26-6038

UNITED STATES SUPREME COURT

FILED
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SUPREME COURT, U.S.

ORIGINAL

Case No. _____

STEVEN LEE ADAIR,
Pro Se, Petitioner-Appellant,

v.

No. TENTH CIRCUIT, U.S. COURT OF APPEALS No. 25-5175
(D.C. No. 4:23-CV-00061-JFH-SH
(N.D. Okla.)

CHRIS RANKINS, Warden,
Respondent-Appellee.

PETITION FOR A WRIT OF CERTIORARI

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

QUESTIONS PRESENTED FOR REVIEW

1. WHETHER STATE AND FEDERAL COURTS MAY APPLY PROCEDURAL BARS, INCLUDING LIMITATIONS PROVISION OF OKLAHOMA STATUTES TITLE 22, SECTION 1080.1, AND THE PROCEDURAL DEFAULT DOCTRINES APPLIED UNDER 28 U.S.C., SECTION 2254, TO DENY REVIEW OF CLAIMS ASSERTING THAT THE UNDERLYING CRIMINAL JUDGMENT IS VOID FOR LACK OF SUBJECT-MATTER JURISDICTION?

2. WHETHER A STATE COURT JUDGMENT ENTERED WITHOUT JURISDICTION MAY BE ENFORCED IN VIOLATION OF THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION, THE MAJOR CRIMES ACT, AND FEDERAL CONSTITUTIONAL GUARANTEES OF DUE PROCESS?

3. WHETHER THE TENTH CIRCUIT ERRED IN DENYING FEDERAL HABEAS REVIEW UNDER 28 U.S.C. SECTION 2254 BY RELYING UPON STATE PROCEDURAL BARS AND CIRUIT COURT PRECEDENT, WHERE PETITIONER ALLEGED THAT THE STATE COURT LACKED JURISDICTION AB INITIO?

4. WHETHER THE APPLICATION OF PROCEDURAL BARS TO JURISDICTIONAL CLAIMS CONFLICTS WITH LONGSTANDING PRECEDENT RECOGNIZING THAT A VOID JUDGMENT MAY BE CHALLENGED AT ANY TIME?

5. WHETHER THE FILING LIMITATIONS OF 28 U.S.C. § 2244(d)(1)(A) VIOLATES DUE PROCESS WHEN APPLIED TO JURISDICTIONAL CHALLENGES RENDERED VOID AB INTITIO?

6. WHETHER A VOID JUDGMENT RENDERED IN COMPLETE ABSENCE OF JURISDICTION CAN BECOME FINAL FOR THE PURPOSES OF STATUTES OF LIMITATIONS?

PARTIES TO THE PROCEEDINGS

Petitioner is Steven Lee Adair, who was the petitioner-appellant before the United States Court of Appeals for the Tenth Circuit. Case No. 25-5175

Respondent is William Rankins, Warden, who was the respondent-appellee before the United State Court of Appeals for the Tenth Circuit. Case No. 25-5175

Petitioner is Steven Lee Adair, who was the Petitioner before the United States District Court for the Northern District of Oklahoma. Case No. 4:23-CV-00061-JFH-SH.

Respondent is William Rankins, Warden, who was the respondent before the United States District Court for the Northern District of Oklahoma. Case No. 4:23-CV-00061.

TABLE OF CONTENTS

Opinions Below	Pg.1
Jurisdiction	Pg.1
Constitutional and Statutory Provisions Involved	Pp.1,2
Rules	Pg.2
Statement of the Case	Pg.3
Reasons for Granting the Writ and Grounds for Review	Pg.4-20

TABLE OF CONTENTS

CONSTITUTIONAL PROVISIONS AND TREATISE

The Cherokee Nation Treaty of 1866, 14 Stat. 800	pp. 6,7,8,10,11,21,26
Article 1§ 8, cl. 3	p. 7
Article 3 §1	p.7
Article 6 § cl. 2	pp. 1,6,10,14
Fourteenth Amendment	p. 1

Federal Statutes

18 U.S.C. § 1151	pp. 2,4,6,7,17
18 U.S.C. § 1153	pp. 21,26
28 U.S.C § 1331	pp. 2,4,7,16
25 U.S.C. § 1321	pp. 6,12,26
28 U.S.C. § 2241	pp. 16,26
28 U.S.C. § 2253	pp. 20,21,26
28 U.S.C. § 2254	pp. 13,25,26
28 U.S.C. § 2244	p. 26
Judicial Act of 1867, § 1, 14 Stat. 385	pp. 2,6,21
Act of Sept. 24, 1789, § 14, 1 Stat. 82	p. 12

State Statutes

22 Oklahoma Statutes, § 1080.1	pp.1,2,5

Supreme Court Cases

Asakura v. City of Seattle, 265 U.S. 332, 44 S.Ct. 515, 68 L.Ed 1041 (1924)	pp. 6,8
Biddle v. Wilkins, 26 U.S. 686, 7 L.Ed 315 (1828)	pp.13
Brecht v. Abrahamson, 507 U.S. 619, 113 S.Ct. 1710, 123 L.Ed2d 353 (1993)	pp. 13
Brown v. Allen, 344 U.S. 443, 73 S.Ct. 397, 97 L.Ed 469 (1953)	pp. 13
Cooper v. Aaron, 358 U.S. 17, 8 S.Ct. 140, 13 L.Ed 97 (1958)	p. 7
Dept. of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 140 S.Ct. 1959, 207 L.Ed2d 427	p. 12
Earle v. McVeigh, 91 U.S. 503, 1 Otto 503, 23 L.Ed 398 (1875)	p.5
Ex parte McCardle, 6 Wall. 318, 18 L.Ed 816 (1868)	p. 12
Ex parte Siebold, 100 U.S. 371, 10 Otto 371, 25 L.Ed 717 (1879)	pp.15,19
Frank v. Mangum, 237 U.S. 309, 35 S.Ct. 582 (1915)	p. 10
Fulminante, 499 U.S. 309, 111 S.Ct. 1246	p. 11
Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 97, 93 A.L.R.2d 733 (1963)	p. 11
Grable & Son's Metal Productions, Inc. v. Darue Eng. & Mfg., 545 U.S. 308 (2005)	p. 4
Johnson v. U.S., 520 U.S. 461, 117 S.Ct. 1544, 137 L.Ed2d 718 (1997)	p. 11

Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 146 L.Ed 1461 (1938) pp. 10,11
Kingdomware, 579 U.S. 162, 136 S.Ct. 1969, 195 L.Ed2d 334 (2016) p. 8
Mackey, 401 U.S. 693, 91 S.Ct. 1160 pp. 18,19
Maine Comm. Health Options v. U.S., 590 U.S. 296, 140 S.Ct. 1308, 206 L.Ed2d 764 (2020) p.8
Martin v. Hunter's Lessee, 1 Wheat 304, 4 L.Ed 97 (1816) p. 5
Marbury v. Madison, 1 Cranch137, 2 L.Ed 60 p. 7
Morton v. Mancari, 417 U.S. 535, 94 S.Ct. 2474, 41 L.Ed2d 290 (1974) p. 7
Oklahoma v. Castro-Huerta, 597 U.S. 629, 142 S.Ct. 2486, 213 L.Ed2d 847 (2022) p. 8
Rose, 478 U.S.___, 106 S.Ct. 3101 p. 12
Sanchez-Llamas v. Oregon, 548 U.S. 331, 126 S.Ct. 2669, 165 L.Ed2d 557 (2006) p. 7
Sebelius v. Auburn Regional Md. Cntr., 133 S.Ct. 817, 568 U.S. 145 (2013) p. 17
Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 146 L.Ed2d 542 (2000) pp. 16,17
Sullivan v. Louisiana, 508 U.S. 275, 113 S.Ct. 2078, 124 L.Ed2d 182 (1993) p. 11
Swain v. Pressley, 430 U.S. 372, 97 S.Ct. 1224, 51 L.Ed2d 411 (1953) p. 13
Teague, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed2d 334 (1989) pp. 18,19
Tumey v. Ohio, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed 749 (1927) p. 11
U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781, 152 L.Ed2d 860 (2002) p. 17
Weaver v. Massachusetts, 582 U.S. 286, 137 S.Ct. 1899, 198 L.Ed2d 420 (2017) p. 11
Wise v. Withers, 3 Cranch 331 (1806) pp. 5,13

State Cases

State v. Klindt, 782 P.2d 401 (Okla. Crim. App. 1989) p. 8

OPINIONS BELOW

The opinions and judgment of the United States Court of Appeals for the Tenth Circuit denying relief is attached as Appendix A.

