

No. 21-6610 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
DEC - 6 2021
OFFICE OF THE CLERK

CODY ALLEN BRUNER — PETITIONER
(Your Name)

vs.

THE STATE OF OKLAHOMA ET AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
On Petition for a Writ of Certiorari
to the OKLAHOMA COURT OF CRIMINAL APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Cody Allen Bruner
(Your Name)
Davis Correctional Facility
6888 East 133rd Road
(Address)

Holdenville, Oklahoma 74848
(City, State, Zip Code)

1-405-379-6400
(Phone Number)

QUESTION(S) PRESENTED

Whether *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), applies retroactively to convictions that were final when *McGirt* was announced.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner is Cody Allen Bruner.

Respondents are the State of Oklahoma, by and through Mark A. Matloff, the District Attorney in and for Pushmataha County, Oklahoma, and the Honorable Jana Kay Wallace, Associate District Judge in and for Pushmataha County, Oklahoma. Oklahoma Court of Criminal Appeals whom used a Writ of Prohibition to deny Post Conviction relief to Petitioner.

RELATED CASES

State of Oklahoma ex rel. Matloff v. Wallace, NO. PR-2021-366
(OKla. Crim. App.)

State of Oklahoma v. Cody Allen Bruner, NO. CRF-2010-2636
(Tulsa County, OKla Dist. Ct.)

Cody Allen Bruner v. State of Oklahoma, No. P.C.-2020-843
(OKla. Crim. App. Post Conviction Appeal)

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Trial Court Opinion Tulsa County District court appears at Appendix B to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from state courts:

The date on which the highest state court decided my case was September 15th, 2021
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Indian Commerce Clause, the Supremacy Clause, the Due Process Clause, and the relevant Provisions of title 18 of the U.S. Code and Title 22 of the Oklahoma Statutes.

STATEMENT OF THE CASE

In *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), this Court held that the federal government must be held to its word.

Because the United States promised to reserve certain lands for tribes in the nineteenth century and never rescinded those promises, those lands remain reserved for the tribes today. In particular, these lands remain "Indian Country" within the meaning of the Major Crimes Act (MCA), which divest states of jurisdiction to prosecute "any Indian" who committed one of the offenses enumerated in Section 1153(a) of Title 18 of the U.S. Code while in "Indian Country." 18 U.S.C. § 1153(a). Only the federal government may prosecute such crimes.

Oklahoma has, however, prosecuted many Indians for such offenses. Among them this Petitioner, Cody Allen Bruner, a registered member of the Creek Tribal Nation. In 2010, Oklahoma prosecuted petitioner for a crime that all agree occurred on the Creek Nation Reservation.

The Creek Nation Reservation continues to exist today and is "Indian Country" within the meaning of the MCA. As confirmed by the holding in *McGirt*, Oklahoma therefore lacked jurisdiction to prosecute petitioner for an enumerated major crime. The State never had jurisdiction to prosecute Indians for major crimes committed in Indian Country; that authority belongs exclusively to the United States.

Nevertheless, when petitioner sought post conviction relief Contesting Oklahoma's jurisdiction to try and sentence him under McGirt, the Oklahoma Court of Criminal Appeals rejected his claim on the theory that McGirt is not retroactive. In its

Writ, McGirt amounts to a mere "procedural rule" that determined only "which sovereign must prosecute major crimes committed by or against Indians within 'Indian country'." State ex rel. Matloff v. Wallace, 2021 OK CR 21, — P.3d —. Despite this court's emphatic holding that the state lacked power to prosecute Indians for major crimes on tribal land, the Oklahoma court believed that the McGirt rule affected "only the manner of determining the defendant's culpability," and thus

imposed only procedural changes." Id. (quoting Schirio v. Sumner, 542 U.S. 348, 353 (2004)). Because it viewed McGirt as a new rule of criminal procedure, the Oklahoma court held that this court's holding did not apply retroactively to convictions that were final when McGirt was announced.

