

IN THE DISTRICT COURT IN AND FOR THE 13th JUDICIAL DISTRICT
OTTAWA, STATE OF OKLAHOMA

PATRICK TERRY,
Petitioner,

vs.

CF 2012-242

STATE OF OKLAHOMA,
Respondent.

FILED
DISTRICT COURT
OTTAWA CO. OKLA.

SEP 17 2018

CASSIE KEY COURT CLERK
BY _____

ORDER DENYING PETITIONER'S APPLICATION FOR POST-CONVICTION
RELIEF

NOW on this 17 day of September, 2018, the Court, upon reviewing the Petitioner's pro se second Application for Post-Conviction Relief and Application for Evidentiary Hearing (PCR), filed on the 23rd day of April, 2018, the Petitioner's Application for Post-Conviction Relief Motion to Supplement, filed on the 11th day of June, 2018, the State's Response to Petitioner's Application for Post-Conviction Relief and Motion to Supplement, filed on the 24th day of July, 2018, the Application for Post-Conviction Relief Petitioner's Motion for Summary Disposition, filed on the 25th day of July, 2018, the Application for Post-Conviction Relief Petitioner's Reply to State's Response, filed on the 24th day of August, 2018, and the court files hereby finds:

That in this PCR, the Petitioner raises one proposition:

"I. "THE STATE OF OKLAHOMA LACKED JURISDICTION TO PROSECUTE BECAUSE THE *ASSIMILATIVE CRIMES ACT*, 18 U.S.C.A. § 1152, GIVE THE FEDERAL GOVERNMENT EXCLUSIVE JURISDICTION TO PROSECUTE CRIMES COMMITTED BY INDIANS IN INDIAN COUNTRY." See PCR, page 3 Part B.

(A) Patrick Terry is an enrolled member of the Cherokee Nation. See PCR, attached page with a copy of Cherokee Nation registration card, and,

That the Petitioner is challenging the jurisdiction of the State of Oklahoma to prosecute and sentence the Petitioner for crimes committed under the Assimilative Crimes Act.

"...Nevertheless, we have recognized that "issues of subject matter jurisdiction are never waived and can therefore be raised on collateral appeal." *Wallace v. State*, 1997 OK CR 18, ¶ 15, 935 P.2d 366, 372.

While jurisdictional claims can be raised at any time, the Petitioner must raise the issue of jurisdiction in a proper manner and provide supporting evidence that the Petitioner is an

**Petitioner's
Appendix A**

'Indian' and that the crime that has been charged and Petitioner convicted of occurred in 'Indian Country'.

That, in order for the State of Oklahoma (State) to have jurisdiction over the Petitioner, the State must have both subject-matter and personal jurisdiction.

That subject-matter jurisdiction is distinguished from personal jurisdiction, which is the power of a court to render a judgment against a particular defendant, and territorial jurisdiction, which is the power of the court to render a judgment concerning events that have occurred within a well-defined territory.

That the Petitioner, in this PCR, challenges the jurisdiction of the State on both subject-matter jurisdiction and personal jurisdiction claims.

The Petitioner avers that the State is without either subject-matter or personal jurisdiction to prosecute and imprison the Petitioner as the Petitioner is a Native American enrolled in the Cherokee Nation, a Federally recognized tribe, and that the crimes committed were committed within the boundaries of Indian Country.

The Petitioner further avers that the federal government has exclusive jurisdiction over the Petitioner as an 'Indian' and the situs of the crimes as 'Indian Country'. Specifically the Quapaw, Modoc or Ottawa Indian Nations. See PCR page 4, (c) (3).

That Indian Country is defined as:

"Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." See 18 U.S.C. §1151.

That the 'Major Crimes Act' provides:

"(a) 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, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), 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 the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

and the State is without subject matter or personal jurisdiction to charge and convict the Petitioner.

That in support of the Petitioner's challenges, the Petitioner relies, in part, on *Murphy v. Royal*, 875 P.3d 896 (10th Cir. 2017). See PCR, page 10, (3) – list of cases.

That this Court recognizes that the 10th Circuit has issued an opinion in *Murphy v. Royal*, that rules that the 1866 boundaries of the Creek Nation Reservation have never been disestablished and that all lands within the boundaries of the Creek Nation Reservation as of 1866 are 'Indian Country'.

That the ruling issued in *Murphy*, by the 10th Circuit, only applies to the Creek Nation.

That a mandate, which would make the *Murphy* ruling law, has not been issued.

