

No. _____

IN THE
Supreme Court of the United States

STATE OF OKLAHOMA, *Petitioner,*

v.

SHAYNNA LAUREN SIMS, *Respondent.*

To the Honorable Neil M. Gorsuch,
Associate Justice of the United States Supreme Court and
Circuit Justice for the Tenth Circuit

**APPLICATION FOR EXTENSION OF TIME TO FILE A
PETITION FOR WRIT OF CERTIORARI TO THE
OKLAHOMA COURT OF CRIMINAL APPEALS**

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APPLICATION FOR AN EXTENSION OF TIME

Pursuant to Supreme Court Rules 13.5, 22, and 30, Petitioner respectfully requests a 30-day extension of time, up to and including February 4, 2022, to file a petition for writ of certiorari to the Oklahoma Court of Criminal Appeals to review the decision in *Sims v. Oklahoma*, No. F-2017-635 (Okla. Crim. App. Oct. 7, 2021) (attached as Exhibit 1). The Court of Criminal Appeals issued its judgment and opinion on October 7, 2021.

This Court has jurisdiction to review the decision below under 28 U.S.C. § 1257(a). Unless extended, the time in which to file a petition for writ of certiorari will expire on January 5, 2022. This application is timely because it is being filed ten (10) days prior to the date on which the time for filing the petition expires. *See* Rule 13.5.

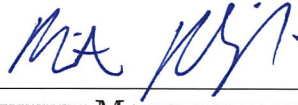
In this case, the Court of Criminal appeals reversed the conviction of a non-Indian who mutilated the corpse of an Indian, holding that the State lacked jurisdiction over the crimes at issue because it occurred on the Muscogee (Creek) reservation recognized by this Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). This case thus presents the same questions as presented in other petitions pending before the Court and distributed for the conference of January 7, 2022, including (1) whether a State has authority to prosecute non-Indians who commit crimes against Indians in Indian country; and (2) whether *McGirt* should be overruled. *See, e.g., Oklahoma v. Castro-Huerta*, No. 21-429. This case also raises the additional question whether, even assuming the state lacks jurisdiction over crimes

in historic Muscogee (Creek) lands committed by non-Indians against Indians, the crimes at issue here—such as Unauthorized Dissection and Unlawful Removal of a Body Part from Deceased—are ones “against” an Indian such that the State lacks jurisdiction over them.

Good cause exists for an extension. The result of this Court’s January 7, 2022 conference, or any later conference in January addressing *Castro-Huerta* and other similar petitions, may materially inform or alter the content of the petition in this case. Moreover, the undersigned counsel of record, who was not counsel below, would benefit from additional time to draft a petition addressing the complex additional question raised in this case. In addition, counsel of record has several intervening deadlines in other cases including: a response to a motion to enjoin upcoming executions in *Glossip v. Chandler*, No. 5:14-cv-665 (W.D. Okla.); a hearing on a preliminary injunction motion in *Oklahoma v. Biden*, No. 21-cv-1136 (W.D. Okla.); and an appellate brief in *Oklahoma Call for Reproductive Justice v. O’Connor*, No. 119,918 (Okla.). An extension of time to file a petition would meaningfully improve the ability of the undersigned counsel to file a well-written and well-researched petition for certiorari to this Court.

For the foregoing reasons, petitioner respectfully request that the time for filing a petition for writ of certiorari in this case be extended by 30 days, up to and including February 4, 2022.

