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"Appendix-A"




does not void final state convictions. *See Matloff*, 2021 OK CR 21, ¶¶ 27-28, 40.

The conviction in this matter was final before the July 9, 2020 decision in *McGirt*, and the United States Supreme Court's holding in *McGirt* does not apply, making Bruner's claim that his offense was committed in Indian country and that he is an Indian **MOOT**. The District Court's Order denying relief is hereby **AFFIRMED**.

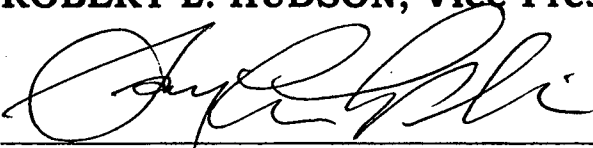
Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2021), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 15<sup>th</sup> day of September, 2021.

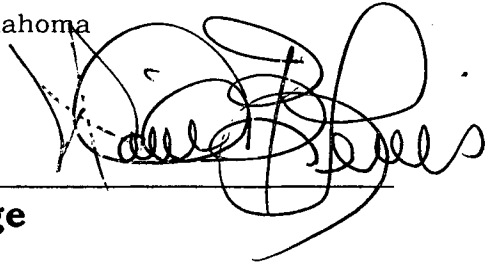
  
\_\_\_\_\_  
**SCOTT ROWLAND, Presiding Judge**

  
\_\_\_\_\_  
**ROBERT L. HUDSON, Vice Presiding Judge**

  
\_\_\_\_\_  
**GARY L. LUMPKIN, Judge**

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PC-2020-843, Bruner v. State of Oklahoma



**DAVID B. LEWIS, Judge**

ATTEST:

*John D. Hadden*

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Clerk

PA

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"Appendix-B"

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IN THE DISTRICT COURT IN AND FOR TULSA COUNTY  
STATE OF OKLAHOMA

CODY ALLEN BRUNER,                     )  
   )  
                           Petitioner,             )  
vs.   )     CRF-2010-2636  
   )  
STATE OF OKLAHOMA,                     )  
   )  
                           Respondent.             )

DISTRICT COURT  
**FILED**  
OCT 09 2020  
DON NEWBERRY, Court Clerk  
STATE OF OKLA. TULSA COUNTY

**ORDER DENYING PETITIONER'S "APPLICATION FOR POST-CONVICTION RELIEF" FILED SEPTEMBER 18, 2020**

Comes on for consideration of Petitioner's "Application for Post-Conviction Relief" filed September 18, 2020. The Court has reviewed Petitioner's motion, the docket sheet in this matter, as well as the pleadings filed by the Petitioner subsequent thereto requesting post-conviction relief based on the recent decision of the United Supreme Court in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). Petitioner's application does not present a genuine issue of material fact requiring a formal hearing with the presentation of witnesses and the taking of testimony. *Johnson v. State*, 1991 OK CR 124, 823 P.2d 370. This matter will therefore be decided based on records the Court has stated it has reviewed.

Petitioner claims, based on the recent decision by the United States Supreme Court in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), that the offenses for which he was convicted were committed in portions of Oklahoma located in Indian Country, prohibiting Oklahoma courts from exercising jurisdiction over his crimes. However, the prosecution of Petitioner's offenses were justiciable matters, and Petitioner has not

"Appendix - B"

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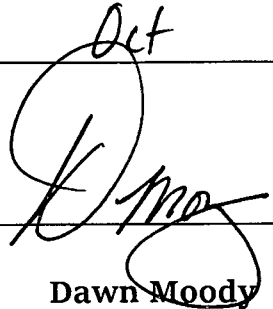
established that the trial court lacked jurisdiction. *See*, Okla. Const. Art. VII, § 7 (District Courts shall have unlimited original jurisdiction of all justiciable matters in Oklahoma). Additionally, Petitioner has failed to offer any proof that he is an "Indian" for purposes of invoking an exception to state jurisdiction. *See Goforth v. State*, 1982 OK CR 48, 644 P.2d 114 (Two elements must be satisfied before it can be found that appellant is an Indian under federal law. Initially, it must appear that he has a significant percentage of Indian blood. Secondly, the appellant must be recognized as an Indian either by the federal government or by some tribe or society of Indians.) The Petitioner has not presented this Court with any affirmative evidence that he has any significant degree of Indian blood and that he is recognized as an Indian by the federal government or by some tribe or society of Indians. In *Russell v. Cherokee Cty. Dist. Court*, 1968 OK CR 45, 438 P.2d 293, 294, the Court stated:

"It is fundamental that where a petition for writ of habeas corpus, or for post-conviction appeal is filed, the burden is upon the Petitioner to sustain the allegations of his petition, and that every presumption favors the regularity of the proceedings had in the trial court. Error must affirmatively appear, and is never presumed."

