THE SUPREME COURT FOR THE UNITED STATES OF AMERICA

No. 24-6801

BIRDELL WEST, Jr.
Pro Se Petitioner,

V.

STATE OF OKLAHOMA,
Respondent.

PETITIONER'S PRO SE APPLICATION FOR A WRIT OF CERTIORARI TO THE OKLAHOMA COURT OF CRIMINAL APPEALS - STATE OF OKLAHOMA

Submitted by: Birdell West, Jr. #138554
Oklahoma State Reformatory
P.O. Box 514
Granite, Oklahoma 73547
Pro Se Petitioner

Questions Presented for Review

Are Judgments entered by a court lacking legal authority, void and unenforceable?

Are all courts (State and Federal) required to establish proper Jurisdiction at the outset of the proceedings affirmatively on the record?

Are statutes of limitations applicable in cases where the Judgments are void, due to the rendering court lacking Jurisdiction?

Are the newly enacted provisions of Oklahoma's Post-Conviction Procedures Act, setting a limitations Period for seeking review of Jurisdictional claims, unconstitutional?

Does the Oklahoma Court of Criminal Appeals substitution of party presented controlling law in this case, depart from the principle of party presentation so as to constitute an abuse of discretion in contravention of the Fourteenth Amendment Due Process Clause?

Whether Petitioner's Claims were Sufficiently Presented to the State Appellate Court under the Liberal construction analysis?

List of all Parties to the Proceedings.

Birdell West, Jr. - Petitioner

Oklahoma Court of Criminal Appeals,

Tulsa County District Court,

LIST OF ALL PARTIES TO PROCEEDINGS

Petitioner:

Birdwell West Jr.

Respondants:

#1 -Tulsa County District Court
500 South Denver
Tulsa, Okla. 74103;

#2- Oklahoma Court of Criminal Appeals
2100 N. Lincoln suite # 4
Okla. City, Ok. 73105;

#3- United States Supreme
Office of The Clerk
Washington , DC 20543-0001.

#4-Office of Attorney General
US Dept. Of Justice,
950 Pennsylvania Ave NW
Washington , DC 20530-0001

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Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 118 S.Ct. 1003 (1998)

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United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 130 S.Ct. 1367, 176 L.Ed 2d 158 (2010)

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Stidham v. Whelchel, 698 N.E. 1152 (Ind. 1998)

Citations of the official and unofficial reports of the opinions and orders entered in the case by Courts or administrative agencies.

Birdell West v. The State of Oklahoma,
No. PC-2024-428

Birdell West v. The State of Oklahoma,
CF-1983-3069

Jurisdictional Statement

This Court has Jurisdiction of this matter Pursuant to Rule 12 et seq. of the Rules of this Court, esp., Rule 13-"Review on Certiorari"- How Sought, Parties;" Provides,

1. Unless otherwise Provided by law, a Petition for a Writ of Certiorari to review a Judgment in any case, civil or criminal, entered by a state court of last resort... is timely when it is filed with the Clerk of this Court within 90 days after entry of the Judgment.

The Oklahoma Court of Criminal Appeals (the Highest State Court for Criminal cases) entered its "order Affirming Denial of Subsequent Applications For Post-Conviction Relief", on June 26, 2024.

Constitutional Law

Provisions

United States Constitution - Amendment One
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Treatise

"The 1832 Treaty" with the Muscogee Creek Nation, Art. XIV, 7 Stat. 368;
"The 1856 Treaty", 11 Stat. 700;
"The Oklahoma Indian Welfare Act", 25 U.S.C. §§ 5203, 5209;
"The Indian Self-Determination and Education Assistance Act, 88 Stat. 2203; 25 U.S.C. § 5301 et seq.
"The Major Crimes Act" 18 U.S.C. § 1151 et seq.

Statutes

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22 O.S., § 1086
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STATEMENT OF THE CASE

Upon the advice of trial Counsel, Petitioner Pled guilty to a charge of murder in the first Degree, in the Tulsa County District Court, Case No. CF-1983-3069. The Tulsa County District Court entered judgment in 1984 and Sentenced Petitioner to Life imprisonment with Parole Possibilities.

Petitioner filed his first application for Post-Conviction relief in 1985, followed by a second application filed in 2009, then a third one in 2022 and a fourth one in 2024 which is the Subject of this Proceeding.

ARGUMENTS AND AUTHORITIES

PROPOSITION ONE: STATE COURT RENDERED JUDGMENT AND SENTENCE, ARE VOID FOR WANT OF JURISDICTION.

This Petition, was not prepared by counsel. It is well settled law that the allegations of such a complaint, "however inartfully pleaded" are held "to less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed 2d 652 (1972).