The order of the United States District Court for the Northern District of Oklahoma denying habeas corpus relief pursuant to 28 U.S.C. § 2254, is attached as Appendix B.

The decisions of the Oklahoma State Courts denying post-conviction relief pursuant to Oklahoma Statute title 22, section 1080.1, are attached as Appendix C.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §1254(1). The judgment of the United States Court of Appeals for the Tenth Circuit was entered on March 31, 2026, in an "ORDER DENYING CERTIFICATE OF APPEALABILITY". This petition is timely filed within ninety days of the entry of judgment, pursuant to Rule 13. (1)(2) of the rules of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article VI, Clause2
"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof,... shall be the Supreme Law of the Land."

United States Constitution, Amendment XIV
"No State shall...deprive any person of life, liberty, or property, without due process of law."

United States Constitution, Sixth Amendment

Art. IV, July 19, 1866, 14 Stat. 800, Treaty with the Cherokees of 1866

28 U.S.C. §1254(1)

28 U.S.C. § 2254

Provides for federal habeas corpus review of persons in custody pursuant to State court judgments.

28 U.S.C. § 2244(d)(1)

28 U.S.C. § 1331

18 U.S.C. § 1151

Title 25, § 1321

Oklahoma Statutes title 22, § 1080.1

Imposes a one-year limitation period upon applications for post-conviction relief.

Rules

Rule 13. (1)(2) of the Rules of the Supreme Court

STATEMENT OF THE CASE

Petitioner was convicted on a plea of guilty, in the courts of the State of Oklahoma and subjected to a judgment and sentence entered by a court that lacked jurisdiction over the criminal proceedings. Petitioner later sought relief from the judgment and sentence after becoming aware of the fact that the State lacked authority to prosecute and enforce the judgment because jurisdiction was exclusively vested in the Federal and Tribal governments pursuant to federal law, including the Major Crimes Act and the Supremacy Clause of the United States Constitution.

Petitioner filed an Application for Post-Conviction Relief in the District Court for Washington County in the State of Oklahoma, asserting that the judgment was void for lack of jurisdiction. That court held an evidentiary hearing and denied petitioner the assistance of counsel for that hearing, and additionally found that petitioner was not an Indian, and thereby denied relief based upon that finding. The court entered that finding although petitioner had included in his attachments of exhibits, copies of his biological paternal Cherokee Tribal roll number, and his biological brother's roll number. Petitioners roll number in the Cherokee Nation is #C0447686.

Petitioner then sought relief in the United States District Court for the Northern District of Oklahoma, asserting that the state court judgment was void for lack of jurisdiction and that the U.S. District Court possessed original jurisdiction of the matters presented instead of state court, in addition to issues involving a court entering judgment without jurisdiction is void and not subject to statutory limitations or any other, what would be, lawful procedural bars and therefore could not be constitutionally insulated from review through lawful procedural default doctrines or statutory provisions.

Rather than addressing the merits of the jurisdictional challenge, the United States District Court for the Northern District of Oklahoma nevertheless denied relief under 28 U.S.C. § 2244(d)(1), holding that the federal constitutional claims were procedurally barred under state and federal laws of habeas corpus principles, and denied a certificate of appealability.

Petitioner appealed to the United States Court of Appeals for the Tenth Circuit. The Tenth Circuit denied a certificate of appealability and declined meaningful review of the underlying jurisdictional issues, effectively permitting the continued enforcement of a criminal judgement entered completely without lawful authority. This petition follows.

REASON FOR GRANTING THE WRIT

I. THIS CASE PRESENTS AN IMPORTANT FEDERAL QUESTION CONCERNING WHETHER PROCEDURAL BARS MAY PRECLUDE REVIEW OF A JUDGMENT RENDERED IN COMPLETE ABSENCE OF JURISDICTION.

This case presents a recurring and exceptionally important question concerning the relationship between procedural default doctrines and jurisdictional defects. The lower courts permitted procedural barriers to foreclose review of claims asserting that the underlying judgment is void ab initio for a complete lack of subject matter jurisdiction.

ARGUMENTS AND AUTHORITIES

Instantly, Petitioner sought habeas review/relief in the United States District Court for the Northern District of Oklahoma, pursuant to 28 U.S.C. § 1331, for correction of a state judgement entered without jurisdiction due to his Indian status and the charged offenses occurred in Indian Country. §1331 provides, "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treatise of the United States."

The Major Crimes Act, codified as 18 U.S.C. § 1151 et seq., is a congressionally enacted federal law derived from the Treaty of 1866 with the Cherokees.

To establish federal-question jurisdiction, the federal question giving rise to jurisdiction must be "presented on the of the plaintiff's properly pleaded complaint. " Federal question jurisdiction may exist if (1) the Nation's cause of action arises under federal law; or (2) the Nations's state law claims "raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg., 545 U.S. 308, 312-14 (2005).

It has long been recognized that a judgment entered without jurisdiction is void and subject to challenge at any time. Jurisdiction is the foundational prerequisite to the lawful exercise of judicial authority. "it is essential that the Court should have jurisdiction of the person and the

subject matter; it is equally clear that the want of jurisdiction is a matter that may always be set up against a judgment when sought to be enforced...as the want of jurisdiction makes it utterly void and unavailable for any purpose." Earle v. McVeigh, 91 U.S. 503, 1 Otto 503, 23 L.Ed. 398 (1875). Also see Borden v. Fitch, 15 Johns. 141, and progenitor case laws. In a prior decision, this Court established that "Courts and officers are trespassers for void judgment. The objection might be urged anywhere, and at any time. The whole proceedings would be nullity." See Wise v. Withers, 3 Cranch 331 (1806). Therefore, it well established law that a judgment rendered without jurisdiction, the proceedings are a legal nullity, unavailable for any purpose.
The Oklahoma courts and the federal courts below nevertheless applied procedural bars to a substantive rule, to avoid adjudicating whether the State possessed lawful authority to prosecute Petitioner. The application of Oklahoma Statutes title 22, section 1080.1, and federal procedural default doctrines under 28 U.S.C. § 2254, allowed the courts to evade the merits of the jurisdictional claims entirely and usurp federal exclusive jurisdiction. The decision below creates a dangerous precedent whereby unconstitutional convictions may remain enforceable solely because the courts refuse to consider whether jurisdiction ever existed. This unlawful usurpation of power and trust must be fully addressed by this Court for a final resolution thereto.

II. THE DECISION BELOW CONFLICTS WITH FUNDAMENTAL PRINCIPLES OF DUE PROCESS AND THE SUPREMACY CLAUSE.

ARGUMENTS AND AUTHORITIES

The Supremacy Clause requires State courts to yield where federal law deprives the state of criminal jurisdiction. Where Congress has vested exclusive jurisdiction in the federal government, any contrary assertion of authority by the State is unconstitutional. Petitioner asserted that federal law divested the State of Oklahoma, of jurisdiction over the charged offenses in this matter. If the State lacked jurisdiction, then every subsequent act of the state court-including conviction, sentencing, denial of post-conviction relief, and enforcement of judgment-are void. The State of Oklahoma has continued to usurp Federal and Tribal jurisdiction in complete disregard of controlling supreme law of the Land. This Court has announced that, "States may not disregard a controlling, constitutional command in their own courts. See Martin v. Hunter's Lessee, 1 Wheat

304, 340-341, 344, 4 L.Ed 97(1816). This Supreme Court opinion is deeply rooted in American jurisprudence. There are no decisions of this Court or acts of congress abrogating the above law. Yet this jurisdictional intrusion persists and the challenges thereto, are recurring.

