

No. 21-6462

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IN THE  
**Supreme Court of the United States**

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CLARENCE ROZELL GOODE, JR.,  
*Petitioner,*

*v.*

OKLAHOMA,  
*Respondent.*

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

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**BRIEF IN OPPOSITION**

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**CAPITAL CASE**  
**QUESTION PRESENTED**

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

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## BRIEF IN OPPOSITION

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

1. Petitioner Clarence Rozell Goode, Jr., murdered Mitch Thompson, his wife Tara Burchett-Thompson, and Ms. Burchett-Thompson's ten-year-old daughter Kayla. Petitioner and Mr. Thompson were involved in an on-going dispute which turned physical. In retaliation for Mr. Thompson's attack on petitioner's friend with a baseball bat, petitioner and two accomplices broke into the Thompson home and shot the three occupants multiple times. Petitioner was convicted of three counts of murder and one count of first-degree burglary in Oklahoma state court. He was sentenced to death for each count of murder and twenty years' imprisonment for burglary. *See Goode v. State*, 236 P.3d 671, 675 (Okla. Crim. App. 2010).

2. After oral argument in *McGirt*, petitioner filed a fourth application for postconviction relief in state court. For the first time, petitioner argued that the State lacked authority to prosecute him because he qualifies as Indian and his crimes occurred within the borders of the historical Cherokee territory. The Court of Criminal Appeals denied that application as premature, and petitioner re-filed after *McGirt* was decided.

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

3. As more fully explained in *Parish*, when this Court decided *McGirt*, it recognized that many state inmates who attempt to seek release under its decision would nonetheless remain in state custody "thanks to well-known state

and federal limitations on postconviction review in criminal proceedings.” 140 S. Ct. at 2479. The Oklahoma Court of Criminal Appeals took *McGirt* at its word, applying one such well-known limitation: claims seeking to apply new decisions retroactively are, as a general rule, not redressable when raised for the first time on postconviction review.

Petitioner, who stands convicted of three counts of murder after a full and fair trial and appellate process (where his current contentions were never raised), nonetheless seeks review of the Court of Criminal Appeals’ state law decision. For the reasons given by the State in *Parish*, certiorari is unwarranted. The State respectfully requests that the Court refer to that brief when considering the petition here.

### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully Submitted,

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January 3, 2022