FILED
United States Court of Appeals
Tenth Circuit

January 22, 2024

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MARCUS D. FORD,

Petitioner - Appellant,

v.

DAVID BUSS,

Respondent - Appellee.

No. 23-6215
(D.C. No. 5:23-CV-00856-HE)
(W.D. Okla.)

ORDER

Before **HOLMES**, Chief Judge, **EID**, and **FEDERICO**, Circuit Judges.

This matter comes before the court on Mr. Ford's response to this court's show cause order regarding this court's jurisdiction over this appeal.

Mr. Ford seeks to appeal a report and recommendation issued by a magistrate judge on November 27, 2023, recommending that Mr. Ford's 28 U.S.C. § 2254 application be dismissed for lack of jurisdiction. Mr. Ford filed his notice of appeal on December 26, 2023, wherein he specifically designated the magistrate judge's November 27, 2023, report and recommendation as the subject of his appeal. This court issued a show cause order on January 2, 2024, directing Mr. Ford to address our jurisdiction over a magistrate judge's report and recommendation.

A magistrate judge's recommendation is not directly appealable to this court. This court lacks jurisdiction to review an order entered by a magistrate judge unless the

Appendix A

magistrate judge was proceeding upon designation of a district judge and with consent of the parties pursuant to 28 U.S.C. § 636(c). *See Phillips v. Beierwaltes*, 466 F.3d 1217, 1222 (10th Cir. 2006) (explaining that matters handled by a magistrate judge are not directly appealable to this court absent designation by the district judge and consent of the parties). The magistrate judge in this case is not presiding pursuant to § 636(c).

Because the magistrate judge's recommendation is not directly appealable to this court, this court lacks jurisdiction to consider this appeal. We note that the district court has since adopted the recommendation and dismissed the case. Dismissal of this appeal does not preclude Mr. Ford from filing an appeal from the district court's final order and judgment.

APPEAL DISMISSED.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

APPendix A

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

MARCUS D. FORD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	NO. CIV-23-0856-HE
	)	
DAVID BUSS, Warden,	)	
	)	
Respondent.	)	

ORDER

Petitioner Marcus D. Ford, a state prisoner appearing *pro se*, filed a petition pursuant to § 2254 seeking habeas relief from his state court conviction. Petitioner plead guilty to one count of first-degree murder and one count of larceny in 1998. In Case No. 22-0341-HE, petitioner filed a habeas petition arguing that the state court lacked jurisdiction over his crimes based primarily on McGirt v. Oklahoma. The court denied that petition as untimely. The present petition alleges that his trial court erred in not giving him a competency hearing before accepting his guilty plea and that the state lacked jurisdiction over his case due to the Oklahoma Indian Welfare Act of 1936. Pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), the matter was referred to Magistrate Judge Shon T. Erwin for initial proceedings. Upon initial review, Judge Erwin issued a Report and Recommendation recommending that the petition be dismissed as a second or successive habeas petition filed without authorization for the Tenth Circuit Court of Appeals. Petitioner has objected to the Report triggering *de novo* review of matters to which objection has been raised.

Petitioner's objection argues in favor of a certificate of appealability and equitable tolling of AEDPA's one-year statute of limitations, discusses Federal Rules of Appellate Procedure and recent Supreme Court and Tenth Circuit Bankruptcy Appellate Panel jurisdictional jurisprudence, and generally addresses subject matter jurisdiction. What the objection does not do is address the fact that this is petitioner's second habeas petition and that is has been filed without authorization from the Tenth Circuit. *See* 28 U.S.C. § 2244(b)(3)(A).

Accordingly, the Report and Recommendation [Doc. #10] is **ADOPTED**. The petition is **DISMISSED** for lack of jurisdiction. Further, because petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), a Certificate of Appealability is **DENIED**.

IT IS SO ORDERED.

Dated this 17th day of January, 2024.

JOE HEATON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

MARCUS D. FORD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**Case No. CIV-23-856-HE**
	)	
DAVID BUSS,	)	
	)	
Respondent.	)	

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing *pro se*, brings this action pursuant to 28 U.S.C. § 2254, seeking habeas relief from a state court conviction. United States District Judge Bernard M. Jones has referred this matter to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the Petition has been promptly examined, and for the reasons set forth herein, it is recommended that the action be **DISMISSED** for lack of jurisdiction.

I. SCREENING REQUIREMENT AND JURISDICTION

The Court is required to review habeas petitions promptly and to dismiss a petition "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court." Rule 4, Rules Governing Section 2254 Cases. Likewise, courts are obligated to examine their jurisdiction *sua sponte* and dismiss any action where subject-matter jurisdiction is lacking. *See* Fed. R. Civ. P. 12(h)(3); *Arbaugh*

v. Y & H Corp., 546 U.S. 500, 506-07 (2006); *Berryhill v. Evans*, 466 F.3d 934, 938 (10th Cir. 2006).