Jurisdiction is power to declare law, and when it ceases to exist, the only function remaining to the Court is that of announcing the fact and dismissing the cause. Without Jurisdiction the Court cannot proceed at all in any cause. Ex Parte McCardle, 7 Wall. 506, 514, 19 L.Ed 264 (1868); Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 118 S.Ct. 1003 (1998); United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 130 S.Ct. 1367, 176 L.Ed 2d 158 (2010).

Since the early days of American Jurisprudence, this Court has held, and oftentimes emphatically recognized that ("A judgment rendered by a Court without Jurisdiction is void and unenforceable.") Ex Parte Sienbold, 100 U.S. 371 (1879); Ex Parte Parks, 93 U.S. 18, 3 Otto 18, 23 L.Ed 787 (1876); (It is only where the Proceedings below are entirely void either for want of Jurisdiction, or other cause, that such relief will be given.) Dynes v. Hoover, 61 U.S. 65, 20 How. 65, 15 L.Ed 838 (1857); Rose v. Himely, 4 Cranch 241, 2 L.Ed 608 (1808); Pennoyer v. Neff, 95 U.S. 714, 24 L.Ed 565 (1877);

Thompson v. Whitman, 18 Wall. 457, 21 L.Ed 897 (1873); Windsor v. McVeigh, 93 U.S. 274, 23 L.Ed 914 (1876); McDonald v. Mabee, 243 U.S. 90, 37 S.Ct. 343, 61 L.Ed 608 (1917); Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed 1461 (1938); Cornett v. Williams, 20 Wall. 226.

This Court further establishes that, "Void Judgments can be attacked at anytime. An order that exceeds the Jurisdiction of the Court is void, or voidable, and can be attacked in any proceeding, in any court where the validity of the Judgment comes into issue. See Rose v. Himely, Pennoyer v. Neff, Thompson v. Whitman, (Supra).

Petitioner, in this instant case, filed a subsequent application for Post-Conviction Relief in Tulsa County District Court, for the State of Oklahoma, seeking to vacate the Judgment and Sentence rendered by that Court in Case No. CF-1983-3069, for want of Jurisdiction. Petitioner, in said application, set out the facts, supported with evidence establishing his Native American ancestry, and that the offenses, [redacted] he is being unlawfully detained and held in Judgment for, occurred in Indian Country. Petitioner presented this case pursuant to "The 1832 TREATY" with the Muscogee Creek Nation, which was later codified as Art. XIV, 7 Stat. 368; "The 1856 TREATY", 11 Stat. 700; "The Oklahoma Indian Welfare Act", 25 U.S.C. §§ 5203, 5209; "The Indian Self-Determination and Education Assistance Act", 88 Stat. 2203, 25 U.S.C. § 5301, et seq.; and "The Major Crimes Act", 18 U.S.C. § 1151 et seq., as controlling laws governing this case. To defeat procedural bars or any issues regarding statutes of limitations, Petitioner cited precedents of this Court and Tenth Circuit Court of Appeals rulings, i.e. United States v. Cotton, 535 U.S. at 630 (2002); Steel Co. v. Citizens for a Better Environment, 532 U.S. 83, 89 (1998); Chicago, B&Q. Ry. Co. v. Williard, 220 U.S. 413, 421 (1911); and Murphy v. Royal, 875 F. 3d 896, 907 n.5 (10th Cir. 2017). "Subject matter Jurisdiction can be raised at any time and it can never be forfeited or waived."

Petitioner's first assignment for relief, labelled "First Proposition" set forth the claim that "The District Court for Tulsa County acted in complete absence of Jurisdiction while rendering the underlying Judgment and Sentence in Case number CF-1983-3069. Petitioner submitted undisputable documentary proof of his Native American heritage, in addition to his sworn affidavit attesting the facts that he, and his family has been recepients of Muscogee Creek Nation tribal benefits dating the 1950's, his Mother's enrollment period. Petitioner also submitted a copy of the Judgment and Sentence rendered by the Tulsa County District Court which establishes the rendering Court as being within the boundaries of Indian Country as defined in 18 U.S.C. § 1151 et seq. which grants exclusive Jurisdiction to Federal and Tribal governments over Indians who commit one of the enumerated offenses of the Major Crimes Act. § 1153.

