

NO. _____

IN THE
SUPREME COURT OF THE UNITED

JOE JOHNSON, JUNIOR, PETITIONER,

VS.

THE STATE OF OKLAHOMA, RESPONDENT(S).

ON PETITION FOR A WRIT OF CERTIORARI TO
THE OKLAHOMA COURT OF CRIMINAL APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Q. WHETHER THE SUPREME COURT CLEARLY ESTABLISHED THE PROSPECTIVE DECISIONS THAT SEMINOLE COUNTRY WRITTEN IN CONGRESS ORGANIC ACT INVOKES THE MAJOR CRIMES ACT ?

Q. WHETHER OKLAHOMA COURT OF CRIMINAL APPEALS APPLICATION OF STATE WAIVER RULE AS A PROCEDURAL BAR IS ADEQUATE TO BAR REVIEW OF FEDERAL SUBJECT MATTER JURISDICTION OF MAJOR CRIME ACTS ENUMERATED IN 1151,1153 TITLE 18 USCA COMMITTED BY INDIAN WITHIN INDIAN COUNTRY ?

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:

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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 is unpublished.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 is unpublished.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 is unpublished.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 DISTRICT COURT SEMINOLE COUNTY court appears at Appendix A to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was NIA.

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 July 24, 2018
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: NIA, and a copy of the order denying rehearing appears at Appendix NIA.

An extension of time to file the petition for a writ of certiorari was granted to and including NIA (date) on NIA (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C.A. AMENDMENT V.

28 U.S.C.A. 1257.(a)

28 U.S.C.A. 1251. (b)(2)

28 U.S.C.A. 2101.(c)

28 U.S.C.A. 2102.

28 U.S.C.A. 2104.

28 U.S.C.A. 2106.

28 U.S.C.A. 116.(b)

18 U.S.C.A. 1151. (a)

18 U.S.C.A. 1152. (1)

18 U.S.C.A. 1153. (a)

18 U.S.C.A. 3231

18 U.S.C.A. 3242

U.S.C.A. CONST. ART. VI, Clause 2. The Supreme Law of The Land.

U.S.C.A. CONST. ART. 1, Section 8. Powers of Congress.

U.S.C.A. CONST. ART. 1, Section 10. Restriction of Powers of States.

TREATIES

Treaty With The Creeks, 1866 WL 18777 June 14, 1866, 14 Stat. 785.

Treaty With The Creeks, ETC., 1856 WL 11367, August 7, 1856. 11 Stat. 699.

OKLAHOMA CONSTITUTION

Organic Act of Congress, May 02, 1890.

Enabling Act of Congress, June 16, 1906.

STATEMENT OF THE CASE

July 24, 2018, Case Number PC-2018-343, the Oklahoma Court of Criminal Appeals (OCCA) entered a Order Affirming the State of Oklahoma District Court within Seminole County Order denying postconviction relief entered on March 29, 2018, Case Number CRF-77-65. **See Appendix “A”**

See Appendix “A” part of the Petition for Writ of Certiorari sought in this Court by the petitioner contains evidence decided by the Supreme Court of the United States in 1942. Based on the Supreme Court decision, Brief of the Seminole Nation, Brief of the United States Respondent, and Reply Brief of the Seminole Nation. The four corners of the Seminole Nation boundaries has already been adjudicated and determined by the Decision of the United States Supreme Court in 1942. This Supreme Court decision at that time reviewed findings from the Court of Claims addressing numerous surveys defining the boundaries of the Seminole Nation of Oklahoma. October 17, 1977, thirty-five (35) years later petitioner would be prosecuted by the State of Oklahoma within Indian Country of the Seminole Nation of Oklahoma without Subject-matter jurisdiction. See Cobb V. Board of Com’rs of Seminole County, August 3, 1915, 50 Okla. 594, 151 P. 220, 1915 OK 588. Seminole Nation of Indians V. United States, June 2, 1953, 125 Ct. Cl. 375, 112 F. Supp. 231. The Seminole Nation V. The United States, October 7, 1940, 92 Ct. Cl. 210, 1940 WL 4090 [describing Seminole Nation Principal Chief John F. Brown and his brother Andrew Jackson Brown-Secretary of the Seminole Nation]. See Godfrey V. Iowa land & Trust Co., May 20, 1908, 21 Okla. 293, 95 P. 792, 1908 OK 107. Davenport V. State, January 3, 1921, 20 Okla. Crim. 253, 202 P. 18, *25-*26 Held: **[It appears: That practically all of the land in Seminole County was Indian land...]**.