II. PROCEDURAL BACKGROUND

On May 22, 1998, pursuant to a guilty plea, Petitioner was convicted on one count of first-degree murder and one count of larceny of a vehicle in of first-degree murder in Oklahoma County District Court Case No. CF-1997-1227. (ECF No. 1:2). Mr. Ford did not file an appeal. *See* ECF No. 1:2. On April 25, 2022, Mr. Ford filed a habeas petition in this Court, challenging the Oklahoma County conviction. *See* ECF No. 1, *Ford v. Dowling*, Case No. CIV-22-341-HE (W.D. Okla. Apr. 25, 2022). On July 20, 2022, the District Judge adopted the findings of the magistrate judge, who had recommended denial of the habeas petition based on untimeliness, and entered judgment accordingly. *See id.* at ECF Nos. 15 & 16. On August 4, 2022, Petitioner filed a Notice of Appeal in the Tenth Circuit Court of Appeals, and March 27, 2023, the Circuit affirmed. *See Ford v. Dowling,* Case No. 22-6138 (10th Cir. Mar. 27, 2023). On Sept. 26, 2023, Mr. Ford filed the instant habeas Petition. (ECF No. 1).

III. UNAUTHORIZED SECOND OR SUCCESSIVE HABEAS PETITION

"The filing of a second or successive § 2254 application is tightly constrained by the provisions of AEDPA." *Case v. Hatch,* 731 F.3d 1015, 1026 (10th Cir. 2013). Notably, "[b]efore a second or successive [§ 2254] application . . . is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the

district court to consider the application." 28 U.S.C. § 2244(b)(3)(A); *accord Case,* 731 F.3d at 1026. If the petitioner does not heed this statutory directive, the district court has no jurisdiction to consider his second or successive filing. *See In re Cline,* 531 F.3d 1249, 1251 (10th Cir. 2008) (per curiam).

On April 25, 2022, Mr. Ford challenged the validity of the conviction in Oklahoma County Case No. CF-1997-1227 by filing a habeas petition under 28 U.S.C. § 2254 in this Court. *See supra.* As stated, the Court denied the petition on the merits and the Tenth Circuit Court of Appeals affirmed the denial. *See supra.* Thus, if Petitioner wished to file a subsequent habeas petition challenging the validity of the same conviction, he would have to seek authorization in the Tenth Circuit Court of Appeals first. *See supra,* 28 U.S.C. § 2244(b)(3)(A); In re Rains, 659 F.3d 1274, 1275 (10th Cir. 2011) ("The dismissal of Mr. Rains's first habeas petition as time-barred was a decision on the merits, and any later habeas petition challenging the same conviction is second or successive and is subject to the AEDPA requirements."). However, a review of the Tenth Circuit docket reveals that Mr. Ford has not sought such authorization prior to filing the instant case. As a result, this Court has no jurisdiction over the current Petition and the Court should dismiss the same.

IV. RECOMMENDATION AND NOTICE OF RIGHT TO OBJECT

Based upon the foregoing analysis, it is recommended that the Court **DISMISS** the Petition for lack of jurisdiction.

The parties are advised of their right to file an objection to this Report and Recommendation with the Clerk of this Court by **December 14, 2023**, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The parties are further advised that failure to make timely objection to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

V. STATUS OF REFERRAL

This Report and Recommendation terminates the referral by the District Judge in this matter.

ENTERED on November 27, 2023.

Shon T. Erwin

SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE

Brief in Support

Proposition one

Newly Discovered Evidence State Courts Lacks The Jurisdiction To Prosecute on Tribal Laads is a denial of Due Process of federal Laws.

Investigators discovered in the 1930's, dispute over fee Simple deed only Surface rights for homesteading on Indian land, belonging to Indian Tribes reservation was allowed in the illegal "land-rush". Jurisdiction over all crimes by any race was exclusively in federal Courts, and that material fact has not changed.

This has been settled since the June 7, 1897 Act of Congress <30 Stat. L. 83>, that has never changed. Fact: may of 2018, in United States vs. Bullcoming, W.D. of Oklahoma, a federal Grand Jury held that "all" of Oklahoma is Indian Country, restricting Jurisdiction over all Crimes to federal Courts. Fact: the June 7, 1897 Act of Congress <30 Stat. L. 83> Specifically bars state Courts Jurisdiction over all crimes committed by any race, inside the 70,000 Square miles of "Indian Country", mandates prosecution by federal Grand Jury, Arkansas and federal laws, exclusive Jurisdiction to one federal Court in Fort Smith, Arkansas.*

Petitioner's federal Constitutional due process rights are being violated. Petitioner, has been in State

*. Fort Smith, Arkansas is where the Five Civilized Tribes drafted their 1866 Treaties, and later on, officially Signed in Washington D.C., that same Year.

Custody - prison on federal land for Murder in the first degree charged under a unlawful State Statute in case CF-1997-1227. This alleged offense occurred on _____

Oklahoma, which is also located on the muscogee Creek nations reservation, which possesses exclusive criminal Jurisdiction since August 11, 1866, Treaty - Articles 1, 2, 3, 4, 5, 9, 10, 11, 12, 14. See attached muscogee Creek nations Treaty documents.