Other issues presented for review were "Prosecutorial misconduct" and "Ineffective Assistance of Counsel."
The State's response was that Petitioner was time-barred pursuant to State law, i.e., 22 Oklahoma Statute, § 1080.1; 22 Oklahoma Statute, § 1083(B); 22 Oklahoma Statute, § 1086.
The district court adopted the State's response and rested it's denial order upon inapplicable state law, and thereby entering "order dismissing Petitioners third and fourth applications for Post-conviction relief. (Ex. #___) It was clear abuse of discretion for the district court to fail to grant the relief required by federal law. See Yates, 484 U.S. at 218, 108 S.Ct. 534. ("If a collateral proceeding is open to a claim controlled by federal law, the State court "has a duty to grant the relief that federal law requires.")
Petitioner timely appealed the district court order to the Oklahoma Court of Criminal Appeals, (O.C.C.A.), asserting that the district court erroneously applied statutes of limitations and doctrines of res judicata and laches in rendering the denial order, in addition to "Issues of of material fact existed so as to preclude summary judgment. Petitioner presented applicable federal law in substantiation of his federal claims to the OCCA.
The OCCA sua sponte, recharacterized the original legal presentation into a "McGirt challenge", and thereby based it's decision affirming the denial order entered by the district court, thereupon, notwithstanding the federal laws and decision of this Court and the

fact that this Court's decision in McGirt was never brought into issue in these proceedings.

The record, in this case clearly shows that Petitioner is of Native American descent and the offense he is being held for, occurred in Indian Country, and is one of the offenses enumerated in the Major Crimes Act.

Petitioner initiated the underlying collateral proceedings in the State district court for Tulsa County, State of Oklahoma, and therein relied solely upon federal law, the decisions of this Court and the United States Constitution.

Law and evidence in this case fully establishes, (1) Law: matters regarding a Court's lacking Jurisdiction, if found, to exist, renders Judgment void, utterly and completely void, and of no legal respect, and are a complete nullity, having no legal effect, void ab initio. Ex Parte Parks, 93 U.S. 18, 3 Otto 18, 23 L.Ed 787 (1876); Ex Parte Siebold, 100 U.S. 371 (1879); Cornett v. Williams, 20 Wall. 226; Windsor v. McVeigh, 93 U.S. 274; Rose v. Himely, 4 Cranch 241, 2 L.Ed 608 (1808); Windsor v. McVeigh, 93 U.S. 274, 23 L.Ed 914; (1876); Thompson v. Whitman, 18 Wall. 457, 21 L.Ed 897 (1873); Pennoyer v. Neff, 95 U.S. 714, 24 L.Ed 565 (1877)

Fact: Judgment and Sentence entered by the Tulsa County District Court in CF-1983-3069, (in which said Court being located in Indian Country, namely, Muscogee Creek Nation Jurisdiction, (See Ex. __, Map of Indian Country); Petitioner is an Indian for purposes of the Major Crimes Act; (See ex. # ___, Enrollment cards, Affidavits)), are void due to the district court's lack of Jurisdiction over Petitioner, due to his Status as an Indian and that the circumstances of this case satisfies the legal requirements set out in 18 U.S.C. § 1151 et seq, § 1153, granting exclusive federal Jurisdiction over Indians found to be in conflict thereof. Thereby Preempting all State law and rendering the Judgment entered in case No. CF-1983-3069 Void, unenforceable, held for naught, of no legal effect, deserving no legal respect, and unavailable for any purpose. Following, are the criteria that qualifies Petitioner's eligibility for federal Preemption under the Major Crimes Act, 18 U.S.C. § 1151 et seq.. (1) Petitioner is an Indian, See ex. #____; (2) The offense is Murder in the first degree, See ex. #____; the offense is enumerated under the M.C.A. as one granting exclusive Jurisdiction to the federal government; (3) The offense occurred in Indian Country, See ex. ##____;

The above facts and documentary evidence being uncontrovertible, clearly renders the Judgment entered by the Tulsa County District Court in Case No. CF-1983-3069, completely void, it has no binding force without the State, and is not entitled to any respect in the State where rendered, 95 U.S. at 732.

Petitioner requests this Court to grant the relief as required pursuant to this Court's precedents and thereby vacate the original Judgment entered by the Tulsa County District Court in Case No. CF-1983-3069; or in the alternative, vacate the order affirming dismissal, entered by the O.C.C.A., with instructions to dismiss the case for want of Jurisdiction, thereby vacating the original judgment entered by the Tulsa County District Court in Case No. CF-1983-3069; or in the alternative; remand the case to the Tulsa County District Court with instructions to dismiss the Judgment and Sentence in Case No. CF-1983-3069 for lacking Jurisdiction to render Judgment in this matter; or in the alternative, this Court, in exercise of it's supervisory Jurisdiction, enter any order that Justice requires in restoration of Petitioner's rights to "be tried in the district (Jurisdiction) where the offense occurred after being ascertained by law", "to access to courts, unabridged", "to due process of laws" and "right to a fair trial."

