

In the Supreme Court of the United States

STATE OF OKLAHOMA,

Petitioner,

v.

JIMMIE DEWAYNE STARR,

Respondent.

**On Petition for a Writ of Certiorari to the
Oklahoma Court of Criminal Appeals**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), should be overruled.

LIST OF PROCEEDINGS

Oklahoma Court of Criminal Appeals

No. C-2018-640

Jimmie Dewayne Starr, Petitioner v.
The State of Oklahoma, Respondent

Date of Final Order: March 18, 2021

Oklahoma District Court (Okmulgee County)

No. CF-2016-80, No. CF-2017-131,
No. CF-2017-132

The State of Oklahoma, Plaintiff v. *Jimmie
Dwayne Starr, Alias: Jimmy Starr*, Defendant

Date of Judgments and Sentences: August 16, 2019

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OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals, dated March 18, 2021, is included in the Appendix at App.1a-9a. The order of the Oklahoma Court of Criminal Appeals, dated August 19, 2020, remanding the case for an evidentiary hearing is included below at App.25a-29a. The District Court of Okmulgee County, Oklahoma, Findings of Facts and Conclusions of Law in Accordance with the remand order, dated November 4, 2020, is included below at App.10a-12a. These opinions and orders were not designated for publication.



JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on March 18, 2021. App.1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).



STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1151 (in relevant part) Indian Country Defined

[T]he 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.

18 U.S.C. § 1152 (in relevant part) Law Governing (Indian country)

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.



STATEMENT OF THE CASE

Thousands of state criminal prosecutions have been called into question by this Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). Like the pending petition in *Oklahoma v. Bosse*, No. 21-186, this case presents the question whether *McGirt* should be overruled. For the same reasons given in the *Bosse* petition, review is warranted here to examine that question. The petition for a writ of certiorari in this case should either be granted or, if the petition in *Bosse* is granted, held pending a decision in *Bosse* and then disposed of as is appropriate.

1. In the state district court, respondent Jimmie Dewayne Starr entered guilty pleas and admitted to committing a number of crimes. On February 20, 2016, respondent refused to pull over for police and instead led them on a ten-mile, high-speed chase, endangering other motorists (O.R. 117; Sent. Tr. 18-20¹). Respondent was charged with eluding but failed to appear for court (O.R. 117; Sent. Tr. 20-21). Upon his apprehension in 2017, respondent resisted arrest and was found to have marijuana on him (O.R. 117; Sent. Tr. 22-23).

These crimes were just the latest in a long string for respondent. In 2007, at just sixteen years old, respondent was sanctioned by Oklahoma's Office of Juvenile Affairs for public intoxication, possession of

¹ All fact citations are to the transcript of respondent's sentencing hearing (Sent. Tr.), and the state trial court's original record (O.R.), which are available below. *See* Sup. Ct. R. 12.7.

drug paraphernalia, and selling or furnishing intoxicating liquor (Sent. Tr. 6-7, 10). In 2008, he was sanctioned for driving under the influence and selling or furnishing intoxicating liquor (Sent. Tr. 7-8). In 2009, respondent was arrested and charged as an adult for obstructing an officer, resisting arrest, and possession of a controlled dangerous substance with intent to distribute (Sent. Tr. 10-11). He ultimately pleaded guilty to possession with intent to distribute of marijuana, Oxycodone, methadone, dihydrocodeine, Alprazolam, Clonazepam, and Diazepam (Sent. Tr. 11). In 2010, respondent was arrested for and charged with leaving the scene of a property damage accident, possession of methamphetamine and cocaine, and eluding (Sent. Tr. 12-14). The charges were ultimately dismissed pursuant to a plea agreement that required respondent to participate in drug court (Sent. Tr. 12-14).

In 2011, respondent was arrested after driving under the influence with his one-year-old daughter in the car, reaching speeds of up to ninety-four miles per hour (Sent. Tr. 15). Respondent again pleaded into drug court, but he was terminated from drug court and imprisoned after repeatedly violating the rules by using drugs and alcohol (Sent. Tr. 15-18). After serving three and half years in prison, respondent was released and, within a mere two months, began committing the crimes at issue in this case (Sent. Tr. 20-21).