Based on the foregoing, the Court finds that Petitioner's application for post-conviction relief filed September 18, 2020, should be, and is hereby DENIED.

IT IS SO ORDERED this 8 day of Oct,

2020.

  
\_\_\_\_\_  
Dawn Moody  
JUDGE OF THE DISTRICT COURT

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**CERTIFICATE OF MAILING**

I certify that on the date of filing a true and correct certified copy of the above and foregoing document was deposited with the United States Postal Service with sufficient postage affixed thereto, and addressed to the following recipient(s):

CODY ALLEN BRUNER #627810  
DAVIS CORRECTIONAL FACILITY  
6888 E 133<sup>RD</sup> ROAD  
HOLDENVILLE, OK 74848

DON E. NEWBERRY  
TULSA COUNTY COURT CLERK

  
\_\_\_\_\_  
Deputy Court Clerk



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"Appendix-C"

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IN THE DISTRICT COURT IN AND FOR TULSA COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA,

Plaintiff,

vs.

CODY ALLEN BRUNER,

Defendant.

COPY

No. CF-2010-2636

\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS

Held April 8, 2021

Before the Honorable Tracy Priddy

In Tulsa, Tulsa County, Oklahoma

\* \* \* \* \*

DISTRICT COURT  
FILED  
AUG 02 2021  
DON NEWBERRY, Court Clerk  
STATE OF OKLA. TULSA COUNTY

APPEARANCES:

RANDALL YOUNG, Assistant Attorney General, 15 W.  
6th Street, suite 1000, Tulsa, Oklahoma 74103,  
appeared on behalf of the state of Oklahoma.

KASEY BALDSIN, Assistant Public Defender, 423  
South Boulder, Suite 300, Tulsa, Oklahoma 74103,  
appeared on behalf of the Defendant.

REPORTED BY:

JODI D'VOREE TERRY, C.S.R., R.P.R.  
TULSA COUNTY COURTHOUSE  
500 South Denver  
Tulsa, Oklahoma 74103

"Appendix - C"

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P R O C E E D I N G S

1  
2 THE COURT: We will be on the record in  
3 CF-2010-2636 and PC-2020-843, the State of Oklahoma  
4 versus Cody Allen Bruner. Mr. Bruner is not present.  
5 He is incarcerated in the Department of Corrections.  
6 His attorney, Casey Baldwin, appears on his behalf.

7 And is Mr. Bruner's appearance waived for  
8 today's purposes, Ms. Baldwin?

9 MS. BALDWIN: Yes, Your Honor.

10 THE COURT: Thank you.

11 The State is represented by Assistant  
12 Attorney General, Randall Young. This comes on today  
13 for evidentiary hearing following the Court of  
14 Criminal Appeals' order remanding, that was on March  
15 4th, 2021, outlining for the Court what evidentiary  
16 findings were needed to be made and given back to the  
17 Court of Criminal Appeals. I have a filed evidentiary  
18 hearing stipulation dated April 8th, 2021. That is as  
19 to Mr. Bruner's status as an Indian, the location of  
20 his crimes being in Indian country.

21 At this time the State would like to make a  
22 record. You may proceed, Mr. Young.

23 MR. YOUNG: Yes, Your Honor. Thank you.  
24 Just very briefly, the State has signed stipulations  
25 along with counsel for the District Attorney's Office

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1 and the attorney for the petitioner in this case,  
2 however, the Attorney General's Office does object to  
3 the -- I guess, the form of this Court's inquiry that  
4 it has to visit the merits of the petitioner's claim  
5 here, specifically, because there are a number of  
6 procedural defenses that ought to be available to the  
7 state and precluding relief on the defendant's claim  
8 -- on the petitioner's claim, notwithstanding the  
9 stipulations that have been filed and notwithstanding  
10 this Court's inquiry here today.

11           As this Court knows, the State filed a brief  
12 outlining a number of procedural defenses under the  
13 post-conviction procedure act. In Bosse versus State  
14 -- that is PCD-2019-124 -- the Court of Criminal  
15 Appeals has, of course, issued an opinion on that case  
16 largely glossing over the various procedural defenses  
17 and the State's arguments in there.