PROPOSITION TWO: WHETHER APPLICATION OF STATUTE OF LIMITATION OR PROCEDURAL BARS TO CLAIMS INVOLVING A COURT RENDERING JUDGMENT IN WANT OF JURISDICTION VIOLATES THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

(ACCESS-TO-COURTS)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. Amendment I

The First Amendment, in pertinent part for this case states, "Congress shall make no law... abridging the... right of the people... to petition the Government for a redress of grievances."

Through a long line of well established precedent this court has interpreted the first amendment to mean that, "the Petition Clause protects the right of individuals to appeal to court's and other forums established by the government for resolution of legal disputes. The right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government." Sure-Tan, Inc. v. NLRB, 467 U.S. 883, 896-897, 104 S.Ct. 2803, 81 L.Ed 2d 732 (1984); See also BE&K Constr. Co. v. NLRB, 536 U.S. 516, 122 S.Ct. 2390, 153 L.Ed 2d 499 (2002); Bill Johnson's Restaurants, Inc. v. NLRB, 461 U.S. 731, 741, 103 S.Ct. 2161, 76 L.Ed 2d 277 (1983); California

Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 513, 92 S.Ct. 609, 30 L.Ed. 2d 642 (1972); quoted in Borough of Duryea, Pa. v. Guarnieri, 564 U.S. 379, 131 S.Ct. 2488, 190 L.R.R.M. (BNA) 3217 (2011). "The Petition Clause, however, was inspired by the same ideals of liberty and democracy that gave us the freedoms to speak, publish, and assemble. See Mine Workers v. Illinois Bar Assn., 389 U.S. 217, 222, 88 S.Ct. 353, 356, 19 L.Ed 2d 426 (1967). These First Amendment rights are inseparable. Thomas v. Collins, supra.

This Court also holds that "(a) Access-to-courts claims fall into two categories: claims that systemic official action frustrates a plaintiff in preparing and filing suits at the present time, where the suits could be pursued once the frustrating condition has been removed, and claims of specific cases that cannot be tried, no matter what official action may be in the future. Regardless of whether the claim turns on a litigating opportunity yet to be gained or an opportunity already lost, the point of recognizing an access claim is to provide some effective vindication for a separate and distinct right to seek judicial relief for some wrong. Thus, access-to-courts right is ancillary to the underlying claim, without which a plaintiff cannot have suffered injury by being shut out of the court. It follows that the underlying claim is an element that must be described in the complaint as though it were being independently pursued; and that, when the access claim... looks backward, the complaint must identify a remedy that may be rewarded as recompense but not otherwise available in some suit that may yet be brought. The underlying cause of action and its lost remedy must be addressed by allegations in the complaint sufficient to give the defendant fair notice." Christopher v. Harbury, 536 U.S. 403, 153 L.Ed 2d 413, 122 S.Ct. 2179 (2002).

In this instant case, systemic official actions of the Oklahoma legislative and judicial officials effectively frustrated this Petitioner's right to access the Oklahoma Courts seeking Judicial relief regarding the State of Oklahoma rendered Judgment and Sentence in the underlying case, while lacking jurisdiction to do so. In the wake of longstanding, well established decisions, edicts and Judicial guidance of this Court regarding Courts lacking Jurisdiction, in addition to more recent decisions of this Court addressing the same, the State of Oklahoma decided to enact statutory Provisional amendments (which amounts to vindictive legislation) to it's Post-Conviction Procedure Act, i.e. Title 22 O.S. section 1080.1, which sets a one year limitation Period for challenging Jurisdictional claims.

It is well settled law that "Courts are constituted by authority and they cannot go beyond that Power delegated to them., If they act beyond that authority, and Certainly in contravention of it, their Judgments and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal. See Williamson v. Berry, 8 How. 945, 540, 12 L.Ed. 1170, 1189 (1850); Valley v. Northern Fire & Marine Ins. Co., 254 U.S. 348, 41 S.Ct. 116 (1920). "It is essential that that the court should have Jurisdiction of the Person and the Subject-matter, and it is equally clear that the want of jurisdiction is a matter that may always be set up against a Judgment when sought to be enforced, or where any benefits is claimed under it, as the want of jurisdiction makes it utterly void and unavailable for any purpose." Borden v. Fitch, 15 Johns. 141; Earle v. McVeigh, 91 U.S. 503, 1 Otto 503, 23 L.Ed 398 (1875) see Opinion.

