

**Capital Case**

Case No. \_\_\_\_\_

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**In the  
Supreme Court of the United States**

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CLARENCE ROZELL GOODE, JR.,  
*Petitioner,*  
v.  
THE STATE OF OKLAHOMA,  
*Respondent*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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No. \_\_\_\_\_

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**CAPITAL CASE**

**QUESTION PRESENTED**

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

## **PARTIES TO THE PROCEEDINGS**

The parties to this action are named in the caption.

## **RELATED PROCEEDINGS**

*Goode v. State*, No. PCD-2020-530, Oklahoma Court of Criminal Appeals, Application for Post-conviction Relief denied October 14, 2021.

*United States v. Goode*, No. 21-CR-165-CVE, United States District Court for the Northern District of Oklahoma. Order dismissing indictment without prejudice entered September 13, 2021.

*Goode v. State*, No. PCD-2020-333, Oklahoma Court of Criminal Appeals, Application for *McGirt* Post-conviction Relief dismissed as premature June 9, 2020.

*Goode v. Sharp*, No 19-6857, United States Supreme Court. Petition for Writ of Certiorari denied February 24, 2020.

*Goode v. Carpenter*, No. 16-5124, United States Court of Appeals for the Tenth Circuit. Judgment entered April 29, 2019.

*Goode v. Duckworth*, No. 11-CV-150-GKF-FHM, United States District Court for the Northern District of Oklahoma. Judgment entered July 11, 2016.

*Goode v. State*, No. PCD-2012-261, Oklahoma Court of Criminal Appeals, Application for Post-conviction Relief denied May 2, 2012.

*Goode v. Oklahoma*, No. 10-7994, United States Supreme Court. Petition for Writ of Certiorari denied February 22, 2011.

*Goode v. State*, No. PCD-2010-661, Oklahoma Court of Criminal Appeals. Judgment entered Sept. 28, 2010.

*Goode v. State*, No. PCD-2008-211, Oklahoma Court of Criminal Appeals. Judgment entered Sept. 7, 2010.

*Goode v. State*, No. D-2008-43, Oklahoma Court of Criminal Appeals. Judgment entered June 9, 2010.

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**PETITION FOR A WRIT OF CERTIORARI**

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Petitioner Clarence Rozell Goode respectfully petitions this Court for a writ of certiorari to review the judgment of the Oklahoma Court of Criminal Appeals (OCCA) in *Goode v. State*, No. PCD-2020-530 (Okla. Crim. App. Oct. 14, 2021).

**OPINIONS AND ORDERS BELOW**

The opinion of the OCCA denying Mr. Goode's subsequent state post-conviction action is unpublished but available in the appendix. *Goode v. State*, No. PCD-2020-530 (Okla. Crim. App. Oct. 14, 2021). See Appendix A (Pet. App. at 1-4) (Petitioner's Appendix). The Findings of Fact and Conclusions of Law by the Tulsa County District Court determining Mr. Goode is an Indian and the

crimes occurred in Indian Country is unpublished but available in the appendix. *State v. Goode*, No. CF-2005-3904, (Tulsa Cnty. Dist. Ct. Nov. 30, 2020). Appendix B (Pet. App. at 5-12) The order of the OCCA finding the issue of jurisdiction pursuant to *McGirt* properly before it and remanding for an evidentiary hearing is unpublished but available in the appendix. *Goode v. State*, PCD-2020-530 (Okla. Crim. App. Aug. 24, 2020). See Appendix C (Pet. App. at 13-19). The decision of the OCCA dismissing Mr. Goode's first *McGirt* state post-conviction action as premature is unpublished but available in the appendix. *Goode v. State*, PCD-2020-333 (Okla. Crim. App. June 9, 2020). See Appendix D (Pet. App. at 20-24).

## **JURISDICTION**

The OCCA rendered its opinion denying post-conviction relief on October 14, 2021. This petition is being filed within 90 days of that denial. The Court has jurisdiction pursuant to 28 U.S.C. § 1257.