That decision is wrong: McGirt's rule is a substantive rule with Constitutional force, not a procedural rule. It thus applies retroactively on collateral review as a matter of federal law. McGirt "places certain criminal laws and punishments altogether beyond the states power to impose," *Montgomery v. Louisiana*, 577 U.S. 190, 201 (2016), and "alters... the class of persons that the law punishes," *Schirio*, 542 U.S. at 353.

Because McGirt announced a substantive rule enforced by the Supremacy Clause, U.S. Const., art VI, cl. 2, which states "This Constitution and the laws of the United States which shall be made in Pursuance thereof, and all Treaties made or which shall be made, under authority of the United States shall be the supreme law of the land; and Judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding." This Court ruled in McGirt that the treaties made between this Petitioner's tribe and the federal Government placed this Petitioner's tribal lands outside the Jurisdiction of the State Courts to Prosecute "Indians" whom commit crimes in "Indian Country." 18 U.S.C. § 1151 and 18 U.S.C. § 1153 (MCA). Therefore since these treaties and federal laws were ratified before even Oklahoma became a state, which is well before this Petitioner's crime in 2010, federal law requires its retroactive application in state-court proceedings. *Montgomery*, 577 U.S. at 205.

The Oklahoma Court's ruling also has sweeping implications. It upends the Constitution's structural allocation of authority between the state and federal governments. It allows states to usurp authority that Congress has reserved to the United States.

And the State's refusal to grant relief from its ultra vires convictions violates fundamental due process principles that have long been vindicated on habeas corpus, viz. that only a court of competent jurisdiction may impose a valid criminal conviction or sentence.

If allowed to stand, the Oklahoma Court's decision will leave thousands of individuals with state convictions that the state had no authority to impose. This Court should grant this petition to reaffirm *McGirt's* jurisdictional holding, protect Congress's authority under the Supremacy Clause, and vindicate the liberty interests of individuals to be free from punishment that the states have no power to impose. Because Congress enacted the MCA, see Act of March 3, 1885, ch. 341, 23 Stat. 362, codified at 18 U.S.C. § 1153. The MCA gives the federal government exclusive jurisdiction to prosecute certain felonies committed by Indians in "Indian country." 18 U.S.C. § 1153(a); *United States v. John*, 437 U.S. 634, 651 (1978).

Because *McGirt* announced a substantive rule of law it must be made retroactive. As *Montgomery* explained: "When a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule." 577 U.S. at 200.

REASONS FOR GRANTING THE PETITION

Citizens of the State of Oklahoma whom reside on Tribal reservations of the Five Civilized Tribes are a Protected Class of citizens because they are under the Exclusive jurisdiction of the United States. Oklahoma Constitution Article 1, § 3; "To date, the State of Oklahoma has made no attempt to repeal Art. 1, § 3 of the Constitution of the State of Oklahoma, which prohibits state jurisdiction over Indian Country, so the federal government still has exclusive jurisdiction over Indian Country located within Oklahoma boundaries." *C.M.G. v. State*, 594 P.2d 799 (1979) and *State v. Littlechief*, Okl. Cr., 573 P.2d 263 (1978).

Therefore if allowed to stand, the Oklahoma Courts decision will leave thousands of individuals with state convictions that the State had no authority to impose. In *McGirt*, this Court held that Oklahoma's "longstanding practice of asserting jurisdiction over Native Americans" for crimes covered by the MCA was unlawful. 140 S. Ct. at 2470-71. The Oklahoma Courts decision in this case is the showing of deliberate indifference to this Petitioner's (4th) Fourth Amendment right to be free from illegal search and seizure and the (14th) Fourteenth Amendment right to Due Process for denying him equal treatment under the Ruling of this Court in *McGirt*.

In 2010, the Tulsa County district Court convicted this Petitioner of First Degree Armed robbery thru a plea deal, which is a crime that falls under the M.C.A.. This petitioner clearly falls under the McGirt ruling as he is a registered member of the Creek Nation, Tulsa County falls inside the Creek Nation Tribal boundaries where this petitioners crime happened in "Indian Country". 18 U.S.C. § 1151.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Cody B

Date: November 30th, 2021