

**IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA**

FILED
COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT 13 2021

JOHN D. HADDEN
CLERK

ZACHARY JEFF HARVELL,

Petitioner,

-vs-

STATE OF OKLAHOMA,

Respondent.

No. PC-2021-1038

ORDER AFFIRMING DENIAL OF POST-CONVICTION RELIEF

Petitioner, pro se, appealed to this Court from an order of the District Court of Okmulgee County in Case No. CF-2007-154 C denying his request for post-conviction relief pursuant to *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). In *State ex rel. Matloff v. Wallace*, 2021 OK CR 21, ___ P.3d ___, this Court determined that the United States Supreme Court decision in *McGirt*, because it is a new procedural rule, is not retroactive and 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. Therefore, the trial court's denial of post-conviction relief is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the*

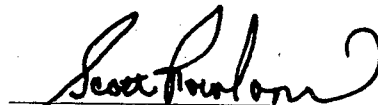
APPENDIX "A"

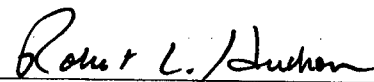
Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App. (2021), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

IT IS SO ORDERED.

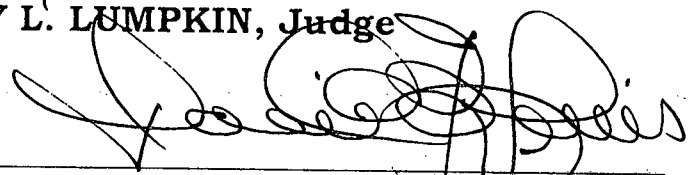
WITNESS OUR HANDS AND THE SEAL OF THIS COURT this

3rd day of October, 2021.


SCOTT ROWLAND, Presiding Judge


ROBERT L. HUDSON, Vice Presiding Judge


GARY L. LUMPKIN, Judge


DAVID B. LEWIS, Judge

ATTEST:


Clerk

PA

FILED
IN DISTRICT COURT

IN THE DISTRICT COURT OF OKMULGEE COUNTY SEP - 9 2021
STATE OF OKLAHOMA

OKMULGEE COUNTY, OKLAHOMA
CHARLY CRINER, Court Clerk
By _____ Deputy

ZACHARY JEFF HARVELL,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

Case No. CF-2007-154 C

ORDER VACATING PREVIOUS ORDER GRANTING
POST-CONVICTION RELIEF AND REINSTATING CONVICTION

NOW on this 1st day of September, 2021, this matter comes on before me, the undersigned Judge of the District Court on the Petitioner's Application for Post-Conviction Relief. The Petitioner is not present, and is currently incarcerated in the Department of Corrections, but is represented by his attorney, Anthony Allen, present in person. The State is present and represented by Carol Iski, District Attorney.

After hearing the arguments of counsel, and pursuant to 22 O.S. § 1083 (B) and (C), the Court issues its Finding of Fact and Conclusions of Law regarding the Petitioner's Application for Post-Conviction Relief. In making said rulings, the Court has reviewed the court file and all pleadings contained therein. The following sets forth the Court's analysis of the claim by defendant.

FINDINGS OF FACT

Petitioner was convicted of the following crimes in this case, specifically: Count One: Burglary, First Degree; Count Two: Conjoint Robbery; Count Three: Kidnapping; Count Four: Forcible Sodomy. Petitioner entered blind pleas of guilty to all counts on

APPENDIX "B"

December 18, 2007. A Pre-Sentence Report was ordered, and after a sentencing hearing, the Court sentenced the Petitioner to a term of 10 years on Counts One and Two, Five years on Count Three and Twenty years on Count Four. All counts were ordered to run consecutively. Petitioner moved to withdraw his pleas which denied by the trial court. Petitioner filed a Writ of Certiorari, which was denied by the Court of Criminal Appeals on November 10, 2008. On October 19, 2020 Petitioner filed an Application for Post-Conviction Relief alleging the State lacked jurisdiction over his crimes pursuant to **McGirt v. Oklahoma**, 140 S. Ct. 2452, 2460-82 (2020) (holding the Muscogee (Creek) Nation's Reservation had not been disestablished for purposes of the Major Crimes Act, 18 U.S.C. § 1153). Petitioner claims he is Indian and committed the crime within the boundaries of the Creek reservation.

On October 28, 2020, the State filed a Response to Petitioner's Application conceding it necessary to grant Petitioner an evidentiary hearing. On January 8, 2021, this Court appointed counsel for Petitioner and set this matter for an evidentiary hearing.

Said hearing was held on May 5, 2021 at which time Petitioner through counsel submitted sufficient evidence for this Court to find his Application for Post-Conviction Relief should be granted as he possessed a quantum of Indian blood, was an enrolled member of a federally recognized tribe and his crimes occurred within the boundaries of the Muscogee Reservation. This Court then granted a stay of the proceedings until June 9, 2021. On that same date, the State filed a Motion to Stay and Abate Proceedings based upon pending litigation in **Bosse v. State**, 2021 OK CR 3, 484 p.3d 286 and **State ex. rel. District Attorney v. Wallace**, 2021 OK CR 15, ¶ 6, ___ P.3d ___, ___. On June 9, 2021, the parties appeared and Petitioner objected to the State's

Motion for Stay. This Court set the Motion to Stay and Abate Proceedings for hearing on August 18, 2021.

On August 16, 2021, the State filed an Amended Response to Petitioner's Application for Post-Conviction Relief citing the decision issued by the Court of Criminal Appeals in ***State ex. rel. District Attorney v. Wallace***, 2021 OK CR 15. On the same date, Petitioner filed a Motion to Continue Stay and Abatement of the Proceedings. This Court set all pending Applications and Motions for hearing on September 2, 2021.

