

21-6331

No. _____

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

BYRON L. WHITE — PETITIONER
(Your Name)

vs.

STATE OF OKLAHOMA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

OKLAHOMA COURT OF CRIMINAL APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BYRON L. WHITE, ODDC# 370938
(Your Name)

J.H.C.C., UNIT - A-1-220, PO BOX 548
(Address)

LEXINGTON, OKLAHOMA 73051
(City, State, Zip Code)

NONE/NA
(Phone Number)

QUESTION(S) PRESENTED

WHETHER RESPONDENT WAIVED/FORFEITED ANY OF IT'S PROCEDURAL DEFENSES IN MCGIRT'S DECISION AND RESPONDENT IS PROCEDURALLY BARRED FROM ASSERTING ANY IF IT'S PREVIOUS PROCEDURAL DEFENSES THAT WERE AVAILABLE AGAINST PETITIONER'S SUBJECT MATTER JURISDICTION CLAIM IN COLLATERAL POST CONVICTION PROCEEDINGS WHEN CONVICTION WAS FINAL?

WHETHER MCGIRT V. OKLAHOMA ANNOUNCED A NEW VINDICATIVE REPLACEMENT OF SUBSTANTIVE RULE DICTATED BY PRIOR PRECEDENT MADE RETROACTIVE BY TEAGUE'S EXCEPTION TO NON-RETROACTIVITY? WHICH RESPONDENT REFUSED TO APPLY RETROACTIVELY AS STATE POSTCONVICTION RELIEF TO CASES FINAL WHEN MCGIRT WAS DECIDED ON JULY 09, 2020?

WHETHER LACK OF TRIBES VOLUNTARY CONSENT TO STATE'S ASSUMPTION OF CRIMINAL JURISDICTION AND THE ATEMPTED EXERCISE OF JUDICIAL POWER BY RESPONDENT WITHOUT TRIBE'S CONSENT IS VOID?

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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OTHERS:

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix "A" to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the MAYES COUNTY DISTRICT court appears at Appendix "B" to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from state courts:

The date on which the highest state court decided my case was 10-27-2021. A copy of that decision appears at Appendix "A".

A timely petition for rehearing was thereafter denied on the following date: NA, and a copy of the order denying rehearing appears at Appendix NA.

An extension of time to file the petition for a writ of certiorari was granted to and including NA (date) on NA (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C.A. CONST. AMEND. V

U.S.C.A. CONST. AMEND. XIV

U.S.C.A. CONST. ART. VI, Clause 2. Supremacy Clause.

U.S.C.A. CONST. ART. 1, Section 8, Clause (3) Indian Commerce Clause.

TREATY WITH THE CREEKS, JUNE 14, 1866. 14 STAT. 785.

TREATY WITH THE CREEKS, AUGUST 7, 1856. 11 STAT. 699.

U.S.C.A. CONST. ART. III.

TITLE 18 U.S.C.A. SECTION 1151

TITLE 18 U.S.C.A. SECTION 1152

TITLE 18 U.S.C.A. SECTION 1153

TITLE 18 U.S.C.A. SECTION 3231

TITLE 18 U.S.C.A. SECTION 3242

TITLE 28 U.S.C.A. SECTION 116. Oklahoma.

TITLE 28 U.S.C.A. SECTION 2101.(c). Supreme Court; time for appeal or Certiorari; docketing; stay.

TITLE 28 U.S.C.A. SECTION 2102. Priority of criminal cases on appeal from State Court.

TITLE 28 U.S.C.A. SECTION 2104. Review of State Court Decisions.

TITLE 28 U.S.C.A. SECTION 2106. Determination.

TITLE 28 U.S.C.A. SECTION 1251.b.2.

TITLE 28 U.S.C.A. SECTION 1257. State Courts; Certiorari.

STATEMENT OF THE CASE

Appendix "C" October 29, 2020, CF-99-105 Petitioner filed his Application for Post-Conviction Relief in the District Court of Mayes County, State of Oklahoma, Doc. 1. June 4, 2021, CF-99-105. Respondent filed State's Request for Stay, Doc. 21. Respondent entered Order Staying request for Post-Conviction Relief on June 8, 2021, CF-99-105, Doc. 28. On September 13, 2021, CF-99-105 respondent entered Order Lifting Stay and denying Post-Conviction Relief, Doc.33. OCCA Respondent used *Matloff v. Wallace*, 2021 OK CR 21 that held *McGirt v. Oklahoma* 140 S.Ct. 2452 (July 9, 2020) would not apply retroactively to Petitioner's conviction. Because conviction is final before *McGirt's* decision was final, Doc. 33. September 24, 2021, CF-99-105, notice of Post-Conviction Appeal and a Designation of Record, Doc. 36.