Respondent subsequently moved to withdraw his guilty pleas and, after that motion was denied, appealed to the Court of Criminal Appeals.

2. After this Court issued its decision in *McGirt*, the Court of Criminal Appeals remanded the case to the trial court for an evidentiary hearing on res-

pondent's claim that the State lacked prosecutorial authority in his case because he is Indian and his crimes occurred in Indian country. On remand, the parties stipulated that respondent had 1/4 Indian blood, that he was a member of the federally-recognized Muscogee (Creek) Nation at the time of the crimes, and that his crimes occurred within the Muscogee (Creek) reservation recognized by *McGirt*. App.11a, 18a-19a.

The Court of Criminal Appeals vacated the convictions, adopting the trial court's conclusions and holding that the State lacked authority to prosecute respondent for the crimes at issue. App.4a.

Two judges wrote separate opinions. Judge Lumpkin concurred in the result. App.6a-8a. He expressed his view that the Court's opinion in *McGirt* "contravened * * * the history leading to the disestablishment of the Indian reservations in Oklahoma," but concluded that he was bound to follow it. App.6a.

Judge Hudson also concurred in the result. App.9a. Like Judge Lumpkin, he concurred "as a matter of *stare decisis*," but he observed that *McGirt* had "far-reaching impact on the criminal justice system in Oklahoma," citing to his previous concurrence in *Bosse*. App.9a.



REASONS FOR GRANTING THE PETITION

In the decision below, the Oklahoma Court of Criminal Appeals applied *McGirt* to free yet another criminal from state custody, exacerbating the crisis in the criminal-justice system in Oklahoma. As the State of Oklahoma explains in its petition in *Bosse*, reconsideration of *McGirt* is the only realistic avenue for ending the ongoing chaos affecting every corner of daily life in Oklahoma. This case presents yet another opportunity to end the damage caused by *McGirt*. For the same reasons offered in *Bosse*, this petition should either be granted or, if the petition in *Bosse* is granted, held pending a decision in *Bosse* and then disposed of as is appropriate.

As explained more fully in *Bosse*, *McGirt* was wrongly decided, and the Court's review is urgently needed because no recent decision has had a more immediate and disruptive effect on life in an American State. *McGirt* contravened longstanding precedent on the disestablishment of Indian reservations. 140 S. Ct. at 2485 (Roberts, C.J., dissenting). It did so by wrongly reasoning that historical materials showing the original public meaning of statutes may be considered in the disestablishment inquiry "only" to "clear up" statutory ambiguity. *See id.* at 2467-2468, 2469-2470 (majority opinion). But consideration of history is necessary precisely because it is unclear whether Congress's alienation of Indian lands at the turn of the century changed the Indian country status of the land. *See id.* at 2488 (Roberts, C.J., dissenting). Under the correct framework prescribed by this Court's precedent, it is clear that Congress disestablished the Creek territory

in Oklahoma, as well as the territories of the four other Oklahoma tribes. And with that conclusion, it is clear that the decision below is incorrect and warrants reversal.

Overruling *McGirt* and restoring the state jurisdiction it stripped is important not only for this case and the victims of the crimes at issue. As the Chief Justice correctly predicted, the “burdens” of the *McGirt* decision on the State of Oklahoma have been “extraordinary.” 140 S. Ct. at 2500. The challenges from that seismic shift in jurisdiction have rippled through every aspect of life in Oklahoma. Most immediately, *McGirt* has jeopardized the state’s jurisdiction over thousands of criminal cases—this case being just one of them.

The question presented in this case is materially identical to the third question presented in *Bosse*. For the compelling reasons explained in the petition in *Bosse*, review should be granted in that case. The Court should then either grant review in this case or hold the petition pending the resolution of the third question presented in *Bosse*.



CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, if the petition in *Oklahoma v. Bosse*, No. 21-186, is granted, the petition in this case should be held pending a decision there and then disposed of as is appropriate.

Respectfully submitted,

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AUGUST 16, 2021