ORIGINAL

No. 18-6098

IN THE

SUPREME COURT OF THE UNITED STATES

JOE JOHNSON, JR., Petitioner,

V.

THE STATE OF OKLAHOMA, Respondent.

On Petition For Writ of Certiorari to the

Oklahoma Court of Criminal Appeals

REPLY TO BRIEF IN OPPOSITION

Joe Johnson, Jr., ODOC# 096004

Unit-1-C-208

Joseph Harp Correctional Center

PO Box 548, 16161 Moffat Road

Lexington, Oklahoma, 73051-0548.

QUESTION PRESENTED BY JOE JOHNSON, JR.
IN REPLY TO BRIEF IN OPPOSITION

1. Whether the prosecution of Petitioner's crime is subject to exclusive federal jurisdiction under the Major Crimes Act for first degree felony murder. Title 18 U.S.C.A. Sections 1151, 1153, 3231. Title 28 U.S.C.A. Sections 116(b), 2254.Organic Act of Congress, Sections 1, 29, 30. Enabling Act of Congress, Section 1.

2. Whether the Seminole Nation historical boundaries within Seminole County, State of Oklahoma constitute a reservation under the Organic Act of Congress after Statehhod ? Organic Act of Congress, Sections 1, 29,30. Enabling Act of Congress, Section 1, 22.

TABLE OF AUTHORITIES

Proposition

The Seminole Nation is a reservation federally recognized Indian Tribe is located within the boundaries of Seminole County, State of Oklahoma. Organic Act, Sections 1,30.

The Supreme Court decided there can be "Indian Country" and not have a reservation. This was addressed in Alaska V. Native Village of Venetie Tribal Gov'T, 118 S. Ct. 948, 952-953 (1998). The fact that Indian Country under a reservation is more durable and not subject to being cancelled or revoked. Indian Country being all the land within the jurisdictional boundary of the formal or informal reservation boundary. If "Indian Country" status is sustained then Oklahoma would not have any statute which would provide jurisdiction to prosecute indians, irrespective of the 1866 reservation status. Okla. Const. Art. 1, section 3. Enabling Act of Congress, Section 1.

The fact is the Seminole Nation of Oklahoma consist of 8.8000 enrolled members in year 2018. A number of Major Crimes Acts committed by these members would not place a burden on Tribal or Federal resources. The State of Oklahoma is overcrowded and number one in the nation for incarceration. Which should make anyone wonder ? Why would you want to retain Indian Inmates incarcerated under a void judgment and sentence, when releasing them to proper federal or tribal authority reduces the State prison population crisis. Out of 111 years falsely operating under a lack of subject matter jurisdiction. This fact will be addressed further in the Reply to Brief in Opposition. Organic Act of Congress, Sections 1, 29, 30. Enabling Act of Congress, Section 1. Title 28 U.S.C.A. Section 116(b), 2254. 18 U.S.C.A. 1151(a),1153,3231. Muscogee (Creek) Nation V. Hodel, 851 F.2d 1439 (D.C. Cir. July 15, 1988).

There is no consequences between Federal, Tribal, State Governments

Okla. Tax Com'N V. Potawatomie Indian Tribe, 498 U.S.505, 544, Syl. [4], 111 S. Ct. 905, 910, (1991). Whether land is Indian Country does not turn upon Whether that Land is dominated "trust land" or "reservation." Rather, we ask Whether the area has been "validly set apart for the use of the Indians as such, under the superintendence of the Government ? Alaska V. Native Village Of Venetie Tribal Gov't., 522 U.S. 520, *528, 118 S. Ct. 948, *953, 140 L.Ed.2d 30 (Decided February 25, 1998). The Supreme Court determined in three cases that Indian Country was found without a reservation. The State of Oklahoma has used an assumption of jurisdiction without tribal consent from the nation when prosecution a native American within the Indian Country. **Joe Johnson, Jr.**, is a member of a Federally recoqnize Tribe. Oklahoma Tax Com'n V. Chickasaw Nation, 515 U.S. 450, 115 S. Ct. 2214, N. [1-2], 132 L.Ed.2d 400 (Decided June 14,1995); Oklahoma Tax Com'n V. Sac And Fox Nation 508 U.S. 114, 124 L.Ed2d. 30, 113 S. Ct. 1985 n. [2,5] (Decided June 28, 1993).