In this instant cause, Petitioner, in State district Court, challeneged the validity of the State's Jurisdiction, (the underlying claim) as Presented in his application for Post-conviction relief, therein asserted three grounds for relief; (1) The State District Court acted in Complete absence of Jurisdiction while rendering Judgment in this case; (2) the Prosecutor committed misconduct for knowingly Pursuing criminal proceedings in a Court lacking Jurisdiction; and (3) Defense Counsel was ineffective for failing to investgate and discover laws applicable to Petitioners native american heritage and thereby launch a proper challenge to the state's jurisdiction of this matter.

Petitioner's Jurisdictional challenge is firmly grounded upon the facts that he is an Indian, and the offenses for which he is being held under state Judgment occurred in Indian Country for purposes of the Major Crimes Act, which states, "Any Indian who commits against the Person or Property of another Indian or other Person any of the following offenses, namely, murder, manslaughter, Kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under Section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within Indian Country, shall be subject to the same law and Penalties as all other Persons committing any of the offenses, within the exclusive Jurisdiction of the United States." 18 U.S.C.A. § 1153. In sum, any Indian who commit any of the above offenses enumerated in the (M.C.A.) shall be subject to the laws within the exclusive Jurisdiction of the United States. "Jurisdiction is Power to declare law, and when it ceases to exist, the only function remaining to the Court is that of announcing the fact and dismissing the cause. Without Jurisdiction the Court cannot proceed at all, in any case." Ex Parte McCardle, 7 Wall. 506, 514, 19 L.Ed 264 (1868); Steel Co., supra.

is not a discretionary matter, it is mandatory"; V.T.A., Inc., v. Airco, Inc., 597 F.2d 220, 224 (10th Cir. 1979); Kile v. U.S., 915 F.3d 682 (10th Cir. 2019); "A void Judgment is a nullity from the beginning and is attended by none of the consequences of a valid Judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex Parte Spaulding, 687 S.W. 2d at 745 (Tex. Crim. App. 2001); Dunham v. Stitzberg, 201 P.2d 1000 (1948); Stidham v. Whelchel, 698 N.E. 1152 (Ind. 1998); "The statutes of limitations does not apply to a suit in equity to vacate a void Judgment." Cadenasso v. Bank of Italy, 6 P.2d 944, 214 Cal. 562; Estate of Pusey, 180 Cal. 368, 374, 181 P. 648 (1919). This Court holds that "There is no grandfather clause that permits States to enforce punishments the Constitution forbids. To conclude otherwise would undercut the Constitutions substantive guarantees." Montgomery v. Louisiana, 577 U.S. 190, 136 S.Ct. 718 (2016) @ 204. "Where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its Judgment, until reversed, is regarded as binding in every other court. But if it act without authority, it's Judgments and orders are nullities; they are not voidable, but simply void, and form no bar to a recovery sought, even prior to reversal, in opposition to them; they constitute no justification, and all persons concerned in executing such judgments, or sentences, are considered in law as trespassers." Williamson v. Berry, 49 U.S. 495, 8 How. 495, 12 L.Ed 1170 (1850); Wilcox v. Jackson ex dem. McConnel, 38 U.S. 498, 13 Pet. 498, 10 L.Ed 264 (1839); Shriver's Lessee v. Lynn, 43 U.S. 43, 2 How. 43, 11 L.Ed 172 (1844); Bellevue Water Co. v. City of Bellevue, 3 Hasb. 739, 3 Idaho 739, 35 P. 693 (1893). The decisions rendered in the above cases adhere to well-settled rule in jurisprudence, that the jurisdiction of any court exercising authority over a subject may be inquired into in every other court, when the proceedings in the former are relied upon, and brought before the latter, by a party claiming the benefit of such proceedings. The rule prevails, whether the decree or judgment has been given in a court of admiralty, chancery, ecclesiastical court, or court of common law, or whether the point ruled has arisen under the laws of nations, the practice in chancery, or the municipal laws of states. This Court applied this rule as early as 1794, in the case of Glass et al. v. Sloop Betsey, 3 Dall., 7; also see Rose v. Himely, 4 Cranch, 241; and Elliot v. Piersol, 1 Pet., 328, 340 (1828). This well-established rule in American jurisprudence declares that void judgments cannot be justified and form no bar to a recovery sought in rectification thereof. Void judgments constitute "no judgment at all." Following such, it is clear that the only function remaining to the Court is that of announcing the fact and dismissing the cause. There is no legal standing or precedent to support giving any faith and credit or legal respect to void judgments. Therefore, procedural bars, statutes of limitations, laches or any lawful process are inapplicable to case where the judgment is void for want of jurisdiction, as the only function remaining to a Court, upon finding voidness, is that of announcing the fact and dismissing the cause. This Court has announced no other proceedinas applicable in such cases. Therefore, when, in this instant case, the State Courts applied and upheld statutes of limitation as procedural bar against seeking relief for the jurisdictional issue presented herein, Oklahoma Courts impermissibly denied this Petitioner his rights to access to courts, to have a fair trial, and to have due process of laws as guaranteed under the First, Sixth and Fourteenth Amendments to the United States Constitution.