The lower Tenth Circuit Court of Appeals and the United States District Court had federal question jurisdiction to entertain and resolve these issues, yet the courts avoided this constitutional question through procedural mechanisms. Such an approach permits state procedural rules to override federal constitutional limitations upon state judicial authority. The doctrines of mootness, res judicata, laches, nor any other limitations statute should apply in cases where the court rendered judgment in absence of jurisdiction. If this Court should find that under current legal principles, the lower courts were correct in applying limitations periods to jurisdictional challenges, then this Court should also review the parts of the state and federal statutes of limitations regarding time limitations for challenging jurisdictional issues pursuant to habeas corpus review or original writ review, and declare that any law enacted that deprives a person of the right to have habeas corpus review of jurisdictional challenges, as unconstitutionally overbroad.

In Asakura v. city of Seattle, 265 U.S. 332, 44 S. Ct. 515, 68 L.Ed 1041 (1924) in one of the precedents of this Court, it was announced that, "a treaty stands on same footing of supremacy as the federal Constitution, and operates of itself, without aid of any legislation, and courts will give it authoritative effect." Instantly, the Major Crimes Act, a Congressionally enacted law, derived from the Treaty Between United States and Cherokee Nation of Indians, Art. IV, July 19, 1866, 14 Stat. 800; and later codified into federal supreme law under Title 18 U.S.C. §§1151 et seq., provides preemptive language, i.e., "Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, 'shall be subject to the same law and penalties as all other persons committing any of the above offenses, 'within the exclusive jurisdiction of the United States." Granting authoritative effect to the MCA's supremacy over state and federal laws notwithstanding.

Art. VI, cl., 2, of the United States Constitution provides, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or what shall be

made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

In the Treaty with the Cherokees of 1866, Congress granted the People of the Cherokee Tribe, protectorate status, subject only to, the United States Federal Government. Ratification of the Treaty, afforded the Cherokee Nation the authority of self-governance and established the jurisdictional borders of the Cherokee Nation within the territory of Indian Country, which later became the State of Oklahoma.

In 1958, this Court opined in Cooper v. Aaron, 358 U.S. 17, 8 S.Ct. 140, 13 L.Ed2d 5, that this Court's interpretation of the Constitution, in addition to Acts of Congress, and the United States Constitution are the Supreme Laws of the Land, and Art. VI of the Constitution makes it of binding effect on the State's 'any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." @ *19, **141.

Twenty-four years later, this Court further opined that, "The plenary power of Congress to deal with the special problems of Indians is drawn both explicitly and implicitly from the Constitution itself." And that, "Article 1, sec. 8, cl. 3, provides Congress with the power to 'regulate commerce...with the Indian Tribes, and thus, to this extent, single Indians out as a subject for separate legislation.." Morton v. Mancari, 417 U.S. 535, 551-552, 94 S.Ct. 2474, 41 L.Ed2d 290 (1974).

In Sanchez-Llamas v. Oregon, 548 U.S. 331, 334, 126 S.Ct. 2669, 165 L.Ed.2d 557 (2006), this Court opined that, "The judicial Power of the United States" is "vested in one supreme Court...and...inferior Courts." U.S. Const., Art. III, § 1. That "Power...extend[s] to...Treaties,"id., § 2, and includes the duty "say what the law is," Marbury v. Madison, 1 Cranch 137, 177, 2 L.Ed. 60. If treaties are to be given effect as federal law, determining their meaning as a matter federal law "is emphatically the province and duty of the judicial department," headed by the "one supreme Court." Ibid. The above cited, squarely grants original jurisdiction of matters pertaining to laws enacted by congress in the federal courts. See 28 U.S.C. § 1331. This includes, but is not limited to, claims regarding Tribal Treatise and all jurisdictional issues derived therefrom.

Congress's enactment of Title 18 U.S.C. §§1151 et seq., a federal law, made in pursuance of the

United States Constitution through its plenary powers derived therefrom, contains explicit and preemptive language regarding the jurisdictional limitations codified in the above federal statute, i.e., 'shall be subject to the same law and penalties as all other persons committing any of the above offenses, 'within the exclusive jurisdiction of the United States" explicitly defines the operational parameters in the state of Oklahoma, regarding Indian Country. When , as is the case here, Congress "distinguishes between 'may' and 'shall,' it is generally clear that 'shall' imposes a mandatory duty." Kingdomware, 579 U.S. 162, 136 S.Ct. 1969, 195 L.Ed.2d 334 (2016), cited and further upheld in Maine Community Health Options v. United States, 590 U.S. 296, 140 S.Ct. 1308, 206 L.Ed.2d 764 (2020). This Court recognized that 'federal law may preempt state jurisdiction in certain circumstances' and that "Under this Court's precedents...a State's jurisdiction in Indian Country may be preempted (i) by federal law under ordinary principles of federal principles of federal preemption, or (ii) when the exercise of state jurisdiction would unlawfully infringe on tribal self-government." Oklahoma v. Castro-Huerta, 597 U.S. 629, 142 S.Ct. 2486, 213 L.Ed.2d 847 (2022). "Oklahoma state courts erroneously entertained prosecutions for major crimes by Indians on Indian allotments for decades, until state courts finally disavowed the practice in 1989. See State v. Klindt, 782, P.2d 401, 404 (Okla. Crim. App. 1989). Directly following that disavowance, the state of Oklahoma, with self-perceived impunity, reverted to its former erroneous practices without making any attempts at conforming to the MCA. Presently, Oklahoma is still in the practice of prosecuting Indians who committed enumerated MCA offenses in Indian country in total disregard to the supreme law of the land. In Asakura v. city of Seattle, 265 U.S. 332, 44 S. Ct. 515, 68 L.Ed 1041 (1924), one of the precedents of this Court, it was announced that, "a treaty stands on same footing of supremacy as federal Constitution, and operates of itself, without aid of any legislation, and courts will give it authoritative effect." Upon enactment of the Major Crimes Act, the State of Oklahoma had the duty to respect the federal legislation and create policies in conformance thereto, i.e., "to properly identify Indians that were perceived to be committing public offenses, and contact the appropriate law enforcement agency for disposition thereof; or to seek permission to prosecute from the Tribal governments pursuant to Title 25, § 1321. The State of Oklahoma has done neither. Instead, the State of Oklahoma made a conscious decision to unlawfully trespass beyond the States jurisdiction, into federal and tribal jurisdictions. This state of Oklahoma, adopted customary practice, has continued for so many

decades, that it has obscured and ignored federal law to the point of meaningless oblivion. As the record reflects in this present case, federal courts in the State of Oklahoma are in total agreement with the practices of the state, and the United States Court of Appeals for the Tenth Circuit upheld the unlawful practice by utilizing the very same unlawful applications of law.

This level of defiance exhibited by the state of Oklahoma and lower federal courts, in this regard, and the judicial and constitutional injury caused thereby, necessitates immediate intervention and, calls for mandates to be set forth by this Court, clarifying all of the legal parameters involved herein, to prevent further intrusiveness into Federal and Tribal sovereignties. Without this Court's intervention, these unconstitutional trespasses and intrusions will continue, in violation of the United States Constitution. Supervisory jurisdiction of this Court is imperative. This Court's intervention is necessary to reaffirm that procedural doctrines cannot supersede constitutional jurisdictional limits imposed by federal law and the decisions of this Court.

III. THE LOWER COURTS APPLICATION OF PROCEDURAL DEFAULT DOCTRINES UNDER 28 U.S.C. § 2254, UNDERMINES THE HISTORIC PURPOSE OF HABEAS CORPUS VIOLATES SUSPENSION CLAUSE AND DENIES DUE PROCESS.

ARGUMENTS AND AUTHORITIES

The Writ of Habeas Corpus exists to protect individuals from unlawful detention. Federal habeas review under 28 U.S.C., section 2254 is intended to ensure that custody imposed in violation of the Constitution or laws of the United States may be corrected. In this instant matter, the lower courts transformed procedural doctrine into absolute barriers preventing review of whether Petitioner is imprisoned pursuant to a void judgment. Such an approach undermines the core purpose of habeas corpus and elevates procedural finality above substantive constitutional legitimacy.