See Brief Opp.P. 16-17. Petitioner is an enrolled member with the Seminole Nation of Oklahoma. Eastern Regional Director Eddie R. Streater would know this on part of the State and the Seminole Nation of Oklahoma. Mr. Streater issued petitioner the Certificate of Degree of

Indian Blood [CDBI] Card. Eddie R. Streater is a distant kinship relative to Woody Streater whom is the alleged victim petitioner was charged by information and convicted in an interracial trial by an all white Jury.

See Brief Opp. P. 6-15. B. Case background. In year 1977 Willie B. Hale is the third degree nephew of Woody Streater and son of Essa Hale the sister to Woody Streater [victim]. Mary Sue Davis is the wife to Special Judge Earl A. Davis, Senior and third degree niece to Woody Streater [victim]. Mary Sue Davis is the daughter of Golden E. Brown and Arthur F. Streater the brother to Woody Streater, and Essa Hale. Richard E. Butner was assistant district attorney that filed the information on June 3, 1977 after preliminary hearing examination presided over by Special Judge Earl A. Davis, Senior on June 1, 1977, binding **Joe Johnson, Jr.,** over for Jury Trial for first degree murder of Woody Streater [vicitm]. Juror Foreman Jarold W. Butler on 10-19-1977 signed both verdict forms for guilt and life imprisonment against petitioner for first degree murder of Woody Streater [vicitm] on the second cousin Richard E. Butner whom filed information against petitioner on June 3, 1977, after preliminary hearing examination June 1, 1977, S-CRF-1977-65. This prosecution occurred within Seminole County, State of Oklahoma within the historical boundaries of the Seminole Nation of Oklahoma I [1977]. Respondent in the Brief In Opposition did not fully detail the facts before this Court. The Private Prison for profit contracted by Department of Corrections for overcrowded conditions in Holdenville, Oklahoma is named after the Special Judge as Earl Davis Correctional Center, whom binded petitioner over for Jury Trial on the information charge of first degree murder of Woody Streater a relative by marriage to the third degree niece Mary Sue [Streater] Davis.

The consequences is the fact Oklahoma had the opportunity to obtain Consent from the Seminole Nation but did not under Pub. Law 280. Title V of the Civil rights act 1968. State V. Klindt, Supra. 782 p.2d 401, 403-404, (Okl.Cr. 1989). Enabling Act of Congress, January 16, 1906, c. 3335, section 22, 34 Stat. 278. Wm H. Murray adopted Resolution on November 21st, 1906 and approved Ordinance Accepting Enabling Act on April 22, 1907, at 11:41 O'clock a.m.

The State of Oklahoma formed the decision "Indian Country"
Did not apply to the Five Civilized Tribes because there was no
Reservation after statehood which abolished Indian Territory.

May 18th, 1908, there was approved by the Governor of the State of Oklahoma, an Act creating a Criminal Court of Appeals. Byers V. Territory, October 18, 1909, 1909 OK 245, 105 P. 998, 24 Okla. 811.

March 20th, 1908, The Oklahoma Supreme Court in this case of Higgins V. Brown, Judge, 20 Okl. 355, 94 P. 703; Id. 1 Okl. Cr. 33. This decision would set the stage for the State of Oklahoma to prosecute Indian Offenses committed by an Indian within the Five Civilized Tribes Indian Country.

October 26th, 1936. this assumption derives from the old Criminal Court of Appeals decision Ex Parte Nowabbi, 60 Okl. Cr. 111, 61 P.2d 1139. The Criminal Court of Appeals affirmed and held:

> That the lands within that part of the State formerly Indian Territory are not "Indian Country" within the meaning of Section 2145, U.S. Rev. Stat., and the State Courts have jurisdiction to prosecute and sentence under the State Laws one Indian for a crime committed against another on such lands. *3.

October 26, 1936, the Criminal Court of Appeals affirmed that the State of Oklahoma had subject matter jurisdiction to prosecute Indians on Indians crimes committed within the tracts/reservations of the Five Civilized Tribes. The Criminal Court of Appeals Opinion held that Indian Country did not apply to the Five Civilized Tribes reservations within the former Indian Territory. Organic Act of Congress, May 2, 1890, c. 182, Sections 1, 30, 26 Stat. 81, 94. Nowabbi, Syllabus [8] cites 18 U.S.C.A. Sections 1151, 1153, 3242.