PROPOSITION THREE: OKLAHOMA COURT OF CRIMINAL APPEALS DEPARTURE FROM THE PRINCIPLE OF PARTY PRESENTATION VIOLATED THE FOURTEENTH AMENDMENT DUE PROCESS CLAUSE.

This Court announced that, "In our adversarial system of adjudication, we follow the principle of party presentation... in both civil and criminal cases, in the first instance and on appeal..., We rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." Greenlaw v. U.S., 554 U.S. 237, 244, 128 S. Ct. 2559, 171 L.Ed 2d 399 (2008). In criminal cases, departures from the party presentation principle have usually occurred "to protect a pro se litigant's rights." Id. at 244; See e.g. Castro v. U.S., 540 U.S. 375, 381-383, 124 S.Ct. 786, 157 L.Ed 2d 778 (2003)(affirming court's authority to recast pro se litigant's motions to avoid unnecessary dismissal" or inappropriately stringent application of formal labeling requirements, or to create a better correspondence between the substance of a pro se motions claim and its underlying legal basis. But as a general rule, our system "is designed around the premise that parties represented by competent counsel know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief." Id. at 386, 124 S.Ct. 786. In short: "Courts are essentially Passive instruments of government; U.S. v. Samuels, 808 F.2d 1298, 1301 (CA8 1987), they do not, or should not, sally forth each day looking for wrongs to right. They wait for cases to come to them, and when cases arise, Courts normally decide only questions Presented by the Parties." Ibid.; also see United States v. Sineneng-Smith, 590 U.S. 371, 374, 140 S.Ct. 1575, 1579, 206 L. Ed 2d 866.

In this instant case, the Oklahoma Court of Criminal Appeals (O.C.C.A.) recharacterized the facts, arguments and controlling law; from that of Party Presented claims and underlying legal basis, to that of a case shaped, substituted and designed by the court, as grounds for affirming denial order. entered by the Tulsa County District Court. Petitioner filed his application for Post-Conviction relief, seeking to have the Judgment rendered in the Tulsa County District Court in Case Number CF-1983-3069 declared as void and vacated, due to the rendering court lacking Jurisdiction, because of Petitioner's status as an Indian; the offenses that are the subject of the underlying Judgment are enumerated in the Major Crimes Act, 18 U.S.C.A. §1151 et seq., and the offense(s) occurred in Indian Country, for Purposes of the Major Crimes Act. Petitioner cited as controlling law, the 1832 Treaty, Art. XIV, 7 Stat. 368; The 1856 Treaty, 11 stat. 700; The Oklahoma Indian Welfare Act, 25 U.S.C. §§ 5203, 5209; The Indian Self Determination and Education Assistance Act, 88 Stat. 2203, 25 U.S.C. § 5301, et seq, and 18 U.S.C. § 1151 et seq, The Major Crimes Act. Attorney's for the State responded and cited several statutory procedural bars, i.e., 22 O.S., §§ 1080.1, 1083(B); 1086 supported with State case law. The Tulsa County District Court adopted the State's defense and dismissed Petitioner's application for Post-Conviction relief on grounds that the claims were barred from review, even Jurisdiction claims Pursuant to 1080.1. Petitioner timely appealed to the Oklahoma Court of Criminal Appeals, which is the highest state Court regarding criminal cases. On appeal, Petitioner challenged the constitutionality of the recently enacted statutory amendment to the State's Post-Conviction Procedure Act, 22 O.S. § 1080.1, or any statute of limitation as being legally inapplicable to the Jurisdictional claims Presented therein. The Oklahoma Court of Criminal Appeals (O.C.C.A.), instead of adjudicating the case as Presented by Petitioner, chose to recharacterize the case into one of it's own making, i.e., "a McGirt issue", and therewith substituted the case and law, presented by Petitioner, with a legal basis that had never been raised or argued in these proceedings and thereby utilized the newly O.C.C.A. designed case presentation and legal basis to deny Petitioner his right to due process of laws. Current holdings of this Court declares that when "the appeals panel departed so drastically from the principle of party presentation as to constitute an abuse of discretion, warranting a vacatur of the judgment and a remand for an adjudication of the appeal attuned to the case shaped by the parties rather than the case designed by the appeals panel. See U.S. v. Sineneng-Smith, 590 U.S. 371, 140 S.Ct. 1575, 206 L.Ed 2d 866 (2020). The actions of the O.C.C.A in this instant case, mirrors that of the appeals panel in the Sineneng-Smith decision, and therefore constitute an abuse of discretion, warranting vacatur of the O.C.C.A. order, in accord with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Conclusion