Indian reservations are an exception to the rule, especially for the Five Civilized Tribes in Oklahoma[1]. On no Indian reservation may all three governments exercise their full criminal Jurisdiction. Indian Nations are distinct political Communities, having territorial boundaries, ~~wh~~with which their authority is exclusive, and having a right to all the lands within those boundaries, which is not acknowledged, but is guaranteed by the United States government. Indian nation had always been considered as distinct, independent political Communities, retaining their original rights, as the undisputed possessors of the soil from time immemorial. The muscogee Creek nation, then, is a distinct Community, occupying its own territory, with boundaries accurately described, in which the laws of the "Oklahoma panhandle" can have no force, and the citizens of Oklahoma, have no right to enter, but with the assent of the muscogee Creek nation themselves, or in conformity with their treaties, and with the act of Congress.

The deceptive organic act laws would still only apply to the "panhandle of Oklahoma" public land strip, not the 70,000 Square miles of Indian Territory - Oklahoma, which is "all federal restricted land", and that law is crystal clear to all of these unscrupulous State and federal officals - twin

1. The Five Civilized Tribes have African Americans included in their Treaties and have the exact rights and privileges as the Native Americans, See Artice Two<2> of the muscogee Creek Nations Treaty of June 14, 1866, after slavery was abolished in the united States, put African Americans on equal footing by the united States Congress. There's many bona fide residents<born residents residing> lawfully residing in many historic black towns and is subjected to the same Federal laws under the treaty. Therefore, born African descendants are entitled to the same sovereign rights as the natives, in Oklahoma. See Oklahoma Indian Welfare Act of 1936.<also known as the Thomas-Rogers Act> is a united States federal law that extended the 1934 Wheeler-Howard or Indian Reorganization Act to include those tribes within the boundaries of the State of Oklahoma.

evils of deep deception. 25 U.S.C.A. § 1301, 1302, 1303 Acts of Congress.[2]

Indian tribes have the inherent right of self-government. Congress has the Supreme authority to limit or abolish tribal power, but the powers that tribes possess are not delegations of authority from the United States; rather, tribes possess them as a consequence of their historic status as independent nations, and the United States supports the exercise of these powers.

Indian tribes are neither states, nor part of the federal government, nor subdivisions of either. Rather, they are sovereign political entities possessed of sovereign authority not deprived from the United States, which they predates.

Tribal governments have the same powers as the federal and state governments to regulate their own internal affairs, with a few exceptions. The eight <8> most important areas of tribal authority <1> the right to form a government, <2> the right to determine tribal membership, <3> the right to regulate tribal lands, <4> the right to regulate individually owned land, <5> the right to exercise Criminal Jurisdiction, <6> the right to exercise Civil Jurisdiction, <7> the right to regulate domestic relations, and <8> the right to engage in and regulate Commerce and trade.

The area that is now the State[3] of OKlahoma[4]

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2. The Indian Civil Rights Act of 1968 was created for Indian reservations laws to be enforced by U.S. Congress. <Pub. L. 90-284, Title II, § 203, April 11, 1968, 82 Stat. 78.>. No State laws exist on federally restricted lands like the 38 federally recognized Indian Tribes in OKlahoma. The State has no land nor authority on the Indian reservations here, any State laws are barred in the 70,000 square miles of federal lands, and that's a undisputed fact.
3. OKlahoma is not a PL-280 State.
4. A bona fide territory of the United States, OKlahoma Territory would eligible for Statehood if its population grew large enough and if its leaders followed the process prescribed by federal law.

was named "Indian Territory" by Congress during the 1830's and was set aside exclusively for Indians and Freedmens<African Americans.[5] At the time, the land was largely barren, and Congress used it as a virtual dumping ground for many eastern tribes that were forcibly removed from lands desired by whites. Today, more than thirty tribes<39 federally recognized tribes under treaties> located in Oklahoma are all federally recognized. Only a few of these tribes are indigenous, including the Osage, Caddo, Wichita, Kiowa, Comanche.

The first tribes to be moved to Indian Country were the Chickasaws, Cherokee, Choctaw, Muscogee Creek, Seminoles, all of which were living in the Southeast of the United States. The tribes often called the Five Civilized Tribes because they had an advanced governmental structual long before the nineteenth Century and operated their own Schools and Courts - each tribes was compelled to sign a treaty with the United States under which the tribes obtained a reservation in Indian Territory. Each treaty assured the tribes that it would own it's lands perpetually, and it's reservations would "never" become part of a State without the tribes consent.[6]

The federal government initially honored it's promise to leave these tribes alone once they arrived from other lands now coveted by whites. The Five Civilized Tribes had owed Slaves and had Sided with the Confederacy during the Civil War, and several leaders of tribes had been Sympathetic to the South.[7] This provided

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5. Congress created over 44 Black "historically" Towns from the Tip of Kansas to the Tip of Texas, through the Cherokee, Chickasaw, Choctaw, Creek, Seminole nations treaties - Rights of African Descendants like South Carolina and eastern Seaboard. Oklahoma has Enid, Tulsa, Taft, Boley, Tatum, RedBird, Bristow, Hugo, Langston, Buford Colony, Idabel, Fredrick, Just to name a few.
6. No such Consent exist in the laws of Congress.
7. The Five Civilized Tribes broke their treaties with the U.S. by taking up arms against the United States.

~~ded~~ a convenient excuse for taking tribal lands. Allegedly, all five tribes lost the Western portions of their reservations. These confiscated lands were then assigned by Congress to more other tribes region, the Cheyenne from the northwest, and the Kickapoo and Apache from the Southwest.