## **RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS**

The Indian Commerce Clause of the United States Constitution, Article I, Section 8, provides in relevant part:

The Congress shall have Power . . . To regulate Commerce . . . with the Indian Tribes.

The Supremacy Clause to the United States Constitution, Article VI, provides in relevant part:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under 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.

The Due Process Clause of the Fourteenth Amendment, Section 1, to the U.S. Constitution provides in relevant part:

No State shall . . . deprive any person of life, liberty, or property, without due process of law.

Title 18, United States Code, Section 1151 (Indian country defined) provides:

Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country”, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Title 18, United States Code, Section 1152 (Laws governing) provides in relevant part:

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

Section 1080 of Title 22 of the Oklahoma Statutes provides:

Any person who has been convicted of, or sentenced for, a crime and who claims:

(a) that the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this state;

(b) that the court was without jurisdiction to impose sentence;

(c) that the sentence exceeds the maximum authorized by law;

(d) that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(e) that his sentence has expired, his suspended sentence, probation, parole, or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

(f) that the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy;

may institute a proceeding under this act in the court in which the judgment and sentence on conviction was imposed to secure the appropriate relief. Excluding a timely appeal, this act encompasses and replaces all common law and statutory methods of challenging a conviction or sentence.

Section 1089(D) of Title 22 of the Oklahoma Statutes provides in relevant part:

8. If an original application for post-conviction relief is untimely or if a subsequent application for post- conviction relief is filed after filing an original application, the Court of Criminal Appeals may not consider the merits of or grant relief based on the subsequent or untimely original application unless:

a. the application contains claims and issues that have not been and could not have been presented previously in a timely original ap-

plication or in a previously considered application filed under this section, because the legal basis for the claim was unavailable, or ....

9. For purposes of this act, a legal basis of a claim is unavailable on or before a date described by this subsection if the legal basis:

a. was not recognized by or could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date, or

b. is a new rule of constitutional law that was given retroactive effect by the United States Supreme Court or a court of appellate jurisdiction of this state and had not been announced on or before that date.

## **STATEMENT OF THE CASE**

### **A. Prior History**

Goode was charged by information in Tulsa County District Court with first-degree burglary and the murders of Kayla Burchett, Tara Burchett-Thompson, and Mitch Thompson. Goode was charged jointly with co-defendants Ronald “Bunny” Thompson and Kenneth “FuFu” Johnson. The trials were severed. Goode’s ten-day capital trial concluded December 12, 2007, and Goode was convicted and found guilty on all counts.

At sentencing, the jury found the existence of two aggravating circumstances, that Goode “knowingly created a great risk of death to more than one person” and that Goode would pose a “continuing threat to society.” The jury

sentenced Goode to death on the murder counts and twenty years imprisonment on the burglary count. He was formally sentenced on January 7, 2008.

On direct appeal, the Oklahoma Court of Criminal Appeals (or OCCA) found no error warranting relief and affirmed the judgment and sentences. *Goode v. State*, 236 P.3d 671 (Okla. Crim. App. 2010). On February 22, 2011, the United States Supreme Court denied Goode's petition for writ of certiorari from his direct appeal. *Goode v. Oklahoma*, 562 U.S. 1231 (2011).

Goode pursued two state post-conviction actions during the pendency of his direct appeal/certiorari proceedings. His original application for post-conviction relief was denied by unpublished opinion. (Opinion Denying Application for Post-Conviction Relief and Evidentiary hearing, *Goode v. State*, PCD-2008-211 (Okla. Crim. App. Sept. 7, 2010)). The second post-conviction application was commenced after *Brady* material came to light, and it was also denied in an unpublished decision. Opinion Denying Petitioner's Subsequent Application for Post-Conviction Relief and Denying Motion for Evidentiary hearing, *Goode v. State*, PCD-2010-661, (Okla. Crim. App. Sept. 28, 2010).