Conclusions of Law

In Petitioner's Application for Post-Conviction Relief, the thrust of his claim is that his crimes occurred within "Indian Country" and he is an "Indian" citing the recent U.S. Supreme Court case of ***McGirt v. Oklahoma***, 140 S.Ct. 2452 (2020). Petitioner asserts he is a member of the Cherokee Nation of Oklahoma. These claims are not contested by the State and this Court made findings in the original order granting the Application that Petitioner was in fact an Indian and his crimes occurred within the Muscogee Nation historical boundaries, and granted Petitioner's Application based upon the rulings in ***McGirt***. This Court's decision was based on the theory that lack of subject matter jurisdiction renders all convictions invalid if the McGirt criteria is met. However, the law governing these issues has changed dramatically in the short period of time since the Court's order was entered.

On August 12, 2021, the Court of Criminal Appeals issued their opinion in ***State ex. rel. District Attorney v. Wallace*** ruling as follows:

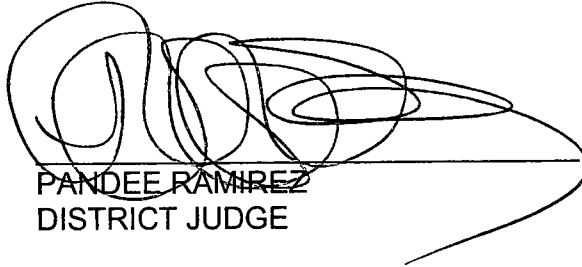
After careful examination of the reasoning in *Cuch*, as well as the arguments of counsel and *amici curiae*, we reaffirm our recognition of the

Cherokee, Choctaw, and Chickasaw Reservations in those earlier cases. However, exercising our independent state law authority to interpret the remedial scope of the state post-conviction statutes, we now hold that *McGirt* and our post-*McGirt* decisions recognizing these reservations shall not apply retroactively to void a conviction that was final when *McGirt* was decided. Any statements, holdings, or suggestions to the contrary in our previous cases are hereby overruled.

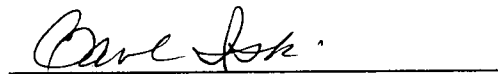
Wallace, ¶15. The Trial Court in **Wallace** was presented with identical issues as this Court and sustained the defendant's Application for Post-Conviction Relief. The Court of Criminal Appeals ruled that *McGirt* shall not be applied retroactively, but went on to rule: "Because we hold that *McGirt* and our post-*McGirt* reservation rulings shall not apply retroactively to void a final state conviction, the order vacating Mr. Parish's murder conviction was unauthorized by state law." ¶40. There, as here, the Court's Order granting Post-Conviction Relief and vacating the original conviction was error and unauthorized by law. The Court of Criminal Appeals has further applied this ruling in very recent decisions issued just two days prior to the hearing in these proceedings in four procedurally similar cases in which they vacated the Orders granting Post-Conviction Relief and reinstated the original criminal conviction in each case. See. **Bosse v. State**, 2021 OK CR 23; **Bench v. State**, 2021 OK CR 24; **Ryder v. State**, 2021 OK CR 25 and **Cole v. State**, 2021 OK CR 26.

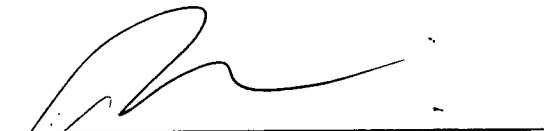
CONCLUSION


The Court finds that the Order granting Petitioner's Application for Post-Conviction Relief was issued in error, and is hereby vacated and Petitioner's original conviction is reinstated. All pending Motions to Stay filed by both sides are now denied.


PANDEE RAMIREZ
DISTRICT JUDGE

APPROVED AS TO FORM:


CAROL ISKI, OBA #11471
District Attorney


ANTHONY ALLEN, OBA # 19738
Attorney for Petitioner

STATE OF OKLAHOMA, OKMULGEE COUNTY:
The undersigned hereby certifies this instrument
to be a full, true and correct copy of the original,
as the same appears on record in this office.
Witness this 25th day of Sept 2001
CHARLY ZIMMER, COURT CLERK
By  Deputy

NOTICE OF RIGHT TO APPEAL

This Order may be appealed to the Court of Criminal Appeals on Petition in Error filed either by the applicant or the state within thirty (30) days from the entry of the judgment. Upon motion of either party on filing of notice of intent to appeal, within ten (10) days of entering the judgment, the District Court may stay the execution of the judgment pending disposition on appeal; provided, the Court of Criminal Appeals may direct the vacation of the Order staying the execution prior to final disposition of the appeal.

Certificate of Mailing

I hereby certify that on this _____ day of September, 2021, a true and correct copy of the above and foregoing was mailed or delivered to: Carol Iski, District Attorney's Office at carol.iski@dac.state.ok.us and to Anthony Allen at Anthony L Allen (tony@anthonylallen.com)

Clerk

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

FILED
IN DISTRICT COURT

AUG 16 2021

STATE OF OKLAHOMA,

PLAINTIFF,

vs.

ZACHARY JEFF HARVELL,

DEFENDANT.

OKMULGEE COUNTY, OKLAHOMA
By CHARLY CRINER, Court Clerk
Deputy
CF-2007-154C

**STATE OF OKLAHOMA'S AMENDED RESPONSE TO
DEFENDANT'S APPLICATION FOR POST-CONVICTION RELIEF**

COMES NOW the State of Oklahoma, by and through District Attorney, Carol Iski, and submits the State's Amended Response to Defendant's Application for Post-Conviction Relief. In support thereof, the State would submit the following Statement of Facts, and Arguments and Authorities.