The territory not taken from the tribes remained officially closed to white settlers, consistent with the treaties.[3] Eventually, as so often happened elsewhere in the country, Congress broke those treaties. By the end of the nineteenth century, Congress had passed laws opening vast areas of Indian land to white settlements, and additional treaty lands were taken by white settlers without any opposition by the federal government. Some tribes were left with nothing but isolated parcels of land scattered throughout the territory that had been guaranteed to them by their treaties.

Congress enacted the General Allotment Act in 1887, which authorized the president of the United States to sell "surplus" tribal lands to whites. The five civilized tribes were excluded from the Act because their treaties with the united States gave them complete and perpetual ownership of their land; that is, their land had not been placed into trust status. Nevertheless, Congress wanted these five civilized tribes <Creek, Cherokee, Seminoles, Chickasaw, Choctaw> to sell some of their land, so that whites could illegally move into those areas. When the tribes refused to sell, an angry Congress retaliated by passing the Curtis Act in 1898. This Act not only forced the allotment to tribal lands but also abolished all tribal courts and removed certain powers of self-government from the tribes, including the right to collect taxes.

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3. The Indians owe no allegiance to a state within which their reservation may be established, and the State of Oklahoma gives them no protection.

In 1934, when Congress passed the Indian reorganization Act<IRA>, which ended the force sale of additional tribal lands under the General Allotment Act, it excluded the Oklahoma tribes from its protections. Congress had a change of heart in 1936, and the Oklahoma Indian Welfare Act<OIWA> was passed. The Oklahoma Indian Welfare Act was provided to the Oklahoma tribes the same rights, protections, and benefits, as the IRA. It restored to the tribes the right to establish tribal Courts having both Civil and Criminal Jurisdiction. see attached documents.[9].

For many Years after passage of the OIWA, though, federal officials often interferred and discouraged the Oklahoma tribes from exercising their rights. This interference by these unscrupulous state and federal officials has caused and has continued to cause all kinds of injustices in Indian Country. This was by design, no accident.[10].

Its a constitutional material fact that Congress only assigned that exclusive Jurisdiction<Indian Country-Oklahoma> to one federal district Court in Fort Smith, Arkansas. see attached documents.

The Oklahoma organic act applied the laws of Nebraska to the incorporated territory of Oklahoma territory, and the laws of Arkansas to the still unincorporated Indian territory, since for Years the federal United States District Court on the easter borderline in Fort Smith, Arkansas has criminal and Civil Jurisdiction over the 70,000 square miles.

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9. In the Oklahoma Indian Welfare Act of 1936, Congress made it very clear it was including the Freedmens - African descendants into this act.
10. All of the historically black Towns and Communities are under federal laws only and exclusively. This fact will not be overlooked, or ignored ever again.

Fact: The United States Congress Created an additional Judgeship for the Western district of ArKansas, and in 1875, the President of the United States appointed Judge Issacc Parker to that position. See documents.

Fact: In October to 1889, Judge Parker in the Western district of ArKansas rendered three<3> very important rulings regarding the criminal Jurisdiction[11] of Indian CountrY-OKlahoma Courts. Judge Parker held that Indian CountrY Courts could not empanel a Grand JurY, that larcenY had to be charged bY Grand JurY Indictment, and not bY Information, and that if, in a assault trial, the evidence showed an assault of a higher grade than assault with a dangerous weapon, that is, one of which the Indian CountrY-OKlahoma Courts did not have Jurisdiction, the lesser offense could not be Carved from the greater. As a result of these rulings the Indian CountrY federal district Jurisdiction became more limited. See Act of march 1, 1889<25 Stat. 787>; Axhelm vs. U.S., 60 P. 98<Supreme Court of TerritorY of OKlahoma>; Sharp vs. State, 104 P. 717<1909>; ReYnolds vs. U.S., 98 U.S. 145; TaYlor vs. ParKer, 35 S.Ct. 22<1914>; BinYon vs. U.S., 76 S.W. 265; Harding vs. State, 22 ArK. 210; CarneY vs. U.S., 104 S.W. 606<1907>.

In Williams vs. U.S., 69 S.W. 849<1902><Court of Appeals of Indian TerritorY-OKlahoma>:

> "Congress bY the Act of march 1, 1875, 28 Stat. 696, provided that the provisions of Mansfield's Digest in Chapters entitled "Criminal Laws and Criminal Procedure" shall govern prosecutions for Crimes in Indian TerritorY, except where the laws of U.S. have provided for the punishment of same offenses in which Case the latter govern. Mansfield's Digest. §1963, Ind. Ter. St. § 1306, the laws of ArKansas, provides that all public offenses<excepting Certain Classes> shall be prosecuted bY indictment. Section 1022,

11. In the late nineteenth century the federal government begun to assume more control over events transpiring in Indian CountrY. In march 1889 a law established a federal Court system based at MusKogee OKlahoma, assuming Judicial authority and Jurisdiction that had been exercised since 1834 Trade Act.

