, 2023** The United States District Court For The Western District Of Oklahoma filed an Order adopting respondents Report and Recommendation. **Case No. CIV-22-1049-J**

On **April 3rd, 2023** The United States District Court For The Western District Of Oklahoma filed an Order denying C.O.A. **Case No. CIV-22-1049-J**

On **June 29th, 2023** The United States Court Of Appeals For The Tenth Circuit filed an Order Denying Certificate Of Appealability **No. 23-6044 (D.C. No 5:22-CV-01049-J) (W.D. Okla.).**

Mcgirt v. Oklahoma 140 S. Ct. 2452 (2020)

Graham v. White No. 23-CV-0164-CVE-SH (2023)

Deerleader v. Crow Case No. 20-CV-0172-JED-CDL (2021)

Matloff v. Wallace 2021 OK CR 21; 497 P.3d 686

Lone Wolf v. Hitchcock, 187 U.S. 533, 566-568, 23 S. Ct. 216, 47 L. Ed. 299 (1903)

Solem v. Bartlett, 465 U.S. 463, 470, 104 S. Ct. 1161, 79 L. Ed. 2d. 443 (1984)

Ferrell v. Oklahoma (1995) OK CR 54; 902 P.2d 1113

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Constitutional Provisions

U.S. Constitution, Amendment 5 Criminal actions - Provisions concerning - Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.....18,20,22.

U.S. Constitution, Amendment 14

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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 any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.18,20,22.

Statutes

28 U.S.C. § 1257(a):

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the

treaties or statutes of, or any commission held or authority exercised under, the United States.27.

18 U.S.C. § 1153(a):

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A [18 USCS §§ 2241 et seq], incest, a felony assault under section 113 [18 USCS § 113], an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title [18 USCS § 661] 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.3/20

28 U.S.C. § 2254:

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b) (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that:

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.....20.

Okl. Stat. Title 22 § 1080.1

(A.) A one-year period of limitation shall apply to the filing of any application for post-conviction relief, whether an original application or a subsequent application. The limitation period shall run from the latest of:

4. The date on which the constitutional right asserted was initially recognized by the United States Supreme Court, if the right has been newly recognized by the United States Supreme Court and made retroactively applicable to cases on collateral review.....37.

28 U.S.C. § 2244(d)(1)(C):

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of:

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review.....26/38.

28 U.S.C. § 2244(d)(1)(C)(2):

The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.....26/38.

Other Authorities

Rule 10(a)(b) of Rules of the Supreme Court of the United States:

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

- (a)** a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

- (b)** a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.....24.

Rule 11 of Rules of the Supreme Court of the United States:

A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal

appellate practice and to require immediate determination in this Court. See 28 U.S.C. § 2101(e).....22.

Rule 14.5 of Rules of the Supreme Court of the United States:

5.) If the Clerk determines that a petition submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition submitted in accordance with Rule 29.2 no more than 60 days after the date of the Clerk's letter will be deemed timely.....20.

Rule 16.2 of Rules of the Supreme Court of the United States:

2.) Whenever the Court grants a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and the court whose judgment is to be reviewed. The case then will be scheduled for briefing and oral argument. If the record has not previously been filed in this Court, the Clerk will request the clerk of the court having possession of the record to certify and transmit it. A formal writ will not issue unless specially directed.....18.

Rule 29.2 of Rules of the Supreme Court of the United States:

2.) A document is timely filed if it is received by the Clerk in paper form within the time specified for filing; or if it is sent to the Clerk through the United States Postal Service by first-class mail (including express or priority mail), postage prepaid, and bears a postmark, other than a commercial postage meter label, showing that the document was mailed on or before the last day for filing; or if it is delivered on or before the last day for filing to a third-party commercial carrier for delivery to the Clerk within 3 calendar days. If submitted by an inmate confined in an institution, a document is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing and is accompanied by a notarized statement or declaration in compliance with 28 U. S. C. § 1746 setting out the date of deposit and stating that first-class postage has been prepaid. If the postmark is missing or not legible, or if the third-party commercial carrier does not provide the date the document was received by the carrier, the Clerk will require the person who sent the document to submit a notarized statement or declaration in compliance with 28 U. S. C. § 1746 setting out the details of the filing and stating that the filing took place on a particular date within the permitted time.....20.

