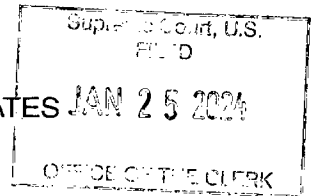


No. 23-6874

IN THE

SUPREME COURT OF THE UNITED STATES



Kendall Dean Mitchell — PETITIONER  
(Your Name)

Gentner Drummond,<sup>vs.</sup>  
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

Kendall Mitchell #178793  
(Your Name)

JCCC Unit 6 - 216 N. Murray Street  
(Address)

Helena, OK 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 14<sup>th</sup> Amendment when it applied its new rule of criminal procedure (State ex rel Matloff v. Wallace, 497 P3d 686) retroactively to Petitioner's post-conviction proceeding?
- ② Whether Oklahoma violated its own rules in an effort to deny Petitioner's right to due process of law pursuant to the 14<sup>th</sup> 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"?
- ③ 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?
- ④ Whether an Indian may waive, by pleading guilty, the <sup>required</sup> pre-emption of a state prosecution by federal statute or by provisions in treaties between the U.S. and Cherokee Nation and whether such waiver must be knowing and voluntary?
- ⑤ Whether Oklahoma's post-conviction process is adequate and independent?

## 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 Co. 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 12/18/2023.  
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

Hicks v. Oklahoma, 447 US 343 (1980)

Montgomery v. Louisiana, 577 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, 815 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 more than 50%, was convicted by guilty plea of Murder First Degree, a crime enumerated in the Major Crimes Act (18 USC § 1153) in Washington County, Oklahoma case #CF-1988-295 on April 3, 1989.

Because of a Tenth Circuit decision in Murphy v. Royal, 875 F3d 896 holding that the Muscogee (Creek) Reservation continues to exist, Petitioner initiated collateral review proceedings asserting that he is an Indian and that the crime he had been convicted of occurred in Indian country. Therefore, the State Court lacked jurisdiction, which required dismissal. During these proceedings, the Oklahoma Court of Criminal Appeals violated its own rules and state law to deprive Petitioner of his liberty.

## REASONS FOR GRANTING THE PETITION

The facts are simple and undisputed: Petitioner is lifelong enrolled member of Cherokee Nation, a federally-recognized Indian tribe, has a blood quantum higher than 50%; was convicted after guilty plea of murder first degree, which is a crime enumerated in the major Crimes Act (18 USC § 1153), and that crime occurred within the boundaries of the Cherokee Nation. (18 USC § 1151)

Oddly, the State courts concede the above-mentioned facts but refuse to apply the clearly established federal law ~~and the~~ (See Negonsott v. Samuels, 507 US 99, 102-103 (1993); McGirt v. Oklahoma, 140 S. Ct. 2452 (2020)) or the clearly established state law (See State v. Klindt, 782 P2d 401 (1989) (The State of Oklahoma does not have jurisdiction over crimes committed by an Indian in Indian country); Hogner v. State, 500 P3d 629 (2021) (Cherokee Nation reservation still exists and is Indian country))

Oklahoma appears to pay no heed to the Supremacy Clause (US Const., Art. VI), *Stare decisis* or justice. (See Montgomery v. Louisiana, 577 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.



In the instant case, Oklahoma violates its own rules of appeal process and retroactivity of new rules of the court in order to prevent Petitioner from being heard. (See 22 O.S. § 1066; Rule V of the Rules of the Court of Criminal Appeals, Ferrell v. State, 1995 OK CR 54)

Washington County District Court found on March 4, 2021 that Petitioner was a member of the ~~Oklahoma~~ Cherokee Nation and that he was convicted of crimes that occurred within the Cherokee Nation reservation. On April 19, 2021, Washington County District Court received an order from the Oklahoma Court of Criminal Appeals "to address Mitchell's post-conviction claims to be completed within 30 days of the date of this order." (See Order Remanding for Ruling on Application For Post-Conviction Relief, attached, Appendix B)

On May 6, 2021, the State moved the Washington Co. District Court to stay ruling on Petitioner application for post-conviction relief, the order of remand from the OCCA notwithstanding. Five days later, on May 11, 2021, the State submits a brief asserting a procedural bar to Petitioner's jurisdictional claim that had not been raised in either the initial post-conviction proceedings or during the post-conviction appeal. In violation of the remand order, on May 17, 2021, the Washington County District Court stayed the post-conviction proceedings. (See Findings of Fact and Conclusion of Law, Appendix B) even though the State had not applied for a stay in the OCCA.

This Court should not allow a State to ignore or circumvent this Court's precedents, the Supremacy Clause by violating its own 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 resistance to federal authority, Constitutional authority, could have lasting and disastrous effects.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kenneth Mitchell

Date: January 22, 2024