Rev.St.U.S., which art not infamous, may be prosecuted by indictment. And the statute, title "Crimes", covers a long period of crimes including larceny. Held that by the Act of march 1, 1895, Congress intended to and did put in force Chapter 45 and 46 of mansfield's Digest <laws of Arkansas> and such laws are exclusive, and, as to larceny of a general nature, Congress intended to adopt the definition and method of procedure provided for in said Chapters of Laws of Arkansas mansfield's Digest."

Although the federal courts had limited Jurisdiction in Criminal cases and none involving Indians and Freedmen's - African Americans. see 25 U.S.C.A.§§1301: The Indian Civil Rights Act of 1968.

Definitions - For purpose of this subchapter, the term -<1>" Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government; <2>"powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and Judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal Jurisdiction over all Indians; <3>"Indian Court" means any Indian tribal Court or Court of Indian offenses; and <4>"Indian" means any person who would be subject to the Jurisdiction of the United States as an Indian under section 1153. Title 18, if that person were to commit an offense listed in that section in Indian Country to which that section applies.

See Muscogee Creek Nation Treaty Article II <2>: "The Creeks here covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall

have been duly Convicted in accordance with laws applicable to all members of said tribe ever exist in said nation; Rights of those of African descendant an inasmuch as there are among the creeks many persons of African descent, who have no interest in the soil, it is stipulated that hereafter these persons lawfully residing in said Creek Country under their law and usages, or who have been thus residing in said Country, and may return within one Year from the ratification of this treaty, and their-descendants and such others of the same race as may be permitted by the laws of the said nation to settle within the limits of the Jurisdiction of the Creek Nation as citizens, [thereof,] shall have and enJoy all the rights and privileges of native citizens, including and equal interest in the soil and national funds, and the laws of said nation shall be equally binding upon and give equal protection to all such persons, and all others, of whatever race or Color, who may be adopted as citizens or members of said tribe". <Birth Rights>

Congress and the Muscogee Creek nation agreed and made it Crystal Clear that the African American descendants were inherenting the same Sovereignty Citizens rights as the natives under the June 14, 1866 forever treaty.

Thus, the so-called State laws does not belong because its laws have no force on federally restricted lands in OKlahoma. The true people of OKlahoma has been bullied for almost two hundred <200> Years of brainwashing, racism, theft, extortion, corruption, Kidnapping, Slavery, murder.

The OKlahoma's statehood did not disestablish the Indian reservations, shortly after Congress expressly preserved the Muscogee Creek Nation's government, it passed, the OKlahoma Enabling Act, 34 Stat. 267 <1907>, paving the way for OKlahoma

statehood and still remained federally restricted lands. But like every other Congressional Statute that might potentially be cited by the State, nothing in the Enabling Act Contained any language suggesting that Congress intended to terminate the Muscogee Creek Nation reservation. The Indian Appropriation Act of 1871 prevents it.[12]

In fact, if anything, the Oklahoma Enabling Act shows that Congress intended that Oklahoma statehood shall not interfere with existing treaty obligations <i.e, its authority on reservations>. The Act explicitly prohibited Oklahoma's forthcoming Constitution from containg anything that could be construed as limiting the federal government's role in Indian affairs, e.g., its authority to make any law or regulation respecting Such Indians". 34 Stat. at 267. See Jackson vs. Harris, 43 F.2d 513 <10th Cir. 1930>.

Ultimately because no act of Congress bears any of textual evidence of intent to disestablish the muscogee Creek Nation reservation, it simply does matter that Oklahoma has bullied its illegal and unlawfully authority onto federal restricted lands since 1866. Nor does it matter that these unscrupulous state and federal so-called officials might have presumed for the hundred and fifthy plus years that the muscogee creek nation no longer exist. see Treaty

In fact, the Oklahoma so-called district Courts <State Courts> and appellant Court are not courts of Competent Jurisdictions in Indian Country, and they are Tribal Courts < with tribal members as authority, not White peo-

12. In 1871, Congress decided the United States would no longer deal with Indian tribes through a formal treaty-making process, providing that "[N]o Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nations. ..."

ple acting as such> and the United States federal district Court, which has been given legal authority, Fort Smith, Arkansas, who held federal Criminal Jurisdiction over Indian Country since 1890. See documents

When Congress put in force in Indian Territory certain general laws of Arkansas May 2, 1890, C. 182, §§ 30, 31; 26 Stat. 81, 94, 95. In 1897, however, it was provided that the laws of the United States and the State of Arkansas in force in Indian Territory should apply to all persons therein, irrespective of race". See Watkins vs. United States, 41 S.W. 1044<1897> Bise vs. United States, 82 S.W. 921; Robbertson vs. Crow, 53 S.W. 534<1899>; Jones vs. State, 107 P. 738 <1909>; Jackson vs. Harris, 43 F. 2d 513<10th Cir. 1930>.

Petitioner, is entitled to be tried under the laws as they existed at the time of the offense. Petitioner's Case should of been transferred to tribal Court instead of State Court, the Crime was on the Muscogee Creek Nation reservation in ___, which was and still is federal restricted land since the 1830's with the Osage, Caddo, Wichita, Kiowa, Comanche Nations indigenous to the 70,000 Square miles of Indian Territory, is why it's always been federal restricted land in the first place. Sharp vs. State, 104 P. 71, 77<OK.Crim.1909>; Harding vs. State, 22 Ark. 210<1860>; Jones vs. State, 107 P. 738<OK.Crim.1910>.

