

23-6718

No. _____

23-6718

IN THE

FILED
JAN 31 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

Larry David Doak — PETITIONER
(Your Name)

Genther Drummond vs.
Oklahoma Attorney General 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

Larry David Doak #242015
(Your Name)

216 N. Murray Street, TCCC Unit 6
(Address)

Helena, Oklahoma 73741

(City, State, Zip Code)

(572) 568-6000

(Phone Number)

QUESTION(S) PRESENTED

- ① Whether Oklahoma violated its own law in an effort to deny Petitioner's right to due process of law pursuant to the 14th Amendment when it applied its new rule of criminal procedure (State ex rel Mattoff v. Wallace, 497 P3d 686) retroactively to Petitioner's post-conviction proceeding?
- ② Whether the Oklahoma Post-Conviction Procedure Act is adequate and independent?
- ③ Whether Oklahoma violated its own rules/law in an effort to deny Petitioner's right to due process of law pursuant to the 14th Amendment when it failed to apply clearly established federal law that "state courts generally have no jurisdiction to try Indians for conduct committed in Indian country"?
- ④ Whether the Supremacy Clause of the U.S. Constitution required Oklahoma to rule on the merits of Petitioner's jurisdictional claim, which was premised on both the provisions in treaties between the U.S. and Cherokee Nation and federal statute, when presented on collateral review?
- ⑤ Whether an Indian may waive, by pleading guilty in state court, the required pre-emption of state prosecution by federal statute or treaty provisions and whether such waiver must be knowing and voluntary?

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

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[] is unpublished.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 Washington County District court 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.

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 12/7/2023.
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

U.S. Constitution, Fourteenth Amendment, Section 1

U.S. Constitution, Article VI

Oklahoma Constitution, Art. II § 7

Oklahoma Constitution, Art. I § 1

Treaty of New Echota, 7 Stat 478 (1835)

Treaty with the Cherokees, 14 Stat 799 (1866)

Hicks v. Oklahoma, 447 US 343 (1980)

Montgomery v. Louisiana, 527 US 190 (2016)

McGirt v. Oklahoma, 140 S.Ct. 2452 (2020)

Negonsott v. Samuels, 507 US 99, 102-103 (1993)

State ex rel Matloff v. Wallace, 497 P3d 686 (2021)

Deo v. Parish, 2023 OK CR 20

State ex rel Ballard v. Crosson 2023 OK CR 18

Ferrell v. State, 1995 OK CR 54

22 O.S. § 1066

Murphy v. Royal, 875 F3d 896

Hogner v. State, 500 P3d 629 (2021)

STATEMENT OF THE CASE

Petitioner, an enrolled member of the Cherokee Nation, a federally-recognized Indian tribe, and whose blood quantum is 3/32, was convicted by guilty plea of Robbery with Dangerous Weapon, Assault with Intent to Kill and possession of weapon, crimes enumerated in the Major Crimes Act (18 USC § 1153)

Because of this Court's decision in McGirt v. Oklahoma, 140 S.Ct. 2452 (2020) holding that the Muscogee (Creek) reservation continues to exist, Petitioner initiated collateral review proceedings asserting that he is Indian and that the crime he had been convicted of occurred within the boundaries of the Cherokee Nation reservation (referred to as Indian Country in 18 USC § 1151). Therefore, the State court lacked jurisdiction, which required dismissal. During these proceedings, the Oklahoma Court of Criminal Appeals (OCCA), despite its holding in Hagner v. State, 500 P3d 629 (2021) and State v. Klindt, 782 P2d 401 (1989), denied relief depriving Petitioner of his liberty.

REASONS FOR GRANTING THE PETITION

The facts are simple and undisputed: Petitioner, an Indian, was convicted of crimes that occurred on land that constitutes Indian Country.

Oddly, while the State readily concedes these facts, it refuses to apply the clearly established federal and state law (See Negonsott v. Samuels, 507 US 99, 102-103 (1993); State v. Klindt, 782 P2d 401 (1989)) that existed at the time of Petitioner's crime.

Oklahoma appears to pay no heed to the Supremacy Clause (US Const. Art. VI), stare decisis or justice. (See Montgomery v. Louisiana, 571 US 190, 198) Rather, Oklahoma manufactures new procedural barriers (i.e. State ex rel Matloff v. Wallace, 497 P3d 686 (2021); Deo v. Parish, 2023 OK CR 20) to jurisdictional claims against convictions years or even decades old.

This Court should not allow any State to ignore or circumvent this Court's precedents or the Constitution when a State violates its own rules/law in order to sustain a conviction it was without jurisdiction to pronounce. Doing so, would be tantamount to suborning rebellion.

Moreover, the negative impact on other jurisdictions watching Oklahoma's open and organized defiance to federal authority, Constitutional authority, could be lasting and disastrous effects.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Samy Drak

Date: January 30, 2024