Statement of Facts

Petitioner was convicted of numerous crimes in this case, specifically: Count One: Burglary, First Degree; Count Two: Conjoint Robbery; Count Three: Kidnapping; Count Four: Forcible Sodomy. Petitioner entered blind pleas of guilty to all counts on December 18, 2007. A Pre-Sentence Report was ordered, and after a sentencing hearing, the Court sentenced the Petitioner to a term of 10 years on Counts One and Two, Five years on Count Three and Twenty years on Count Four. All counts were ordered to run consecutively. Petitioner moved to withdraw his pleas which denied by the trial court. Petitioner filed a Writ of Certiorari, which was denied by the Court of Criminal Appeals on November 10, 2008. Petitioner is now before this Court, some

fourteen years after he committed these offenses, on his claim that the State lacked jurisdiction over his crimes pursuant to 18 U.S.C. §§ 1152-53. See *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2460-82 (2020) (holding the Muscogee (Creek) Nation's Reservation had not been disestablished for purposes of the Major Crimes Act, 18 U.S.C. § 1153). Petitioner claims he is Indian and committed the crime within the boundaries of the Creek reservation.

Argument and Authorities

Defendant's only basis for his motion is the allegation that he is a tribal member, and his crimes occurred on the Muscogee reservation. Assuming for the sake of argument both assertions to be true, he fails to state a claim upon which relief can be granted.

In ***State ex rel. Mark Matloff v. Honorable Jana Wallace***, 2021 OK CR 21 decided August 12, 2021, the Court held:


“ . . . exercising our independent state law authority to interpret the remedial scope of the state post-conviction statutes, we now hold that *McGirt* and our post *McGirt* decisions recognizing these reservations shall not apply retroactively to void a conviction that was final when *McGirt* was decided. Any statements, holdings or suggestions to the contrary in our previous cases are hereby overruled.”

Id., ¶ 15.

The *McGirt* decision was rendered July 9, 2020. Defendant's conviction was final on November 10, 2008. Based on the ruling in *Wallace* holding that *McGirt* does not retroactively apply to any final conviction which occurred prior to July 9, 2020, the defendant's Post-Conviction Application must fail.

WHEREFORE, premises considered, the State prays this Court summarily deny defendant's Post-Conviction Application and any other relief this Court deems just and proper.


RESPECTFULLY SUBMITTED,



CAROL ISKI, OBA #11471
District Attorney

Certificate of Delivery

I hereby certify that on this 16th day of August, 2021, a true and correct copy of the foregoing was electronically delivered to attorney for the defendant: Anthony Allen at tony@anthonyallen.com



IN THE OKLAHOMA COURT OF CRIMINAL APPEALS

STATE OF OKLAHOMA

ZACHARY HARVELL,
PETITIONER-APPELLANT,
VS.
STATE OF OKLAHOMA,
RESPONDENT-APPELLEE.

No. _____

BRIEF IN SUPPORT OF
PETITION IN ERROR

COMES NOW, ZACHARY HARVELL, PRO SE APPELLANT ASK THIS COURT LIBERALLY CONSTRUCT HIS PRO SE BRIEF IN SUPPORT OF PETITION IN ERROR, PETITION IN ERROR IN LIGHT OF HALL V. BELLMAN, 935 F.2d, 21110, N. (6) (10th CIR. (1991)), CITING HAINES V. KERNER, SUPRA. AND 22 O.S. 2017, SECTION 1083 (2) III, REGARDLESS OF DEFECT OF FORM.

(1) OCTOBER 19, 2020 APPELLANT FILED HIS APPLICATION FOR POST CONVICTION RELIEF, IN CF-2007-154C, OKMULGEE COUNTY DISTRICT COURT. OCTOBER 28, 2020, THE STATE RESPONDED TO APPELLANT'S MCGIRT V. OKLAHOMA 140 S.Ct. 2452 (2020) CLAIM FOR FEDERAL RELIEF. MAY 5, 2021, THE DISTRICT COURT GRANTED FEDERAL RELIEF UNDER MCGIRT'S DECISION.

(2) JUNE 9, 2021, CF-2007-154C STATE FILED MOTION TO STAY WHICH WAS GRANTED TO AUGUST 18, 2021.

(3) AUGUST 12, 2021, OCCA ISSUED A OPINION IN STATE EX REL DISTRICT ATTORNEY V. WALLACE, 2021 OKCR 21.

(4) SEPTEMBER 9, 2021, CF-2007-154C, THE DISTRICT COURT ENTERS ORDER APPLYING DIST. ATTY. V. WALLACE TO VACATE THE FEDERAL RELIEF GRANTED MAY 5, 2021, AND APPELLANT APPEALS THIS ORDER TO OCCA.

APPENDIX "C"

PROPOSITION I

APPELLEE DID NOT AMEND ARTICLE I,
SECTION 3 OF THE OKLAHOMA CONSTITUTION
NOR ACQUIRED CONSENT OF THE AFFECTED
INDIAN TRIBES TO ASSUME JURISDICTION
OVER INDIAN COUNTRY AND ANY ATTEMPTED
JUDICIAL POWER IS VOID.

