

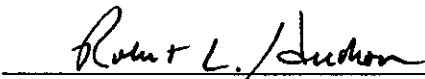
post-conviction relief is **AFFIRMED**. Respondent's motion to stay proceedings is **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2021), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

IT IS SO ORDERED.

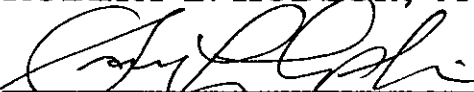
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 27th day of September, 2021.



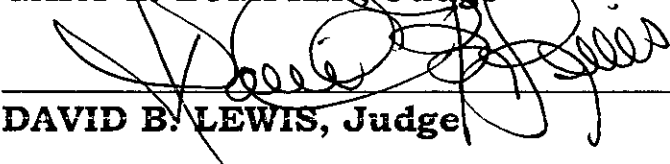
SCOTT ROWLAND, Presiding Judge



ROBERT L. HUDSON, Vice Presiding Judge

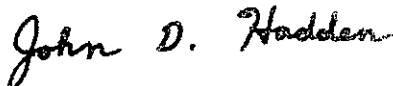


GARY L. LUMPKIN, Judge



DAVID B. LEWIS, Judge

ATTEST:



Clerk

PA

**IN THE DISTRICT COURT OF OKMULGEE COUNTY
STATE OF OKLAHOMA**

FILED
IN DISTRICT COURT
APR 28 2021
OKMULGEE COUNTY, OKLAHOMA
By CHARLY CRINER, Court Clerk
Deputy

GARY F. COMPELLEEBEE,)
)
Petitioner,)
)
-vs-)
)
STATE OF OKLAHOMA,)
)
Respondent.)

Case No. CF 2005-5030
COCA No. PC 2020-667

COURT ORDER

NOW ON THIS 22nd day of April, 2021, the above cause of action comes on for consideration by the Court on the Order Remanding For Evidentiary Hearing and Ruling on Application for Post-Conviction Relief sent by the Court of Criminal Appeals for the State of Oklahoma.

STATEMENT OF THE CASE

Based on a review of the mandate affirming Petitioner's judgment and sentence, the Court finds that Gary Franklin Compelleebec entered a plea of guilty to the crimes of First Degree Robbery (Count 1), Grand Larceny (Count 2), and Assault and Battery (Count 4) and was sentenced to sixteen (16) years with all but the first six (6) years suspended on Count 1, five (5) years on Count 2 and ninety (90) days on Count 4, with each count ordered to run concurrently. Petitioner was released from confinement in approximately 2011 and began to serve the balance of his suspended sentence on Count 1. On February 13, 2014, the State filed a Motion to Revoke, and Petitioner subsequently stipulated to that Motion and was ordered to serve the remainder of his sentence in prison, a term of ten (10) years.

On July 9, 2020, the United States Supreme Court held in *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2460-82 (2020), that the Creek Nation's Reservation had not been disestablished. On that same day, and for reasons stated in *McGirt*, the Court also affirmed the Tenth Circuit's decision in *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017). *Sharp v. Murphy*, 140 S. Ct. 2412 (2020).

On August 5, 2020, Petitioner filed a *pro se* Application for Post-Conviction relief in this Court, pursuant to 22 O.S. 2011, §§ 1080, *et seq.*, claiming the State lacked jurisdiction to prosecute him for his crimes in this case under the reasoning set forth in *McGirt*, 140 S. Ct. 2452,

APPENDIX "B"

jurisdiction. As OCCA has previously stated: "issues of subject matter jurisdiction are never

2460-82 (2020). Specifically, Petitioner alleged that he was a member of the Muscogee (Creek) Nation with a registration number of 64209, and that his crimes occurred in the City of Henryetta,

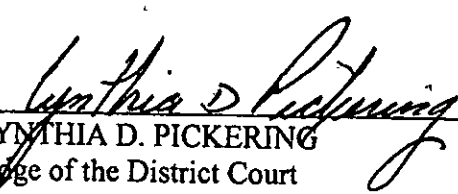
waived and can therefore be raised on collateral appeal.” . . .” *Wallace v. State*, 1997 OK CR 18, ¶ 15, 935 P.2d 366, 372.

CONCLUSIONS OF LAW

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Based on the stipulations entered into by agreement of the parties, the Court finds that the Petitioner is an “Indian”, as Petitioner has some Indian blood, and is recognized as an enrolled member of the Muscogee (Creek) Nation, a federally recognized Indian tribe, and was so enrolled at the time of the crime. Further, the Court finds that the crime committed by the Petitioner was committed within the historical boundaries of the Muscogee (Creek) Nation, and therefore was committed within Indian country as defined by 18 U.S.C. §1151(a).

It is settled law that “[s]ubject-matter jurisdiction can never be waived or forfeited.” *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012). The Oklahoma Court of Criminal Appeals has repeatedly held that the limitations of post-conviction or subsequent post-conviction statutes do not apply to claims of lack of jurisdiction. *Wackerly v. State*, 2010 OK CR 16, ¶ 4, 237 P.3d 795, 797; *Wallace v. State*, 1997 OK CR 18, ¶ 15, 935 P.2d 366, 372; see also *Murphy v. State*, 1997 OK CR 25 ¶¶ 5-7, 124 P.3d 1198, 1200 (recognizing limited scope of post-conviction review, then addressing newly raised jurisdictional claim on the merits). In *Wackerly*, they also held the time limit on newly raised issued in Rule 9.7 did not apply to jurisdictional questions. *Wackerly*, 2010 OK CR 16, ¶ 4 237 P.3d at 797. In short, the State of Oklahoma does not have jurisdiction to prosecute Petitioner Compelleebee.

So Ordered this 26th day of April, 2021.


CYNTHIA D. PICKERING
Judge of the District Court

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

FILED

COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAY 17 2021

JOHN D. HADDEN
CLERK

GARY F. COMPELLEEBEE,

Petitioner,

v.

STATE OF OKLAHOMA,

Respondent.

No. PC-2020-667

FILED
IN DISTRICT COURT
MAY 19 2021

OKMULGEE COUNTY, OKLAHOMA
CHARLY CRINER, Court Clerk
By Deputy

**ORDER GRANTING RESPONDENT'S MOTION TO FILE
SUPPLEMENTAL BRIEF FOLLOWING REMAND**

On April 16, 2021, this matter was remanded to the District Court of Okmulgee County, the Honorable Cindy Pickering, Associate District Judge, for ruling on the post-conviction application filed in Case No. CF-2005-5030. The application raised claims pursuant to *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). Judge Pickering's order was filed in the District Court on April 28, 2021.


Our April 16, 2021, order provided Petitioner thirty days in which to file a supplemental brief. On May 5, 2021, counsel for Respondent sought leave to file a supplemental brief following the remand. Petitioner's motion is **GRANTED**. Respondent's supplemental brief is due no later than thirty (30) days from the date of this order.

APPENDIX "C"

IT IS SO ORDERED.

WITNESS MY HAND AND THE SEAL OF THIS COURT this

17th day of May, 2021.



DANA KUEHN, Presiding Judge

ATTEST:

John D. Hadden

Clerk

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