The Tenth Circuit's decision effectively authorizes Oklahoma to continue imprisoning citizens under a judgment entered without jurisdiction, while simultaneously preventing any court from examining the merits of the claim.

It is imperative that this Court grant certiorari to clarify that procedural default doctrines cannot extinguish jurisdictional challenges implicating the constitutional authority of the convicting court. The congressional restrictions placed upon habeas procedures were enacted to put an end to lengthy court battles regarding "*lawfully*" imposed death sentences, in addition to acts of terror, or gang violence, that were "lawfully adjudicated", *where the sentence has become final within the meaning of finality as understood in the context of the statute*, i.e., "The limitation period shall run from the latest of-(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review"; (B) "the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed"; (C) "the date on which the constitutional right asserted was initially recognized by the Supreme Court"; (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." In the context of the litany of decisions by this Court, "a judgment entered without lawful jurisdiction can always be set upon to determine if the court entering judgment had jurisdiction to do so.

It has been long established that, "the Due Process of law guaranteed by the 14th Amendment has regard to substantive of right, and not to matters of form or procedure; that it is open to the courts of the United States upon an application for a writ of habeas corpus, to...decide whether a prisoner has been deprived of his liberty without due process of law, and for this purpose to inquire into jurisdictional facts, whether they appear on the record or not." See Frank v. Mangum, 237 U.S. 309, 35 S.Ct. 582 (1915), further opining, "the writ of habeas corpus *will lie* only in cases where the judgment under which the prisoner is detained is shown to be absolutely void for want of jurisdiction in the court that pronounced it, *either because such jurisdiction was absent at the beginning*, or because it was lost in the courts of the proceedings." In 1996, following the enactment of the "Anti-terrorism and Effective Death Penalty Act" this Court, in a series of decisions repeatedly held that the "AEDPA" was constitutional. However, this Court has yet to enter a holding, setting out that the time limitations set forth in the AEDPA does not apply to judgments entered by a court in complete absence of jurisdiction. This desired type of Holding is necessary for the conformity of the lower courts. In Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 146 L.Ed. 1461 (1938), this Court announced that, "A judge of the United States—to whom a petition for habeas corpus is addressed—should be alert to examine 'the facts for himself when

if true as alleged they make the trial absolutely void.' Johnson v. Zerbst, is a longstanding, undisturbed opinion by this Court. If this Court should rule in favor of imposing state and federal statutes of limitations upon jurisdictional claims, it would then upend a plethora of decisions of this Court and constitutional protections guaranteed under federal law, and cancel out, the principles of due process regarding substantive rule violations, structural error, actual innocence, plain error review, and miscarriage of justice review. The State of Oklahoma, through its recalcitrant actions, has a long standing tradition of defying this Courts decisions, when in disagreement thereof.

As this Court stated in Weaver v. Massachusetts, 582 U.S. 286, 137 S.Ct. 1899, 198 L.Ed2d 420 (2017), "that some errors should not be deemed harmless beyond a reasonable doubt. These errors came to be known as structural errors. See Fulminante, 499 U.S. at 309-310, 111 S.Ct. 1246. The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial. Thus, the defining feature of a structural error is that it "affect[s] the framework within which the trial proceeds, "rather than being "simply an error in the trial process itself."…. For the same reason, a structural error "defies analysis by harmless error standards….The precise reason why a particular error is not amenable to that kind of analysis—and thus the precise reason why the Court has deemed it structural—varies in a significant way from error to error. There appear to be at least three broad rationales. (in pertinent part) "an error has been deemed structural in some instances if the right at issue is not designed to protect the defendant from erroneous conviction but instead protect some other interest", "an error has been deemed structural if the effects of the error are simply too hard to measure", "an error has been deemed structural if the error always results in fundamental unfairness." Also see Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 92, 93 A.L.R. 2d 733 (1963); Johnson v. U.S., 520 U.S. 461, 468-69, 117 S.Ct. 1544, 1549-50, 137 L.Ed2d 718 (1997); Sullivan v. Louisiana, 508 U.S. 275, 282, 113 S.Ct. 2078, 2083, 124 L.Ed2d 182 (1993); Tumey v. Ohio, 273 U.S. 510, 535, 47 S.Ct. 437. 445, 71 L.Ed. 749 (1927). Instantly, the errors complained of by petitioner are errors that are "too hard to measure" and the "errors always results in fundamental unfairness." It is very difficult to measure the extent of the harm caused by a court rendering a judgment and sentence without lawful power, and in doing so, it always results in fundamental unfairness to the defendant and parties, thereby trespassed against.

The issues presented herein "affect[s] the framework within which the trial proceeds, "rather than being "simply an error in the trial process itself." And therefore, also classifies as structural error. "Such errors "infect the entire trial process," Brecht v. Abrahamson, 507 U.S. 619, 630, 113 S.Ct. 1710, 123 L.Ed2d 353 (1993), and "necessarily render a trial fundamentally unfair," Rose, 478 U.S., at 577, 106 S.Ct. 3101. Put another way, these errors deprive defendants of "basic protections" without which "a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence...and no criminal punishment may be regarded as fundamentally fair." Id., at 577-578, 106 S.Ct. 3101.

The Writ of Habeas Corpus has historically and traditionally been available to test the legality of a judgment and/or sentence entered by a court in violation of the United States Constitution. The First Judiciary Act authorized the federal courts "to grant writs of habeas corpus for the purpose of an inquiry into the cause of commitment," with a proviso that such writs could "extend to prisoners in goal" only "where they [were] in custody, under or by colour of the authority of the United States, or [were] committed for trial before some court of the same, or [were] necessary to brought into court to testify." Act of Sept. 24, 1789, § 14, 1 Stat. 82. In 1867, Congress expanded the federal courts' habeas powers to cover "all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States." The Habeas Corpus Act of 1867, provided that "the several courts of the United States...shall have power to grant writs of habeas corpus in all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States." Judiciary Act of Feb. 5, 1867, § 1, 14 Stat. 385. The Act was "of the most comprehensive character," bringing "within the habeas corpus jurisdiction of every court and of every judge, every possible case of privation of liberty contrary" to federal law." Department of Homeland Security v. Thuraissigiam, 591 U.S. 103, 140 S.Ct. 1959, 207 L.Ed.2d 427, (citing Ex parte McCardle, 6 Wall. 318, 325-326, 18 L.Ed 816 (1868).

Since then, Congress has recodified and reorganized the Judiciary Code, to include recodification of the preexisting habeas authority. In 1996, Congress enacted AEDPA, which made significant reforms to the process of federal-court postconviction review for both state and federal prisoners. See 28 U.S.C. § 2241 et seq. At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have

been strongest. See e.g., Swain v. Pressley, 430 U.S. 372, 380, n. 13, 97 S.Ct. 1224, 51 L.Ed.2d 411 (1977); id., at 385-386, 97 S.Ct. 1224; Brown v. Allen, 344 U.S. 443, 533, 73 S.Ct. 397, 97 L.Ed 469 (1953)("The historic purpose of the writ has been to relieve detention by executive authorities without judicial trial"). Under the 1996 enactment, the AEDPA addition to the habeas corpus statutes included a filing deadline for persons in custody pursuant to the judgment of a state court. i.e., "A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review; (B) the date on which the impediment to filing an application created by state action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action; (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review, or; (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence. 28 U.S.C. §2244 (d)(1). "The time during which a properly filed application for state post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." 28 U.S.C. §2244 (2). Instantly, petitioner asserts that this Court has decided and re-enforced the decision that "judgments entered by a court in absence of jurisdiction are void ab initio and subject to challenge at any time." The syllogism utilized by this Court to conclude in that decision was based largely upon the constitutional interpretation that "Court and officers are trespassers for void judgment. The objection might be urged anywhere, and at any time. The whole proceedings would be nullity." Wise v. Withers, 3 Cranch 331 (1806). "When the Court in which the judgment is rendered has not jurisdiction over the subject-matter of the suit, or when the judgment is absolutely void, this may be pleaded in bar, or may in some cases be given in evidence under the general issue." Biddle v. Wilkins, 26 U.S. 686, 1 Pet.__, 7 L.Ed 315 (1828). Additionally, a plethora of concurring decisions and dicta syllogism has given form to the constitutional rule that "a conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void. It follows, as a general principle, that a court has not authority to leave in place a conviction or sentence that violates a substantive

