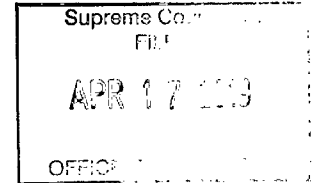


18-9526

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



JIMCY McGIRT—PRO SE PETITIONER
VS.
STATE OF OKLAHOMA—RESPONDENT
ON PETITION FOR A WRIT OF CERTIORARI TO
THE OKLAHOMA COURT OF CRIMINAL APPEALS

PETITION FOR WRIT OF CERTIORARI

JIMCY McGIRT, #178480
JAMES CRABTREE CORRECTIONAL CENTER
216 NORTH MURRAY STREET UNIT 5
HELENA, OK 73741-1018

LIST OF PARTIES

All parties listed in the above caption.

QUESTION PRESENTED

WHETHER OKLAHOMA COURTS CAN CONTINUE TO UNLAWFULLY EXERCISE, UNDER STATE LAW, CRIMINAL JURISDICTION AS "JUSTICIABLE MATTER" IN INDIAN COUNTRY OVER INDIANS ACCUSED OF MAJOR CRIMES ENUMERATED UNDER THE INDIAN MAJOR CRIMES ACT—WHICH ARE UNDER EXCLUSIVE FEDERAL JURISDICTION.

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Murphy v. Royal, 866 F.3d 1164, footnote 5:

In Oklahoma, “issues of subject matter jurisdiction are never waived and can therefore be raised on a collateral appeal.” *Wallace, supra*; *See also Triplet v. Franklin*, 365 Fed. Appx. 86, 95 (Okla. 10thCir. 2010) *unpublished* (recognizing that, in Oklahoma, issues of subject matter jurisdiction are not waivable and can be raised for the first time in collateral proceedings); *Wackerly v. State*, 237 P.3d 795, 797 (Okla.Crim.App. 2010) (considering jurisdictional claim that crime occurred on federal land raised in prisoner’s second-application for post-conviction relief); *Magnon v. State*, 207 P.3d 397, 402 (Okla.CrimApp. 2009) (considwerint Indian Country jurisdictional challenge and explaining subject matter jurisdiction may be challenged at any time.).

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OPINIONS BELOW

The opinion of the state's highest criminal court to review my post-conviction appeal appears at Appendix A to the petition and is unpublished.

The opinion of the trial court's review of my post-conviction relief application appears at Appendix B to the petition and is unpublished.

JURISDICTION

February 25, 2019, the Oklahoma Court of Criminal Appeals (state's highest criminal appeals court) issued its final order (appendix A), *McGirt v. State*, PC-2018-1057 *unpublished*, denying my October 15, 2018 post-conviction appeal and affirmed the Wagoner County District Court's August 21, 2018 final order (appendix B), denying my June 18, 2018 pro se petition for post-conviction relief application, *McGirt v. State*, CF-1996-0355 *unpublished*. *No rehearing allowed.*

Petitioner did not seek a rehearing in either court.

Petitioner did not seek an extension of time in either court.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article VI to the United States Constitution and the Sixth and Fourteenth Amendments provide in relevant part:

Article VI—“This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all *treaties made*, or which shall be made, under the authority of the United States, shall be the *supreme law of the land*; and the judges in every state shall be bound thereby...” (*emphasis mine*)

Amendment VI—“In all criminal prosecutions, the accused shall enjoy the right to a speedy trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law,...”

Amendment XIV—“ [N]or shall any State deprive any person of life, liberty, or property, without due process of law.”

Article 1 § 3 of the State of Oklahoma Constitution—Unappropriated Public Lands—Indian Lands—Jurisdiction of the United States:

“The people inhabiting the state do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within limits owned or held by an Indian tribe, or nation and that until the title to any such public land shall have been extinguished by the United States the same shall be and remain subject to the jurisdiction, disposal and control of the United States...”