Appendix "D" October 5, 2021, Case No. PC-2021-1048, Petitioner filed Petition In Error and Brief In Support of Petition In Error. October 27, 2021, PC-2021-1048, the Respondent entered Order affirming denial of Post-Conviction relief in case No. PC-2021-1048.

REASON FOR GRANTING THE PETITION

The Major Crimes Act code is a body of substantive rule of Constitutional Law through Act of Congress.

The MCA (U.S. Statutes at large 23:385) is a law passed by the United States Congress as the final section of the Indian Appropriations Act of that year 1885. This section of Law places certain crimes under Federal Courts subject matter jurisdiction. The Major Crimes Act was passed by Congress in response to the Supreme Court of the United States ruling in Ex parte Crow Dog (109 U.S. 556 1883) that overturned the Federal conviction of Brule Lakota Sub chief crow Dog for the murder of principal chief Spotted Tail on the Rosebud Reservation. Federal Court had no subject matter jurisdiction to try an enrolled Indian for the murder of another enrolled Indian. The MCA was Congress' reaction to the holding of Crow Dog. See Keebler v. United States, 412 U.S. 205, 209-12 (1973) and United States v. Kagama, 118 U.S. 375, 383 (1886). Under 18 U.S.C.A. sections 1153, 1151(a), 3242, 3231, Federal District Court have exclusive subject matter jurisdiction, exclusive of State Courts over these offenses enumerated in the MCA section.

Legislative History indicates that the words "or other person" were incorporated in the 1885 Act to make certain the enrolled members were to be prosecuted in Federal Courts, exclusive of State Courts.

Oklahoma upon becoming a State November 16, 1907, did not comply with Public Law 280 to exercise assumption of jurisdiction over Indian Country. April 11, 1968 the Public Law 280 was repealed and Title IV, the Civil Rights Act of 1968 was enacted by Congress. Now, the States had to get consent of the affected Indian Tribes and amend the impediment in its Constitution to assume civil and criminal jurisdiction over "Indian Country." A Congressional Act that Oklahoma as a State has not did to this date to have assumption of jurisdiction.

QUESTION PRESENTED

WHETHER RESPONDENT WAIVED/FORFEITED ANY OF ITS PROCEDURAL DEFENSES IN MCGIRT'S DECISION AND RESPONDENT IS PROCEDURALLY BARRED FROM ASSERTING ANY OF ITS PREVIOUS PROCEDURAL DEFENSES THAT WERE AVAILABLE AGAINST PETITIONER'S SUBJECT MATTER JURISDICTION CLAIM IN COLLATERAL POST CONVICTION PROCEEDINGS WHEN CONVICTION WAS FINAL ?

STANDARD OF REVIEW:

State-Court procedural default, non-retroactivity, Statute of Limitations, is affirmative defenses in Federal Habeas Corpus proceedings and State is obligated to raise procedural default, non-retroactivity, Statute of Limitations or lose the right to assert the defense thereafter. See Hooks V. Ward, 184 F.3d 1206, n. 7 (10th Cir. 1999). See Day V. McDonough, 547 U.S. 198, n. 1, 3, 126 S. Ct. 1675 (Decided April 25, 2006) (If a State intelligently chooses to waive a Statute of Limitations Defense to a State prisoner's habeas Petition, a District Court is not at liberty to disregard that choice).

ARGUMENT AND AUTHORITIES:

See McGirt V. Oklahoma, 140 S. Ct. 2452, I. supra. (Decided July 09, 2020) (Oklahoma has put aside whatever "procedural defenses" it might have and asked us to confirm that the land once given to the Creeks is no longer a reservation Today).

See Rule 5, Rule governing Section 2254 federal habeas corpus cases, 28 U.S.C.A. reads:

(b) Contents, Addressing the Allegations; stating the Bar.

The answer must address the Allegations in the Petition. In Addition, it must state Whether any claim in the Petition is Barred by a failure to exhaust remedies, a procedural bar, non-retroactivity, or a statute of limitations.