PETITION FOR WRIT OF CERTIORARI

Petitioner William Shirley IV, DOC#828193, respectfully petitions for a Writ Of Certiorari to the Supreme Court of the United States for review of The District Court of Okmulgee County's conviction decided September 24th, 2018, CF-16-487. To review the District Court Of Okmulgee County's Post-Conviction decisions denying Petitioner Post-Conviction Relief January 11th, 2022. To review The Oklahoma Court Of Criminal Appeals Order Affirming Denial Of Post-Conviction Relief October 10th, 2022. To review The United States District Court For The Western District Of Oklahoma's Order adopting respondents Report and Recommendation. To review The United States Court Of Appeals For The Tenth Circuit's Order denying C.O.A. 23-6044(D.C. No. 5:22-CV-01049-J)(W.D. Okla.) / CF-16-487; and grant relief by immediately releasing petitioner because petitioner's Constitutional and Statutorial rights have been and still are being violated. **See Rule 10(a)(b) and (C), Rule 11 and Rule 16.2 of Rules of the Supreme Court of the United States. See Constitution Amendment 5 and 14. See 18 U.S.C. § 1153(a). See 28 U.S.C. § 2244(d)(1)(C). See *Mcgirt v. Oklahoma* 140 S. Ct. 2452 (2020), *Deerleader v. Crow*, Case No. 20-CV-0172-JED-CDL (2021), *Graham v. White*, No. 23-CV-0164-CVE-SH (2023).**

OPINIONS BELOW

Petitioner's original/initial Post-Conviction Application filed December 16th, 2020 in the Okmulgee District Court is included in **APPENDIX A**.

Petitioner's **FBI Indictment** file June 23rd, 2021 is included in **APPENDIX B**.

The opinion of the Okmulgee District Court affirming the denial of Petitioner's Application for Post-Conviction Relief (Shirley v. Oklahoma CF-16-487) on January 11th, 2022 is available in Petitioner's **APPENDIX C**.

The Opinion of the O.C.C.A. in the State of Oklahoma denying the Petitioner's Application for Post-Conviction Relief (Shirley, IV, v. Harpe No. PC-2022-593) on October 10th, 2022 is available in Petitioner's **APPENDIX D**.

Petitioner's Habeas Corpus Petition filed within the United States District Court Western District Of Oklahoma on December 9th, 2022 is included in **APPENDIX E**.

Respondent's Report and Recommendation filed on January 5th, 2023 is included in **APPENDIX F**.

The opinion of the United States District Court Western District Of Oklahoma denying Petitioner's Habeas relief (Shirley, IV, v. Harpe CIV-22-1049-J) on March 14th, 2023 is available in Petitioner's **APPENDIX G**.

The opinion of the United States District Court Western District Of Oklahoma denying Petitioner's Objection to respondent's Report and Recommendation (Shirley, IV, v. Harpe CIV-22-1049-J) on April 3rd, 2023 is available in **APPENDIX H**.

The Opinion of the United States Court Of Appeals For The Tenth Circuit denying Petitioner's Certificate Of Appealability (Shirley, IV, v. Harpe No. 23-6044) on June 29th, 2023 is available in **APPENDIX I**.

The Supreme Court Of The United States Office Of The Court Clerk Washington,
DC 20543-0001 Letter For Correction received September 26th, 2023 is presented in
APPENDIX J

The Supreme Court Of The United States Office Of The Court Clerk Washington,
DC 20543-0001 Letter For Correction received November 14th, 2023 is presented in
APPENDIX K

JURISDICTION

The **United States Court of Appeals For The Tenth Circuit** judgment affirming the denial of Petitioner's Habeas Corpus petition was entered on **June 29th, 2023**. Petitioner's original petition was filed within 90 days of that denial on **September 20th, 2023**. Petitioner's properly and corrected petition is being filed in accordance to **Rule 14.5 of Rules of The Supreme Court of the United States** here on **November 14th, 2023**. See **APPENDIX J and K**. This Court has jurisdiction pursuant to; **28 U.S.C. § 1257(a), Rule 10, Rule 11, Rules 14.5, Rule 16, and Rule 29.2 of Rules of The Supreme Court of the United States; The Fifth(5th) and Fourteenth(14th) Constitutional Amendments and Federal Title 18 U.S.C. § 1153(a), 28 U.S.C. § 2254, Okla. Stat. Title 22 § 1080.1 and 28 U.S.C. § 2244(d)(1)(C)(2)**. The State of Oklahoma did not and continues not to have Jurisdiction over petitioner. This Court may adjudicate this case matter.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