September 19th, 1945, the Criminal Court of Appeals further affirmed the Nowabbi decision in Ex Parte Wallace, 81 Okla. Cr. 176, 162 P.2d 205, Syllabus [2-6] which made Nowabbi decision stare decisis under State law after statehood by the state highest Criminal Court of Appeals.

> The above provision of the United States Code here involved, particularly with reference to the Five Civilized Tribes, was discussed at length by this Court in Ex Part Nowabbi, 60 Okl. Cr. 111, 61 P.2d 1139. It was therein held that the term "Indian Country" as used in the provision of the Code, 25 USCA Section 217, did not extend to the territory occupied by the Five Civilized Tribes. U.S. V. Sands, 968 F.2d 1058, 1061-1062, (10thCir.1992).

June 29th, 1979, the Oklahoma Court of Criminal Appeals affirmed **Joe Johnson, Junior's** Seminole County, first degree felony murder conviction, within the Seminole Nation, on direct appeal in Case Number F-78-214. Johnson V. State, 597 p.2d 340 (Okl. Crim. App. 1979). The Transcript of Evidence filed on direct appeal supported by Trial Counsel statement on the record that appellant/petitioner is half black and half indian, October 19th, 1977, S-CRF-1977-65.

December 31, 1979, Atty Gen. Opin. No. 79-216, 1979 WL 37653 *9 F. The State Attorney General Jan Eric Cartwright of the State of Oklahoma further confirmed everyone's mistaken belief when stating:

> Due to the dissolution of the Indian Tribes of former "Indian Territory" as governments of limited sovereignty there is no "Indian Country" in said former "Indian Territory" over which Tribal and thus Federal Jurisdiction exists. **[Joe Johnson, Jr. sentenced 10-31-77].**

Between Oklahoma Supreme Courts early decision Higgins and Court of Criminal Appeals construction of Nowabbi in light of Higgins further strengthens the misdirection of the State highest Criminal Court of Appeals from its early days shortly after statehood. It is clear as later decisions were developed the entire State of Oklahoma became misdirected there is no Indian Country and No Reservations after statehood within the Five Civilized Tribes Indian Territory. There is no other opinion that would be arrived by these Indian Tribes. non-citizens of the State. there is no Indian Country nor reservation and the State Prosecutors/Executive Department has the authority to prosecute Indian offenses committed within the former reservation of the Five Civilized Tribes against those same Indians. No one would be free to just ignore these unsound Court decisions even when flawed irreparably throughout the years as the law of the land within the State of Oklahoma. Okla. Const. Art. 4, section 1. Department of Governments. is Legislative, Executive. Judicial. No. [1] Judicial interprets the laws: No. [2] Executive enforces these same laws. These two branches of State Government control the outcome for decades ensuring the prosecution and conviction of Indians for crimes committed within the Indian Country. The Executive department had the approval of the State highest Courts supporting decisions. The same Department of State Goverments exercise authority over **Joe Johnson, Jr.**

It should be noted respondent did not take refuge with Higgins. Nowabbi. Wallace. any Attorney General Opinion of the State of Oklahoma to support it's position on Indian Country status of the Seminole Nation. Respondent did not address what authority made the State believe it had the smoking gun to charge, indict, indians for their crimes committed within the Indian Country. even without a reservation. The Seminole Nation still has Indian Country status for criminal jurisdiction under Federal laws and Tribal Laws. See Brief Opp. P. 5. Resp. "In the 111 years since, the State of Oklahoma has consistently prosecuted Indians for major crimes committed within the historical boundaries of the Seminole Nation. Not once has either the federal government or the tribe prosecuted any crimes in this area on theory that it was a reservation." See Brief Opp. P. 22. Resp. "Petitioner also ignores the unbroken 111-year history of state prosecution of major crimes in Seminole County. See NLRB V. Noel Canning, 134 S. Ct. 2250. 2560, (2014); Mistretta V. United States, 488 U.S. 361. 401. (1989). Nor does Petitioner acknowledge the significant consequences that this theory would unleash."

> The Respondent bases its argument for jurisdiction on Ex Part Nowabbi before the Supreme Court of the United today, No. 18-6098.

The State bases its argument for jurisdiction on Ex Parte Nowabbi on State Direct Appeal and Collateral Post Conviction Proceedings. October 30. 1989. the OCCA held that: "Indian Country jurisdiction is not precluded as to Allotted lands located in what was "Indian Country" **before** Statehood; overruling Ex Parte Nowabbi." See State V. Klindt. 782 p.2d 401 (Okl.Cr.1989).