See McGirt, Supra. IV. (Oklahoma and Dissent warn, our holding might be used by other tribes to vindicate similar treaty promises)...sic...(Each

~~tribe's treaties must be considered on their own terms, and the only question before us concerns the Creek). U.S.C.A. Const. Art. VI, Clause 2.~~

U.S.C.A. Const. Art. I, Section 8. Clause 3. (Indian Commerce Clause).

The Respondent intelligently, knowingly, voluntarily waived/forfeited all of its procedural defenses in the McGirt Decision. The Respondent chose to defend the judgment instead of relying upon any state procedural defenses it had before the Court. The respondent knowing the collateral consequences that their waiver decision in McGirt would impact future treaties with the other Five tribes of the State of Oklahoma. That McGirt would be used or applied to the others of the Five tribes treaties. Until these other four of the Five tribes reservation boundaries have been adjudicated by the State highest Court of Criminal Appeals. The respondent intelligently waived any of its procedural defenses as part of the McGirt decision. The respondent can no longer rely on State procedural default, non-retroactivity, statute of limitation as affirmative defenses. Due to waiver of defenses under the McGirt decision. As it was intelligently, knowingly, voluntarily waived/forfeited by respondent's own decision with collateral consequences made a part of McGirt's decision. See Collins V. Youngblood, 110 S. Ct. 2715, 2718, n. 1 (1994). McGirt V. Oklahoma, 140 S. Ct. 2452 (Decided July 09, 2020). Johnson V. Oklahoma, 141 S. Ct. 167 (Decided July 09, 2020)(the United States Supreme Court vacated judgment and remanded to Respondent to consider in light of McGirt's decision). Montgomery V. Louisiana, 577 U.S. 190, 136 S. Ct. 718 (Decided May 28, 2016). See Silas Pickett V. United States, 216 U.S. 456, 30 S. Ct. 265, 54 L. Ed. 566 (Decided Feb. 21, 1910)(The Courts of the State could not be empowered to prosecute crimes against the laws of another sovereignty). Title 18 U.S.C.A. Sections 3231, 3242, 1151(a), 1153(a), 1111. See Southern Surety Co. V. State of Oklahoma, 36 S. Ct. 692 (Decided June 12, 1916)(The test of jurisdiction of the State Courts was to be the same that would have applied had "Indian Territory been a State" when the offenses were committed).

~~Respondent's procedural defenses were not preserved for review but intelligently, knowingly, voluntarily waived/forfeited by respondent's own conduct and words before the Supreme Court Justices. The Court should dismiss Respondent's Matloff V. Wallace decision and should be reversed based on the determination that McGirt's decision was not retroactive in post-conviction collateral review. In the interest of justice and judicial economy.~~

QUESTION PRESENTED

WHETHER MCGIRT V. OKLAHOMA ANNOUNCED A NEW VINDICATIVE REPLACEMENT OF SUBSTANTIVE RULE DICTATED BY PRIOR PRECEDENT MADE RETROACTIVE BY TEAGUE'S EXCEPTION TO NON-RETROACTIVITY ? WHICH RESPONDENT REFUSED TO APPLY RETROACTIVELY AS STATE POSTCONVICTION RELIEF TO CASES FINAL WHEN MCGIRT WAS DECIDED ON JULY 9, 2020 ?

By Justice Gorsuch: All our decision today does is vindicate that replacement promise. And if the threat of unsettling convictions cannot save a precedent of this Court. Ramos V. Louisiana, 590 U.S.____, ____-____ (2020) (Plurality opinion)(slip Op., at 23-26), it certainly cannot force us to ignore a Statutory promise when no precedent stands before us at all.

See Montgomery V. Louisiana, 577 U.S. 190, 136 S. Ct. 718, 193 L. Ed. 2d 599 (Decided Jan. 25, 2016)(As Revised Jan. 27, 2016). Syllabus 15-16. Teague's conclusion establishing the retroactivity of new substantive rules is best understood as resting upon Constitutional premises. That Constitutional command is, like all Federal law, binding on State courts. This holding is limited to Teague's First exception for substantive Rules; the Constitutional status of Teague's exception for watershed Rules of Procedure need not be addressed here.