- 1.) The Fifth(5th) Amendment of the Constitution
- 2.) The Fourteenth(14th) Amendment of the Constitution
- 3.) The Major Crimes Act (M.C.A.) 18 U.S .C. § 1153(a).
- 4.) Oklahoma Statute Title 22. Ch. 18 § 1080. Post-Conviction Procedure Act-Right to Challenge Conviction or Sentence.
- 5.) Title 28 U.S.C. § 2244(d)(1)(C)
- 6.) 28 U.S.C. § 1257(a).
- 7.) Rule 10(a)(b) of Rules of The Supreme Court of the United States
- 8.) Rule 11 of Rules of the Supreme Court of the United States
- 9.) Rule 14.5 of Rules of the Supreme Court of the United States
- 10.) Rule 16.2 of Rules of the Supreme Court of the United States
- 11.) Rule 29.2 of Rules of the Supreme Court of the United States

STATEMENT OF CASE

Petitioner is unconstitutionally in custody of the Oklahoma Department of Corrections (ODOC) against clearly established federal law and seeks relief and review from The United States Supreme Court. **See Fifth(5th) and Fourteenth(14th) Constitutional Amendments and Federal Title 18 U.S.C. § 1153(a). 28 U.S.C. § 2254, See McGirt v. Oklahoma, 140 S. Ct. 2452 (2020), Deerleader v. Crow, Case No. 20-CV-0172-JED-CDL (2021), Graham v. White, No. 23-CV-0164-CVE-SH (2023). See Rule 11 of Rules of The Supreme Court.**

INTRODUCTION

Petitioner was convicted and sentenced **September 24th, 2018**. Petitioner motioned for Post-Conviction relief **December of 2020**, Five(5) months after the United States Supreme Court decided *Mcgirt*. In that decision (*Mcgirt v. Oklahoma*) the Supreme Court “newly recognized the Constitutional and Statutory Rights of Indians and granted relief on collateral review. **See *Mcgirt v. Oklahoma* July 9th, 2020**. Petitioner has the right through Oklahoma Statute **Title 22. Ch. 18 § 1080**. Post-Conviction Procedure Act-Right to Challenge Conviction or Sentence. Petitioner also has the right to pursue Habeas Corpus relief through **Title 28 U.S.C. Part VI, Ch. 153. § 2254**. Petitioner was erroneously denied relief by the Okmulgee District Court **January 11th, 2022**, the OCCA **October 10th, 2022**, the United States District Court Western District Of Oklahoma **April 3rd, 2023** and the United States Court of Appeals For The Tenth Circuit **June 29th, 2023**. Petitioner’s Appeal is timely through **28 U.S.C. § 2244(d)(1)(C)**. The previous Courts have misapplied properly stated rules of law and have denied petitioner relief. Petitioner citing Steven Harpe’s Report and Recommendation pg. 5: has “suggested facts that would implicate subsection (C) [of 2244(d)(1)(C)]indicating *Mcgirt* revealed the State of Oklahoma did not have jurisdiction over his criminal proceedings.” Petitioner has indicated reasons for relief with factual findings of both Constitutional and Statutory provisions. Petitioner now motions for a Writ of Certiorari pursuant to **28 U.S.C. § 1257(a), Rule 10, Rule 13, Rule 14, Rule 16.2 of Rules of The Supreme Court of the United States**

REASONS FOR GRANTING WRIT

Reason 1:

The United States Court For The Tenth Circuit has entered a decision in conflict with the decision of the United States Supreme Court.

In the United States Court Of Appeals For The Tenth Circuit Order Denying Certificate Of Appealability on June 29th, 2023 before Bacharach, Kelly and Moritz, Circuit Judges they state that “ the district court concluded that there was no basis for statutorial or equitable tolling of the Antiterroism and Effective Death Penalty Act's (AEDPA) one-year limitation period and dismissed the petition as untimely. As no reasonable jurist could conclude otherwise, we deny COA and dismiss this appeal.”

Pg. 1 of Tenth Circuit's Order.

On Pg. 2 “The Magistrate Judge recommended the petition be dismissed as untimely under the one-year limitation period as he had not shown a basis for statutory or equitable tolling.” Pg.2 continues to state “To obtain a COA, where, as here, a district court has dismissed a filing on procedural grounds, Mr. Shirley must show both 'that jurist of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurist of reason would find it debatable whether the district court was correct in its procedural ruling.

On Pg. 3 the Circuit judge states “Given Mr. Shirley did not file his habeas petition until December 2022, four years after his conviction became final , his petition was untimely.” The judge also states “Although Mr. Shirley pursued state post-conviction

relief, it was two years after his conviction became final, so statutory tolling did not apply.

