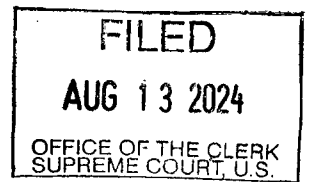


No. 24-5450



IN THE
SUPREME COURT OF THE UNITED STATES

Anthony H. Warnick — PETITIONER
(Your Name)

VS.

State of Oklahoma — 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

Anthony H. Warnick #175234
(Your Name)

JCCC-216 N. Murrey St. #2
(Address)

Helena, OK 73741
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Since Oklahoma lacks jurisdiction to prosecute Indians in Indian country, can Oklahoma incarcerate an Indian pursuant to a judgment rendered by a court devoid of jurisdiction to do so?

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

- Warnick v. State, No. PC-2020-656, Oklahoma Court of Criminal Appeals. Judgment entered Sept. 29, 2021.
- Warnick v. Crow, No. 21-cv-0478, U.S. District Court for the Northern District of Oklahoma. Judgment entered May 23, 2022.
- Warnick v. Harpe, No. 22-5042, U.S. Court of Appeals, Tenth Circuit. Judgment entered Nov. 3, 2022.
- Warnick v. Harpe, No. 22-7166, U.S. Supreme Court. Judgment entered June 5, 2023.
- Warnick v. State, No. PC-2020-656, Oklahoma Court of Criminal Appeals. Judgment entered Sept. 29, 2021.
- Warnick v. State, No. CF-16-395, Washington County District Court. Judgment entered April 3, 2024.
- Warnick v. State, No. PC-2024-0288, Oklahoma Court of Criminal Appeals. Judgment entered Jun 11, 2024.

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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☐ is unpublished.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 State Trial Court court appears at Appendix B 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 Jun 11, 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

18 U.S.C. § 1153 - "Any Indian who commits" enumerated offenses "against the person or property of another Indian or any other person" shall be subject... within the exclusive jurisdiction of the United States."

U.S. Const. Art VI, cl. 2 - ... the laws of the United States which shall be made ..., shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. Amend. 14 - ... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

This is an Indian criminal jurisdiction issue challenging Oklahoma's jurisdiction to incarcerate Indians pursuant to an unlawful state-court judgment.

I am an enrolled member of the Choctaw Nation of Oklahoma and reside on the Cherokee Nation Reservation.

On April 21, 2017 I was tried in a non-jury trial, convicted and sentenced to a term of 35 years on August 9, 2017.

The Oklahoma Court of Criminal Appeals affirmed judgment on

Nov. 8, 2018. On July 27, 2020 I filed for post-conviction relief challenging the States jurisdiction (18 U.S.C. § 1153),

which was denied Sept. 14, 2020. On May 12, 2021 the

OCCA reversed and remanded to trial court for evidentiary

hearing. On July 29, 2021 the OCCA stayed the proceedings

pending it's State ex rel. Matloff V. Wallace case. On

Sept. 29, 2021 the OCCA affirmed denial of post-conviction

relief, citing Matloff V. Wallace (497 P.3d 686). On Nov. 1,

2021 the trial court issued a second denial. On May 23,

2022 the U.S. District Court, N.D. OK, dismissed my 28

U.S.C. § 2254 as untimely. On Nov. 3, 2022 the U.S. Court of

Appeals denied Certificate of Appealability. On June 5, 2023

the Supreme Court denied certiorari. Several state motions

were sought thereafter which the latest of is now before

this Court.

ARGUMENT

To resolve this case, the Court need look only to it's own unbroken century-long precedent. Where Oklahoma's

departure from prior law is as clear as in the instant case, and where the issue is so squarely presented by the petition for certiorary, the matter can be easily resolved in a summary fashion, without the necessity for lengthy briefing and oral argument. See e.g. Appendices H, I, J, K and L.

For over 130 years this Court has spoken with a single voice. This Court has consistently reaffirmed the jurisdictional exclusivity of the Major Crimes Act. *United States v. Kagama*, 118 U.S. 375 (1886); *U.S. v. Ramsey*, 271 U.S. 467 (1926); *Keeble v. United States*, 412 U.S. 205 (1973); *Williams v. Lee*, 358 U.S. 217 (1959); *United States v. John*, 437 U.S. 634 (1978); *Negonsott v. Samuels*, 113 U.S. 1119 (1993).

Only three terms ago this Court issued decisions in two cases speaking directly to Oklahoma; *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), and *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017) aff'd sub nom. *Sharp v. Murphy*, 140 S.Ct. 2412 (2020). The Court need not revisit these decisions, they are settled law.

This case poses the straightforward question: Since Oklahoma lacks jurisdiction to prosecute Indians in Indian country, can Oklahoma incarcerate an Indian pursuant to a judgment

rendered by a court devoid of jurisdiction to do so?

As the opinions of this Court are a final determination of the jurisdictional question, the answer must be in the negative.

Although this issue has been settled, my case remains in an unusual procedural posture. The Oklahoma Court of Criminal Appeals has cherry-picked a single Supreme Court case to sidestep the issue. In *Matloff v. Wallace*, 497 P.3d 686, the OCCA characterized *McGirt's* holding as announcing a new rule of criminal procedure concluding *McGirt* would not apply retroactively. 497 P.3d at 689-94. The relevant statutes and precedent foreclose this argument.

Matloff and Appendices E, F and G reflect Oklahoma's displeasure with this Court's *McGirt* decision. "Lower court judges are certainly free to note their disagreement with a decision of this Court. But the 'Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source.'" "

DIRECTV, Inc. v. Imburgia, 577 U.S. 47, 53 (2015). Under the Supremacy Clause, "any

state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." *Gade V. National Waste Management*, 505 U.S. 88, 108 (1992).

The OCCA's latest conclusion that "Petitioner's propositions of error either were or could have been raised in his previous application for post-conviction relief[.]", further places my case in an unusual, catch-22 posture. Since *Matloff* (which I challenged as *ex post facto*) was decided while my "previous application" was pending, I undoubtedly could not have raised the issue.

The Fourteenth Amendment's guarantee of equal protection is essentially a direction that all persons similarly situated should be treated alike. *City of Cleburne V. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985).

Oklahoma's departure from settled law to enforce an illegal state-court judgment, questions the evenhanded, predictable and consistent judicial decisions of this Court present an important question which should be settled by this Court.

REASONS FOR GRANTING THE PETITION

I am a Native American incarcerated pursuant to a state-court judgment in a state where such prosecution is preempted by federal law.

Over 130 years of Supreme Court precedent pre-date *McGirt*, the single case which the OCCA aggressively frustrates.

Declaratory precedent summarily dispenses with the need for lengthy briefing and oral argument. See e.g., Appendices H, I, J, K, L.

The Supreme Court has endlessly championed the rights of Native Americans against a state's over-reach.

I am undeniably similarly situated with the Native Americans in *Murphy* and *McGirt*, as well as those in the Appendices. I do not ask the Court to revisit the jurisdictional question. It is settled law. I only ask I be awarded the same equal protection of law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Anthony B. Warrick

Date: August 12, 2024