Goode filed his petition for writ of habeas corpus in the United States District Court for the Northern District of Oklahoma. 28 U.S.C. § 2254 Petition for a Writ of Habeas Corpus by a Person in Custody Pursuant the Judgment of a State Court, *Goode v. Workman*, 11-CV-150-GKF-FHM (N.D. Okla. Feb. 21,

2012). Shortly thereafter he filed a third application for post-conviction relief which was denied by the OCCA while the habeas action was still being briefed. Opinion Denying Petitioner’s Successive Application for Post-Conviction Relief and Denying Petitioner’s Motion for Evidentiary hearing, *Goode v. State*, PCD-2012-261 (Okla. Crim. App. May 2, 2012). On July 11, 2016, the United States District Court denied habeas relief and Goode’s motions for discovery and evidentiary hearing. *Goode v. Duckworth*, No. 11-CV-150-GKF-FHM, 2016 WL 3748279 (N.D. Okla. July 16, 2016). The District Court’s decision was affirmed on appeal by the United States Court of Appeals for the Tenth Circuit on April 29, 2019. *Goode v. Carpenter*, 922 F.3d 1136 (10th Cir. 2019). Goode’s petition for writ of certiorari was denied February 24, 2020. *Goode v. Sharp*, 140 S. Ct. 1145 (2020).

## **B. Current Controversy**

On May 18, 2020, Mr. Goode filed a subsequent application for post-conviction relief challenging the State’s jurisdiction to prosecute him. Successive Application for Post-Conviction Relief, *Goode v. State*, PCD-2020-333 (Okla. Crim. App. June 9, 2020). Mr. Goode asserted exclusive jurisdiction rests with the federal courts because Mr. Goode is a citizen of the Creek Nation and the crimes occurred within the boundaries of the Cherokee Nation Reservation. The OCCA concluded Mr. Goode’s claim was “premature” because *McGirt v.*



*Oklahoma*, 140 S. Ct. 2452 (2020) (*McGirt*) and *Sharp v. Murphy*, 140 S. Ct. 2412 (2020) (per curiam) (*Murphy*) were not final decisions. *See* Appendix D (Pet. App. at 23) (Order Dismissing Successive Application for Post-Conviction Relief and Denying Motion to Hold Successive Application in Abeyance at 4, *Goode v. State*, PCD-2020-333 (Okla. Crim. App. June 9, 2020)).

One month later, on July 9, 2020, this Court issued its *McGirt* and *Sharp v. Murphy* opinions. The Court held that the federal government must be held to its word. Because the United States promised to reserve certain lands for tribes in the nineteenth century and never rescinded those promises, those lands remain reserved to the tribes today. Such lands remain “Indian country” within the meaning of the Major Crimes Act (MCA), which divests States of jurisdiction to prosecute “[a]ny Indian” who committed one of the offenses enumerated in Section 1153(a) of Title 18 of the U.S. Code while in “Indian country.” 18 U.S.C. § 1153(a).

Shortly after the final decisions in *Murphy* and *McGirt* were issued by this Court, Mr. Goode filed a subsequent application for post-conviction relief again raising the claim raised in PCD-2020-333, i.e., that exclusive jurisdiction rests with the federal courts because Mr. Goode is a citizen of the Creek Nation and the crimes occurred within the boundaries of the Cherokee Nation Reservation. *See* Appendix E (Pet. App. at 25-62) (Successive Application for Post-Conviction

Relief, *Goode v. State*, PCD-2020-530 (Okla. Crim. App. Aug. 12, 2020). On August 24, 2020, the OCCA remanded Mr. Goode’s case to the District Court of Tulsa County for an evidentiary hearing, seeking fact finding on “two separate questions: (a) Petitioner’s Indian status and (b) whether the crime occurred in Indian Country.” See Appendix C (Pet. App. at 16) (Order Remanding for Evidentiary Hearing at 4, *Goode v. State*, PCD-2020-530 (Okla. Crim. App. Aug. 24, 2020)). The OCCA also specifically stated “[w]e find that the issues raised are issues which fall under the parameters of [Okla. Stat. tit. 22] section 1089(D), and this issue is properly before this Court.” *Id.* at 3. (Pet. App. at 15).