Toward the end of Pg 3 Mr. Kelly states “ In his (petitioner's) view, the Supreme Court implicitly indicated McGirt's jurisdictional ruling had retroactive effect, because 'otherwise McGirt would not have received relief.' But there is at least one fatal flaw to this argument: McGirt announces no new constitutional right.”

Now with all that being said according to *Black's Law Dictionary Ninth Edition* “Retroactivity is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called 'true retroactivity,' consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as 'quasi-retroactivity,' occurs when a new rule of law is applied to an act or transaction in the process of completion.”

This leads us to *Ferrell v. State* 1995 OK CR 54; 902 P.2d 1113; Which states “A case announces a new rule when it breaks new ground or imposes a new obligation on the States or Federal Government or, to put it differently, when the result was not dictated by precedent existing at the time the defendant's conviction became final.”

Forgoing the State of Oklahoma attempts to or supposedly announced *Mcgirt v. Oklahoma* as a new procedural rule through the O.C.C.A.'s decision in *Matloff v. Wallace*. **The Fourteenth(14th) Amendment** states '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 any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...' Including **18 U.S.C. § 1153(a)**; which places (i) manslaughter committed by an Indian in Indian

territory as a 'certain kind of primary conduct beyond the power of the State of Oklahoma, the criminal law-making authority to proscribe.' This means Petitioner shall be subject to the same laws and penalties as all other persons committing the above offense within the exclusive jurisdiction of the United States. View *Ferrell v. Oklahoma* (1995) Retroactivity and its exceptions. The second exception (ii) also "requires the observance of those procedures that are implicit in the concept of ordered liberty which refers to the Supreme Court's retroactive relief procedure that was implicit in the concept of McGirt's ordered liberty.

So for the Tenth Circuit to say "McGirt announces no new constitutional right" was redundant for a "new constitutional right" is not required for retroactive relief to apply. It is only required that an already existing constitutional right be 'newly recognized.'

See **Case No. CIV-22-1049-J, McGirt v. Oklahoma and Constitutional Amendment 5 and 14.** These two Constitutional Rights were initially asserted since 1787. The Supreme Court newly recognized these rights in 2020. See **McGirt v. Oklahoma**. The Supreme Court did not explicitly express retroactivity (but implied it) so it is up to the Supreme Court to exercise its judicial discretion in this matter citing **Rule 10(a)(b) and (C) of Rules of The United States Supreme Court**. **28 U.S.C. § 2244(d)(1)(C)** extends Petitioner's Finality of Determination to the date of The Supreme Court's McGirt decision.

Reason 2

Respondent admits on Pg. Five(5) of Respondent's Rep & Rec. "Petitioner has suggested facts that would implicate subsection (C), of **28 U.S.C. § 2244(d)(1)(C)** 'indicating McGirt revealed the State Of Oklahoma did not have jurisdiction over his criminal proceedings."

Reason 3

Petitioner filed for Post-Conviction Relief December 16th, 2020 five(5) months after the Supreme Court of the United States decided *Mcgirt v. Oklahoma*. In that decision the Supreme Court 'newly recognized' the **'Fifth(5) and Fourteenth(14) Amendment** in a very implicit manner. Citing *Pg. Five(5)* in *Mcgirt*; "This Court long ago held that the Legislature wields significant Constitutional authority {207 L. Ed. 2D 955} when it comes to tribal relations, possessing even the authority to breach its own promises and treaties. *Lone Wolf v. Hitchcock*, 187 U.S. 533, 566-568, 23 S. Ct. 216, 47 L. Ed. 299 (1903). But that power, this Court has cautioned, belongs to Congress alone. Nor will this Court lightly infer such a breach once Congress has established a reservation. *Solem v. Bartlett*, 465 U.S. 463, 470, 104 S. Ct. 1161, 79 L. Ed. 2d. 443 (1984).

This 'significant constitutional authority' refers to the **Fifth(5) and Fourteenth(14) Amendment**; newly recognized in *Mcgirt v Oklahoma* (2020). **18 U.S.C. § 1153(a)** is also an example of 'significant constitutional authority' which makes reference to "the exclusive jurisdiction of the United States." Jurisdiction belongs to the 'exclusive jurisdiction of the United States,' Federal Law.

