

No. 21-6443

IN THE
Supreme Court of the United States

SHAUN MICHAEL BOSSE,
Petitioner,

v.

OKLAHOMA,
Respondent.

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

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTION PRESENTED

Whether federal law requires state courts to apply *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), retroactively on state postconviction review.

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

BRIEF IN OPPOSITION 1

CONCLUSION.....2

TABLE OF AUTHORITIES

CASES

Page(s)

Bosse v. State,
360 P.3d 1203 (Okla. Crim. App. 2015).....1

McGirt v. Oklahoma,
140 S. Ct. 2452 (2020) i, 2

State ex rel. Matloff v. Wallace,
497 P.3d 686 (Okla. Crim. App. 2021)2

BRIEF IN OPPOSITION

The Petition in this case relies entirely upon the arguments advanced in the petition in *Parish v. Oklahoma*, No. 21-467, as a basis for certiorari in this case. For the reasons given in the State's brief in opposition in *Parish*, certiorari should be denied in this case as it should be in *Parish*.

1. Petitioner Shaun Michael Bosse murdered his girlfriend, Katrina Griffin, and her two children, eight-year-old Christian and six-year-old Chasity, after Ms. Griffin discovered that petitioner had stolen some of her family's property. Petitioner stabbed Katrina and Christian to death and then locked Chasity in a closet before setting the family's mobile home on fire, burning Chasity alive. The bodies of Katrina, Christian, and Chasity were found the next morning. Petitioner was convicted of three counts of murder in Oklahoma state court and sentenced to death. *See Bosse v. State*, 360 P.3d 1203, 1211-1213, 1227-1229 (Okla. Crim. App. 2015).

2. After oral argument at this Court in *Sharp v. Murphy*, No. 17-1107, petitioner filed a second application for postconviction relief in state court. For the first time, petitioner argued that the State lacked authority to prosecute him because his crimes occurred within the borders of the historical Chickasaw territory and the Griffin family qualified as Indians. The Court of Criminal Appeals granted postconviction relief, rejecting the State's arguments that petitioner had procedurally defaulted his claim under state postconviction statutes and was precluded from raising his claim under the doctrine of laches. The State applied to this Court for a stay of the mandate pending certiorari, arguing in part that the Court of Criminal Appeals erred in holding federal law precluded the application of state procedural and equitable bars to petitioner's postconviction claim. Justice Gorsuch referred the stay application to the full Court, and the Court granted the stay. *See* No. 20A161.

After this Court granted a stay in this case, the Court of Criminal Appeals in another case held as a matter of state law that *McGirt* was not retroactively applicable to void state convictions on state postconviction review. *See State ex rel. Matloff v. Wallace*, 497 P.3d 686 (Okla. Crim. App. 2021). The Court of Criminal Appeals then applied that decision, which is the subject of the pending certiorari petition in *Parish*, to deny petitioner's claim in this case, withdrawing its earlier grant of postconviction relief. Pet. App. A.

3. As more fully explained in *Parish*, when this Court decided *McGirt*, it recognized that many state inmates who attempt to seek release under its decision would nonetheless remain in state custody "thanks to well-known state and federal limitations on postconviction review in criminal proceedings." 140 S. Ct. at 2479. The Oklahoma Court of Criminal Appeals took *McGirt* at its word, applying one such well-known limitation: claims seeking to apply new decisions retroactively are, as a general rule, not redressable when raised for the first time on postconviction review.

Petitioner, who stands convicted of three counts of murder after a full and fair trial and appellate process (where his current contentions were never raised), nonetheless seeks review of the Court of Criminal Appeals' state law decision. For the reasons given by the State in *Parish*, certiorari is unwarranted. The State respectfully requests that the Court refer to that brief when considering the petition here. Additionally, because petitioner is a non-Indian seeking relief under *McGirt* for crimes committed against Indians, certiorari should be denied if the Court grants relief on either of the questions presented in the State's pending petition in *Oklahoma v. Castro-Huerta*, No. 21-492.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully Submitted,

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