18           In response to State of Oklahoma, through  
19 the Attorney General's Office, is going to be seeking  
20 a writ of certiorari to the United States Supreme  
21 Court and, therefore, the rules contained in Bosse are  
22 not set in concrete. And because of that fact, the  
23 State does wish to preserve a number of defenses here  
24 in this case and, again, object to the fact that this  
25 Court is reaching the merits in the first place.

1           Specifically, the issue of waiver of subject  
2 matter jurisdiction, as this Court may know from the  
3 evidentiary hearing stipulations, Mr. Bruner has been  
4 an enrolled member of the Creek Nation since 2002.  
5 When Mr. Bruner pleaded guilty in this District Court  
6 in 2010, or no contest, rather, he was well aware of  
7 his Indian status. And it is no less the case that  
8 Mr. Bruner was just as capable of discerning the Creek  
9 Nation's status as a reservation, he was no better off  
10 than Mr. Patrick Murphy or Jimcy McGirt in developing  
11 that jurisdictional claim and rather than advance  
12 those claims as Mr. Murphy did, Mr. Bruner here has  
13 sat for roughly a decade on such jurisdictional claim.  
14 If there ever was a case for waiver of subject matter  
15 jurisdiction there is here.

16           Additionally, the State would note that this  
17 case is emblematic of other cases that should be  
18 subject to the doctrine of laches here, specifically  
19 the fact that the statute of limitations to prosecute  
20 Mr. Bruner in federal court is more than likely  
21 passed, it being more than a decade past the offense.

22           The State is entitled to advance this  
23 equitable defense as a procedural defense and, again,  
24 under the post-conviction procedure act. It is very  
25 clear in the text that the legislature didn't think

1 the subject matter jurisdiction was any different than  
2 any other type of post-conviction claim available to  
3 petitioners in Oklahoma and, respectfully, the  
4 Oklahoma Court of Criminal Appeals has carved out an  
5 exception to subject matter jurisdiction without any  
6 basis in the post-conviction procedure act.

7           So, again, emphasizing just those two  
8 aspects of the procedural defenses that should be  
9 available to the State, again, subject matter  
10 jurisdiction claim waiver and laches, those should  
11 close the door to relief for Mr. Bruner and it should  
12 be closing the door to any inquiry on the merits of  
13 Mr. Bruner's claim.

14           Accordingly, the State does object.  
15 However, we do, again, stipulate as to the relevant  
16 facts to this Court's inquiry. It is -- the State  
17 understands that this Court has been directed by the  
18 Court of Criminal Appeals to answer two questions. In  
19 the interest of judicial economy, we are not going to  
20 make an issue hearing out of those facts.

21           So notwithstanding the State's objection  
22 based on procedural defenses and in light of Bosse  
23 being subject to the writ of certiorari by the United  
24 States Supreme Court, the State has nothing else to  
25 add to the record.

1 THE COURT: Thank you, Mr. Young.

2 Any response, Ms. Baldwin?

3 MS. BALDWIN: Just briefly, Judge. I  
4 believe the Bosse opinion didn't merely gloss over,  
5 but actually addressed and overruled the State's  
6 objections. But if that were not the case and  
7 something were to change in the future, any waiver  
8 done by Mr. Bruner would not have been done knowingly  
9 and voluntarily and if the Court for some reason saw  
10 fit to now take up the State's arguments that they  
11 continue to urge, we would, at that point, I guess,  
12 our request on appeal would be to grant an evidentiary  
13 hearing on waiver, but I don't believe that is  
14 necessary at this point.

15 THE COURT: Thank you, Ms. Baldwin.

16 MS. BALDWIN: Thank you, Judge.

17 THE COURT: All right. Then, as I said  
18 before, I will get the order prepared. If anybody  
19 wants to submit any proposed -- I mean, if there is  
20 something, Mr. Young, that you would want preserved in  
21 the order particularly. I am not making a ruling on  
22 any of your arguments there, of course, because that  
23 is outside the scope of my jurisdiction on this order  
24 to remand, but if there is something you want noted in  
25 the order, submit that to myself and Ms. Baldwin

1 before that 20 days.

2 MR. YOUNG: Thank you, Judge.

3 THE COURT: Okay. All right. We'll be off  
4 the record.

5 (Proceedings concluded.)

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