The OCCA conceded Nowabbi misinterpreted statutes and cases upon which it based its opinion. The OCCA State V. Klindt decision did not null and void the courts original Nowabbi holding which sanctioned state prosecutions within the Five Tribes Nations.When the state was

discretionarily prosecuting Indian offenses within the tribes reservations. after statehood; that dissolution of "Indian Territory" ended the "Indian Country" status.

Nowabbi was overruled as to its application to allotted lands. But state continued it's Nowabbi tradition within the historical boundaries of the Seminole Nation located within Seminole County, State of Oklahoma. **Joe Johnson, Jr.,** information filed on Nowabbi decision in 1977.

OCCA Nowabbi decision only paid lip service overruling as to its application to allotted lands within the five nations; but sanctioned continued State prosecution within the Indian Country of offenses committed by Indians. Seneca-Cayuga Tribe. 874 F.2d 709, 712, footnote 2. (10thCir.)

So, eighty-two (82) years of one-hundred-eleven (111) years Nowabbi gave the State discretion to prosecute Indian offenses within Indian Country without jurisdiction of subject matter. Although Nowabbi was overruled it's precedents is still practiced today by the District Attorneys Office within the five Nations in the name of the State of Oklahoma. This explains respondents calculations (111) years the State of Oklahoma continued this practice unimpeded by federal or tribal sovereignty. The respondents took it upon themselves to impede federal and tribal sovereignty for (111) years based on its Judicial and Executive State unsanction authority under the Major Crimes Act. Tiger, 221 U.S. at 311-12, 31 S. Ct. at 584-85 (That theory was rejected by the Supreme Court); Indian Country, U.S.A., 829 F.2d 967. 980. footnote 6 (10thCir.1987); Seneca-Cayuga Tribe V. State Ex Rel. Thompson. 874 F.2d 709, 712. Footnote 2 (10thCir.1989)(Oklahoma has exercised unlimited jurisdiction in Indian Country without subject matter jurisdiction previous to and immediately after Statehood in those 111 years).

There is nothing that can undo what the State of Oklahoma did after Statehood to the Five Civilized Tribes because of its State highest Court decisions that sanctioned these unconstitutional prosecutions without jurisdiction of subject matter within the Indian Country. The Consequences is if the Supreme Court of the United States does not stop the State prosecution of Indian Offenses committed within the Indian Country. they will surely continue, unless stopped. The other collateral consequences is Congress would have to rewrite the Code of Federal Regulation, United States Code Annotated, Title 25 statutes governing the Indians. and the Major Crimes Act establishing federal criminal jurisdiction over Indian Offenses committed within Indian Country. The Secretary of the Interior, Department of Interior would have to shift policy regarding the Seminole Nation and its sovereignty within the borders of the jurisdictional boundaries of the Seminole Nation. The Supreme Court of the United States would have repeal, supercede, much of it's prior decisions established by Stare Decisis which control. resolve. all controversies between Indian Tribes. Federal and State Issues involving the five tribes. The Nations compacts with the State of Oklahoma would be rendered null and void as a matter of law. The Contract irrevocable where Ordiance Accepting Enabling Act approved April 22, 1907.

The Reason Certiorari should be granted on the record before this Court in the Interest of Justice and Judicial Economy.

By Joe Johnson, Jr.

The Seminole Nation Indian Country is a reservation.
within the Historical Boundaries of Seminole County.
State of Oklahoma, Organic Act of Congress.

The Supreme Court has on occasion constructed Indian Country without considerations of formal and informal reservations. Okla. Tax Com'n V. Sac And Fox Nation, 508 U.S. 114, 123, n. 1-2, 113 S. Ct. 1985, 1990-91 (1993); Okla. Tax Com'n V. Chickasaw Nation, 515 U.S. 450, n. 1, 16-18, 115 S. Ct 2214 (1995); Okla. Tax Com'n V. Potawatomie Indian Tribe, 498 U.S. 505, 511, 112 L.Ed. 2d 1112, 111 S. Ct. 905, 910, (Decided Feb. 26, 1991)(Rather, we ask whether the area has been "validly set apart for the use of the Indians as such, under the superintendence of the Government?" Solem V. Bartlett 465 U.S. 463, 468, 470, 79 L. Ed. 2d 443, 449, 104 S. Ct. 1161(Decided Feb. 22, 1984) (*Only in 1948 did Congress uncouple reservation status from Indian Country to include lands held in fee by non-Indians within reservation boundaries); (*The first and governing principle is that only Congress can divest a reservation of its land and diminish its boundaries. Once a block of land is set aside for an Indian Reservation and no matter what happens to the title of individual plots within the area, the entire blcok retains its reservation status until Congress explicitly indicates otherwise).