Although Allotment had began this would not extinguish tribal government until March 4, 1906 but Congress extended Tribal government indefinitely two-days prior to the deadline on March 2, 1906. The Tribal government continued indefinitely by an Act of Congress extending it’s ultimate power over the life and death of a Nation. The Seminole nation and it’s people survived as Indian Country into the 21st Century. The nation survived within the old boundaries of the Organic Act of Congress, May 2, 1890, Sections 1, 29, 30. The Supreme Court of Oklahoma and Public Officials knew or should have known the Seminole Nation is Indian Country. The Town of Wewoka, Oklahoma within Seminole County, State of Oklahoma is the Capitol and seat of Government of the Seminole nation and tribal organization.

REASONS FOR GRANTING THE WRIT

2] Whether Oklahoma Court of Criminal Appeals application of State waiver rule as a procedural Bar is Adequate to bar review of Federal subject matter Jurisdiction of Major Crime Acts enumerated in 1153 committed by Indian within Indian Country

The adequacy of an independent State procedural waiver rule as an adequate procedural bar is a Federal question itself. See Beard V. Kindley, 558 U.S. 553, 130 S. Ct. 612, 175 L.Ed.2d 417 (Decided December 8, 2009). Foster V. Chatman, 136 S. Ct. 1737, 195 L.Ed.2d 1 (Decided May 23, 2016); Arbaugh V. Y & H Corp., 126 S. Ct. 1235 (Decided February 22, 2006)(The Supreme Court must make this initial assessment by addressing the adequacy of the OCCA State procedural Waiver as a bar to Supreme Court Review is Jurisdictional). **APPENDIX “A”**

The OCCA Order filed in PC-2018-343, July 24, 2018, applied waiver as a procedural bar which is not adequately followed by the OCCA in it's decisions addressing Subject-matter Jurisdiction can be raised at any time or stage of the proceedings. This question of subject-matter jurisdiction has been raised through second and subsequent proceedings in collateral proceedings and OCCA entertained these applications regardless of 1086 of title 22 when 1080(b) of title 22 asserted. See Wackerly V. State, 2010 OK CR 16, Syllabus [1], 237 p.3d. 795. '[I]ssues of subject matter jurisdiction are never waived and can therefore be raised on collateral appeal.]' Wallace V. State, 1997 OK CR 18, Syllabus [10-11], 935 p.2d 366, 372. Ex Parte Duty, 1957 OK CR 111, 318 p.2d 900. It is "Clear Error" committed by the OCCA Order filed July 24th, 2018, in Collateral Appeal Case Number PC-2018-343 and it cannot determined OCCA application of waiver as procedural bar was being evenly applied precedent. The adequacy of the OCCA bar cannot be afforded a presumption of correctness afforded a State's independent and adequate application of waiver rule as a Bar to petitioner's Federal Subject-matter Jurisdiction Claim denied July 24th, 2018, PC-2018-343.

See 41 Am. Jur-2d Indians; Native Americans, Section 164. Federal and Tribal Liquor regulatory authority in Indian Country. IX: Civil and Criminal Courts and proceedings in Indian Matters: Cf: Observation

The Geographic Scope of Tribal and State authority extends to the reservation's four corners since the applicable definition of "Indian Country" for the purposes of the delegation of regulatory authority to the tribes and states is the broad definition as all Land within the limits of any Indian Reservation.

1] Whether the Supreme Court clearly established the prospective decisions that Seminole Country written in Congress Organic Act invokes the Major Crimes Act ?