This case is properly before this Court for review, clarification and Judicial guidance as reconciliation of applicable rule of law. The facts of this case is supported by irrefutable evidence which clearly establish that (1) Petitioner is an Indian who has been a recepient of Muscogee Creek Nation tribal benefits since his early childhood; (2) The United States Constitution grants broad authority to Congress to make treatise and to conduct affairs of the federal government, by which Title 18 U.S.C. § 1151 et sea. "The Major Crimes Act" was enacted, vesting exclusive Jurisdiction over criminal offenses committed by Indians in Indian Country; (3) Petitioner is being unlawfully held on a State Court rendered Judgment for first degree murder, which is one of the offenses enumerated within the Major Crimes Act; and (4) the underlying complained of Judgment rendered by the Tulsa County District Court, in <u>Case No. CF-1983-3069</u> is simply and completely void, held for naught, unenforceable, non-Judgment, unavailable for any purpose, non-binding, non-existent, and deserving of no legal respect.

In Several of the earlier decisions of this Court as cited herein above, It was repeatedly announced that the only remedy available for cases where the Judgments are completely void due to the rendering Court lacking Jurisdiction, is vacatur of the void Judgment, Ex Parte McCardle, 7 Wall. 506, 514, 19 L. Ed 264 (1868); Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed 1461, 1025 (1938); Jordan v. Gilligan, 500 F.2d 701, 710 (6th Cir. 1974), that void Judgments can be attacked at any time, U.S. v. Cotton, 535 U.S. at 630 (2002); Steel Co., supra., Chicago, B & Q, Ry. Co. v. Williard, 220 U.S. 413 (1911); Borden v. Fitch, 15 Johns. 141; Earle v. McVeigh, 91 U.S. 503, 1 Otto 503 (1875) and it is only where the Proceedings below are entirely void either for want of Jurisdiction, (as in this case) or other cause, that such relief will be given. Dynes v. Hoover, 61 U.S. 65 (1857); Rose v. Himely, 4 Cranch 241 (1808); Pennoyer v. Neff, 95 U.S. 714 (1877). In this instant cause, the Oklahoma State Court's failed to uphold their duty to examine the facts regarding Jurisdiction in this Case, once the Court had been alerted as to the Possibility of the existence of a void Judgment, the District Court for Tulsa County and subsequently, the Oklahoma Court of Criminal Appeals had a legal duty to cause an examination into the matter, by which to determine the truth thereof, and if found in the affirmative, enter order declaring such and dismiss the cause.

In Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed 1461 (1938) this Court set forth the Process that is due under these circumstances by announcing that "the judgment of conviction Pronounced by a court without Jurisdiction is void and one imprisoned thereunder may obtain release... A judge of the United States to whom a Petition for habeas corpus is addressed should alert to examine the facts for himself when if true, as alleged they make the trial absolutely void." @ 1025. In this instant case, the State Courts, failed follow and apply long-standing rules of law announced by this Court, the United States Constitution and federal law.

The sheer magnitude of the constitutional encroachments and deprivations involved in this case veiwed through a "good faith" or good conscious lens, further magnifies and lays bare, the facts that the State of Oklahoma is willfully, maliciously and unlawfully holding Petitioner against his will, and thereby committing violence to the Constitution of the United States.

Supremacy Clause

The Supremacy Clause provides that "this Constitution, and the laws of the United States which shall be made in Pursuance thereof... 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." Art. VI, cl. 2. Haywood v. Drown, 556 U.S. 729, 129 S.Ct. 2108, 173 L.Ed. 2d 920 (2009). Thus, a valid federal law is substantively superior to a state law; "if a state measure conflicts with a federal requirement, the state provision must give way." Swift & Co. v. Wickham, 382 U.S. 111, 120, 86 S.Ct. 258, 15 L.Ed. 2d 194 (1965); Haywood, 556 U.S. at 751.