Reason 4

On January 11th, 2022 the District Court of Okmulgee County filed a Final and Formal Order Denying Petitioner's first application for Post-Conviction Relief citing *Matloff v. Wallace*. In that final and formal order the Court alleges that "petitioner failed to state a claim upon which relief could be granted" which is meritless. If you observe Petitioner's application for Post-Conviction Relief you will see Petitioner's first and only proposition was that "the State lacked jurisdiction to prosecute him" citing **18 U.S.C. §**

1153(a); meaning that the State of Oklahoma violated his **Fifth(5) and Fourteenth(14) Amendment Constitutional Rights, Rights of Persons and Rights Guaranteed:** Privileges and **Immunities of Citizenship, Due Process and Equal Protection.** Petitioner was denied Post-Conviction relief based on the ruling in *Mark Matloff v. Honorable Jana Wallace*; alleging that McGirt and the M.C.A. are new procedural rules and do not apply retroactively which is an “*unlawful exercise of independent state-law authority.*”

A. Writ of Prohibition. Petitioner has the burden of establishing (1) a court, officer or person has or is about to exercise judicial or quasi-judicial power; (2) the exercise of said power is unauthorized by law; and (3) the exercise of said power will result in injury for which there is no other adequate remedy. See *Maynard v. Layden*, 830 P.2d 581, 583 (Okla.Cr.1992). The adequacy of a remedy is to be determined upon the facts of each particular case. See *State ex rel. Wise v. Clanton*, 560 P.2d 588, 591 (Okla.Cr.1977).

Reason 5

In *McGirt v. Oklahoma*, McGirt raises **The Major Crimes Act (M.C.A.) 18 U.S.C. § 1153(a)** which is indeed a longstanding Substantive Rule of Law which states, “Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely manslaughter...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.' This does in fact mean that the State of Oklahoma lacked jurisdiction to prosecute petitioner and that “*independent state-law authority*” does not exist. Therefore sentence and judgment was never legally final and must be dismissed and vacated. Petitioner respectfully and lawfully pays this Court to grant relief by dismissing and vacating the Petitioner's unlawful sentence and judgment. Petitioner request and prays for immediate release.

Reason 6

Applying the **Major Crimes Act** or the *Mcgirt* ruling as a New Procedural Rule that is not Retroactive is in fact improper and unlawful. For instance a "Procedural Law" is defined as "That which prescribes method of enforcing rights or obtaining redress for their invasion." The **M.C.A.** is a "Substantive Rule of Law" and would be unlawful to apply it as a Procedural one. Proper redress would be applying the M.C.A. retroactively due to Oklahoma's invasion. "A general rule, laws which fix duties, establish rights and responsibilities among and for persons, natural or otherwise, are 'Substantive Laws' in character, while those which merely prescribe the manner in which such rights and responsibilities may be exercised and enforced in a court are 'Procedural Laws.'" The **Major Crimes Act** is a general rule and well established law that fixes the duties of the Federal Government, Established Rights for Indians, as well as responsibilities for the Federal Government by the Federal Government. Therefore the **M.C.A.** is indeed a Substantive Law for it was actively established June 25th, 1948.

Reason 7

Applying the **M.C.A.** as a "New Procedural Rule" that is not retroactive would be a way of undermining the deterrent effects of criminal law. Otherwise subject matter jurisdiction cannot be raised at any time. Subject Mater Jurisdiction is Substantive.

Reason 8

Even if the **M.C.A.** were to apply as a "Procedural Rule of Law" it must apply retroactively because "it places certain kind of primary conduct beyond the power of the criminal law-making authority." See retroactivity exceptions in *Ferrell v. Oklahoma* 1995. *Mcgirt v. Oklahoma* does not announce a "New Constitutional Rule" but reminds

Oklahoma of an already existing “Substantive Constitutional Rule.” **See Fifth(5) and Fourteenth(14) Amendment, 1832 Treaty With the Creeks and 18 U.S.C. § 1153(a).**

Reason 9

As mentioned in *Matloff v. Wallace* “for purposes of retroactive analysis, a case announces a new rule when it breaks new ground, imposes a new obligation on the Federal and State Government, or in other words, the result was not dictated by precedence when the defendant's conviction became final.” Defendant was unlawfully convicted in 2018 and precedence did exist, for example *Michael Koch v. Thomas* (2014) and *Reyna Tom Carmen v. U.S. District Court For The Northern District Of California* (1958). Precedence lies within the **M.C.A.** and the **Constitution**; hints the charge **“Murder In Indian Country.”** particularly the **“In Indian Country”** portion, otherwise this crime would not exist with its specificity.