That *Murphy* has been appealed to the United States Supreme Court by the State and has been accepted by the Supreme Court on certiorari appeal.

That, until such time as the Supreme Court issues a ruling and mandate, *Murphy* is not law.

The Petitioner's reliance on *Murphy* is error at the worst and pre-mature at best and at this time does not constitute new law.

That the Petitioner further points to the Indian Self-Determination and Education Assistance Act of 1975, PL 93-638 in support that the Ottawa Tribe "...retain reservation tribal boundaries for establishment of the Quapaw, Modoc and Ottawa Nations." See PCR, page 8, 1st paragraph.

That the Petitioner's reliance on the Indian Self-Determination and Education Assistance Act of 1975, PL 93-638 as retaining or creating Indian Country as defined in 18 U.S.C. §1151 is in error or is a misreading of that act by the Petitioner.

"That the Indian Self-Determination and Education Assistance Act of 1975, PL 93-638 (ISDEAA) is largely concerned with strengthening tribal governments and tribal organizations on Indian reservations by emphasizing tribal administration of federal Indian programs, services, functions, and activities, as well as associated funds.101 The Act currently consists of five major sections: (1) a self-determination contracting program within the BIA and the Indian Health Service (IHS) under Title I;102 (2) education assistance programs under Title II;103 (3) a permanent self-governance program within the DOI for both BIA and non-BIA programs under Title IV;104 (4) a permanent self-governance program within the DHHS under Title V;105 and (5) a feasibility study for including non-IHS agencies within the DHHS in a self-governance demonstration project under Title VI.106." See 18 *American Indian Law Review* Vol. 39.

That on the 11th day of June, 2018, the Petitioner filed the Petitioner's Application for Post-Conviction Relief Motion to Supplement.

That 22 O.S. §1083 provides:

"B. When a court is satisfied, on the basis of the application, the answer or motion of respondent, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may order the application dismissed or grant leave to file an amended application."

That the Petitioner neither sought nor was granted leave to file an amended PCR.

That, normally, this Court would dismiss an amended or supplemental PCR that was filed without leave or order of the court.

That in this case, the Court will permit the Motion to Supplement (Supplement) in the interest of judicial economy.

That the Petitioner amends the initial PCR to the point:

That the Assimilative Crimes Act is actually based on 18 U.S.C. § 13 - Laws of States adopted for areas within Federal jurisdiction, which provides in its relevant part:

"(a) Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment." See Supplement Page 2.

That the Petitioner abandons any reliance upon *Murphy* in support of the proposition of lack of jurisdiction. See Supplement Page 2.

That the Petitioner demonstrates that an Ottawa Reservation was created by treaty with the United States in a portion what is now known as Ottawa County, Oklahoma. See Treaty of February 23, 1867, Article 16.

That in HCR-108 that the Congress of the United States expressly stated its intention to terminate Indians' status as government wards as soon as possible and Native Americans would assume all the responsibilities of full citizenship.

"Whereas it is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same

privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship; and

Whereas the Indians within the territorial limits of the United States should assume their full responsibilities as American citizens:..." See August 1, 1953 [H. Con. Res. 108] 67 Stat. B122.

That HCR-108 did not specifically list the Ottawa Tribe of Oklahoma.

That, in Public Law 943, Chapter 909, August 3rd, 1956, Congress terminated the Federal supervision of the Ottawa Tribe, over trust and restricted property of the Tribe, the individual member thereof and all Federal services furnished because of their status as Indians within 3 years of the Act.

That Public Law 943, Section 8, further terminated the Federal trust relationship of the tribe and its members and subjected them to the laws of the States in the same manner as those laws applied to other citizens or person within their jurisdictions.

"SEC. 8. (a) The Federal trust relationship to the affairs of the Ottawa Tribe and its members shall terminate three years after the date of this Act, and thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians. All statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the tribe, and the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction. (b) Nothing in this Act shall affect the status of the members of the Ottawa Tribe as citizens of the United States. (c) Prior to the termination of the Federal trust relationship in accordance with the provisions of this section, the Secretary of the Interior is authorized to undertake, within the limits of available appropriations, a special program of education and training designed to help the members of the tribe to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistence during the course of training or instruction. For the purposes of such program, the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or person. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it."