Respectfully submitted,



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December 21, 2021

Exhibit 1

ORIGINAL

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

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT -7 2021

JOHN D. HADDEN
CLERK

SHAYNNA LAUREN SIMS,



Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

No. F-2017-635

OPINION

LUMPKIN, JUDGE:¹

Appellant Shaynna Lauren Sims was tried by jury and convicted of Knowingly Concealing Stolen Property (21 O.S.2011, § 1713)(Count II); First Degree Burglary (21 O.S.2011, § 1431) (Count III); Unauthorized Dissection (21 O.S.2011, § 1155 (Count IV); Disturbing or Interrupting a Funeral (21 O.S.2011, § 1166 (Count V); and

¹As stated in my separate writing in *Roth v. State*, 2021 OK CR 27, __ P.3d __, (Lumpkin, J., concurring in result), I am bound by my oath and adherence to the Federal-State relationship under the U.S. Constitution to apply the edict of the majority opinion in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). However, I continue to share the position of Chief Justice Roberts' dissent in *McGirt*, that at the time of Oklahoma Statehood in 1907, all parties accepted the fact that Indian reservations in the state had been disestablished and no longer existed.

Unlawful Removal of Body Part from Deceased (21 O.S.2011, § 1161(B)) (Count VI) in the District Court of Tulsa County, Case No. CF-2015-2252.² In accordance with the jury's recommendation the Honorable Kelly Greenough, District Judge sentenced Appellant to two (2) years imprisonment and a \$500.00 fine in Count II, seven (7) years imprisonment in Count III, one year imprisonment and a \$500.00 fine in each of Counts IV and V and five (5) years imprisonment and a \$5,000.00 fine in Count VI. The sentences were ordered to run consecutively. Appellant appeals from these convictions and sentences.

In Proposition VII of her appellate brief, Appellant claims the District Court lacked jurisdiction to try her. Appellant argues that while she is not Indian, her victim, Tabatha Lynch, was a citizen of the Muscogee (Creek) Nation and the crimes occurred within the boundaries of the Creek Nation.

Pursuant to *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020) Appellant's claim raises two separate questions: (a) the Indian status of the victim, Tabatha Lynch, and (b) whether the crime occurred in

² Count I, Larceny from a Person (21 O.S.2011, § 1704.2) was dismissed prior to trial.

Indian Country. These issues require fact-finding. We therefore remanded this case to the District Court of Tulsa County for an evidentiary hearing.

Recognizing the historical and specialized nature of this remand for evidentiary hearing, we requested the Attorney General and District Attorney work in coordination to effect uniformity and completeness in the hearing process. Upon Appellant's presentation of *prima facie* evidence as to the victim's legal status as an Indian and as to the location of the crime as Indian Country, the burden shifts to the State to prove it has subject matter jurisdiction. The District Court was ordered to determine whether the victim had some Indian blood and was recognized as an Indian by a tribe or the federal government. The District Court was also directed to determine whether the crime occurred in Indian Country. The District Court was directed to follow the analysis set out in *McGirt* to determine: (1) whether Congress established a reservation for the Creek Nation; and (2) if so, whether Congress specifically erased those boundaries and disestablished the reservation. In so doing, the District Court was directed to consider any evidence the parties provided, including but not limited to treaties, statutes, maps, and/or testimony.

We also directed the District Court that in the event the parties agreed as to what the evidence would show with regard to the questions presented, the parties could enter into a written stipulation setting forth those facts upon which they agree and which answer the questions presented and provide the stipulation to the District Court. The District Court was also ordered to file written findings of fact and conclusions of law with this Court.

An order from Honorable Tracy L. Priddy, District Judge, entitled *Findings of Fact and Conclusions of Law* was timely filed with this Court. The order states that the parties appeared for a status conference and based upon the parties' announcement that they had agreed and stipulated to facts supporting the issues to be decided, no evidentiary hearing was held. The order states that appearances were made by attorneys from the office of the Attorney General of Oklahoma, the Tulsa County District Attorney's Office, and defense counsel.

In its order, the District Court states that Appellant and the State of Oklahoma stipulated to the following: 1) Shaynna Lauren Sims is the named Defendant/Appellant in the matter; 2) the victim, Tabatha Nadine Lynch, had 1/64 Indian blood and was a member of the Muscogee (Creek) Nation Tribe at the time of the crime; 3) the

Muscogee (Creek) Nation is a federally recognized tribe; and 4) verification of Ms. Lynch's tribal membership and blood quantum are attached to the stipulation as Exhibit A and the parties agree Exhibit A should be admitted into the record of the case. The District Court stated that it adopted the Agreed Stipulation and based upon the record before the court, found that the victim Tabatha Nadine Lynch was an Indian.