STANDARD OF REVIEW:

MCGIRT, 140 S.Ct., 21 2478 (BY JUSTICE GORSUCH) (BUT OKLAHOMA DOESN'T CLAIM TO HAVE COMPLIED WITH THE REQUIREMENTS TO ASSUME JURISDICTION VOLUNTARILY OVER CREEK LAWS. NOR HAS CONGRESS EVER PASSED A LAW CONFERRING JURISDICTION ON OKLAHOMA. AS A RESULT, THE MCA APPLIES TO OKLAHOMA ACCORDING TO ITS USUAL TERMS. ONLY THE FEDERAL GOVERNMENT, NOT THE STATE, MAY PROSECUTE INDIANS FOR MAJOR CRIMES COMMITTED IN INDIAN COUNTRY. TITLE 18 U.S.C.A. SECTIONS 1151, 1152, 1153, 3231, 3242.

ARGUMENT AND AUTHORITIES

SEE STATE V. LITTLECHIEF 573 P.2d 263, 1978 OK CR 2, JANUARY 4, 1978. OPINION OF U.S. DISTRICT JUDGE, HON. FRED DAUGHERTY OF NOVEMBER 7, 1977 HELD: UNDER THE ACT OF AUGUST 15, 1953, PUBLIC LAW NO. 83-280, 67 STAT. 588 (1953) (HEREAFTER PUBLIC LAW 83-280), THE CONGRESS GAVE THE STATES PERMISSION TO ASSUME CRIMINAL AND CIVIL JURISDICTION OVER ANY "INDIAN COUNTRY" WITHIN THEIR BORDERS WITHOUT THE CONSENT OF TRIBE AFFECTED. TITLE IV OF THE CIVIL RIGHTS ACT OF 1968, 25 U.S.C. §§ 1321-1326. (HEREAFTER TITLE IV), CHANGED THE PROCEDURE SET OUT IN PUBLIC LAW 83-280 AND REQUIRED THE "CONSENT" OF THE INDIANS INVOLVED BEFORE A STATE WAS PERMITTED TO ASSUME CRIMINAL AND CIVIL JURISDICTION

over "Indian Country"; See 25 U.S.C. §§ 1321(a) and 1322(a). Like section 6, Public Law 83-280, 25 U.S.C. § 1324 gave states with legal impairments to the assumption of jurisdiction under Title IV permission to "amend" their constitution and statutes to remove any such impairments and provided that "the assumption of jurisdiction by such a state should not be effective until" the required amendments had been made. Article I, section 3 of the Oklahoma constitution constitutes a legal impairment. See H.R. Rep. No. 848, 83d. Cong. 1st Sess., reprinted in (1953) U.S. Code Cong. & Admin. News p. 2409. Under the provisions of Public Law 83-280 it appears that the state of Oklahoma could have unilaterally assumed jurisdiction over any "Indian country" within its borders at any time between 1953 and 1968 had the Oklahoma constitution been "amended" as required. After the enactment of Title IV in 1968 Oklahoma had to "amend" its constitution and the affected tribes had to "consent" to the states assumption of jurisdiction over them before the state could acquire jurisdiction over "Indian country." However, the state of Oklahoma apparently has never acted pursuant to Public Law 83-280 or Title IV and assumed jurisdiction over the "Indian country," within its borders. The Little Chief Court held in regards to Hon. Judge Fred Daugherty; we find that the issue sought to be raised has been determined by the honorable Fred Daugherty, and that said determination is binding on the state of Oklahoma since it

INVOLVES THE CONSTRUCTION AND APPLICATION OF FEDERAL STATUTES. SAIO DETERMINATION IS BINDING ON THE STATE OF OKLAHOMA UNLESS AND UNTIL IT IS OVERTURNED BY THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT OR THE SUPREME COURT OF THE UNITED STATES. SEE C.M.G. V. STATE, 1979 OK CR 39, 594 P 2d 798 MAY 4, 1979 HELD: TO DATE, THE STATE OF OKLAHOMA HAD MADE NO ATTEMPT TO REPEAL ART. I, § 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. SEE UNITED STATES V. JOHNSON, 457 U.S. 537, 549, 102 S. Ct. 2579, 73 L.Ed. 2d 202 (JUNE 21, 1982) (FIRST, WHEN A DECISION OF THIS COURT MERELY HAS APPLIED SETTLED PRECEDENTS TO NEW AND DIFFERENT FACTUAL SITUATIONS, NO REAL QUESTION HAS ARISEN AS TO WHETHER THE LATER DECISION SHOULD APPLY RETROACTIVELY. IN SUCH CASES, IT HAS BEEN A FOREGONE CONCLUSION THAT THE RULE OF THE LATER CASE APPLIES IN EARLIER CASES, BECAUSE THE LATER DECISION HAS NOT IN FACT ALTERED THAT RULE IN ANY MATERIAL WAY.

SEE MICHIGAN V. PAYNE, 412 U.S., at 61, 93 S.Ct., at 1973 (MARSHALL, J., DISSENTING: RULINGS ARE FULLY RETROACTIVE WHEN THE COURT HAS HELD THAT THE TRIAL COURT LACKED JURISDICTION IN THE TRADITIONAL SENSE).

