

23-7012 ORIGINAL  
No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

FILED  
FEB 21 2024  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Michael Deangelo Lowery — PETITIONER  
(Your Name)

Gentner 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

Michael Deangelo Lowery #197216  
(Your Name)

JCCC Unit 4E - 216 N. Murray Street  
(Address)

Helena, OK 73141

(City, State, Zip Code)

(512) 568-6000

(Phone Number)

QUESTION(S) PRESENTED

- ① Whether Oklahoma's Post-Conviction Procedure Act is adequate and independent?
- ② 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 Matliff v. Wallace, 497 P3d 686) retroactively to Petitioner's post-conviction proceeding?
- ③ Whether Montgomery v. Louisiana, 577 U.S 190 (2016) requires Oklahoma, despite its procedural barriers, to make a merits determination of Petitioner's jurisdictional claim, which was premised on provisions in treaties between the United States and Choctaw Nation when presented on collateral review?

## 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:

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Hicks v. Oklahoma</u> , 447 US 343 (1980)	
<u>Montgomery v. Louisiana</u> , 577 US 190 (2016)	
<u>McGirt v. Oklahoma</u> , 140 S.Ct. 2452 (2020)	
<u>Negonsott v. Samuels</u> , 507 US 99, 102-103 (1993)	
<u>State v. Klindt</u> , 782 P2d 401 (1989)	
<u>Hererra v. Wyoming</u> , 139 S.Ct 1686 (2019)	
<u>State ex rel Matloff v. Wallace</u> , 497 P3d 686 (2021)	
<u>Ferrell v. State</u> , 1995 OK CR 54	

### STATUTES AND RULES

18 USC § 1153

22 U.S. § 1080 et seq

7 Stat 333

14 Stat 769

### OTHER

U.S. Constitution, Fourteenth Amendment, Section 1

U.S. Constitution, Article VI

Oklahoma Constitution, Art. II § 7

Oklahoma Constitution, Art. I § 1

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 Oklahoma 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 February 1, 2024. 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

US Constitution, Fourteenth Amendment, Section 1

US Constitution, Article VI

Oklahoma Constitution, Art. II § 7

Oklahoma Constitution, Art. I § 1

7 Stat 333, Articles 4 and 6

14 Stat 769, Articles 3, 8, 45

#### STATEMENT OF THE CASE

Petitioner, a descendant of freedman on the Dawes Roll of the Choctaw Nation, a federally-recognized tribe, was convicted by jury trial of Manslaughter First Degree and Possession of a Firearm After Conviction of a Felony in Oklahoma County Case #CF-1995-3572 and was sentenced to consecutive terms of imprisonment of seventy-five years and twenty-five years, respectively.

Petitioner initiated collateral review proceedings pursuant to the Oklahoma Post-Conviction Procedure Act (22 O.S. § 1080 et seq) asserting that he was subject to the provisions of treaties between Choctaw Nation and the United States. Therefore, the State of Oklahoma lacked jurisdiction to prosecute him, requiring dismissal. During these proceedings, the Oklahoma Court of Criminal Appeals violated its own retroactivity rules to deprive Petitioner of his liberty.

## REASONS FOR GRANTING THE PETITION

The facts are simple and undisputed: Petitioner, a descendant of a Choctaw Freedman on the Dawes Roll, was convicted of committing crimes by Oklahoma state authorities. However, treaties between the U.S. and Choctaw Nation reserves criminal jurisdiction to either the U.S. or Choctaw Nation, exclusive of state criminal jurisdiction. (See Treaty of Dancing Rabbit Creek, 7 Stat 333; Treaty with Choctaws and Chickasaws, 14 Stat 769)

Oddly, while the State readily concedes these facts, it refuses to apply the treaty provisions pursuant to Supremacy Clause. (See Negonsott v. Samuels, 507 U.S. 99, 102-103 (1993); Herrera v. Wyoming, 139 S. Ct. 1686 (2019)) Rather, Oklahoma manufactures new procedural barriers (i.e. State ex rel Matloff v. Wallace, 497 F.3d 486 (2021)) to jurisdictional claims against convictions years or even decades old.

This Court should not allow any State to pay no heed to the Constitution, stare decisis or justice. No State should be allowed to ignore or circumvent this Court's precedents or the Constitution when it 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/tribal authority, constitutional requirements, could be lasting and disastrous.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael F. Avery

Date: February 21, 2021