"A Jurisdictional rule cannot be used as a device to undermine federal law, no matter how evenhanded it may appear... 556 U.S. at 739. As far back as 1819 this Court held that "The government of the Union, though limited in its powers, is supreme within its sphere of action, and its laws, when made in Pursuance of the Constitution, form the Supreme law of the land." M'Culloch v. State, 17 U.S. 316, 4 L.Ed. 579 (1819). The United States Congress enacted Title 18 U.S.C. § 1151 et seq. in Pursuance of the United States Constitution to which State law in conflict thereof, must yeild. This is evident in this instant case where Oklahoma enacted a statutory amendment to it's Post-Conviction Procedure Act, 22 O.S. § 1080.1, Setting a new statute of limitation for seeking judicial review of Jurisdictional claims in order to undermine federal law, by denying Jurisdictional issues reaffirmed by this Court in recent Tribal Jurisdiction decisions, the effect thereof constituting denial to access the Courts for redress of grievances and due process of laws where State erected an unconstitutional bar to a claim that, in accordance with numerous decisions of this court, can be set up against at any time. Federal law must be Permitted to Prevail in this case. Even according to the Oklahoma Constitution, the State acknowledged that it would yeild to the Supreme Law of the Land. See Art. 1 § 1 which Provides, "The State of Oklahoma is an inseparable

Part of the Federal Union, and the Constitution of the United States is the supreme law of the land." Yet, Oklahoma stands in defiance against the decisions of this Court, the laws of the federal government, and the First, Sixth and Fourteenth Amendments to the United States Constitutions rights to access to courts, to be tried in the jurisdiction where the offense occurred, to a fair and constitutional trial, and to Due Process of laws.

Federal Preemption

The Supremacy Clause Provides that the Constitution, federal statutes, and treatise constitute "the supreme law of the land." Art. VI, cl. 2. The Clause Provides "a rule of decision" for determining whether federal or State law applies in a Particular situation. Armstrong v. Exceptional Child Center, Inc., 575 U.S. 320, 324, 135 S.Ct. 1378, 191 L.Ed.2d 471 (2015) If federal law "imposes restrictions or confers rights on private actors" and a state law confers rights or imposes restrictions that conflict with the federal law." "the federal law takes takes Precedence and the State law is Preempted." Murphy v. National Collegiate Athletic Assn., 584 U.S. ___, 138 S.Ct. 1461, 1480, 200 L.Ed.2d 854 (2018); Kansas v. Garcia, 589 U.S. 191, 140 S.Ct. 791, 801, 206 L.Ed.2d 146 (2020). It is well established that within constitutional limits Congress may preempt state authority by so stating express terms. Pacific Gas & Elec. Co. v. State Energy Resources Conservation and Development Comm'n, 461 U.S. 190, 203, 103 S.Ct. 1713, 75 L.Ed 2d 752 (1983). In this case Congress stated in express terms that the federal government has exclusive jurisdiction of Indians that commit offenses enumerated in the Major Crimes Act, in Indian Country. Oklahoma State Courts had a Constitutionally mandated duty to yeild to federal law applicable in this case and to vacate the void judgment in accord with law.

Federal District and State Courts residing in the boundaries of the State of Oklahoma recognize and acknowledge federal preemption, void judgments for want of jurisdiction and the remedies for such, but yet choose to apply statutes of limitations to maintain enforcement of void judgments. The United States Court of Appeals rules likewise. Other States across the nation hold that statutes of limitations are inapplicable in these cases. See Estate v. Pusey, 180 Cal. 368, 374; El-Kareh v. Texas Alcoholic Beverage Comm'n, 874 S.W. 2d 192; Folger v. Columbian

Ins. Co., 99 Mass. 267; Long v. Long, 62 Md. 62; Compare, Smallen v. Nunn, 2023 WL 2759756 (U.S.D.C. E.D. Okl. 2023); Williams v. Bridges, 2023 WL 9105546 (W.D. Okla. 2023); Perry v. Crow, 2022 WL 1696540 (N.D. Okla.); Laffoon v. Rankins, 2023 WL 4533911 (E.D. Okla.) to name a few.

Therefore, the Supervisory authority of this Court is paramount in this Case to bring Clarity and conformity to the Oklahoma Judiciary and Federal Court of Appeals for the Tenth Circuit. Should this Court decline review of this matter, the rule of law will continue to be substituted with arbitrariness, capriciousness, and a level of whimsicality cautioned against by the Framer's of our United States Constitution, and Politics and lawlessness will be enabled to thrive and prevail.

Petitioner prays this Court to issue its Writ of Certiorari and thereby cause the lower Court records to be forwarded to this Court for review, and to take any lawful action to restore Petitioners rights to access to Courts, to be tried in the Jurisdiction where the offense occurred after being ascertained by law, to have a fair trial, and to have due Process of law.

Respectfully Submitted,

Birdell West, Jr.

Birdell West, Jr.