CF-2007-154C, October 19, 2020 APPELLANT FILED AN APPLICATION FOR POST-CONVICTION RELIEF. CF-2007-154C, October 28, 2020, APPELEE FILED A RESPONSE TO THE APPLICATION FOR POST-CONVICTION RELIEF. CF-2007-154C, MAY 5, 2021, THE DISTRICT COURT OF OKMULGEE COUNTY,

GRANTED POST-CONVICTION RELIEF AS FEDERAL REMEDY ON THE MCGIRT V. STATE OF OKLAHOMA, 140 S.Ct. 2452 (JULY 9, 2020) FEDERAL CLAIM. THERE WAS A STAY OF EXECUTION OF THAT ORDER OF RELEASE TO FEDERAL CUSTODY UNTIL JUNE 9, 2021. A NUMBER OF STAYS FOLLOWED ON MAY 21, 2021 STATE EX REL. DISTRICT ATTORNEY V. WALLACE, 2021 OKCR 15, AND MAY 26, 2021, BOSSE V. STATE, 2021 OKCR 3, 484 P.3D 286. ON JUNE 9, 2021, APPELEE FILED A MOTION TO STAY IN CASE NO. CF-2007-154C. THE COURT STAYED THE GRANT OF POST-CONVICTION RELIEF UNTIL AUGUST 18, 2021.

SEPTEMBER 9, 2021, CF-2007-154C THE DISTRICT COURT OF OKMULGEE COUNTY, STATE OF OKLAHOMA ENTERED ORDER VACATING PREVIOUS ORDER GRANTING POST-CONVICTION RELIEF AND REINSTATING CONVICTION. CITING STATE EX REL. DISTRICT ATTORNEY V. WALLACE, 2021 OKCR 15 DECIDED AUGUST 12, 2021 TO APPLY NON-RETROACTIVITY OF MCGIRT'S FEDERAL CLAIM AND RELIEF AS INITIALLY GRANTED ON MAY 5, 2021.

THE OCA, TENTH CIRCUIT, U.S. SUPREME COURT CONTINUOUSLY HOLD WITH THEIR DECISIONS THE STATE OF OKLAHOMA DO NOT HAVE THE FEDERAL RIGHT TO EXERCISE AN ASSUMPTION JURISDICTION OVER INDIAN COUNTRY WITHIN THE BORDERS OF THIS STATE. THE STATE OF OKLAHOMA HAS NOT AMENDED THE STATE CONSTITUTION TO REMOVE THIS IMPEDIMENT CREATED BY ARTICLE 1, SECTION 3, NOR DO THE STATE OF OKLAHOMA HAVE CONSENT OF THE AFFECTED TRIBES TO EXERCISE THEIR ASSUMPTION OF JURISDICTION. THEREFORE, THE ATTEMPTED EXERCISE OF JUDICIAL POWER IS VOID. THE COURT CANNOT PROCEED WHERE IT HAS NOT POWER OVER THE PARTY OR JURISDICTION TO IMPOSE A JUDGMENT OF CONVICTION. EXCEPT TO DISMISS ANY DOCUMENT FILED THAT CANNOT INVOKE SUBJECT MATTER JURISDICTION BY THE STATE OF OKLAHOMA. U.S.C. A. CONST. ART. VI, CLAUSE 2. U.S. C.A. CONST. ART. 1, SECTION 8, CLAUSE (3). OKLA. CONST. ART. 1, SECTION 1. 18 U.S.C.A. SECTIONS 1151, 1152, 1153, 3231, 3242.

AN MCA DEFINES FEDERAL JURISDICTION IS EXCLUSIVELY,
WHICH EXEMPTS THE STATE OF OKLAHOMA OF ALL JURISDICTION.
THE STATE HAS COMPLETELY IGNORED FEDERAL STATUTES AND
HAS OCCA TO ENJOIN WITH APPLYING STATE EX REL DISTRICT
ATTORNEY V. WALLACE, 2021 OKCR 15 MAY 26, 2021. See
COVEY V. U.S., 109 F. Supp. 2d 1135 (U.S. Dist. Court S. DOK, S. DIV(2000).
(THE CONSTITUTION AND THE CONGRESS ESTABLISH THE JURISDICTION
OF THE FEDERAL COURTS); DASHNEY V. U.S., 52 F.3d 298, 299, (10th
CIR. 1995) (HOLDING THAT TEAGUE WAS INAPPLICABLE BECAUSE THE
NEW DECISION AT ISSUE IN DASHNEY DID NOT ANNOUNCE A NEW
RULE OF CONSTITUTIONAL CRIMINAL PROCEDURE BUT ONLY DECLARED
WHAT THE LAW MEANT FROM THE DATE OF ENACTMENT). MCGIRT V
STATE OF OKLAHOMA, SUPRA. EVERYTHING WAS DICTATED BY PRIOR
SUPREME COURT PRECEDENTS, TREATIES, STATUTES THAT GUIDE
THE FEDERAL GOVERNMENT, ENABLING ACT, JUNE 16, 1906 AND
MARCH 4, 1906 AMENDMENTS 16, 17, 20. See U.S. V. FIDELITY
& GUARANTY CO., 309 U.S. 506, 60 S.Ct. 653, 84 L.Ed 894
(DECIDED MARCH 25, 1940) (NOTES 7-12 STATES! CONSENT ALONE
GIVES JURISDICTION TO ADJUDGE AGAINST SOVEREIGN. AB-
SENT THAT CONSENT, THE ATTEMPTED EXERCISE OF JUDICIAL
POWER IS VOID). CRAYATT V. STATE, 1992 OKCR 6, n.[1], 825
P.2d. 277 (SAME), CITING KLINOT V. STATE, SUPRA.