Seminole Nation of Oklahoma located within the boundaries of Seminole County, State of Oklahoma is where a significant number of tribal members resided. See 25 CFR Section 292.6.(d)(1). The entire Seminole Nation jurisdictional boundaries are within the 25-mile radius of the tribal Headquarters which was initially Wewoka, Oklahoma and moved Southwest of Seminole, Oklahoma within Seminole County, State of Oklahoma. See 25 CFR Section 292.6.(d)(2). According to Code of Federal Regulations the Seminole Nation qualifies as a reservation within it's Historical and jurisdictional boundaries. Organic Act of Congress. Sections 1, 29, 30. See Okla. Const. Art. 7, section 8 description of Seminole County, State of Oklahoma is given and also gives recoqnition to the Seminole Nation East boundary Line. See 25 U.S.C.A. Section 1903.(10) defines "Reservations" means Indian Country defined in Section 1151 of Title 18. **Joe Johnson, Jr.** is charged with first degree murder under 1153 of Title 18.

The State of Oklahoma has never obtained Consent of the Seminole Nation and does no have jurisdiction over members of the Nation within the reservation. U.S. V. U.S. Fidelity & Guar. Co, 309 U.S. 506, *514, 60 S. Ct. 653, n. [9-12], 84 L.Ed. 894; Southern Sur. Co. V. State of Oklahoma 241 U.S. 582, *586, 36 S. Ct. 692, **694, 60 L.Ed. 1187 (Decided June 12, 1916). State V. Klindt, 1989 OK CR 75, 782 p.2d 401. See Brief Opp. p. 167-17 Respondent argues petitioner should be stayed until Murphy's disposition is decided and would be dispositive to the Seminole Nation reservation status as Indian Country which is dispositive to petitioner's Petition for Writ of Certiorari. The Supreme Court will be determining Murphy and that decision will not be fairly, fully a decision on the merits for the Seminole Nation and it's members under the Major Crimes Act. This Court should grant Certiorari in the interest of justice and judicial economy. Which would benefit the interest of all parties involved.

/S/ Joe Johnson, Jr

May 17, 2018, No. 18-6098 upon Petition For Writ of Certiorari being docketed by the U.S. Supreme Court Clerk's Office, this petitioner did not receive application for extension of time to file Brief In Opposition was filed by Respondent nor was there any order entered by the Court extension to file the Brief In Opposition beyond the thirty (30) days deadline from Parties.

The U.S. Supreme Court Rule 15.(3) provides exceptions to deadlines to file a Reply or Brief in Opposition by the parties before this Court.

September 4, 2018, petitioner resubmitted the Petition For Writ of Certiorari filed in Case No. 18-6098, because the State District Court of Seminole County, Oklahoma Court Order was not included with the Petition for Writ of Certiorari. This is presumed that it should have been dockted no later October 4, 2018.

December 14, 2018, No. 18-6098 is the date on the Certificate of Service made upon petitioner by the respondent's Brief In Opposition filed in the above case number.

September 4, 2018 thru November 30, 2018 extends beyond thirty (30) days specified by Rule 15.(3) of the U.S. Supreme Court Rules. Given this liberal construction this petitioner did not receive anything from the Court Clerk's Office, except to resubmit the correct Petitioner For Writ of Certiorari. Had the Court Clerk extended this mandatory deadline requirement outside the thirty days per Rule 30.4. Petitioner would presume that he would have been notified by the party or Court Clerk's Office. However, neither provided notice that respondent had authority to file outside this thirty days deadline without authorization pursuant to Rule 15.(3) or Rule 30.4. Which states in mandatory language: "The letter shall be served on all parties as required by Rule 29."

Petitioner would ask the Brief In Opposition be stricken as out of time as a proper remedy for violation of the Supreme Court Rules and lack of notice. Had petitioner failed to comply with this requirement as a Pro se litigant, the same rules would result in dismissal, stricken, as a sanction for failure to comply with the Rules of the Supreme Court. U.S.C.A. Const. Amend. 5.

/S/ Joe Johnson, Jr.