Regarding whether the crime occurred in Indian Country, the order states that the parties stipulated "that the crimes occurred at 1908 South Memorial Dr. East, Tulsa, Ok 74112 and 4946 S. Mingo Road, Apt. 245G Tulsa, Ok 74146, which lie within the Muskogee (Creek) Reservation boundaries." The court stated that it adopted the stipulation and found the crime occurred within the boundaries of the Creek Reservation. The District Court concluded its order by finding that based upon *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), "the crimes occurred on the Creek Reservation which is Indian Country."

Both Appellant and the State were given the opportunity to file response briefs addressing issues from the evidentiary hearing. Appellant did not file a response brief. The State filed a response brief acknowledging the District Court's acceptance of the stipulations

regarding the victim's status as an Indian and the location of the crime as occurring within the Muscogee (Creek) Reservation. The State does not contest the factual findings that the victim was an Indian but also does not concede the legal conclusion that she was a victim. The State agrees the crimes occurred in Indian Country but argues the State properly exercised jurisdiction for two reasons: 1) the State has exclusive jurisdiction over victimless crimes committed by non-Indian defendants; and 2) assuming any of Appellant's crimes were not victimless, the State has concurrent jurisdiction. The State also argues that should this Court find Appellant is entitled to relief, this Court should stay any order reversing the conviction for thirty (30) days to allow the United States Attorney's Office for the Eastern District of Oklahoma to secure custody of Appellant. *Cf.* 22 O.S. 2011, § 846.

To support its first claim, the State relies on *United States v. Langford*, 641 F.3d 1195, 1197 (10th Cir. 2011). There the Tenth Circuit Court of Appeals said that “[t]he states possess exclusive criminal jurisdiction over crimes occurring in Indian country if there is neither an Indian victim, nor an Indian perpetrator”, relying in part on *Solem v. Bartlett*, 465 U.S. 463, 465 n. 2, (1984) (“[w]ithin Indian

country, State jurisdiction is limited to crimes by non-Indians against non-Indians, and victimless crimes by non-Indians”) and *United States v. McBratney*, 104 U.S. 621, 622 (1881) (federal jurisdiction over crimes in Indian country is contingent upon the existence of either an Indian victim or perpetrator). The State then argues that the crimes in this case were victimless crimes as they were committed upon the person or property of a deceased person.

The evidence in this case shows that Appellant entered the Moore Eastlawn Funeral Home and proceeded to the viewing room where the body of Tabatha Lynch was displayed so her family and friends could pay their last respects prior to her cremation. Appellant cut the decedent’s forehead from her hairline to the top of her nose, cut her hair, smeared the decedent’s make-up, and cut off a toe and both breasts. Appellant then took photographs of the body, including the actual cutting off of the toe. She then removed the decedent’s pants and took photographs of the decedent’s vagina. Appellant took the shoes from the decedent’s feet.

After leaving the funeral home, Appellant went to the decedent’s apartment. She introduced herself to the decedent’s son who answered the door as working for the funeral home and needing a photograph of

the decedent. The son left Appellant outside the apartment as he searched for a photograph. The decedent's boyfriend soon arrived and let Appellant into the apartment. He then received a phone call from the decedent's brother informing him that the decedent's body had been disturbed and Appellant was suspected of committing the acts. Family and friends kept Appellant at the apartment until police arrived. For these acts, Appellant was charged, tried by jury, and convicted of the crimes of Knowingly Concealing Stolen Property, First Degree Burglary, Unauthorized Dissection, Disturbing or Interrupting a Funeral, and Unlawful Removal of Body Part from Deceased.