That Section 9 (a) & (b) of the Act also provided:

"SEC. 9. (a) Effective three years after the date of this Act, the corporate charter issued pursuant to the Act of June 26, 1936 (49 Stat. 1967), as amended, to the Ottawa Tribe of Oklahoma and ratified by the tribe on November 30, 1938, is hereby revoked.

(b) Effective three years after the date of this Act, all powers of the Secretary of the Interior or other officer of the United States to take, review or approve any action under the constitution and bylaws of the Ottawa Tribe are hereby terminated. Any powers conferred upon the tribe by such constitution which are inconsistent with the provisions of this Act are hereby terminated. Such termination shall not affect the power of the tribe to take any action under its constitution and bylaws that is consistent with this Act without the participation of the Secretary or other officer of the United States.”

That Section 13 of the Act provided:

“SEC. 13. All Acts or parts of Acts inconsistent with this Act are hereby repealed insofar as they affect the Ottawa Tribe or its members. The Act of June 26, 1936 (49 Stat. 1967), and the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378), shall not apply to the tribe and its members three years after the date of this Act.”

That on May 15, 1978, the Ottawa Tribe was reestablished as a federally recognized government when the Ottawa Council and U.S. Congress ratified the Constitution in 1979.

That the Petitioner has failed to provide any support for the proposition that the situs of the crime was within the Indian Country of the Ottawa Tribe.

That the Petitioner makes no other showing that the situs of the crime was on any clearly recognized ‘Indian Country’.

That, “... Before a writ of habeas corpus will issue, Petitioner has the burden of establishing that his confinement is unlawful. Rule 10.6(C), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2018). The writ of habeas corpus has not been suspended or altered by the Post-Conviction Procedure Act so long as the statutory appeal procedures enacted by the Legislature have been first exhausted. *Id.* The writ of habeas corpus is not an authorization to bypass the statutory appeal process. *Id.*” *Stuart v Bryant*, HC-2017-1277, (Ok. Cr. June 11, 2018).

THEREFORE, it is hereby Ordered, Adjudged and Decreed that the Petitioner’s second Application for Post-Conviction Relief and Application for Evidentiary Hearing, the Petitioner’s Application for Post-Conviction Relief Motion to Supplement and the Petitioner’s Application for Post-Conviction Relief Petitioner’s Motion for Summary Disposition are denied

State of Oklahoma, Ottawa County
I, Cassie Key, Court Clerk do hereby certify that the above
is full, true, correct and complete copy of the document in the
above entitled case. Case No. CF-12-242
as the same remains on file in my office.
In witness whereof I have hereunto set my hand and
affix the seal of said Court of Miami, Oklahoma on the
17 day of Sept., 2018
CASSIE KEY, County Court Clerk
By [Signature]
Deputy

[Signature]
Robert G. Haney
District Judge

CERTIFICATE OF MAILING

A true and correct copy of the foregoing was mailed via U.S. Mail, personally delivered or transmitted by facsimile to:

Patrick Terry
DOC #97730
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216 North Murray Street
Helena, Oklahoma 73741

Kenneth Wright
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Kelly Shepherd

IN THE COURT OF CRIMINAL APPEALS FILED
OF THE STATE OF OKLAHOMA IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

FEB 25 2019

PATRICK JOSEPH TERRY,)
)
 Petitioner,)
)
 v.)
)
 STATE OF OKLAHOMA,)
)
 Respondent.)

JOHN D. HADDEN
CLERK

No. PC-2018-1076

ORDER AFFIRMING DENIAL OF
APPLICATION FOR POST-CONVICTION RELIEF

The Petitioner has appealed to this Court from an order of the District Court of Ottawa County denying his application for post-conviction relief in Case No. CF-2012-242. Petitioner was found guilty following a non-jury trial and convicted of Count 1 – Manufacturing a Controlled Dangerous Substance Within 2,000 Feet of a School, in violation of 63 O.S. § 2-401, Count 2 – Possession of a Controlled Dangerous Substance, in violation of 63 O.S. § 2-402(A), and Count 3 – Unlawful Possession of Drug Paraphernalia, in violation of 63 O.S. § 2-405. He was sentenced to thirty years imprisonment for Count 1, six years imprisonment for Count 2, and one year imprisonment for Count

Petitioner's
Appendix B

1915
The following is a list of the names of the persons who were present at the meeting held on the 15th day of June 1915 at the residence of Mr. J. H. Smith, 123 Main Street, New York, N. Y.

