

No. 19-8126

ORIGINAL

Supreme Court, U.S.  
FILED  
MAR 16 2020  
OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

Garry Wayne Wilson — PETITIONER  
(Your Name)

Mike Hunter, vs.  
Oklahoma Attorney General — 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

Garry Wayne Wilson #779304  
(Your Name)

JCC Unit 6 216 North Murray St.  
(Address)

Helena, OK 73741  
(City, State, Zip Code)

580 - 852-3221  
(Phone Number)

## QUESTIONS PRESENTED

1. Whether the State of Oklahoma has jurisdiction to prosecute a Cherokee Indian whose alleged crime of murder occurred within the historic and treaty-set boundaries of the Cherokee Nation.

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Amendment V of the US Constitution, Appendix B
2. Amendment XIV of the US Constitution, Appendix B
3. 1866 Treaty with the Cherokee Indians, 14 Stat 799, Appendix B
4. 1835 Treaty with the Cherokee Indians, 7 Stat 478, Appendix B
5. 18 USCA § 1151, 1153

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 is unpublished.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 is unpublished.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 is unpublished.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 \_\_\_\_\_ 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 is unpublished.

**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 March 2, 2020.  
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied 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. § 1257(a).

## STATEMENT OF THE CASE

Petitioner, an enrolled Cherokee Indian, was prosecuted and convicted for the crime of Murder First Degree in the district court of Tulsa County, Oklahoma in Case # CF-2016-5198 and sentenced to a term of life imprisonment. Petitioner appealed to the Oklahoma Court of Criminal Appeals, Case #F-2018-56 where his judgment and sentence was affirmed. Petitioner filed an application for post-conviction relief in the trial court claiming that, among other things, the State of Oklahoma lacked jurisdiction to prosecute him because criminal jurisdiction is reserved to the Cherokee Nation or federal government pursuant to treaty and federal law. Petitioner was denied post-conviction relief and a post-conviction appeal to OCCA affirmed the lower court denial.

## REASONS FOR GRANTING THE PETITION

1. Currently, before the Court are two cases that present issues that mirror Petitioner's claims, albeit involving Muscogee Creek Nation rather than Cherokee Nation: *Sharp v. Murphy*, No. 17-1107 and *McGirt v. Oklahoma*, No. 18-9526. Judicial economy would be promoted by hearing Petitioner's case at this time. *Parklane Hosiery Co, Inc. v. Shore*, 439 US 322 (1979).
2. Just last term the Court reaffirmed that treaty rights preclude prosecution. (See *Herrera v. Wyoming*, 139 S.Ct 1686 (2019)) Uet, the State of Oklahoma continues to rebel against the precedents of this Court that clearly hold that treaties with Indian tribes are the supreme law of the land, that federal

reserving criminal jurisdiction to the federal government (18 USC §§-1151-1153) preclude state encroachment and that “without jurisdiction the court cannot proceed at all in any cause.” (Ex parte McCardle, 74 US (7 Wall) 506 (1869))

3. The crime in this case is a “major crime” enumerated in 18 USC § 1153. Petitioner is a Cherokee Indian enrolled in the Cherokee Nation of Oklahoma. The crime is alleged to have occurred within the historic and treaty-defined boundaries of the Cherokee Nation. (See OCCA decision affirming denial of post-conviction relief, Appendix A; Treaty with the Cherokees, Appendix B). These facts preclude state criminal jurisdiction.
4. No State may operate outside the Constitution. It is this Court which must draw the necessary lines where State jurisdiction ends. (See Worcester v. Georgia, \_\_\_\_\_)

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Darryl W. Wilson

Date: 3-12-20