Syllabus 24-25. If a State may not Constitutionally insist that a prisoner remain in Jail on Federal habeas review, it may not Constitutionally insist on the same result in its own postconviction proceeding's, under the Supremacy Clause of the U.S. Constitution. If a State collateral proceeding is open to a claim controlled by Federal law, the State Court, has a duty to grant the relief *205 that Federal law requires. Where State collateral review proceedings permit prisoner to challenge the lawfulness of their confinement, State cannot Refuse to give retroactive effect to a substantive Constitutional right that determines the outcome of that challenge.

August 12, 2021, PR-2021-366, the Oklahoma Court of Criminal Appeals determined the United States Supreme Court did not rule McGirt V. Oklahoma was retroactive. That Matloff Court determined that McGirt would not apply to all Major Crimes Convictions that were final before McGirt was decided on July 9, 2020.

August 12th, 2021, PR-2021-366, the OCCA held that: Following Teague and its progeny, we would apply a new substantive rule to final convictions if it placed certain primary (private) conduct beyond the power of the Legislature to punish, or categorically barred certain punishments for classes of persons because of their status. U.S.C.A. Const. Art. I, Sec. 8, Cl. 3

McGirt did not consist of "procedural rule", but interpreted substantive Rules under Federal Jurisdictional statutes and Tribal treaties governing select group or class of individuals identified by Indian status, under the Major Crimes Act. Those Indians who committed crimes on Federal reservations that were specific under 18 USCA 1153(a), 1151(a), 3242, 3231.

Syllabus 26. As a final point, it must be noted that the retroactive application of substantive rules does not implicate a State's weighty interests in ensuring the finality of convictions and sentences. Teague warned against the intrusiveness of "continually forcing the States to Marshal Resources in order to keep in prison defendants whose trials and appeals conformed to then-existing Constitutional standards." 489 U.S., at 370, 109 S. Ct. 1060. This concern has no application in the realm of substantive rules, for no resources Marshaled by a State could preserve a conviction or sentence that the Constitution deprives the State of Power to Impose. See Mackey, 401 U.S., at 693, 91 S. Ct. 1160 (Opinion of Harlan, J.)(There is little societal interest in permitting the criminal process to rest at a point where it ought properly never to repose).

Syllabus 2-23. The U.S. Supreme Court addressed the void, State process where the State had no authority to Act, under a substantial Rule imposed by the Constitution and the Federal Supremacy Clause law of the land.

The Supreme Court held that: As discussed, the Court has concluded that the same logic governs a challenge to a punishment that the Constitution deprives States of Authority to Impose. See Ex Parte Siebold, 100 U.S. 371, 25 L. Ed. 717 (1880).

This same analogy is applicable to interpretation of the Federal Statutes and Treaties in McGirt V. Oklahoma. See Pickett V. United States, 216 U.S. 456, 30 S. Ct. 265, 54 L. Ed 566 (Decided February 21, 1910)(The Courts of the State, could not be empowered to prosecute crimes against the laws of another sovereignty). Sharp V. Murphy, 140 S. Ct. 2412 (July 09, 2020); Johnson V. Oklahoma, 141 S. Ct. 192 (July 09, 2020). Title 18 U.S.C.A. Sections 3231, 3242, 1151(a), 1153(a), 1111. U.S.C.A. Art. VI, Clause 2.

QUESTION PRESENTED

WHETHER LACK OF TRIBES VOLUNTARY CONSENT TO STATE'S ASSUMPTION OF CRIMINAL JURISDICTION AND THE ATEMPTED EXERCISE OF JUDICIAL POWER BY RESPONDENT WITHOUT TRIBE'S CONSENT IS VOID?

STANDARD OF REVIEW:

See U.S. FIDELITY 7 GUAR. CO., 309 U.S. 506, S. Ct. 653, 84 L.Ed. 2d 894 (Decided March 25, 1940)(Notes 7-12, states: Consent alone gives Jurisdiction to adjudge against a Sovereign. Absent that Consent, the attempted exercise of Judicial Power is Void). Georgia V. Public Resource Org. Inc., 140 S. Ct. 1498, 206 L.Ed. 2d 732 (Decided April 27, 2020)(Every citizen is presumed to know the law). Estes V. Conoco-Phillips Co., 2008 OK 21, n. 17, 184 P.3d 518 (Same). See Treaty With The Creeks, June 14, 1866. 14 Stat. 785. Treaty With The Creeks, August 7, 1856. 11 Stat. 699. U.S.C.A. Const. Art. I, section 8, Clause 3 (Indian Commerce Clause). U.S.C.A. Const. Art. VI, Clause 2. (Supreme Law of Land). See V.T.A. Inc. V. Airco, Inc., 597 F.2D 220 (10TH Cir. April 19, 1979); Orner V. Shalala, 30 F.3d 1307 (10th Cir. July 19, 1994). Title 18 U.S.C.A. Sections 1151, 1152, 1153, 3231, 3242.