rule, regardless of whether the conviction or sentence became final before the rule was announced...There is no grandfather clause that permits states to enforce punishments the Constitution forbids. To conclude otherwise would undercut the Constitution's substantive guarantees." Montgomery v. Louisiana, 577 U.S. 190, 136 S.Ct. 718 (2016). Under the above set out principles there is absolutely no ambiguity regarding the "imposition of a conviction or sentence in violation of a substantive rule" or the mandatory remedy for such. This Court in Montgomery, further opined that, "no resources marshaled by a state could preserve a conviction or sentence that the constitution deprives the state of power to impose." Also see Mackey, 401 U.S., at 693, 91 S.Ct. 1160. The above constitutional interpretation being the supreme law of the Land, with profound precedential value, declare that "no resources marshaled.....could preserve a conviction or sentence that the constitution deprives the state of power to impose." "Any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Art. VI cl. 2. In light of the above, several important constitutional questions arise. "Whether the application of the AEDPA's limitation period or state statute of limitations, to judgments rendered void ab initio is an unconstitutional application?" "Whether the AEDPA's or equivalent State statutory filing period violates a claimants substantive entitlements by precluding review of jurisdictional claims?" "Whether a judgment entered without jurisdiction can be constitutionally reconciled with lawful proceedings?" "Whether continued prosecution of Indians who commit offenses in Indian Country violates the Supremacy and Due Process Clauses of the U.S. Constitution?" "Whether a State can continue to enforce a void judgment rendered in violation of the constitution?" "Whether a void judgment can become final for purposes of statutes of limitations?"

Petitioner asserts that the current application of habeas statutes of limitations on filing for review in cases of jurisdictional challenges undermines the traditional purpose of the writ, and violates the constitutional entitlements by unconstitutional preclusion of review and thereby encouraging and permitting the Oklahoma State courts to continue its unlawful encroachment upon federal and tribal jurisdictions. It is imperative that this Court intervene and therewith issue mandate regarding the issues presented herein. Pleading against a void judgment, in bar, in ordinary terms, states that a void judgment could be challenged regardless of statutory limitations restrictions. Because the judgment is a nullity, non-existent, and available for no purpose other than dismissal of the cause. Petitioner implores this Court to accept this case for review and issue a mandate to the lower

federal and state courts setting out and holding that the types of jurisdictional issues presented herein are not subject to statutory procedural limitations. IT IS SO PRAYED!

IV. THIS CASE PRESENTS ISSUES OF NATIONAL IMPORTANCE.

ARGUMENTS AND AUTHORITIES

Questions concerning the interaction between State procedural bars and federal jurisdictional limitations have become increasingly significant, particularly in cases involving Indian Country jurisdiction, the Major Crimes Act, and the constitutional limits of state criminal authority.

The decisions below permits state and federal courts to rely upon procedural doctrines to avoid determining whether the state possessed lawful authority to prosecute at all. Such rulings undermine confidence in the integrity of criminal judgments and create uncertainty regarding the constitutional limits of state power.

Review by this Court is necessary to ensure uniformity in the treatment of jurisdictional claims across the nation, and to preserve the supremacy of federal law.

For as far back as 1880, this Court has held that, "a conviction obtained under an unconstitutional law warrants habeas relief." And that substantive rules must have retroactive effect regardless of when the defendant's conviction became final. Ex parte Siebold, 100 U.S. 371, 25 L.Ed 717. It is important to national interests and to this Court, that the issues presented in this case be resolved in accordance with the Constitution in order to protect the rights of the people and to provide a constitutional benchmark regarding national policy mandating review and correction of void judgments entered by courts in complete absence of jurisdiction, whereby the states can operate within the limits of the law, while simultaneously, strengthening public confidence in the judiciary and its orderly and lawful operations thereto. Currently, the United States Court of Appeals for the Tenth Circuit, the federal district courts in the State of Oklahoma and the Oklahoma State courts, all share the opinion that the question of jurisdiction may be waived or forfeited, and that state and federal statutory procedural limitations can preclude review of void judgments, and thereby render a void judgment enforceable in contrast to established law. The unlawful abuse of discretion by the lower courts in completely ignoring, this Courts precedents in exchange for lower court

precedents, undermines public confidence in the judiciary and creates confusion and uncertainty in the adversarial system. Adherence to substantive rules, and the doctrine of fundamental error are carefully guarded by this Court. The mandates set out by this Court are the supreme law of the land and must be followed by all courts across the Nation. Defiance exhibited through non compliance by a state or lower federal court in Oklahoma could be potentially infectious to other courts across the nation. Therefore, it is imperative that this Court accept this case for review and herewith, resolve the jurisdictional disputes presented herein for posterity.

V. THE UNITED STATES COURT OF APPEALS ERRED IN DENYING A C.O.A.

"A C.O.A. will issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253 (c)(2). This standard requires "a demonstration that...includes showing the reasonable jurists could debate whether...the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000).

This instant case presents, a matter of an Oklahoma Court entering judgment without jurisdiction to exercise power over the subject or the subject matter. The subject involved an Indian who committed criminal offenses in Indian Country. Petitioner is an Indian. His tribal bloodline is documented through his biological father, brother, and mother's enrollment in the Cherokee Nation. The Oklahoma District Court denied petitioner's application for post-conviction relief, after an evidentiary hearing, held without affording petitioner his 6th Amendment right to have the assistance of counsel, based upon petitioner's inability to prove his Indian bloodline, although petitioner had presented the tribal enrollment numbers of his relatives as evidence. Petitioner thereafter, sought review in the United States District Court for the Northern District of Oklahoma due to the principles of "Federal Question Jurisdiction" "Due Process of the Laws", and "the Supremacy Clause."

28 U.S.C. § 1331. Federal Question, provides, " The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

Congressionally enacted, the above statutory provision grants "original jurisdiction of all civil action arising under the constitution, laws, or treatise of the United States. The Cherokee Nation Treaty of 1866, the Act of 1893, and the Major Crimes Act, 18 U.S.C. § 1151 et seq. are Treatise and laws derived from the Constitution which are applicable in the context of this instant case.

This Courts decision in Sebelius v. Auburn Regional Medical Center, 133 S.Ct. 817, 568 U.S. 145, 184 L.Ed 2d 627, *153, **824 (2013), upheld the non-finality of a judgment entered without jurisdiction to become final. "Objections to a tribunal's jurisdiction can be raised at any time, even by a party that once conceded the tribunal's subject-matter jurisdiction over the controversy." Also see U.S. v. Cotton, 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed. 2d 860 (2002).

Pursuant to Federal Question jurisdiction, the Federal District Court had original jurisdiction of the subject matter involved in this case and could therefore have exercised its power to correct the void judgment and sentence entered by the lower state courts.

The Major Crimes Act, applicable through the supremacy clause, preempts the state court from prosecuting Indians who commit public offenses in Indian country by the grant of "Exclusive jurisdiction". 18 U.S.C. § 1153(a).

"A C.O.A. will issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253 (c)(2). This standard requires "a demonstration that...includes showing the reasonable jurists could debate whether...the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000). Petitioner asserts that the above demonstrates that, (1) The Major Crimes Act is an enactment which was created by the United States Congress in pursuance of the United States Constitution; (2) The U.S. Constitution, Acts of Congress, and decisions of the United States Supreme Court are the supreme laws of the Land; (3) The mandatory language provided in the Major Crimes Act granting exclusive jurisdiction to the federal government, preempts state power to act in cases involving Indians committing public offenses in Indian Country; (4) Petitioner is an Indian; (5) Judgments entered by a court without jurisdiction are void ab initio, and require correction; (6) Judgments in complete absence of jurisdiction are void and are open for challenge, at any stage of the proceedings and can never become final for the purposes of statutes of limitations; and that Statutes of limitations can never be applied to void judgments.