Mr. J. H. Smith
Mr. A. B. Jones
Mr. C. D. Brown
Mr. E. F. Green
Mr. G. H. White
Mr. I. J. Black
Mr. K. L. Gray
Mr. M. N. Blue
Mr. O. P. Red
Mr. Q. R. Purple
Mr. S. T. Yellow
Mr. U. V. Orange
Mr. W. X. Silver
Mr. Y. Z. Gold

The meeting was held in the evening and was attended by a large number of persons. The subject of the meeting was the proposed new law relating to the taxation of property. The speaker, Mr. J. H. Smith, discussed the various provisions of the bill and the effect which they would have upon the property owners of this city.

It was pointed out that the bill would increase the tax upon all property over \$10,000 in value. This would be a heavy burden upon the property owners of this city, many of whom are unable to pay the tax. It was suggested that the bill should be amended so as to exempt property of less than \$10,000 in value from the tax.

The meeting was adjourned at 10 o'clock. The next meeting will be held on the 15th day of July 1915 at the residence of Mr. J. H. Smith, 123 Main Street, New York, N. Y.

Very truly yours,
J. H. Smith
Secretary

3. The sentences were ordered to be served concurrently. Petitioner's conviction was affirmed by this Court. *See Terry v. State*, 2014 OK CR 14, 334 P.3d 953.

Petitioner has failed to establish entitlement to any relief in this post-conviction proceeding. *Russell v. Cherokee County District Court*, 1968 OK CR 45, ¶ 5, 438 P.2d 293, 294 (it is fundamental that where a post-conviction appeal is filed, the burden is upon the petitioner to sustain the allegations of his petition). Post-conviction review provides petitioners with very limited grounds upon which to base a collateral attack on their judgments and sentences. *Logan v. State*, 2013 OK CR 2, ¶ 3, 293 P.3d 969, 973. All issues that were not raised previously on direct appeal, but which could have been raised, are waived for further review. *Id.*; 22 O.S.2011, § 1086. Petitioner has not established any sufficient reason why his current grounds for relief were not previously raised. *Id.*

Petitioner tries to claim that his crimes were committed in portions of Oklahoma located in Indian Country, prohibiting Oklahoma courts from exercising jurisdiction over his crimes in Case No. CF-2012-242. However, the prosecution of Petitioner's crimes in

The first part of the document discusses the importance of maintaining accurate records.

This section outlines the various methods used to collect and analyze data.

The following table provides a summary of the key findings from the study.

It is important to note that the results of this study are preliminary.

Further research is needed to confirm the findings and explore the underlying causes.

The data suggests that there is a significant correlation between the variables studied.

These findings have important implications for the field of research.

The study was conducted over a period of six months, during which time a large amount of data was collected.

The results of the analysis are presented in the following sections.

The first section describes the methodology used in the study.

The second section discusses the results of the data analysis.

The third section provides a detailed discussion of the findings.

The fourth section concludes the study and offers suggestions for future research.

The authors would like to thank the following individuals for their assistance.

The study was supported by a grant from the National Science Foundation.

The authors have no conflicts of interest to declare.

The data and code for this study are available in the public domain.

The authors are grateful to the reviewers for their helpful comments.

that case was a justiciable matter, and thus he has not established that the District Court lacked jurisdiction. Okla. Const. Art. VII, § 7 (District Courts shall have unlimited original jurisdiction of all justiciable matters in Oklahoma). The issues raised in Petitioner's application are addressed in *Murphy v. Royal*, 866 F.3d 1164 (10th Cir. 2017) and as a result are currently pending before the United States Supreme Court. *Murphy* is stayed pending the United States Supreme Court's final disposition of the petition for writ of certiorari. *Murphy v. Royal*, Nos. 07-7068 & 15-7041 (10th Cir. November 16, 2017). The United States Supreme Court has granted the petition for writ of certiorari. *Royal v. Murphy*, __ U.S. __, __ S.Ct. __, 2018 WL 747674 (Mem) (May 21, 2018). Therefore, *Murphy* is not a final decision and Petitioner has cited no other authority that refutes the jurisdictional provisions of the Oklahoma Constitution.

Therefore, the order of the District Court of Ottawa County denying Petitioner's application for post-conviction relief in Case No. CF-2012-242 should be, and is hereby, **AFFIRMED**. Pursuant to Rule 3.15, *Rules, supra*, the MANDATE is ORDERED issued forthwith upon the filing of this decision with the Clerk of this Court.

**Additional material
from this filing is
available in the
Clerk's Office.**