

No. 21-959

IN THE
Supreme Court of the United States

STATE OF OKLAHOMA,
Petitioner,

v.

JOSHUA LEE PURDOM,
Respondent.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the Oklahoma Court of Criminal Appeals correctly hold that States lack jurisdiction to prosecute crimes by non-Indians against Indians in Indian country, as this Court has repeatedly affirmed and as lower courts uniformly agree?

2. Should this Court consider overruling its statutory decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020)?

INTRODUCTION

This petition’s two questions presented are identical to the questions presented in *Oklahoma v. Castro-Huerta*, No. 21-429. This Court recently granted certiorari on the first question presented in that petition. *See* No. 21-429 (U.S. Jan. 21, 2022). Meanwhile, this Court denied over 30 petitions for certiorari presenting only the second question (*i.e.*, whether to overrule *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020)). *See* Order List (U.S. Jan. 24, 2022). This petition should be held pending a decision in *Castro-Huerta*.

STATEMENT OF THE CASE

In *Sharp v. Murphy*, 140 S. Ct. 2412 (2020), and *McGirt*, it was common ground that the Court’s holding would apply to all crimes involving Indians, whether as defendants or victims. That was because, as Oklahoma explained, “States lack criminal ... jurisdiction ... if either the defendant or victim is an Indian.” Petition for a Writ of Certiorari at 18, *Royal v. Murphy*, No. 17-1107 (U.S. Feb. 6, 2018). Hence, Oklahoma emphasized that an adverse ruling would invalidate convictions for “crimes committed against Indians” by Indians or non-Indians, “which the state would not have jurisdiction over.” Transcript of Oral Argument at 54, *McGirt v. Oklahoma*, No. 18-9526 (U.S. May 11, 2020).

Respondent invoked that law below. Respondent Joshua Lee Purdom was charged by information in October 2018 for alleged crimes committed within the Creek reservation. Information (Okla. Dist. Ct., Hughes

Cnty. Oct. 22, 2018).¹ Over a year earlier, in August 2017, the Tenth Circuit had applied *Solem v. Bartlett*, 465 U.S. 463 (1984), to hold that the Muscogee reservation endured. *Murphy v. Royal*, 875 F.3d 896, 966 (10th Cir. 2017). Oklahoma nevertheless prosecuted Respondent, who was convicted on September 12, 2019. Verdict (Okla Dist. Ct., Hughes Cnty. Sept. 12, 2019).

Respondent appealed. While his appeal was pending, Respondent filed a motion to dismiss his case for lack of jurisdiction in light of this Court’s decision in *McGirt v. Oklahoma*. Appellant’s Motion to Dismiss for Lack of Jurisdiction (Okla. Ct. Crim. App. Sept. 24, 2020).² The State opposed the motion, arguing that it had concurrent jurisdiction to prosecute Respondent. Response to Order Directing Response to Appellant’s Motion to Dismiss at 3-14 (Okla. Ct. Crim. App. Oct. 13, 2020). The Oklahoma Court of Criminal Appeals (“OCCA”) remanded to the district court for an evidentiary hearing on the victim’s Indian status and whether the alleged crimes occurred within the boundaries of the Creek reservation. Pet. App. 21a.

On remand, the parties stipulated that the victim was an enrolled member of the Cherokee Nation, and that the location of the crimes was within the boundaries of the Creek reservation. Pet. App. 16a-17a. The State “accept[ed] the district court’s findings” and did not dispute them in its supplemental brief after remand.

¹ References to district-court filings are to Case No. CF-2018-0093, available at <https://bit.ly/3rbROAK>.

² References to filings in the Oklahoma Court of Criminal Appeals are to Case No. F-2019-854, available at <https://bit.ly/3G3Rh85>.

Supplemental Brief of Appellee After Remand at 5 (Okla. Ct. Crim. App. May 24, 2021). The State did, however, argue that it had concurrent jurisdiction to prosecute Respondent's crimes. *Id.* at 5-9.

The OCCA rejected Oklahoma's concurrent jurisdiction argument and, relying on *Roth v. State*, 2021 OK CR 27, 499 P.3d 23, *petition for cert. filed*, No. 21-914 (U.S. Dec. 21, 2021), held that Oklahoma lacked jurisdiction to prosecute Respondent. Pet. App. 6a. Therefore, on September 23, 2021, the OCCA dismissed Respondent's case for lack of jurisdiction. Pet. App. 8a.

By the time the OCCA decided Respondent's case, the federal government had long since charged Respondent, Complaint at 1 (E.D. Okla. Nov. 24, 2020), ECF No. 1,³ and had taken Respondent into custody, Warrant at 1 (E.D. Okla. Dec. 8, 2020), ECF No. 7. Respondent pled guilty on June 24, 2021. Plea Agreement (E.D. Okla. June 24, 2021), ECF No. 39. Respondent is awaiting sentencing.

REASONS FOR DENYING THE PETITION

Respondent maintains that this petition should be denied for the same reasons enumerated in the Brief in Opposition in *Castro-Huerta*.⁴ In *Castro-Huerta*, however, this Court granted certiorari on the first question presented here: whether States have concurrent jurisdiction over crimes committed by non-

³ References to filings in Respondent's federal criminal case are to No. 20-cr-146 (E.D. Okla.).

⁴ Respondent also maintains that the petition should be denied as moot. See Cherokee Nation Amicus Brief at 12-14, *Oklahoma v. Castro-Huerta*, No. 21-429 (U.S. Oct. 29, 2021).

Indians against Indians in Indian country. No. 21-429 (U.S. Jan. 21, 2022). This Court should therefore hold this petition pending *Castro-Huerta* and dispose of it as appropriate after the decision in *Castro-Huerta*.

Respectfully submitted,

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