Reason 10

On page 9 of the *Matloff v. Wallace* decision Matloff states “Following *Teague* and its progeny, we would apply a new substantive rule to a final conviction if it placed certain primary conduct beyond the power of the Legislature to punish, or categorically barred certain punishments for the classes of persons because of their status.” The **Major Crimes Act** being a Law since 1948 place Indians who commit Manslaughter within Indian Country as a primary conduct/offense beyond the power of the State of Oklahoma to punish, and categorically bar certain crimes committed by Indians within Indian Country subject to the exclusive jurisdiction of the United States.

Reason 11

On *page 13* *Matloff* states “Before and after *Mcgirt*, this Court has treated Indian Country claims as presenting non-waivable challenges to criminal subject matter jurisdiction. After *Mcgirt* was decided, relying on this theory of non-waivability, this court initially granted post-conviction relief and vacated several capital murder convictions, and at least one non-capital (Jimcy *Mcgirt*), that were final when *Mcgirt* was announced.” He continues on *page 14*; “The court acted in those post-conviction cases without their attention ever having been drawn on to the potential non-retroactivity of *Mcgirt* in the light of the *Court of Appeals' Opinion in United States v. Cuch*.”

Reason 12

After careful examination of the reasoning in *Cuch*, you will see that with no disrespect to the United States Government but that they simply charged Mr. Cuch with the wrong crime. The Federal Government did in fact have jurisdiction over Mr. Cuch but they shouldn't have charged him under the **M.C.A.** with crimes committed on or in Indian Country that had been determined to be part of an Indian Reservation, because the land on which Mr. Cuch was charged was no longer considered Indian Territory. *See Hagen v. Utah (1994) and Ute Indian Tribe v. Utah (1985)*. Therefore Mr. Cuch's conviction should never had been considered final under **§ 1153(a)** but should have been re-indicted or had such indictment modified, **Rule 4.1(5)** under the proper clause, if the Federal Government inclined to properly prosecute him. With that said the *Court of Appeals' Opinion in the United States v. Cuch* was controversial to “**28 U.S.C. § 2255**. 'Jurisdictional issues are never waived and can be raised on collateral attack.' If the Court of Appeal or the Supreme Court Of The United States can and does limit the retroactive application of

subject matter jurisdiction they are then waiving Jurisdictional Issues. Petitioner's cannot raise an issue on collateral review if its already waived.

Reason 13

Also the argument that a jurisdictional ruling should not be applied retroactively to cases on collateral review is based on principles of finality and fundamental fairness. Mr. Cuch could have actually challenged the finality and fairness of his conviction due to the Error of his Indictment. Furthermore, Federal jurisdiction and the State's lack thereof mentioned in the **Constitution**, the **M.C.A.** and *Mcgirt* existed way before the finality of Petitioner's conviction.

Reason 14

In *Hagen v. Utah* the Reservations in Utah were diminished unlike the Creek Reservation in *Mcgirt v. Oklahoma*. This makes *Hagen v. Utah* irrelevant and inappropriate in this matter. The same goes for *O'Callahan v. Parker*, for this case mentions “newly announced jurisdiction” and a “clear break from the past.” *Mcgirt* does not announce a “New Jurisdiction” or “make a clear break from the past.” If anything Oklahoma made a clear break from the law in the past and tries to announce reservations in Oklahoma as “new jurisdictions” to justify or cover up their error of unauthorized judicial power. The Supreme Court nor Congress ever declared the **M.C.A.** as a new procedural rule. To those regards, Matloff and the State of Oklahoma lack the authority to apply the **M.C.A.** as a non-retroactive doctrine.

Reason 15

Mcgirt announces no 'New Rule of Criminal Law' if he used *prior cases*, **Treaties**, **Acts of Congress** and **the United States Constitution** to recognize a long dormant of Federal Jurisdiction. With this revelation at hand its evident *Matloff* never did establish the *Honorable Jana Wallace* exercised unauthorized judicial power by granting Mr. Parish relief. Instead *Matloff* attempts to 'exercise his own unauthorized judicial power' to cause 'injury to Indians and their Rights for which there would be no adequate remedy.' He even admits the State courts jurisdiction was faulty on page *39 of Matloff v. Wallace*.

Reason 16

Oklahoma has exceeded its jurisdiction beyond all bounds. The effects of unlawful convictions are harmful to defendants and their families. Defendants are unlawfully being separated from their families, prosecuted, punished and oppressed. Native Indian citizens Rights are being violated. If Oklahoma had assumed or stayed within its respected jurisdiction this apparent issue would not be at hand. Nonretroactivity is an injustice within itself. Unfairness lies with defendants and their rights. Law enforcement and prosecutors were wrong in action and this makes their faith in those actions highly questionable. If Oklahoma can't be trusted to abide by the law and its jurisdiction then their truth-finding functions can't be trusted. Omission is neglection of the truth which can and will result in a 'miscarriage of justice.' This therefore leaves Oklahoma's truth-finding function in question. Defendants should not be held to a 'more stringent or higher standard of due diligence of the law' than prosecutors and law enforcement. The accuracy and process by which judgments and convictions rendered on Indians in Indian Country

by Oklahoma are in fact unlawful. This is indeed a fact established by Congress and the Supreme Court.