1856 Treaty with the Creek and Seminole Tribes

“[N]o State or Territory shall ever pass laws for the government of the Creek or Seminole tribes of Indians.”

“[N]o portion of either of the tracts of country defined in [the treaty] shall ever be embraced or included within, or annexed to, any Territory or State.” Article 4, August 7, 1856 11 Stat, 699, 700, available at 1856 WL11367

1866 Treaty with the Creek Indians, June 14, 1866:

Article IX—“...cause to be erected suitable agency buildings, . . . in the reduced Creek reservation

under the direction of the superintendent of Indian affairs. See Treaty with Creek Nation, Article IX, June 14, 1866, 14 Stat. 785, 786, 788, *available at 1866 WL 18777*).

STATUTES:

22 O.S. § 1080 et seq.—UNIFORM POST-CONVICTION PROCEDURES ACT:

Right to challenge conviction or sentence—Any person who has been convicted of or sentenced for, a crime and who claims ... (b) that the court was without jurisdiction to impose sentence; ... may institute a proceeding under this act in the court in which the judgment and sentence[s] on conviction was imposed to secure the appropriate relief, excluding a timely appeal, this act encompasses and replaces all common law and statutory methods of challenging a conviction or sentence.

22 O.S. § 1087—Appeal to the Court of Criminal Appeals—and 22 O.S. Ch. 18, App., (2018) *Rules of the Oklahoma Court of Criminal Appeals*, Section V, Rule 5.2—Appeal from final judgment:

A. Final Judgment on Post-Conviction Application. The appeal to this Court under the Post-Conviction Procedure Act constitutes an appeal from the issues raised, the record, and findings of fact and conclusions of law made in the District Court in non-capital cases. *See Yingst v. State*, 480 P.2d 276, 277 (Okl.Cr.1971)

STATEMENT OF THE CASE

A. FACTS IN EVIDENCE:

In March 1991 I met, moved in with, and later married Norma Blackburn and because I was ten-years-younger, recently discharged from prison with nothing but the clothes on my back, and moved in with and married Norma, the alleged victim's (Bri) grandmother, her daughters blamed me for their displacement—Norma's adult son Mathew—late-twenties, youngest daughter DeEtte—17, (Bri's mother) and her aunt Nena—late-thirties, all lived with Norma when we met and married.(see Preliminary hearing, June 1997 sounding docket hearing, trial transcripts and appellate brief)

The alleged crimes were at Petitioner's rural Broken Arrow, Wagoner County, Oklahoma home in August 1996 when Bri spent a week while DeEtte took a birthday trip to Cancun, Mexico.

In September 1996, after spending a weekend with Nena—though Nena was mad at Bri for reporting allegations, about May 1996, "her Uncle Bill", Nena's live-in boy friend, "touched her" inappropriately—Nena "told her what to say and practiced with her" to make an audio tape, which she gave to the sheriff's deputy. (In preliminary hearing, trial transcripts, also appellate brief and June 1997 hearing transcript) Nena moved Bill out and found him dead of a drug overdose in his Okmulgee, Oklahoma apartment shortly after the allegations against me.

About September 8, or 9, 1996, following a visit to a child abuse counselor, a report was made to the Wagoner County Sheriff's department and a doctor examined her about September 10, 1996.

Before the allegations, my wife Norma and I made plans to go to Dallas to watch her son dance in a play but because we were receiving threats—Bri's father and his uncle hospitalized my brother, now deceased, by beating him with a baseball bat—he drove by the house with a car

load of others yelling obscenities, and Norma's daughters called her at work with threats of criminal prosecutions. We changed our vacation plans and October 5, 1996, we went to Denver instead of Dallas. Due to the threats, I stayed in Denver and got an apartment and a job while we were there for vacation. We planned for Norma to retire, after over twenty years, rent her Broken Arrow home and move with me to Denver.