According to this Courts decision in Montgomery v. Louisiana, 577 U.S. 190, 136 S.Ct. 718 (2016), "A conviction or sentence imposed in violation of a substantive rule is not just erroneous, but contrary to law and, as a result, void. It follows, as a general principle, that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced...There is no grandfather clause that permits States to enforce punishment the Constitution forbids. To conclude otherwise would undercut the Constitution's substantive guarantees." Further, in Montgomery, this Court opined that Teague was not applicable in the realm of substantive rules, for no resources marshaled by a State could preserve a conviction or sentence that the Constitution deprives the State of power to impose. Also see Mackey, 401 U.S. at 693, 91 S. Ct. 1160.

Instantly, Petitioner asserts that his rights to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, to have the effective assistance of counsel for his defense, and to have due process of the laws, are substantive rules which were violated in this case by the state of Oklahoma, all of which are substantive constitutional rights guaranteed under the 6th and 14th Amendments. Debatable issues in this case include, but are not limited to:

1. Whether the exclusive language provided in the MCA preempts state action regarding Indians committing offenses in Indian Country?

2. Whether the State usurped federal jurisdiction by prosecuting Indians who committed offenses in Indian Country?

3. Whether a judgment that is void ab initio can constitutionally become final?

4. Whether statutes of limitations can foreclose review of void judgments in contrast to Supreme Court decisions holding that void ab initio judgments may be challenged at any time, regardless of whether the judgment or sentence has become final?

5. Whether a State could constitutionally enforce void judgments entered without lawful authority?

6. Whether Supreme Court standards set out in Montgomery v. Louisiana, 577 U.S. 190, 136 S.Ct 718 (2016), are applicable in cases, as this one, i.e., "no resources marshaled by a state could preserve a conviction or sentence that the Constitution deprives the State of power to impose." Also see Mackey, 401 U.S. at 693, 91 S.Ct. 1160?

Petitioner further asserts that the above are substantial demonstrations, showing that reasonable jurists could debate whether the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further. A judgment rendered in absence of lawful jurisdiction creates structural error that cannot be constitutionally reconciled.

This Courts decision in Teague, continued a long tradition of recognizing that substantive rules must have retroactive effect regardless of when the defendant's conviction became final; for a conviction under an unconstitutional law "is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment." Montgomery v. Louisiana, 577 U.S. 190, 136 S.Ct 718 (2016), citing Siebold, 100 U.S. 371, 10 Otto 371, 25 L.Ed 717 (1879) and Teague, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334(1989). The syllogism utilized by this Court in reaching the conclusions set forth in the above decisions are premised upon substantive constitutional rules and ensuring adherence thereto, including the rights to a fair trial as guaranteed under the 6th Amendment, and to have due process of the laws pursuant to the 14th Amendment to the Federal Constitution. The United States Court of Appeals for the Tenth Circuit denied a C.O.A. and habeas review based upon its own precedents. See attached Order, Ex. "A"

Therefore, the United States Court of Appeals for the Tenth Circuit erred by solely relying on its own precedents, in conflict with this Courts decisions, and thereby applying the AEDPA statutes of limitations to deny habeas relief in a case where the judgment entered was absolutely void ab initio.

CONCLUSION

Therefore, the above being premised, Petitioner humbly requests this Court to accept this case for review, and resolve the confusion and/or defiance by the lower federal and state courts in the State of Oklahoma and the United States Court of Appeals for the Tenth Circuit, regarding the application of statutes of limitations to jurisdictional challenges, and thereby remand this case to the United States Court of Appeals for the Tenth Circuit, directing the court of appeals to remand the case to the United States District Court for the Northern District of Oklahoma with instructions to assume §1331 federal question jurisdiction and dismiss the void judgment entered by the state court, and grant petitioner a constitutional trial.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

/s/ Steven Adair

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OKLAHOMA STATE REFORMATORY
P.O. BOX 514
GRANITE, OKLAHOMA 73547

APPENDIX INDEX

Appendix A- Opinion and judgment of the United States Court of Appeals for the Tenth Circuit.

CERTIFICATE OF MAILING

I, Steven Lee Adair do certify that on the 26 day of June, 2026, the foregoing was placed in the institutional mailbox for forwarding to the Clerk of the United States Supreme Court, United States postage prepaid.

Steven adair
Steven Lee Adair

CERTICATE OF SERVICE

I certify that a true and correct copy of the Petition for a Writ of Certiorari was served upon the Respondent by depositing the same in the United States Mail, Postage prepaid, addressed to: Mr. Gentner Drummond, Oklahoma Attorney General. Office of the Attorney General, 313 N.E. 21st Street, Oklahoma City, Oklahoma, 73105, on this 26 day of June, 2026.

Steven
STEVEN LEE ADAIR

FILED
United States Court of Appeals
Tenth Circuit

March 31, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

STEVEN LEE ADAIR,

Petitioner - Appellant,

v.

CHRIS RANKINS, Warden,

Respondent - Appellee.

No. 25-5175
(D.C. No. 4:23-CV-00061-JFH-SH)
(N.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **TYMKOVICH**, **PHILLIPS**, and **FEDERICO**, Circuit Judges.

Petitioner Steven Adair seeks a certificate of appealability from the district court's denial of his 28 U.S.C. § 2254 habeas petition as untimely. Because the correctness of the district court's procedural ruling is beyond debate, we **DENY** the request and **DISMISS** this appeal.

I. Background

In November 2015, Adair pleaded guilty in Oklahoma court to two counts of first-degree murder, one count of kidnapping, one count of assault and battery with a deadly weapon, and one count of attempted first-degree arson. In exchange for his

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

plea, the State declined to seek the death penalty, and the court sentenced Adair to incarceration for life without the possibility of parole. He never sought review in the Oklahoma Court of Criminal Appeals. But in April 2021, Adair applied for postconviction relief in Oklahoma district court, arguing the sentencing court lacked jurisdiction because he is an Indian and the crimes were committed in Indian country. *See McGirt v. Oklahoma*, 591 U.S. 894, 898 (2020). The court denied Adair's application in May 2021, and once again, Adair did not appeal.

In February 2023, Adair filed a pro se petition for habeas under 28 U.S.C. § 2254 in the Northern District of Oklahoma. His petition raised three claims: (1) his state incarceration violates his constitutional right to due process because the State lacked jurisdiction to prosecute him for crimes he committed in Indian country; (2) his trial counsel's failure to investigate and raise the Indian country jurisdiction claim was constitutionally deficient; and (3) the prosecutor deprived him of due process by prosecuting him despite the State's lack of jurisdiction.

The district court determined Adair's petition was barred by the Antiterrorism and Effective Death Penalty Act's (AEDPA) statute of limitations because he filed it more than one year after his conviction became final. *See* 28 U.S.C. § 2244(d)(1). The court found no grounds to toll the limitations period, dismissed the petition, and declined a certificate of appealability (COA).

II. Discussion

Adair must secure a COA for this court to consider the merits of his appeal. *Slack v. McDaniel*, 529 U.S. 473, 482 (2000). He can only get one if he makes "a

substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Because the district court denied his petition on procedural grounds, Adair must show that "jurists of reason" could debate both "whether the petition states a valid claim of the denial of a constitutional right" and "whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484. When a district court correctly invokes a procedural bar to dispose of a habeas petition, the case "should not be allowed to proceed further." *Id.*

AEDPA imposes a one-year statute of limitations for state prisoners to file a habeas petition. 28 U.S.C. § 2244(d)(1). The limitations period begins on the latest of four possible accrual dates, which here is "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." *Id.* § 2244(d)(1)(A). The district court correctly noted that Adair's conviction became final on November 16, 2015, when time expired for him to withdraw his plea and pursue direct review through an appeal to the Oklahoma Court of Criminal Appeals. Since he did not, the limitations period began the next day and expired on November 17, 2016. *See Harris v. Dinwiddie*, 642 F.3d 902, 906 n.6 (10th Cir. 2011). Adair did not file his petition until February 2023; over six years past the expiration date.

