

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

SHAWN DAVID MCMINN,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

FILED
IN COURT OF CRIMINAL APPEAL
STATE OF OKLAHOMA

DEC - 8 2023

JOHN D. HADDEN
CLERK

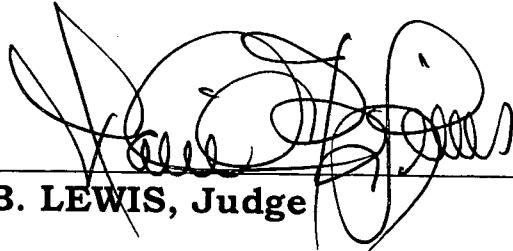
No. PC-2023-659

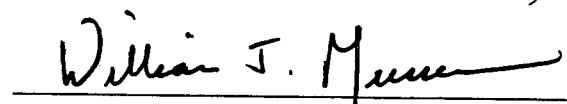
ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner, pro se, appeals the denial of post-conviction relief by the District Court of Muskogee County in Case No. CF-2015-1251.

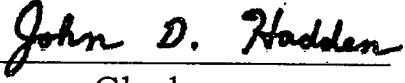
Before the District Court, Petitioner asserted that the State lacked jurisdiction to convict and punish him. *See McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). In *State ex rel. Matloff v. Wallace*, 2021 OK CR 21, 497 P.3d 686, *cert. denied*, 142 S.Ct. 757 (2022), this Court determined that the United States Supreme Court decision in *McGirt*, because it is a new procedural rule, is not retroactive and does not void final state convictions. *See Matloff*, 2021 OK CR 21, ¶¶ 27-28, 40, 497 P.3d at 691-92, 694.

The conviction in this matter was final before the July 9, 2020, decision in *McGirt*, and the United States Supreme Court's holding in


DAVID B. LEWIS, Judge


WILLIAM J. MUSSEMAN, Judge

ATTEST:


Clerk
PA

IN THE DISTRICT COURT IN AND FOR MUSKOGEE COUNTY
STATE OF OKLAHOMA

SHAWN MCMINN,

Petitioner, FILED BY ROBYN BOSWELL
DISTRICT COURT CLERK
Case No.

CF-2015-1251

vs.

JUL 12 2023

STATE OF OKLAHOMA,

MUSKOGEE COUNTY, OK

Respondent.

**ORDER DENYING PETITIONER'S
APPLICATION FOR POST-CONVICTION RELIEF**

This matter comes on for consideration of the Petitioner's Application for Post-Conviction Relief. The Court has reviewed the Petitioner's Application, and the docket sheet in this matter.

The Court finds that the matter under consideration does not present any genuine issue of material fact requiring a formal hearing with the presentation of witnesses and the taking of testimony as the matter can be decided solely on the pleadings and records reviewed. *Johnson v. State*, 1991 OK CR 124, 823 P.2d 370. Nor does the Court need to appoint counsel for the Petitioner; nor is his presence required.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above Petitioner has requested Post-Conviction Relief, alleging that the Court lacked jurisdiction pursuant to 18 U.S.C. §1153 and the United States Supreme Court Decision in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). The Oklahoma Court of Criminal Appeals (OCCA) has held that the *McGirt* decision is not retroactive. *State ex rel. Matloff v. Wallace*, 2021 OK CR 11, 490 P.3d 1110, 1111.

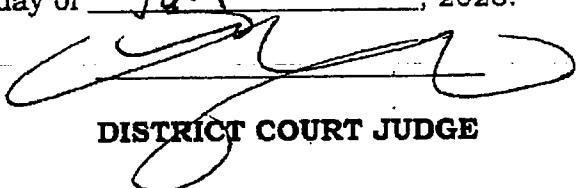
CERTIFICATE OF TRUE COPY
STATE OF OKLAHOMA, MUSKOGEE COUNTY, DISTRICT COURT
MUSKOGEE COUNTY, OKLAHOMA
I hereby certify that the annexed
instrument is a true and correct copy of the
original on file in my office.
ATTEST: ROBYN BOSWELL
COURT CLERK
MUSKOGEE COUNTY, OKLAHOMA
By: ROBYN BOSWELL
Court Clerk
Date: JUL 12 2023

OCCA applied to doctrine of non-retroactivity found in the Supreme Court decision *Teague v. Lane*, 489 U.S. 288 (1989), holding that *McGirt* would not apply cases that were final before the July 9, 2020 decision.

In the case(s) before the Court, the case(s) was/ were final prior to the *McGirt* decision on July 9, 2020, and as such, *McGirt* does not apply.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's Application for Post-Conviction Relief is hereby **DENIED**.

SO ORDERED this 11th day of July, 2023.


DISTRICT COURT JUDGE