On October 15, 2020, the Tulsa County District Court held an evidentiary hearing to answer the two questions posed. On November 30, 2020, the Tulsa County District Court filed its Findings of Fact and Conclusions of Law, finding “Defendant/Petitioner is an Indian and that the crime occurred in Indian Country.” see Appendix B at 7 (Pet App. at 11) (Findings of Fact and Conclusions of Law, (Tulsa Cnty. Dist. Ct. Nov. 30, 2020).

Both parties filed supplemental briefing in the OCCA. See Appendix F (Pet. App. at 63-87) (Petitioner’s Post-Hearing Supplemental Brief in Support of Successive Application for Post-Conviction Relief, *Goode v. State*, No. PCD-2020-530 (Okla. Crim. App. Dec. 22, 2020)); See Appendix G (Pet. App. at 88-107) ((Supplemental Brief of Respondent After Remand, *Goode v. State*, No.

PCD-2020-530 (Okla. Crim. App. Dec. 22, 2020)). The State did not argue that *McGirt* announced a new rule that could not be retroactively applied. Instead, the State vigorously argued *McGirt* did not announce a new rule. See Appendix G (Pet. App. at 98) (citing *Teague v. Lane*, 489 U.S. 288, 301, 307 (1989); *Walker v. State*, 933 P.2d 327, 338-39 (Okla. Crim. App. 1997) (“*McGirt* was a mere application of, and was dictated by, *Solem v. Bartlett*, 465 U.S. 463 (1984)]. Further, the decision did not break new ground or impose a new obligation on the State . . . .”).

The State sought permission to file another brief citing additional authority and continuing to argue *McGirt* was not based on a new rule. See Appendix H (Pet. App. at 113) (State’s Supplemental Brief Regarding Whether *McGirt* Was Previously Available for Purposes of Barring Claims, *Goode v. State*, No. PCD-2020-530 (Okla. Crim. App. Jan. 22, 2021)<sup>1</sup> (“As Petitioner’s *McGirt* claim was based on well-established precedent, it could have been reasonably formulated before *McGirt* (and in fact was . . .) and is not based on a new rule of constitutional law.”)). The OCCA unanimously denied the State permission to raise the “not relevant” authority. See Appendix J (Pet. App. at 129) (Order

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<sup>1</sup>Mr. Goode’s response to this filing is available at Appendix I (Pet. App. at 120-27) (Petitioner’s Response to State’s Supplemental Brief Regarding Whether *McGirt* Was Previously Available for Purposes of Barring Claim, *Goode v. State*, No. PCD-2020-530 (Okla. Crim. App. Jan. 29, 2021)).

Denying Motion to File Supplemental Brief, *Goode v. State*, No. PCD-2020-530 (Okla. Crim. App. Feb. 2, 2021)).

While Petitioner’s application was pending, the OCCA applied *McGirt* to find the continued existence of and lack of State jurisdiction over the Cherokee Nation, where the crimes Mr. Goode was charged with and convicted of occurred. *See* Appendix K (Pet. App. at 130-38) (*Hogner v. State*, No. F-2018-138, 2021 WL 958412, \_\_\_ P.3d \_\_\_, (Okla. Crim. App. March 11, 2021)). Around this time, similar rulings applied *McGirt* to each of Oklahoma’s “Five Civilized Tribes,” and the OCCA issued published opinions granting post-conviction relief to several capital defendants who were convicted in the absence of jurisdiction in Oklahoma state courts, regardless of whether the void state court convictions were considered final.<sup>2</sup>

Due to the judicially recognized and (still) unalterable fact that the State of Oklahoma never had jurisdiction to prosecute Mr. Goode for the subject crimes, the United States on March 11, 2021 took action to file a criminal complaint against Goode charging him with the subject crimes in the United

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<sup>2</sup> *See, e.g., Bosse v. State*, 484 P.3d 286 (Okla. Crim. App. 2021) (withdrawn); *Cole v. State*, 492 P.3d 11 (Okla. Crim. App. 2021) (withdrawn); *Ryder v. State*, 489 P.3d 528 (Okla. Crim. App. 2021) (withdrawn); *Bench v. State*, 492 P.3d 19 (Okla. Crim. App. 2021) (withdrawn). Consistent with the State’s arguments in Goode’s and others’ cases, in granting post-conviction relief to Shaun Bosse, the OCCA noted the State had argued “that waiver should apply because there is really nothing new about the claim.” *Bosse*, 484 P.3d at 293 n.8.