A "victimless crime" has been defined as "a crime which generally involves only the criminal, and which has no direct victim." Black's Law Dictionary 1567-68 (6th ed.1990). The State has cited no controlling authority establishing that the crimes in this case fall under that definition or have been considered by a court as victimless crimes. We find the State's arguments on the issue unpersuasive and not sufficient to show the State has jurisdiction to prosecute Appellant.

Turning to the second portion of the State's argument, we have addressed and rejected a similar argument on the concurrent jurisdiction of the federal and state governments in *Roth*, 2021 OK CR

27, ¶ 12, ___ P.3d at ___. The State of Oklahoma does not have concurrent jurisdiction to prosecute Appellant.

After thorough consideration of the arguments and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we find that under the law and the evidence relief is warranted. Under the record before us, we find the District Court did not abuse its discretion and its findings are supported by the evidence presented at the evidentiary hearing. *See State v. Delso*, 2013 OK CR 5, ¶ 5, 298 P.3d 1192, 1194. We find Appellant has met her burden of establishing that her victim, Tabatha Lynch was an Indian, having 1/64 degree Indian blood of the Muscogee (Creek) Nation Tribe and is an enrolled member of the Muscogee Creek Nation of Oklahoma on the dates of the charged offense and that the charged crime occurred within the Muscogee (Creek) Reservation.

Based upon the evidence in this case, we find that pursuant to *McGirt*, the State of Oklahoma did not have jurisdiction to prosecute Appellant in this matter.³ The Judgments and Sentences in this case

³ While Art. 7 of the Oklahoma Constitution vests the district courts of Oklahoma with “unlimited original jurisdiction of all justiciable matters,” the federal government has pre-empted the field as it relates to major crimes committed by or against Indians in Indian country.

are hereby reversed and the case remanded to the District Court of McIntosh County with instructions to dismiss the case.⁴

DECISION

The **JUDGMENTS** and **SENTENCES** are **REVERSED AND REMANDED** with instructions to **Dismiss**. The **MANDATE** is not to be issued until **twenty (20) days** from the delivery and filing of this decision.⁵

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE TRACY L. PRIDDY, DISTRICT JUDGE

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⁴ This resolution renders the other seven (7) propositions of error raised in Appellant's brief moot.

⁵ By withholding the issuance of the mandate for 20 days, the State's request for time to determine further prosecution is rendered moot.

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OPINION BY: LUMPKIN, J.
ROWLAND, P.J.: Concur in Result
HUDSON, V.P.J.: Specially Concur
LEWIS, J.: Concur in Result

ROWLAND, PRESIDING JUDGE, CONCURRING IN RESULTS:

I concur in the results of this case, but I write separately to reiterate my belief that where the federal statute of limitations has expired rendering federal prosecution impossible, the state's jurisdiction is not preempted and dismissal is inappropriate. While circumstances indicate that is likely the case here, there is no evidence in this record specifically addressing the applicable statute of limitations on these crimes. Furthermore, even were there such evidence in this record, *stare decisis* would dictate this outcome based upon this Court's holding in *Roth v. State*, 2021 OK CR 27, P.3d .

HUDSON, VICE PRESIDING JUDGE, SPECIALLY CONCURS:

Today's decision dismisses convictions for knowingly concealing stolen property, first degree burglary, unauthorized dissection, disturbing or interrupting a funeral, and unlawful removal of body part from deceased from the District Court of Tulsa County based on the Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). This decision is unquestionably correct as a matter of *stare decisis* based on the Indian status of the victim and the occurrence of this crime on the Creek Reservation. Under *McGirt*, the State has no jurisdiction to prosecute Appellant for the crimes. Instead, Appellant must be prosecuted in federal court. I therefore as a matter of *stare decisis* fully concur in today's decision. Further, I maintain my previously expressed views on the significance of *McGirt*, its far-reaching impact on the criminal justice system in Oklahoma and the need for a practical solution by Congress. *See Hogner v. State*, 2021 OK CR 4, __P.3d__ (Hudson, J., Specially Concur).