ARUGMENT AND AUTHORITIES:

In 1953 Governor Johnston Murray submitted his letter to Congress and Assistant Secretary to Department of the Interior Mr. Omar Lewis inquiry. Governor Murray stated Respondent already exercised an assumption of Jurisdiction over tribal lands/reservations and did not need to comply with Public Law 280. However, the States can no longer unilaterally assume jurisdiction over Indian Country under Public Law 280 after 1953. Since the power was repealed by the Act of April 11, 1968, 82 Stat. 77, 79. 25 U.S.C.A. Section 1323(b) (Supp. IV 1965-1969)(Commonly known as the Civil Rights Act of 1968). However, this Act does grant States the right to assume Civil and Criminal Jurisdiction over Indian Country, but only with the "Consent" of the affected Indian Tribes. 25 U.S.C.A. Sections 1321-1322. In time the State of Kansas was added as a State that could assume concurrent jurisdiction over Indian Country through an Act of Congress.

Oklahoma has never obtained Consent from the tribes to assume Criminal jurisdiction nor amended Oklahoma Constitution Article 1, Section 3

Which constituted an impediment to assumption of State Jurisdiction over Indian Country within the Eastern half of the State of Oklahoma. Which includes the Five Civilized Tribes affected by Respondent's lack of compliance with the Civil Rights Act of April 11, 1968, Title IV.

August 12, 2021, Case No. PR-2021-366, the Respondent issued an opinion that exceeds its Jurisdiction and defies treaties between the Five Civilized Tribes and the United States as contracting parties.

The Matloff decision was such an attack by the Respondent on the complete sovereignty of the Five Tribes Nations. See Davis v. Oklahoma, 141 S.Ct. 193 (2020). The Oklahoma Court of Criminal Appeals as Respondents know there decisions affirm Respondent as State of Oklahoma, has never obtained the consent of the Five Tribes nor amended its Constitution's Impediment to assumption of criminal Jurisdiction within the "Indian Country". The Respondent OCCA knowing without a valid consent from the affected Tribes or amending the legal impediment in the Oklahoma Constitution. Any order OCCA entered is attempted exercise of judicial power without Tribes consent or the Amendment to Constitutional Impediment is null and void ab initio. U.S.C.A. Const. Art. VI, Clause 2 (Supremacy Clause). U.S.C.A. Const. Art. I, Section 8, Clause (3)(Indian Commerce Clause). Okla. Const. Art. I, Section 1 (Okla. Supremacy Clause).

The Honorable Justices of this Court is requested to rule the Respondent's OCCA Matloff decision is null and void as a matter of Law. Respondents do not have any Congressional authority that grants Respondent assumption of Jurisdiction within Indian Country. The Petition for a Writ of Certiorari should issue to review the Matloff v. Wallace decision and its application to deny Petitioner _____ an enrolled member State Post-Conviction Relief a Federal remedy. Appendix "A" "B" "C".

The U.S. Supreme Court is authorized to exercise its jurisdiction under 28 U.S.C.A. sections 1257, 1251 b.2, 2104, 2102, 2101 @ 116. U.S.C.A. Const. Amends. 5, 14. Seminole Nation v. United States, 318 U.S. 629, 63 S.Ct. 784, 789, n. 4, 87 L.Ed. 1046 (decided April 5, 1943); Southern Surety, Co., v. State of Oklahoma, 36 S.Ct. 692 (decided June 12, 1916) (by Justice DeVanter: Thus, by the concurrent action of Congress and the State of Oklahoma ... the Enabling Act and the State Constitution United...) U.S.C.A. Const. Art. VI, section 1 and Okla. Const. Art. 1, section 1. Okla. Const. Art. 1 section 3 (disclaimer). Enabling Act, sections 1, 27 (contains a revocability clause not subject to recall and constitutes a contract between sovereign Nations). Wall, 241 U.S. 87, 60 L.Ed. 905, 36 S.Ct. 493. U.S.C.A. Const. Art. 1, section 8, clause (3).

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted

/s/ Byron White

Date: 11-3-21