In 1990, the Petitioner stand charged with the Commission of A Crime is entitled to be tried and dealt with under the laws as they exist at the time of alleged Commission of the offense of which he stood charged, in all matter where such laws Vouchsafe to him A Substantial protection. See Sharp vs. State, 104 P. 71, 77<OK.Crim.1909>, "and Cannot be disregarded Without preJudice to an accused." "The legislature may abol-

ish Courts and create new ones, and it may prescribe altogether different modes of procedure in it's discretion, though it cannot lawfully, I think, in so doing, dispense with any of those Substantial protections with which the existing law Surrounds the person accused of crime". It is A matter of Substance which cannot be disregard ~~without~~ prejudice ~~to~~ an accused.

But it is argued that this is mere matter of Criminal procedure, and that one accused of crime has no vested rights in being prosecuted in accordance with the methods of procedure in force at the date of the offense. That must be granted as A general proposition; but is so because A chance of procedure ordinary imposes no hardship on the accused, nor seriously alters his position to his disadvantage. See Sharp vs. State, 104 P. 71, 77 <OKl. Crim. 1909>; Jones vs. State, 107 P. 738 <OKl. Crim. 1910>; AXhelm vs. U.S., 60 P. 98 <Supreme Court of the Territory of Oklahoma 1900>

In fact, the So-called "Organic act" of 1890, then the Enabling act is an clone from it, in all doe respect Something is seriously wrong with all of that there. The So-called Organic act of may 2, 1890, has absolutely nothing to do with the federal laws already in effect decades before this irrelevant State name to A Superior federal Treaty Acts of the United States Congress. The difficulty with the State, they Just do not have any respect for the people of any Color that lives on Indian reservations in Indian Country, no more than they do their Sovereignty, treaties, or any existing laws. The muscogee creek Nation reservation is not Some Kind of A Contract, when in reality it is only Acts of Congress and can have no greater effect. See Brady vs. Sizemore, 35 S.Ct. 135 <1914>; McDougal vs. McKay, 35 S.Ct. 605 <1915>; Stephens vs. Cherokee Nation, 19 S.Ct. 722 <1899>; Jackson vs. Harris, 43 F.2d 513

"The Constitution of the United States and all general laws of the United States which prohibit crimes and misdemeanors in any place within the Sole and exclusive Jurisdiction of the

United States, except in the District of Columbia, and all laws relating to national banking associations, shall have the same force and effect in the Indian Territory as elsewhere in the United States. See Sharp vs. State, 104 P. 71, 77 <1909>; Taylor vs. U.S., 98 S.W. 123 <1906>; Williams vs. U.S., 69 S.W. 849 <1902>; Watkins vs. U.S., 41 S.W. 1044 <1897>.

The federal preemption test is easy to apply when A State law clearly Contradict A federal Statute or A federal treaty. Like always often, however, A State law will "Criminally interfere" with an overall federal Indian policy but expressly Contradicts A treaty or federal Statute. To determine whether the state law is preempted in that circumstance, the State's interest in forcing it's law are balanced against the federal and tribal interests in preventing State's intrusion, bullying, invasion. These situations, the Supreme Court has explained, require A particularized inquiry into the nature of the state, federal and tribal interest at stake... to determine whether, in the specific context, the exercise of State authority would violate federal law. The State law must declared invalid if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are Sufficient to Justify the assertion of State authority.

Due to the inherent Sovereignty of Indian tribes State laws "Can have no force" in Indian Country without the Consent of Congress. In Worcester vs. Georgia, 31 U.S. 515 <1832>, thus established an "absolute rule": if Congress Consented, the State could act, and without Consent, State Jurisdiction was "absolutely barred," even with respect to

the activities of non-Indians on the reservations. In short, the preemption test remains A formidale - if not A insurmountable barrier against the States non-stop encroachment, trespassing, intrusion, interferes with long-standing Acts of Congress, federal Statutes as if theY All meant Absolutely Nothing to them. The Courts Seemed to be handcuffed from in forcing the Acts of Congress, to put A permanent end to the Criminal and Civil inJustices that has been going on for waY to long in the State, that is all federal land.

In 1959, the Supreme Court of the United States held in Williams vs. Lee, that A State maY not infringe on the rights on Indian reservations to forcefullY maKe their own laws and be ruled bY them. This principle sets forth the infringement test. It was Suppose to protects the inherent rights of Indian tribes to be Self-governing.

The United States Constitution declares that A federal treatY, Just liKe A federal Statute, it is "the Supreme law of the land." Treaty's therefore, are Superior to anY state Constitution and State laws. If A State law Conflict with the provisions of A treatY, the treatY prevails. A fact that is undisputed.

A treatY can be made on anY SubJect. However, A treatY maY not deprive A Citizen of A right guaranteed bY the United States Constitution; the United States Constitution is alwaYs Superior to anY law or treatY. Is that still A honorable fact, that should be in forced in A place liKe Indian CountrY? Corruption and racism rules in Indian CountrY.