The critical determination is whether the entire 360 acres plus tract of the Seminole Nation defined by Congress as Indian Country is subject to Indian Offenses committed by an Indian under the Major Crimes Act. Title 18 U.S.C.A. Sections 1151(a), 1152.[1], 1153(a), 3231, 3242. In 1948, Congress amended the major crimes Act and codified the definition of “Indian Country.” See Also Alaska V. Native Village of Venetie Tribal Gov’t, 523 U.S. 520, 528-530, 118 S. Ct. 948, 140 L.Ed.2d 30 (1988). Congress included the Boundaries-based concept of reservations that had developed in the Supreme Court case Law under the Major Crimes Act. See Murphy V. Royal, 866 F.3d 1164, *1184 (10thCir. Aug. 8, 2017); Murphy V. Royal, 875 F.3d 896 (10th Cir. Nov. 9, 2017); Royal V. Murphy, May 21, 2018 138 S. Ct. 2026, 2018 WL 747674. Petition for Certiorari Granted by the Supreme Court of the United States of America.

The Supreme Court of the United States decision

See Seminole Nation V. U.S., 316 U.S. 310, 62 S. Ct. 1061, 86 L.Ed.2d 1497 (Decided May 11, 1942). As Amended on Denial of Rehearing June 28, 1942. No. 830 consolidated with Supreme Court Case No. 348. Reversed and Remanded. See Seminole Nation V. U.S., 316 U.S. 286, 62 S. Ct. 1049, 86 L.Ed.2d 1480 (Decided May 11, 1942)[No.348].

On Remand by Supreme Court-Court of Claims

See Seminole Nation V. U.S., December 04, 1944, 102 Ct. Cl. 565, 1944 WL 3678 [*565 On The Proofs] See Findings [10, 14] Identifying Indian Country.

The Decision May 11, 1942 constituted the Supreme law of The Land in accordance with U.S.C.A. Const. Art. 1, section 8. Powers of Congress. U.S.C.A. Const. Art. VI, Clause 2. The Supreme law of The land. U.S.C.A. Const. Art. 1, section 10. Restriction on Powers of the States. See Treaty With The Creeks, 1866 WL 18777 June 14, 1866, 14 Stat. 785. See Treaty With The Creeks, 1856 WL 11367 August 7, 1856 11 Stat. 699. The Supreme Court determined the entire four-corners of the boundaries of the Seminole Nation of Oklahoma based on Geological Land Survey.

May 2, 1890, Sections 1, 29, 30, Congress Organic Act and title 28 U.S.C.A. 116(b) confers Federal Eastern-District of Oklahoma Subject Matter Jurisdiction over Muskogee, South McAlester and Ardmore, Oklahoma.

ORGANIC ACT OF CONGRESS, MAY 2, 1890

Section 1. Boundaries of Oklahoma Territory—Congress may change Boundaries:

...The portion of the Indian Territory included in said Territory of Oklahoma is bounded by a line drawn as follows: *Commencing at a point where the ninety-eighth meridian crosses the Red river, thence by said meridian to the point where it crosses the Canadian river, thence along said river to the west line of the Seminole country, thence along said line to the North Fork of the Canadian river; thence down said river to the west line of the Creek country, thence along said line to the northwest corner of the Creek country, thence along said north line of the Creek country to the ninety-sixth meridian, thence northward by said meridian to the southern boundary line of Kansas,...*

May 2, 1890, c. 182, section 1, 26 Stat. 81.

Section 29. Boundaries of Indian Territory proper—Establishing a Court:

That all that part of the United States which is bounded on the north by the state of Kansas, on the east by the states of Arkansas and Missouri, on the south by the state of Texas, and on the west and north by the Territory of Oklahoma as defined in the first section of this Act, shall for the purposes, of the Act, be known as the Indian Territory; and under the jurisdiction of the United States court established under and by virtue of an Act entitled "An Act to establish a United States court in the Indian Territory; and for other purposes, approved March first, eighteen hundred and eighty nine, is hereby limited to and shall extend only over the Indian Territory as defined in this section;...

May 2, 1890, c. 182, section 29, 26 Stat. 93.

