

In the Supreme Court of the United States



STATE OF OKLAHOMA,

Petitioner,

v.

SONNY RAYE MCCOMBS,

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-17-1000

Sonny Raye McCombs, Appellant v.

The State of Oklahoma, Appellee

Date of Final Opinion: April 29, 2021

Oklahoma District Court (Tulsa County)

No. CF-2016-6878

State of Oklahoma, Plaintiff v.

Sonny Raye McCombs, Defendant

Date of Judgment and Sentence: September 18, 2017

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OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals, dated April 29, 2021, is included in the Appendix at App.1a-10a. The order of the Oklahoma Court of Criminal Appeals, dated August 24, 2020, remanding the case for an evidentiary hearing is included below at App.25a-30a. The Findings of Fact and Conclusions of Law of the District Court in and for Tulsa County, State of Oklahoma, dated December 3, 2020, is included below at App.11a-24a. These opinions and orders were not designated for publication.



JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on April 29, 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. § 1152 (in relevant part) **Law governing (Indian country)**

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.

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 either be granted or, in the alternative, held if the petition in *Castro-Huerta* is granted.

1. On December 15, 2016, at around 6:30 p.m., respondent wrecked his car on Highway 169 in Tulsa,

Oklahoma. Tr. 214-17.* Respondent then approached a motorist who had stopped just behind the wreck, Jasmine Freese, and told her to “get the fuck out” of her car. Tr. 217-19. Respondent forced his way into the car as Jasmine attempted to escape; he then started to drive while Jasmine was still partially in the car. Tr. 219-22. Respondent dragged Jasmine along the road as she screamed in terror, thinking she was going to die. Tr. 220-22, 224, 250-53. Fortunately, Jasmine was able to free herself, and she tumbled hard onto the ground. Tr. 221-22, 250-53.

Later that evening, along with two cohorts, respondent stole items from an Academy Sports and Outdoors and subsequently led police on a high-speed chase in Jasmine’s car. Tr. 290-97, 318, 330, 355-56, 390-91, 402, 409; S. Ex. 6-7, 9, 23-28. Respondent, a passenger during the pursuit, hung out of the passenger window (even sitting on the windowsill at times) and fired a gun at the officers engaged in the pursuit. Tr. 320-22, 325-26, 331, 366-69, 374-75, 393-99, 403-05, 430-33, 440-42, 516.

Respondent was convicted of second-degree robbery, use of a vehicle in the discharge of a weapon, possession of a firearm after former felony conviction, larceny of merchandise from a retailer, and obstructing an officer. He was sentenced to ten years, twenty-five years, five years, thirty days, and one year, of imprisonment, respectively, for these crimes. He then appealed to the Oklahoma Court of Criminal Appeals.

* All fact citations are to the transcript of respondent’s trial (Tr.) and the State’s trial exhibits (S. Ex.), which are available below. *See* Sup. Ct. R. 12.7.

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 court accepted the parties' stipulations and found that respondent is an Indian, as an enrolled member of the Creek Nation with 9/64 Indian blood. App.13a, 16a. The court further concluded, pursuant to *McGirt*, that some of the crimes occurred on the reservation of the Creek Nation and some of them occurred within the reservation of the Cherokee Nation. App.17a-24a.

The Court of Criminal Appeals reversed the convictions based on *McGirt*. App.3a-4a. Two judges wrote separate opinions. Judge Lumpkin concurred in the result. App.6a-8a. 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.6a.

Judge Hudson also concurred in the result based on *stare decisis*, but stated 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.9a-10a.



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*. This petition should either be granted or, if the petition in *Castro-Huerta* is granted, held pending a decision in *Castro-Huerta* and then disposed of as is appropriate.

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 victims 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 grant review in this case or hold the petition pending the resolution of the second question presented in *Castro-Huerta*.



CONCLUSION

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

Respectfully submitted,

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