IN CONCLUSION: ORDERS, JUDGMENTS IMPOSED BY A COURT
FOR LACK OF SUBJECT MATTER JURISDICTION IS NOT JUST
VOIDABLE, THEY ARE VOID AB INITIO (FROM THE BEGINNING).
THIS MEANS THE COURT NEED NOT VACATE THE ORDER, OR
JUDGMENT. INSTEAD, THE COURT MUST SIMPLY ACKNOW-
LEDGE THAT THE ORDER, JUDGMENT WAS NEVER VALID.
ALSO, ABSENT THE TRIBES AND STATES VOLUNTARY CONSENT
TO ADJUDGE AGAINST ITS SOVEREIGNTY, THE ATTEMPTED
EXERCISE OF JUDICIAL POWER NOT AUTHORIZED BY ANY
FEDERAL STATUTE, TREATY, IS VOID AB INITIO. THE
ORDER OF SEPTEMBER 9, 2021, FILED IN CF-2007-154C
IS VOID/INVALID AND SHOULD BE SET ASIDE BY OCCA AND
REINSTATE THE VALID ORDER ENTERED MAY 5, 2021, CF-
2007-154C.

PROPOSITION

THE MCGIRT DECISION IS RETROACTIVE
WHICH RELIED ON PRIOR PRECEDENT WHEN
MCGIRT WAS ANNOUNCED.

STANDARD OF REVIEW:

Southern Surety Company, Plaintiff v. State of Oklahoma, 36 S.Ct. 692 (Decided June 12, 1916) (Thus, the test of Jurisdiction of the State Courts was to be the same that would have applied had the "Indian Territory" been a State when the offenses were committed). See SEMINOLE NATION v. UNITED STATES, 318 U.S. 629, 63 S.Ct. 784, 789, n. 4, 87 L.Ed. 1046 (Decided April 5, 1943) (The Act of 1906, 34 Stat. 137. Congress at the time planned to terminate the existence of the Five Civilized Tribes in 1906, and the Act of 1906 was introduced into the House of Representatives with the object of preserving Indian interests after Tribal dissolution. In the course of discussion. Congress determined to continue Tribal existence, and the Act was amended to that effect before passage). See Chae Chan Ping v. UNITED STATES, 130 U.S. 581, 9 S.Ct. 623 (Decided May 13, 1889) (Congress may abrogate a formal Treaty with a Sovereign Nation; it may alter or repeal an Agreement of this kind with an Indian Tribe). See August 19, 1907 26 U.S. Op. Atty. Gen. 390, 1907 WL 486. **5. U.S.C.A. CONST. ART. VI, clause 2. U.S.C.A. CONST. ART. I, SECTION 8, clause (3). OKLA. CONST. ART. 1, SECTION I.

ARGUMENT AND AUTHORITIES:

MARCH 2, 1906 ACT OF CONGRESS IN A JOINT RESOLUTION REPEALED THE ACT OF MARCH 3, 1903 PASSAGE THAT TRIBAL GOVERNMENT AND TRIBAL EXISTENCE WOULD NOT CONTINUE LONGER THAN MARCH 4, 1906. JUNE 26, 1906 ACT OF THE FIVE CIVILIZED TRIBES READ THAT: TRIBAL EXISTENCE

AND PRESENT TRIBAL GOVERNMENT OF THE CHOCTAW, CHICKASAW, CHEROKEE, CREEK AND SEMINOLE TRIBES OR NATIONS ARE HEREBY CONTINUED IN FULL FORCE AND EFFECT FOR ALL PURPOSES AUTHORIZED BY LAW, ~~UNTIL OTHERWISE PROVIDED BY LAW.~~

MARCH 4, 1907 WAS THE DEADLINE FOR THE FIVE TRIBES TO COMPLETE THE ROLLS OF CREEK, SEMINOLE, CHEROKEE, CHOCTAW, CHICKASAW, PRIOR TO STATEHOOD.

MARCH 4, 1907, NINE MONTHS PRIOR TO THE OKLAHOMA BECOMING A STATE ON NOVEMBER 16, 1907. SECTIONS 16, 17, 20 OF THE ENABLING ACT HAS BEEN AMENDED TO CONFORM WITH THE CONSTITUTION OF THE STATE OF OKLAHOMA. OKLA. CONST. ART. SCHEDULES 28, 27.

JUNE 12, 1916, THE SUPREME COURT OF THE UNITED STATES DECIDED NINE YEARS AFTER OKLAHOMA BECAME A STATE, ADJUDICATED THE CRIMINAL JURISDICTION FOR THE STATE OF OKLAHOMA. Southern Surety Company, Plaintiff V. State of Oklahoma, 36 S.Ct. 692.

APRIL 5, 1943, THE SUPREME COURT OF THE UNITED STATES CONFIRMED THAT THE FIVE CIVILIZED TRIBES RESERVATIONS EXISTED. SEMINOLE NATION V. U.S., 63 S.Ct. 784, N. 4. See OKLA. CONST. ART. 17, SECTION 8.

See OKLA. CONST. ART. SCHEDULE, SECTION 1,
READS: "PREAMBLE"

IN ORDER THAT NO INCONVENIENCE MAY ARISE BY REASON OF A CHANGE FROM THE FORMS OF GOVERNMENT NOW EXISTING IN THE INDIAN TERRITORY AND THE TERRITORY OF OKLAHOMA, IT IS HEREBY DECLARED AS FOLLOWS.

