

In the Supreme Court of the United States

STATE OF OKLAHOMA,

Petitioner,

v.

DAMEON LAMAR LEATHERS,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), should be overruled.

LIST OF PROCEEDINGS

Oklahoma Court of Criminal Appeals

No. F-2019-962

Dameon Lamar Leathers, Appellant v.
The State of Oklahoma, Appellee

Date of Final Opinion: August 5, 2021

Oklahoma District Court (Tulsa County)

No. CF-2018-1340

The State of Oklahoma, Plaintiff v.
Dameon Lamar Leathers, Defendant

Date of Judgment and Sentence: December 2, 2019

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OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals, dated August 5, 2021, is included in the Appendix at App.1a-11a. The order of the Oklahoma Court of Criminal Appeals, dated April 27, 2021, remanding the case for an evidentiary hearing is included below at App.23a-26a. The Findings and Fact and Conclusions of Law of the District Court in and for Tulsa County, State of Oklahoma, dated May 25, 2021, is included below at App.12a-22a. The order of the Oklahoma Court of Criminal Appeals, dated August 30, 2021, denying the State's motion to stay the mandate pending certiorari review is included

below at App.29a-31a. These opinions and orders were not designated for publication.



JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on August 5, 2021. App.1a. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).



STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1151 (in relevant part) Indian country defined

[T]he 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.

18 U.S.C. § 1153(a) Offenses committed within Indian country

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.



STATEMENT OF THE CASE

Thousands of state criminal prosecutions have been called into question by this Court’s decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). Like the pending petition in *Oklahoma v. Castro-Huerta*, No. 21-429, this case presents the question whether *McGirt* should be overruled. For the same reasons given in the *Castro-Huerta* petition, review is warranted to examine that question. The petition for a writ of certiorari in this case should be held pending consideration of the *Castro-Huerta* petition or, in the alternative, granted.

1. The evening of April 6, 2018, respondent and his accomplice, Lloyd Clemmons, laid in wait outside the Tulsa home of Howard Thompson, planning to rob Howard and burglarize the home, which respondent believed contained “[a] lot of money and a lot of dope.” Tr. II 392, 405-18.¹ As Howard attempted to leave his house, respondent and Clemmons ambushed him, and respondent brandished a gun and demanded his money. Tr. II 418-23. The two accomplices then forced Howard

¹ All fact citations are to the transcript of respondent’s trial (Tr.), which is available below. See Sup. Ct. R. 12.7.

back inside the house and to a bedroom, where respondent pistol-whipped Howard and rummaged through a dresser drawer. Tr. II 423-25. Howard grabbed a gun from underneath the pillow on the bed and began shooting at the two men, who fled from the house. Tr. II 426-34. Shortly thereafter respondent returned to the house alone and gunned down Howard in his driveway. Tr. II 310-11; Tr. IV 612-21.

Respondent was convicted of first-degree murder and robbery with a firearm, both after four prior felony convictions for burglary.² He was sentenced to life imprisonment without the possibility of parole for the murder and forty-five years imprisonment for the robbery. Respondent then appealed to the Court of Criminal Appeals.

2. After this Court issued its decision in *McGirt*, the Court of Criminal Appeals remanded the case to the trial court for an evidentiary hearing. On remand, the parties stipulated that respondent is a member of the federally recognized Muscogee (Creek) Nation with 1/32 Indian blood quantum and the crimes occurred within the historical boundaries of the Cherokee Nation. App.13a-14a. The district court then issued findings of fact and conclusions of law recounting the parties' stipulations and holding that the crime occurred within the Cherokee reservation. App.15a-16a.

After the state district court issued its findings of fact and conclusions of law, the case returned to the

² In addition to his long criminal history, respondent once again proved his dangerousness when, after the jury verdicts were read in open court, he leapt from his seat and attacked the prosecuting attorney, hitting him over the head several times with a water pitcher. Tr. IV 913.

Oklahoma Court of Criminal Appeals. The State filed a brief recognizing that the Court of Appeals was “bound by *McGirt*” but “strenuously disagree[ing] with the holding[] in *McGirt* . . . and preserv[ing] the right to ask the Supreme Court [to overrule *McGirt*].” App.39a, n.2. The Court of Criminal Appeals reversed the convictions, holding that “*McGirt* governs this case and requires us to find the District Court of Tulsa County did not have jurisdiction to prosecute Leathers.” App.5a.

Two judges wrote separate opinions. Judge Hudson specially concurred based on *stare decisis* but reiterated his “previously expressed views on the significance of *McGirt*, its far-reaching impact on the criminal justice system in Oklahoma and the need for a practical solution by Congress.” App.8a.

Judge Lumpkin concurred in the result. App.9a-11a. He expressed his view that the Court’s opinion in *McGirt* “contravened * * * the history leading to the disestablishment of the Indian reservations in Oklahoma,” but concluded that he was bound to follow it. App.9a-11a.



REASONS FOR GRANTING THE PETITION

In the decision below, the Oklahoma Court of Criminal Appeals applied *McGirt* to free yet another criminal from state custody, exacerbating the crisis in the criminal-justice system in Oklahoma. As the State of Oklahoma explains in its petition in *Castro-Huerta*, reconsideration of *McGirt* is the only realistic avenue for ending the ongoing chaos affecting every corner of daily life in Oklahoma. *See* Pet. at 17-29, *Oklahoma v. Castro-Huerta*, No. 21-429. This case presents yet another opportunity to end the damage caused by *McGirt*. If the petition in *Castro-Huerta* is granted, this petition should be held pending a decision in *Castro-Huerta* and then disposed of as is appropriate, or this petition should be granted.

As explained more fully in *Castro-Huerta*, *McGirt* was wrongly decided, and the Court's review is urgently needed because no recent decision has had a more immediate and disruptive effect on life in an American State. *McGirt* contravened longstanding precedent on the disestablishment of Indian reservations. 140 S.Ct. at 2485 (Roberts, C.J., dissenting). It did so by wrongly reasoning that historical materials showing the original public meaning of statutes may be considered in the disestablishment inquiry "only" to "clear up" statutory ambiguity. *See id.* at 2467-2468, 2469-2470 (majority opinion). But consideration of history is necessary precisely because it is unclear whether Congress's alienation of Indian lands at the turn of the century changed the Indian country status of the land. *See id.* at 2488 (Roberts, C.J., dissenting). Under the correct framework prescribed by this Court's precedent, it is

clear that Congress disestablished the Creek territory in Oklahoma, as well as the territories of the four other Oklahoma tribes. And with that conclusion, it is clear the decision below is incorrect and warrants reversal.

Overruling *McGirt* and restoring the state jurisdiction it stripped is important not only for this case and the victim of the terrible crimes at issue. As the Chief Justice correctly predicted, the “burdens” of the *McGirt* decision on the State of Oklahoma have been “extraordinary.” 140 S.Ct. at 2500. The challenges from that seismic shift in jurisdiction have rippled through every aspect of life in Oklahoma. Most immediately, *McGirt* has jeopardized the State’s jurisdiction over thousands of criminal cases—this case being just one of them.

The question presented in this case is materially identical to the second question presented in *Castro-Huerta*. For the compelling reasons explained in the petition in *Castro-Huerta*, review on this question is warranted. Accordingly, the Court should either hold the petition pending the resolution of the second question presented in *Castro-Huerta* or grant review in this case.



CONCLUSION

The petition for a writ of certiorari in *Castro-Huerta* should be granted, and the petition in this case should be held pending a decision there and then disposed of as is appropriate. In the alternative, this petition should be granted.

Respectfully submitted,

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