Adair now contends that the district court's timeliness ruling was debatable because AEDPA's limitations period should not apply to jurisdictional challenges. He argues a lack of subject matter jurisdiction renders a judgment void *ab initio* and prevents it from becoming final. But we have previously "explained that a

petitioner's challenge to the convicting court's jurisdiction is considered a due process challenge and is subject to AEDPA's one-year limitations period." *Warnick v. Harpe*, No. 22-5042, 2022 WL 16646708, at *2 (10th Cir. Nov. 3, 2022) (citing *Yellowbear v. Wyo. Att'y Gen.*, 525 F.3d 921, 924 (10th Cir. 2008) ("Absence of jurisdiction in the convicting court is . . . a basis for federal habeas corpus relief cognizable under the due process clause.")). And we have rejected the same argument in the *McGirt* jurisdictional context several times. *See Owens v. Whitten*, No. 22-5106, 2022 WL 17972141, at *1 (10th Cir. Dec. 28, 2022); *Warnick*, 2022 WL 16646708, at *2–3. Thus, the application of AEDPA's time bar was neither "debatable [nor] wrong."[1] *Slack*, 529 U.S. at 484.

[1] Adair does not challenge the district court's refusal to toll the statute of limitations. Even if he had, our precedent forecloses the possibility of equitable tolling based on a *McGirt* jurisdictional defect. *See Pacheco v. Habti*, 62 F.4th 1233, 1241–46 (10th Cir. 2023). Adair's remaining arguments address the merits of his constitutional claims, and since we find the district court properly applied AEDPA's statute of limitations, we do not consider them further. *See Slack*, 529 U.S. at 485 (explaining the doctrine of constitutional avoidance "allows and encourages the court to first resolve procedural issues").

III. Conclusion

For the foregoing reasons, we deny Adair's request for a certificate of appealability and dismiss this appeal. We grant his motion for leave to proceed in forma pauperis.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STEVEN LEE ADAIR,

Petitioner,

v.

CHRIS RANKINS, Warden,[1]

Respondent.

Case No. 23-CV-0061-JFH-SH

OPINION AND ORDER

Before the Court is the Petition for a Writ of Habeas Corpus, under 28 U.S.C. § 2254 ("Petition") filed by Petitioner Steven Lee Adair. Dkt. No. 1. Adair challenges the lawfulness of his custody under the criminal judgment entered against him in Washington County District Court Case No. CF-2014-400. Adair claims he is in state custody in violation of federal law because: (1) he is Indian, and the State of Oklahoma did not have jurisdiction to prosecute him for major crimes he committed in Indian country; (2) his attorney provided constitutionally deficient representation by failing to investigate and raise the Indian country jurisdiction claim; and (3) the prosecutor committed misconduct by prosecuting him when the State lacked jurisdiction. Respondent urges the Court to dismiss the Petition because Adair's claims are barred by the one-year statute of limitations prescribed in 28 U.S.C. § 2244(d)(1) and because Adair did not exhaust available state remedies as required by 28 U.S.C. § 2254(b)(1)(A).

Having considered the Petition, Respondent's Response [Dkt. No. 8], Adair's Reply [Dkt. No. 9], the record of state court proceedings, and applicable law, the Court finds and concludes that the Petition shall be DISMISSED with prejudice as barred by the statute of limitations.

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[1] Respondent's last name is Rankins. Dkt. No. 8 at 1 n.1. The Clerk of Court shall correct the record to show Respondent's name as Chris Rankins.

BACKGROUND

In November 2015, Adair pleaded guilty to two counts of first-degree murder, one count of kidnapping, one count of assault and battery with a deadly weapon, and one count of attempted first-degree arson. Dkt. No. 8-2 at 10-11; Dkt. No. 8-3 at 6.[2] In exchange for his guilty pleas, the State agreed not to pursue the death penalty. *Id.* The trial court accepted Adair's guilty pleas and imposed two terms of life without the possibility of parole ("LWOP"), to be served consecutively to each other, and three terms of ten years' imprisonment, to be served concurrently with each other and with the first LWOP term. Dkt. No. 8-1. Adair did not move to withdraw his pleas or file a certiorari appeal in the Oklahoma Court of Criminal Appeals ("OCCA").[3] Dkt. No. 8-2 at 12; Dkt. No. 1 at 2.

In April 2021, Adair applied for postconviction relief in state district court. Dkt. Nos. 8-4, 8-5. Adair argued that the State violated his constitutional rights to due process because he is Indian, and the State did not have jurisdiction to prosecute him for crimes he committed in Indian country. Dkt. No. 8-4 at 2.[4] The state district court denied Adair's application in May 2021, concluding that Adair did not present any evidence to support his status as an Indian at the time of

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[2] The Court's citations refer to the CM/ECF header pagination.

[3] Under Oklahoma law, a defendant convicted on a guilty plea must move to withdraw the plea within ten days of sentencing if the defendant intends to file a certiorari appeal in the OCCA. *Clayton v. Jones*, 700 F.3d 435, 441 (10th Cir. 2012).

[4] In support of his Indian country jurisdiction claim, Adair primarily relied on the United States Supreme Court's July 2020 decision in *McGirt v. Oklahoma*, 591 U.S. 894 (2020). The *McGirt* Court held that because Congress did not disestablish the Muscogee (Creek) Nation Reservation the land within the boundaries of that reservation is "Indian country," as defined in 18 U.S.C. § 1151(a), and the federal government thus has exclusive jurisdiction, under 18 U.S.C. § 1153(a), to prosecute Indians for committing certain crimes within the boundaries of that reservation. *McGirt*, 591 U.S. at 913, 932-34.

his offenses. Dkt. No. 8-6.[5] Adair did not file a postconviction appeal in the OCCA. Dkt. No. 8-2 at 13; Dkt No. 9 at 9-10.

Adair commenced this federal habeas action in February 2023, without counsel. Dkt. No. 1.[6] As previously stated, he raises three claims. First, he claims he is in state custody in violation of his constitutional right to due process because he is Indian, and the State did not have jurisdiction to prosecute him for crimes he committed in Indian country. Dkt. No. 1 at 12-21. Second, he claims his trial counsel provided constitutionally deficient representation, in violation of the Sixth Amendment, by failing to investigate and raise the Indian country jurisdiction claim. *Id.* at 21-25. Third, he claims the prosecutor committed misconduct, and deprived him of due process, by prosecuting him despite the State's lack of jurisdiction. *Id.* at 27-29.

Respondent contends the Petition should be dismissed because these claims are untimely and Adair did not exhaust available state remedies by fairly presenting them to the OCCA. Dkt. No. 8. Adair contends it is unconstitutional to apply the statute of limitations or require exhaustion when his criminal judgment is void for lack of jurisdiction. Dkt. No. 9.

DISCUSSION

A federal court may grant federal habeas relief to "a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). But "[t]o ensure that federal habeas

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[5] In determining whether a criminal defendant is Indian for purposes of federal law, a "court must make factual findings that the defendant '(1) has some Indian blood; and (2) is recognized as an Indian by a tribe or by the federal government.'" *United States v. Prentiss*, 273 F.3d 1277, 1280 (10th Cir. 2001) (quoting *Scrivner v. Tansy*, 68 F.3d 1234, 1241 (10th Cir. 1995)). Further, the court must find that the defendant was an Indian, under this two-part test, at the time he or she committed the offenses. *United States v. Hatley*, 153 F.4th 1112, 1120-23 (10th Cir. 2025).

[6] Because Adair appears without counsel, the Court liberally construes the Petition. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

corpus retains its narrow role, [the Antiterrorism and Effective Death Penalty Act ("AEDPA")] imposes several limits on habeas relief, and [the Supreme Court] ha[s] prescribed several more." *Shinn v. Ramirez*, 596 U.S. 366, 377 (2022). "And even if a prisoner overcomes all of these limits, he is never entitled to habeas relief. He must still 'persuade a federal habeas court that law and justice require [it]." *Id.* (alteration in original) (quoting *Brown v. Davenport*, 596 U.S. 118, 134 (2022)).