THE LAW IS CLEAR THAT A RESERVATION EXISTED AND KNOW TOO MANY GOVERNMENT OFFICIALS THAT

DELIVERED SERVICES to the Tribes. It should be REASONABLE to ASSUME EVERY CITIZEN AND GOVERNMENT OFFICIALS KNOW the LAW. THESE RESERVATIONS WERE KNOWN to EXIST AND the U.S. Supreme COURT DECISIONS guided that Outcome. GEORGIA V. PUBLIC RESOURCES ORG. INC., 140 S.Ct. 1498, 206 L.Ed. 2d. 732 (Decided APRIL 27, 2020) (EVERY CITIZEN IS PRESUMED to KNOW the LAW). HARLOW V. FITZGERALD, 102 S.Ct. 2727, 73 L.Ed. 2d. 396 (Decided JUNE 24, 1982) (NOTES 9-10 WHEN GOVERNMENT OFFICIALS KNEW OR REASONABLY SHOULD HAVE KNOWN OF the VIOLATION OF CLEARLY ESTABLISHED FEDERAL LAWS AS DETERMINED BY the SUPREME COURT OF the UNITED STATES). See TITLE 21 O.S. SECTION 1645 DIRECTOR DEFINED. TITLE 21 O.S. SECTION 1641. Director PRESUMED to have KNOWLEDGE. ESTES V. CONOCO-PHILLIPS CO., 2008 OK 21, N. 17, 184 p. 3d 518 (Decided MARCH 4, 2008) (SAME).

IN SOUTHERN SURETY COMPANY, PLAINTIFF, V. STATE OF OKLAHOMA, 241 US 582, 36 S.Ct. 692, 60 LEd 1187 (Decided JUNE 12, 1916) Hon. JUSTICE VAN DEVANTER HAD DELIVERED the OPINION OF the COURT:

Thus, by the CONCURRENT ACTION OF CONGRESS AND the STATE ... sic ... THE ENABLING ACT AND the STATE CONSTITUTION UNITED IN DECLARING that the STATE COURTS, IN RESPECT OF the PROSECUTIONS WHICH WERE to be TRANSFERRED to them, SHOULD be the SUCCESSORS OF the TEMPORARY COURTS.

~~OKLAHOMA AS A STATE KNEW OR REASONABLY SHOULD HAVE KNOWN~~ these RESERVATION BOUNDARIES EXISTED FOR the FIVE TRIBES AFTER STATEHOOD NOVEMBER 16, 1907, THE SUPREMACY CLAUSES OF the UNITED STATES CONTROL ALL STATE JUDGES AND GUIDED the DECISIONS OF these STATES JUDGES. ~~OBVIOUS SOME STATES DO NOT FOLLOW~~ the SUPREMACY CLAUSE BECAUSE MCGIRT IS NOT NEW LAW.

THE MCGIRT DECISION IS GUIDED BY PRIOR PRECEDENT. THERE IS NOTHING NEW IN USE OF OLD SUPREME COURT DECISIONS, TREATIES AND ACTS OF CONGRESS TO REACH THE DECISION ANNOUNCED BY JUSTICE GORSUCH, JULY 9, 2020. THE RULE OF FEDERAL STATUTE THAT TRIBAL MEMBERS CHARGED UNDER THE MCA SHOULD BE PROSECUTED BY THE FEDERAL GOVERNMENT, NOT THE STATES IS A SUBSTANTIAL RULE OF LAW UNDER THE CONSTITUTION. JUST AS INDIAN STATUS A SUBSTANTIAL RULE GUIDED BY THE MCA COMMITTED BY INDIANS ON RESERVATIONS. MONTGOMERY V. LOUISIANA, 577 U.S. 190, 136 S.Ct. 718, 193 L.Ed.2d 599 (Decided JAN. 25, 2016) REVISED JAN. 27, 2016. MCGIRT V. OKLAHOMA, 140 S.Ct. 2452, 207 L.Ed.2d. 985 (Decided JULY 9, 2020). COLLINS V. YOUNG BLOOD, 497 US 37 110 S.Ct. 2715, n. (1), 111 L.Ed.2d 30 (Decided JUNE 21, 1990). TITLE 18 U.S.C.A. SECTIONS 1151, 1152, 1153, 3242, 3231. SEE PICKETT V. UNITED STATES, 216 U.S. 456, 30 S.Ct. 265, 54 L.Ed. 566 (Decided FEBRUARY 21, 1910) (note 6. FOR THE COURTS OF THE STATE COULD NOT BE EMPOWERED TO PROSECUTE CRIMES AGAINST THE LAWS OF ANOTHER SOVEREIGNTY).

Appellant moves the OCCA LIBERALLY CONSTRUING HIS PROSE BRIEF REINSTATE THE ORDER OF MAY 5, 2021 IN CASE NO. CF-2007-154C. THE APPELLEE DID NOT HAVE ANY FEDERAL JURISDICTION TO PROSECUTE A FEDERAL CRIME UNDER STATE STATUTE AND DID NOT AMEND ITS CONSTITUTION TO REMOVE ART 1, SECTION 3 WHICH IS AN IMPEDIMENT TO THE ASSUMPTION OF JURISDICTION IN INDIAN COUNTRY AND THE STATE DO NOT HAVE THE CONSENT OF THE AFFECTED TRIBE UNDER THE CIVIL RIGHTS ACT OF 1968, TITLE IV.

IN CONCLUSION, Appellant with Supporting Authority ASK THAT MCGIRT BE APPLIED RETROACTIVELY TO HIS MCGIRT CLAIM. THE ORDER OF SEPTEMBER 9, 2021 FILED IN CASE NO. CF-2007-154C BE VACATED, AND DISMISSED.

THAT ORDER ENTERED MAY 5, 2021, CF-2007-154C BE REINSTATED ~~IN THE INTEREST OF JUSTICE AND JUDICIAL ECONOMY.~~

~~SI~~
~~PETITIONER / APPELLANT~~

MR. ZACHARY HARVELL

DOC# 571262

J.H.C.C., UNIT-1-C-102

PO Box 548

16161 MOFFAT ROAD

LEXINGTON, OKLAHOMA

73051-0548.