It is now well-establish fact that the Muscogee Creek Nation held exclusive Criminal Jurisdiction over the petitioner in 1990, since the location of the alleged offense occurred on the Muscogee Creek Nation reservation. The Muscogee Creek Nations 1866 treaty States and I quote: Article Ten<10>and section Three<3> pages 4,5;

"The Creek agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of Justice and the Protection of the rights of the person and property within the Indian territory: Provided, however, That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs. The Creeks also agree that A general Council, consisting of delegates elected by each nation or tribe lawfully resident within the Indian territory, may be annually Convened in said manner and Possess such powers as are hereinafter described.

Section three<3> said general Council shall have power to legislate upon all right subjects and matters pertaining to the intercourse and relations of the Indian tribes and nations resident in said territory, the arrest and extradition of criminals and offenders escaping from one tribe to another, the administration of Justice between members of several tribes of said territory, and persons other than Indians and members of said tribes or nations, the Construction of works of internal improvement and the Common defense and Safety of the nations of said territory. All laws enacted by said Council shall take effect as such time as may therein be provided, unless Suspended by direction of the Secretary of the Interior or the President of the united States. No law shall be enacted inconsistent with the Constitution of the United States, or the laws of Congress, or existing treaty Stipulations with the United States, nor shall said Council legislate upon matters pertaining to the organization, laws, or customs of

Article Ten<10>and section Three<3> are very clear who held authority and Jurisdiction on petitioner or anyone else for that matter regardless of race and non-members that Commits A Crime on their reservation is Subjected to their Jurisdiction and their laws under federal guidelines. 25 U.S.C. §1301<4>, I.C.R.A. of 1990.

In 1907, it is also well-established that the only federal law that was legally enforced was the federal laws of Arkansas ever since June 7, 1897, "true Act of Congress of the United States <30 Stat. L. 83>, that fact has never been changed by Congress of the United States of America for the 70,000 Square miles of federal restricted land.

The provisions in the Act of April 28, 1904 and 1908, making all the laws of Arkansas put in force in Indian Territory applicable to all persons. See Williams vs. U.S., 69 S.W. 849 <1902>; 53 S.W. 534 <1899>; Simin vs. U.S., 76 S.W. 280 <1903>; Cox vs. State, 152 P.3d 244 <Okl. crim. 2006>; McDougal vs. McKay, 142 P. 987 <1914>; Grease vs. McNac, 225 P. 524 <1923>; Gray vs. Chapman, 243 P. 522 <1926>.

Where there are two statutes upon the same subject, the earlier being special and the latter general, the presumption is, in the absence of an express repeal, or an absolute incompatibility, that the special is to remain in force as an exception to the general - under the original Creek Agreement of 1890, and 1897 of June 7, 1897 Act of Congress <30 Stat. L. 83>, specifically bars state courts jurisdiction over all crimes committed by any race, inside the 70,000 Square miles of federal restricted land in Indian Country - Oklahoma. Congress has never changed this fact of federal laws concerning the 70,000 Square miles of federal land, which was not available at the time petitioner's offense occurred. Jefferson vs. Fink, 38 S.Ct. 516 <1921>.

With all of the illegal dictating and interferring criminally and all of deeprooted corruptive criminal and civil activities going on with unscrupulous so-called state and federal officials causing catostrophic chaos and injustices that's been off the charts for well over a century in Indian country. Today they are still allowed to continue their mafia

like State "fake" constitution under the disguise of the organic act, that Congress "never" passed for Indian Country. A fact that is undisputed. see documents.

It is also a well-established Constitutional materal fact that Congress never passed any organic act for any acre of the 70,000 square miles of federally Restricted lands in May 2, 1890.

It is also now well-established fact that the so-Called state Constitution is a clear and Convincing evidence of fraud, and fraud upon the federal Courts to the United States Supreme Court for over a Century.

The State has no Sovereign authority to continue to hold petitioner illegally against his guaranteed fourteenth Amendment federal Constitutional rights in Clear violation of the Indian Civil Rights Act of 1968-1990, 25 U.S.C.A. § 1301<4>, Clearly the only federal laws that would of been appropriate and applied to petitioner because of all the stated Constitutional materal facts stated above. The Judgment is void here.

It has been Well-established that petitioner has established by Clear and Convincing evidence that he is being denied a Constitutional right. Jurists of reason would find it debatable whether the petition should have been resolved in a different manner or that this claim present are adequate to deserve encouragement to proceed futher. See Miller-El vs. Cockwell, 537 U.S. 322, 336<2003>; 28 U.S.C. § 2253<C>; Slack vs. Mc Daniel, 529 U.S. 473, 484<2000>; miller vs. marr, 141 F.3d 976, 978<10th Cir. 1998>; marsh vs. Soars, 223 F.3d 1217, 1220<10th Cir. 2000>; 28 U.S.C. § 2253<c><1>.

Respectfully Submitted,

Marcus D. Ford
Pro se Signature

#211437

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The underlying Certifies that a true and correct copy of this brief was mailed, prepaid postage on this March 7, 2024 to:

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3-7-2024
Date

Marcus D. Ford
Pro Se Signature

In The
Supreme Court of The United States

Marcus D. Ford
Petitioner,

VS.

David Buss-Warden
Respondent.

NO. 23-6215

Memorandum Addressing Courts Subject matter Jurisdiction To adJudicate This Petition.