There were two surveys totaling 375, 000 acres of Seminole Land under Treaty and Reparation made by United States

THE FIRST 200,000 ACRES LAND SURVEY

See Seminole Nation V. U.S., 316 U.S. 310, *311, 62 S. Ct. 1061, **1063, 86 L.Ed. 1497 (Decided May 11, 1942) the U.S. Supreme Court determined that:

The question presented for decision is whether the United States remains under any obligation to the *314 Seminole Nation with respect to Article III of the Treaty of March 21, 1866, 14 Stat. 755, 756, which provides in part: “***as follows, to-wit:

Beginning on the Canadian River where the line dividing the Creek lands according to the terms of their sales to the United States by their Treaty of February 6, 1866, following said line due North to where said line crosses the North Fork of the Canadian River; thence up said North Fork of the Canadian River a distance sufficient to make two hundred thousand acres by running due South to the Canadian River; thence down said Canadian River to the place of beginning.

THE SECOND 175,000 ACRES LAND SURVEY—REPARATIONS

See Seminole Nation V. U.S., 316 U.S. 310, *311, 62 S. Ct. 1061, **1063, 86 L.Ed. 1497 (Decided May 11, 1942) the U.S. Supreme Court further adjudicated that:

See 62 S. Ct., at **1063. The Bardwell survey disclosed that a considerable area East of the Seminole-**Creek dividing line had been occupied by the Seminoles, who had made substantial improvements on this land. Creek Nation V. United States, 93 Ct. Cl. 561, 566. The Creeks received \$175,000 for this Tract. Act of August 5, 1882, 22 Stat. 257, 265. This land became a part of the Seminole Domain and was disposed of either by Allotment to members of the tribe or by sale for the account of the tribe.

This Court can acquire judicial notice of the Seminole Nation boundaries under the East Indian Meridian drawn as follows, to-wit: [1] The South Canadian River on the South. [2] The North Fork of the Canadian River on the North. [3] The Muscogee [Creek] nation on the East. [4] The Oklahoma Territory boundaries on the West.

The Seminole nation of Oklahoma tribal boundaries are located within the boundaries of Seminole County, State of Oklahoma.

SEMINOLE COUNTY, OKLAHOMA BOUNDARY LINES

See Okla. Const. Art. 17, section 8. Description of Counties-Designation of County Seats.

SEMINOLE;-Beginning at a point where the East boundary line of the Seminole Nation intersects the center line of the South Canadian River; thence North along the East boundary line of said Seminole nation to its intersection with the township line between townships seven and eight North; thence east along said township line to the southwest corner of section thirty-five, township eight North, range eight East; thence north along the section line between sections thirty-four and thirty-five, in said township and range, projected to its intersection with the center line of the North Canadian River; thence westward along the center line of said river to its intersection with the east boundary line of Pottawatomie County; thence southward along said east boundary line to its intersection with the center line of said river to the point of beginning. Wewoka is hereby designated the County Seat of Seminole County.

“Indian Country”, as Congress comprehends that term, includes formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by United States. Oklahoma Tax Com’n V. Chickasaw Nation, 515 U.S. 450, 132 L.Ed.2d 400, 115 S. Ct. 2214, n. [16-18] (Decided June 14, 1995); Oklahoma Tax Com’n V. Sac and Fox Nation, 508 U.S. 114, 124 L.Ed.2d 30, 113 S. Ct. 1985, n.[3] (Decided May 28, 1993). Rehearing Denied June 28, 1993. See 509 U.S. 933, 113 S. Ct. 3066. McClanahan V. Arizona Tax Commission, 411 U.S. 164, 168, 172, n.[5-7] 36 L.Ed.2d 129, 93 S. Ct. 1257 (Decided March 27, 1973).

CONCLUSION

The Supreme Court should grant Certiorari to Review the Order of July 24th, 2018, in Oklahoma Court of Criminal Appeals Case Number PC-2018-343, due to the Public Importance that would adversely affect numerous Native Americans living within the State of Oklahoma on reservations, former reservations, Allotments held in Trust by the United States for benefit of the Nations of the Five tribes and clarification of "Indian Country" boundaries within Seminole County, State of Oklahoma and it's applicability to Major Crimes Act for offenses committed by enumerated offenses by an Indian and the State preempted from prosecution for lack of subject matter jurisdiction over Indian Offenses. Title 28 U.S.C.A. 1257, 1251.(b)(2) and 2101.(c), 2102.

Date: 8-16-2018

/s/ Joe Johnson Jr
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