CERTIFICATE OF MAILING

I, ZACHARY HARVELL, VERIFY, CERTIFY, DECLARE THAT THE
FOREGOING TITLE AND CAPTION, BRIEF IN SUPPORT OF PETITION
IN ERROR, PETITION IN ERROR, WAS MAILED POSTAGE PREPAID,
ON THE 30th DAY OF SEPTEMBER, 2021, ADDRESSED TO THE
FOLLOWING ADDRESS:

CLERK OF THE APPELLATE COURTS

OKLAHOMA JUDICIAL CENTER
SUITE 4

2100 N. LINCOLN BLVD.

OKLAHOMA CITY, OKLAHOMA

73105.

~~SI~~
~~APPELLANT / APPELLANT~~

MR. ZACHARY HARVELL

DOC# 571262

J.H.C.C., UNIT-1-C-102

PO Box 548, 16161 MOFFAT ROAD

LEXINGTON, OKLAHOMA 73051.

IN THE OKLAHOMA COURT OF CRIMINAL APPEALS

STATE OF OKLAHOMA

ZACHARY HARVELL,
Appellant,

v.

STATE OF OKLAHOMA,
Appellee.

No. _____

PETITION IN ERROR

COMES NOW, ZACHARY HARVELL, PRO SE PURSUANT
TO SECTION V, RULE 5.2 OF THE RULES OF THE COURT OF
CRIMINAL APPEALS. TITLE 22, CH. 18, APP.

(1) THE TRIAL COURT AND CASE NUMBER? OKMULGEE COUNTY
DISTRICT COURT CASE NUMBER CF-2007-154C.

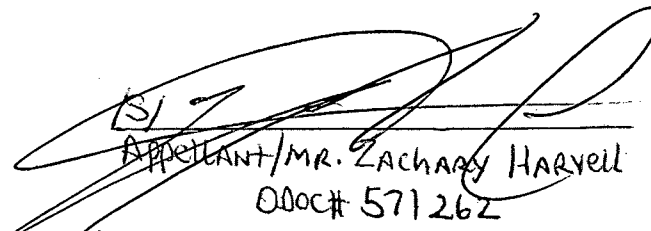
(2) NAME OF THE CRIMES YOU WERE CHARGED AND CONVICTED?
CT. 1 BURGLARY FIRST DEGREE, CT. 2 CONJOINT ROBBERY, CT. 3
KIDNAPPING, CT. 4 FORCIBLE SOONY. ENTERED BLIND PLEAS OF
GUILTY TO ALL COUNTS DECEMBER 18, 2007.

(3) THE TERMS OF YOUR SENTENCE? CT. 1 TEN YEARS, CT. 2
AND TEN YEARS.. CT. 3 FIVE YEARS. CT. 4 TWENTY YEARS.
ALL TO BE SERVED CONSECUTIVELY. APPELLANT MOVED TO
WITHDRAW HIS BLIND PLEAS WHICH WAS DENIED BY THE DISTRICT
COURT OF OKMULGEE COUNTY, OKLAHOMA. PETITION FOR WRIT
OF CERTIORARI WAS TIMELY FILED WITH THE OCCA WHICH
WAS DENIED ON NOVEMBER 10, 2008.

(4) OCTOBER 19, 2020; CF-2007-154C, APPELLANT FILED
HIS APPLICATION FOR POST CONVICTION RELIEF. WHICH WAS
DENIED ON SEPTEMBER 9, 2021 BY THE DISTRICT COURT OF
OKMULGEE, OKLAHOMA DENYING MCGIRT RELIEF.

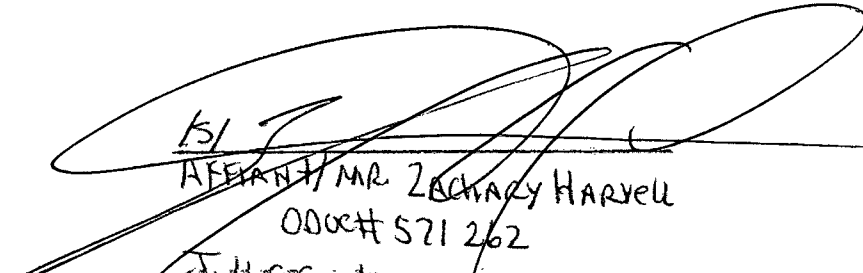
CONCLUSION

Appellant Moves the OCCA VACATE, DISMISS the ORDER ENTERED ON SEPTEMBER 1, 2021, AND FILED SEPTEMBER 9, 2021, IN CASE NO. CF-2007-154C. THAT the POST CONVICTION RELIEF GRANTED MAY 5, 2021, CF-2007-154C BE REINSTATED FOR ABUSE OF DISCRETION. IN THE INTEREST OF JUSTICE AND JUDICIAL ECONOMY.


Appellant/MR. ZACHARY HARVELL
ODOC# 571262

CERTIFICATE OF MAILING

I, ZACHARY HARVELL, PRO SE, CERTIFY, DECLARE, VERIFY, THE FOREGOING PETITION IN ERROR, BRIEF IN SUPPORT, WAS MAILED POSTAGE PREPAID, OCTOBER 1, 2021, ADDRESSED TO:
CLERK OF THE APPELLATE COURTS
OKLAHOMA JUDICIAL CENTER
2100 N. LINCOLN BLVD., STE. 4
OKLAHOMA CITY, OKLAHOMA 73105.


Appellant/MR. ZACHARY HARVELL
ODOC# 571262

J.H.C.C; UNIT 1-C-102
PO Box 548
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LEXINGTON, OKLAHOMA
73051.