A. Request for Recusal

As a preliminary matter, Adair suggests that this Court should recuse from this case under 28 U.S.C. § 455. Dkt. No. 9 at 1-4. Under § 455(a), a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Adair appears to contend he will be deprived of his right to an impartial tribunal if the undersigned adjudicates his Petition because the undersigned screened the Petition and directed Respondent to file a limited response addressing timeliness and exhaustion. Dkt. No. 9 at 1-4; *see* Dkt. No. 6 (directing Respondent to file limited response).

These circumstances do not provide a basis for recusal. Rule 4, *Rules Governing Section 2254 Cases in the United States District Courts*, directs a district judge to "promptly examine" a habeas petition and determine whether the petition should be summarily dismissed. That same rule provides that, if the judge determines that the petition should not be dismissed, the judge "must order the respondent to file an answer, motion, *or other response* within a fixed time, or *to take other action the judge may order*." Rule 4, *Rules Governing Section 2254 Cases in the United States District Courts* (emphases added). The commentary to this rule explains that Rule 4 "afford[s] the judge flexibility in a case where either dismissal or an order to answer may be inappropriate," for example, when dismissal may be warranted on procedural grounds like

"fail[ure] to exhaust state remedies." *See id.* (advisory committee notes, 1976 adoption, paragraph 5). Because this Court's application of Rule 4 to screen Adair's Petition and order a limited response addressing two procedural issues does not evidence impartiality, the Court DENIES Adair's request for recusal.

B. Timeliness of Petition

State prisoners seeking federal habeas relief under 28 U.S.C. § 2254 have one year from the latest of four events to file a petition. 28 U.S.C. § 2244(d)(1). These events include:

> (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
>
> (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
>
> (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
>
> (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1)(A)-(D). For most prisoners the limitations period runs from the date the judgment became "final" under § 2244(d)(1)(A). *Preston v. Gibson*, 234 F.3d 1118, 1120 (10th Cir. 2000). A judgment is final, for purposes of § 2244(d)(1)(A), when the prisoner can no longer seek direct review of the judgment. *Gonzalez v. Thaler*, 565 U.S. 134, 150 (2012). The prisoner bears the burden of showing that his limitations period commenced under a different provision of § 2244(d)(1). *Preston*, 234 F.3d at 1120. In some circumstances, the limitations period is tolled by statute and may be extended through equitable tolling. 28 U.S.C. § 2244(d)(2); *Holland v. Florida*, 560 U.S. 631, 645, 649 (2010).

1. Section 2244(d)(1)(A) provides the applicable limitations period.

Adair has not shown that any provision other than § 2244(d)(1)(A) applies. Instead, he appears to assert that no provision of § 2244(d)(1) applies because the State lacked jurisdiction to prosecute him. Dkt. No. 1 at 8-10; Dkt. No. 9 at 4-8. Contrary to Adair's position, a claim alleging an absence of jurisdiction in the convicting court is not exempt from § 2244(d)(1)'s one-year statute of limitations. *See Pacheco v. Habti*, 62 F.4th 1233, 1245 (10th Cir. 2023) ("When Congress enacted the limitations period . . . it discerned no reason to provide a blanket exception for jurisdictional claims."); *Owens v. Whitten*, 637 F. Supp. 3d 1245, 1251 (N.D. Okla. 2022) ("[L]ike any other cognizable habeas claim, a claim alleging an absence of jurisdiction in the convicting court is subject to the AEDPA's one-year statute of limitations and may be dismissed as untimely."). Moreover, case law in this circuit "make[s] clear" that in nearly all cases, "the one-year limitations period set out in § 2244(d)(1)(A), rather than the ones set out in § 2244(d)(1)(C) and/or (D), applies to *McGirt*-based challenges to the validity of state convictions." *Owens v. Whitten*, No. 22-5106, 2022 WL 17972141, at *1 (10th Cir. Dec. 28, 2022) (unpublished);[7] *see also Pacheco*, 62 F.4th at 1246 (rejecting petitioner's argument that *McGirt* announced a new constitutional right that would support application of § 2244(d)(1)(C) to calculate petitioner's limitations period).

Based on the foregoing, the Court considers only whether Adair's claims are timely under § 2244(d)(1)(A) and concludes they are not. Adair's judgment became final on November 16, 2015, when the time expired for him to move to withdraw his plea, the first and necessary step in pursuing direct review through a certiorari appeal to the OCCA. *Gonzalez*, 565 U.S. 150; *Clayton*,

[7] The Court cites all unpublished decisions herein for their persuasive value. Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

700 F.3d at 441. His limitations period began to run the next day, November 17, 2015, and, absent any tolling events, expired one year later, November 17, 2016. *Harris v. Dinwiddie*, 642 F.3d 902, 906 n.6 (10th Cir. 2011). Absent statutory or equitable tolling, Adair's claims are time-barred.

2. Tolling is not available to extend the limitations period.

As Respondent contends, neither statutory nor equitable tolling is available. Dkt. No. 8 at 6, 10-12. Under 28 U.S.C. § 2244(d)(2), the limitations period is tolled while "a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending." But statutory tolling is available only when a petitioner properly files an application before the applicable limitations period expires. *Clark v. Oklahoma*, 468 F.3d 711, 714 (10th Cir. 2006). As just discussed, Adair's limitations period expired in November 2016. And he did not seek postconviction relief in state district court until April 2021, after his limitations period expired. The Court therefore finds that statutory tolling is not available.

To obtain equitable tolling, Adair must show that he "diligently pursue[d] his claims and . . . that the failure to timely file [a federal habeas petition] was caused by extraordinary circumstances beyond his control." *Marsh v. Soares*, 223 F.3d 1217, 1220 (10th Cir. 2000). And he bears "a strong burden to show specific facts" supporting his request for equitable tolling. *Yang v. Archuleta*, 525 F.3d 925, 928 (10th Cir. 2008) (quoting *Brown v. Barrow*, 512 F.3d 1304, 1307 (11th Cir. 2008)). Even granting Adair the benefit of liberal construction afforded to self-represented litigants, the Court finds no specific facts in the Petition or the Reply showing either that Adair diligently pursued his federal habeas claims or that extraordinary circumstances prevented him from filing a habeas petition before his limitations period expired in 2016. The

Court thus finds no equitable reasons to toll the limitations period.[8]

CONCLUSION

Based on the foregoing, the Court concludes that 28 U.S.C. § 2244(d)(1)'s one-year statute of limitations bars Adair's request for federal habeas relief as to all three claims he identifies in the Petition. The Court therefore DISMISSES with prejudice the Petition. And because the statute of limitations presents a plain procedural bar, the Court DENIES a certificate of appealability. 28 U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

IT IS THEREFORE ORDERED that: (1) Adair's request for the undersigned to recuse, as asserted in the Reply [Dkt. No. 9] is DENIED; (2) the Petition [Dkt. No. 1] is DISMISSED with prejudice as barred by 28 U.S.C. § 2244(d)(1)'s one-year statute of limitations; (3) a certificate of appealability is DENIED; and (4) a separate judgment of dismissal shall be entered in this matter.

IT IS FURTHER ORDERED that the Clerk of Court shall correct the record to reflect Respondent's name is Chris Rankins.

Dated this 7th day of November, 2025.

JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE

[8] In rare cases, a credible claim of actual innocence may permit review of untimely claims. *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013). However, even generously construing the Petition and Reply, the Court discerns no credible claim of actual innocence. *See* Dkt. Nos. 1 and 9, generally. As Respondent contends, Adair's primary complaint is that his criminal judgment is "void" because he was tried in the wrong court, and this complaint does not implicate "actual innocence" for purposes of applying *Perkins*'s equitable exception to the statute of limitations. Dkt. No. 8 at 12-14; *see Pacheco*, 62 F.4th at 1241-46 (discussing *Perkins* and stating its exception did not apply to permit review of an untimely Indian country jurisdiction claim because the habeas petitioner's "actual-innocence claim is not based on evidence regarding what she did, but on where she did it").