Comes now appearing pro se, Petitioner in the above styled petition to A request to Amend the required memorandum of petitioner to address the Court of its authority to adJudicate this case on the Courts SubJect matter Jurisdiction of this action.

*211 Although several of SCOTUS recent decisions have undertook taken to clarify the distinction between Claims-processing rules and Jurisdictional rules, none of them calls into question SCOTUS longstanding treatment of Statutory time limits for taking an appeal as Jurisdictional. Indeed, those decisions have also recognized the Jurisdictional significance of the fact that a time limitation is set forth in a statute. In Kontrick vs. Ryan, 540 U.S. 443, 124 S.Ct. 906, 157 L.Ed.2d 867 (2004) we held that failure to comply with the time requirement in Federal Rule of Bankruptcy Procedure 4004 did not affect a court's subject matter Jurisdiction. Critical to our-SCOTUS analysis was the fact that "[n]o statute... specifies a time limit for filing a complaint objecting to the debtor's discharge". 540 U.S., at 448, 124 S.Ct. 906. Rather, the filing deadlines in the Bankruptcy Rules are "procedural rules adopted by the Court for the p

orderly transaction of its business "that are" "not Jurisdictional". Id., at 454, 124 S.Ct. 906 <Citing-quoting Schacht vs. U.S., 398 U.S. 58, 64, 90 S.Ct. 1555, 26 L.Ed.2d 44 <1970>. Because "[O]nly Congress may determine a lower ~~court~~ federal Court's Subject matter Jurisdiction", 540 U.S., at 452, 124 S.Ct. 906 <Citing U.S. Const., Art. III, § 1>, it was improper for Courts to use "term 'Jurisdictional' to describe emphatic time prescriptions in rules of Court", 540 U.S., at 454, 124 S.Ct. 906. See also Eberhart vs. U.S., 546 U.S. 12, 126 S.Ct. 403, 163 L.Ed.2d 14 <2005> <per curiam>. As a point of contrast, SCOTUS noted that § 2107 contains the type of statutory time constraints, that would limit a Court's Jurisdiction. 540 U.S., at 453, and n. 8, 124 S.Ct. 906. Nor do Arbaugh vs. Y&H Corp., 546 U.S. 500, 126 S.Ct. 1235, 163 L.Ed.2d 1097 <2006>, or Scarborough vs. ~~Principle~~ Principi, 541 U.S. 401, 124 S.Ct. 1856, 158 L.Ed.2d 674 <2004>, aid petitioner. In Arbaugh, the statutory limitation was an employee-numerosity requirement, not a time limit. 546 U.S., at 505, 126 S.Ct. 1235. Scarborough, which addressed the availability of attorney's fees under the Equal Access to Justice Act, concerned "a mode of relief... ancillary to the Judgment of a Court" that already had plenary Jurisdiction. 541 U.S., at 413, 124 S.Ct. 1856.

This Court's-Scotus treatment of its certiorari Jurisdiction also demonstrates the Jurisdictional distinction between Court-promulgated rules and limits enacted by Congress. According to Scotus Rules, a petition for a writ of Certiorari must be filed within 90 days of the entry of the Judgment sought to be reviewed. See this Court's Rule 13.1. That 90-day period applies to both Civil and Criminal Cases. But the 90-day period for Civil Cases deprives from both this Court's Rule 13.1 and 28 U.S.C § 2101 <c>. SCOTUS, have repeatedly held that this statute-based filing period for Civil Cases is Jurisdictional. See, e.g., Federal Election Comm'n vs. NRA Political Victory Fund, 513 U.S. 88, 90, 115 S.Ct. 537, 130 L.Ed.2d 439 <1994>. Indeed, this Court's Rule 13.2 cites § 2101 <c> in directing the Clerk not to file any petition "that is Jurisdictionally out of time". <Emphasis added.> On the other hand, We have treated the rule-based time limit for Criminal Cases differently, stating that it may be waived because "[t]he procedural rules adopted by the Court for the orderly transaction of its business are not Jurisdictional and can be relaxed by Court in the exercise of its discretion...". Schacht, supra, at 64, 90 S.Ct. 1555.

Jurisdictional treatment of statutory time limits makes good sense. Within Constitutional bounds, Congress decides what Cases the federal Courts have Jurisdiction to Consider. Because Congress decides Whether federal Courts can hear cases at all, it can also determine when, and under what conditions, federal Courts can hear them. See Curry, 6 How., at 113, 12 L.Ed. 363. Put another way, the notion of "subject matter" Jurisdiction obviously extends to "classes of cases ... falling within a Court's adJudicatory authority," Eberhart, supra, at 16, 126 S.Ct. 403 <quoting Kontrick, supra, at 455, 124 S.Ct. 906, but it is no less "Jurisdictional" When Congress prohibits federal Courts from adJudicating an otherwise legitimate "class of cases" after a certain period has elapsed from final Judgment. See Bowles vs. Russell, 551 U.S. 205, 127 S.Ct. 2360, 168 L.Ed.2d 96 <2007>;

Respectfully Submitted,
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The Underlying Certifies that a true and correct Copy of this Amended memorandum was mailed, prepaid postage on this March 7, 2024 Date to:

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