Reason 17

The State of Oklahoma is in manifest error violating the rights of Indians by prosecuting us without jurisdiction and unlawfully imprisoning us against our will. **18 U.S.C. § 1153(a).**

Reason 18

When a Petitioner in custody under criminal judgment issued by a state request Federal Habeas Relief, a federal court may grant relief from the judgment if the petitioner shows that he or she “is in custody in violation of the **Constitution or Laws or Treaties of the United States.**” **[28 U.S.C. § 2254(a).]** The State Court's decision on October 10th, 2022 in *Shirley v. Oklahoma* “was contrary to **18 U.S.C. § 1153(a);** clearly established federal law.” The Western District of Oklahoma's decision “involved an unreasonable application of clearly established federal law” and “was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings *id.* **28 U.S.C. § 2254(d)(1),(2).** The Supreme Court shall entertain petitioner writ because **§2254(d)** does not bar habeas relief due to the O.C.C.A.'s decision on petitioner's jurisdictional claim being contrary to clearly established federal law. As used in **§2254(d)(1)** the phrase “clearly established federal law” means “the governing legal principles stated in the holdings, as opposed to the dicta of the Supreme Court's decisions as of the time of the relevant state court decision. *Lockyer v. Andrade* 538 U.S. 63, 71-72 (2003). (*Quoting Williams v. Taylor* 529 U.S. 362, 412 (2000). If clearly established federal law governs the federal claims presented in state court, the state court's decision is contrary to that law if the decision 'applies a rule that contradicts the

governing law set forth in the Supreme Court cases. *Mcgirt v. Oklahoma. Murphy 1. 875 F.3d at 914* (alteration in original) (*quoting Williams 529 U.S. At 405*). “If the state court identifies and applies 'the correct rule' it's decision will not be 'contrary to' federal law (**§1153(a)**) but the state courts application of the correct rule can still be evaluated under **§2254(d)(1)**'s 'unreasonable application clause' *id.* (*first quoting Williams 529 U,S, at 406*, then quoting **28 U.S.C. §2254(d)(1)and (2)**).

Reason 19

In *Murphy 1*, the Tenth Circuit determined that the clearly established federal law governing the Habeas petitioner's jurisdictional claim-a claim identical to the one raised here-is the analytical framework established in *Solem v. Bartlett 465 U.S. 463 (1984)*. *Murphy 1 875 F. 3d at 926-28*. The Tenth Circuit's reasoning as to why the O.C.C.A.'s 2005 decision that was subject to habeas review in *Murphy 1* was 'contrary to clearly established federal law' is equally applicable here because like the O.C.C.A.'s 2005 decision, the O.C.C.A.'s 2020 decision in this case neither cited nor applied *Solem* when it addressed petitioner's jurisdictional claim and “the substance of the O.C.C.A.'s analysis lacks even cursory engagement with any of the three *Solem Factors*.” As in *Murphy 1* because the O.C.C.A.'s decision on petitioner's jurisdictional claim is contrary to clearly established federal law; **§2254(d)** does not bar habeas relief in this case. As a result the Western District Court Of Oklahoma should have decided petitioner's jurisdictional claim *de-novo*. *Murphy 1 and Milton v Miller 744, F. 3d, 660, 670-71 (10th Cir. 2014)* explaining the satisfaction of **§2254(d)**'s standards “effectively remove the A.E.D.P.A.'s prohibition on the issuance of a writ” and “requires a Federal Habeas Court to review *de-novo*” the Petitioner's claims.