States District Court for the Northern District of Oklahoma (*United States v. Goode*, No. 21-CR-165-CVE). Mr. Goode was then physically taken off of Oklahoma’s death row and detained by federal authorities in the Northern District of Oklahoma. Court Minutes, *United States v. Goode*, No. 21-CR-165-CVE (N.D. Okla. Mar. 25, 2021); Waiver of Detention Hearing and Consent to Order of Detention Pending Further Proceedings, *United States v. Goode*, No. 21-CR-165-CVE (N.D. Okla. Mar. 25, 2021).

On August 12, 2021, the OCCA reversed course and discarded the settled law it had been relying on (and bedrock jurisdictional principles) by issuing *State ex rel. Matloff v. Wallace*, No. PR-2021-366, 2021 WL 3578089, \_\_\_ P.3d \_\_\_, (Okla. Crim. App. Aug. 12, 2021) (*See* Appendix L (Pet. App. at 139-49). In *Matloff*, the OCCA held *McGirt* “announced a new rule of criminal procedure which we decline to apply retroactively in a state post-conviction proceeding to void a final conviction.” (Pet App. L at 141).

The United States moved to dismissed its federal prosecution of Goode without prejudice, which was granted by the district court. Motion for Leave to Dismiss Without Prejudice, *United States v. Goode*, No. 21-CR-165-CVE (N.D. Okla. Sept. 10, 2021); Order, *United States v. Goode*, No. 21-CR-165-CVE (N.D. Okla. Sept. 13, 2021). On October 14, 2021, the OCCA denied Goode’s *McGirt*

application for post-conviction relief on the basis of *Matloff*. See Appendix A (Pet. App. at 1-4).

### **REASONS THE PETITION SHOULD BE GRANTED**

The petition for writ of certiorari in *Parish v. Oklahoma*, No. 21-467 (arising from *Matloff*), presents the same question presented in this case. As explained in the petition for writ of certiorari in *Parish*, *McGirt* must apply retroactively to convictions that were final when *McGirt* was announced. Mr. Goode’s petition for writ of certiorari is one of several that follows *Parish* and presents the same question.

Under *McGirt*, the federal government has—and always had—exclusive jurisdiction to prosecute the crimes of which Mr. Goode was convicted that occurred in Indian Country. The State has never had the power to do so. By holding *McGirt* is a mere procedural rule that is not retroactive to cases on collateral review, the OCCA has sought to preserve legally void convictions that the State never had authority to impose. Such a regime violates the Supremacy Clause by treating an exclusive allocation of power to the federal government as a mere regulation of the State’s “manner” of trying a case. The decision also violates bedrock principles of due process and centuries-old understandings of habeas corpus. A conviction cannot stand where a State lacks authority to criminalize the conduct, and habeas courts have long set aside judgments by a

court that lacks jurisdiction. If left unreviewed, *Matloff* would condemn many people, including Mr. Goode, to bear state convictions and serve state sentences for crimes the State had no power to prosecute.

A favorable decision in *Parish* would vindicate Mr. Goode's argument that *McGirt* applies retroactively to convictions that were final when *McGirt* was announced. Because the question presented in this case is before the Court in *Parish*, Mr. Goode respectfully requests that the Court hold this petition pending the Court's decision in *Parish*.

## CONCLUSION

Oklahoma has no jurisdiction to proscribe and punish Mr. Goode's conduct, and the State is now holding him without any valid authority to do so. Petitioner Clarence Rozell Goode respectfully requests the Court hold this petition pending disposition of the petition for a writ of certiorari in *Parish v. Oklahoma*, No. 21-467, and then dispose of it as appropriate. If *Parish* is resolved in the petitioner's favor, the Court should grant certiorari, vacate the judgment below, and remand for further proceedings.

Respectfully submitted,

*s/ Thomas D. Hird*

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