Reason 20

The United States Court For The Tenth Circuit has departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. The Respondent even stated that "the State of Oklahoma did not have jurisdiction over petitioner's criminal proceedings." Pg.5 of Rep & Rec. **See Constitutional Amendment 14 and 5, 18 U.S.C. § 1153(a), 28 U.S.C. § 2244(d)(1)(C), McGirt v. Oklahoma, Graham v. White, Deerleader v. Crow, and Case No. CIV-22-1049-J. See Rule 10(a) of Rules of The United States Supreme Court. Rule 16 of the Supreme Court of the United States.**

Reason 21

The O.C.C.A. a state court of last resort has decided an important Federal Question in a way that conflicts with the decision of the United States Supreme Court of Appeals. **See McGirt v. Oklahoma and 18 U.S.C. § 1153(a), and Case No. PC-2022-593. See Rule 10(b) of Rules of The United States Supreme Court.**

Reason 22

Respondent omits(ed) **Okla. Stat. tit, 22 § 1080.1(A)(4)(B)(C):**

(A): A one-year period of limitation shall apply to the filing of any application for post-conviction relief, whether an original application or a subsequent application. The limitation period shall run from the latest of:

(4): The date on which the constitutional right asserted was initially recognized by the United States Supreme Court, if the right has been newly recognized by the United States Supreme Court and made retroactively applicable to cases on collateral review; or:

(B): Subject to the exceptions provided for in this section, this limitation period shall apply irrespective of the nature of the claims raised in the application and shall include jurisdictional claims that the trial court lacked subject-matter jurisdiction.

(C): The provisions of this section shall apply to any post-conviction application filed on or after the effective date of this act.

Meaning Petitioner's one-year limitation did not begin until the 2020 McGirt decision and that the State of Oklahoma did not ever have jurisdiction over Petitioner.

See Case No. 23-6044, McGirt v. Oklahoma, CF-16-487 and See Rule 10(b) of Rules of The United States Supreme Court.

Reason 23

Respondent omits(ed) **28 U.S.C. § 2244(d)(1)(C)(D)(2):**

(d) (1). A 1-year period of limitation shall apply to an application for a writ of Habeas Corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of

(C). The date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review;

(D). The date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence; **was July 9th, 2020.**

(2). The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection;

Petitioner's Post-Conviction petition was timely pursuant to **Okl. Stat. tit, 22 § 1080.1(A)(4)(B)(C)** which is pursuant to **28 U.S.C. § 2244(d)(1)(C)** and **28 U.S.C. § 2244(d)(1)(2)** which dissolves respondent's timeliness argument in accordance with **Rule 10(b) of Rules of The United States Supreme Court** and **Rule 16 of Rules of the Supreme Court of the United States**. See **APPENDIX A, B, C, D, E, F, G, H and I**

Reason 24

Petitioner presents equitable tolling in State and Federal Court through hereby affidavit asserting that "he was actively misled and coerced by counsel into signing a guilty plea, preventing petitioner from asserting his self-defense and defense of another right claims at trial. In light of the new evidence that petitioner was actively misled by counsel and acting in self-defense equitable tolling should be warranted because no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt.

Petitioner comes now proving he was acting in self-defense and defense of another. Petitioner had the Right to defend himself and another against the immediate use of unlawful force displayed by the victim. Deadly force was as much force as reasonably appeared to be necessary to prevent death to himself and another. The State and Federal government cannot establish beyond a reasonable doubt that the petitioner's actions were not in self-defense. See **Shirley v. Oklahoma, Okmulgee County District Court, Case No. CF-16-487, supra**. See **Oklahoma Self Defense and Defense of another Jury Instructions**. See **aggressor and aggressor reversed definitions**. Petitioner was acting in Self-Defense and Defense of Another at the time of the incident and had the Right to Stand (Your) His Ground consistent with Oklahoma's Make My Day Law. See also **Title 21 O.S. §1290.1 to §1290.27 Oklahoma Self-Defense Act, §1279 Pointing Weapons at Others-Exceptions**,

**§1289.3 Definitions for Firearms Act, §1290.2 Definitions, Title 21 O.S. §1289.1 to
§1289.30 Oklahoma Firearms Act of 1971, U.S. 18 Ch. 44 Firearms §927 Effect on State
Law/ §928 Separability, Title 375 Oklahoma State Bureau of Investigation, Title 21 O.S.
§733 Justifiable Homicide by Other Persons.**

CONCLUSION

For the foregoing reasons Petitioner's Writ Of Certiorari should be granted and the judgment of the Tenth Circuits entered June 29, 2023 should be reviewed and overturned following **Rule 11 of Rules of the Supreme Court of the United States**. Petitioner respectfully request and prays for the United States Supreme Court to reverse the Tenth Circuits decision/judgment entered on June 29, 2023 and grant petitioner an Immediate release from the Oklahoma Department of Corrections including dismissal of the State of Oklahoma's conviction, sentence and judgment in accordance with **Rule 16.2 of Rules of the Supreme Court of the United States**.

Respectfully submitted,

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November 14th, 2023.