Information and affidavit of probable cause were filed October 21, 1996 charging Petitioner with count 1, first degree rape by instrumentation; count 2, lewd molestation; and count 3, forcible sodomy after former convictions of a felony. Norma notified me of the charges and November 4, 1996, I returned home and surrendered for an arraignment with retained counsel who arranged for my arraignment after I returned to Oklahoma and jailed on \$25,000 bond.

At the November 27, 1996 sounding docket hearing, the preliminary hearing was date set certain for January 10, 1997. January 06, 1997, the state presented his Notice of Hearsay notice. 12 O.S. § 2803.1(B) required a 10 day advance notice with dismissal the only remedy—counsel objected and state offered to reduce bond from \$25,000 to \$5,000 if I did not object to a preliminary hearing continuance.

January 10, 1997, the date set certain for preliminary hearing, bond was posted and Petitioner was released on bail, with February 5, 1997 set for preliminary hearing. Following the hearing, court set district court arraignment and Petitioner's counsel moved to withdraw and Petitioner moved to represent himself to stay on bond.

Petitioner, was remanded to custody at the May 5, 1997 sounding docket hearing and bond revoked with new bond set at \$50,000 and appointed counsel to represented him for trial.

Represented by court appointed counsel, the jury found Petitioner guilty of all three counts recommending 500 years each for counts 1 and 2 and life without parole for count 3. Court sentenced according.

Represented by court appointed appellate counsel from the Oklahoma Indigent Defense System, Petitioner filed a timely appeal and August 26, 1998, the Oklahoma Court of Criminal Appeals (OCCA) affirmed the district court's convictions.

November 17, 1998, this Court, Justice Breyer, denied Petitioner's timely application for extension of time to file his petition for certiorari review.

Petitioner requested case-made at public expense for a post-conviction application from the Wagoner County district court—court denied and Petitioner appealed. OCCA affirmed and denied Petitioner's petition for mandamus in June 1999.

In 2012, Petitioner submitted an actual innocence claim with the newly formed Oklahoma Innocence Project. Last contact in November 2014 they notified me my case was "still under review." In September of 2017, I notified them I would challenge illegal restraint and needed my documents back—no response.

B. STATE CONSTITUTION HABEAS CORPUS:

September 29, 2017, *McGirt v. Warden Bryant*, WH-2017-0022, Petitioner challenged the illegal restraint, via Oklahoma Constitution Article 2 § 10 Writ of Habeas Corpus, in the Alfalfa County district court—county where institution located—as petitioner was illegally restrained under a *void ab initio* June 24, 1997 convictions of the Wagoner County district court as rendered without subject matter jurisdiction because 1) Petitioner is an enrolled member of the federally recognized Seminole/Creek (Mvskoke) Nations of Oklahoma; 2) the alleged crimes were in Indian Country within the federally recognized reservation boundaries of the Mvskoke Nation of Oklahoma; and 3) the alleged crimes are enumerated within the Indian Major Crimes Act, under exclusive federal jurisdiction, and the State of Oklahoma lacked subject matter jurisdiction; therefore the *void ab initio* convictions must be vacated and dismissed and Petitioner must be released from the illegal restraint forthwith.

October 03, 2017, the Court directed state response within 30 days of receipt of the order; October 16, 2017, state responded with a motion to dismiss claiming my “action must be dismissed because my cause of action lies in the district court of Wagoner County through a post-conviction application.”

November 06, 2017, the Court’s final order, received November 09, 2017, dismissed my petition as, “The appropriate procedure to challenge the validity of this judgment and sentence[s] is through post-conviction in the county where the conviction occurred, pursuant to 22 O.S.2011 § 1080 et seq.”¹¹

Because Petitioner challenged the illegal restraint, *by the void ab initio convictions of the Wagoner County district court as rendered without subject matter jurisdiction*, (emphasis mine) and I did not challenge the convictions itself, I applied for a *Oklahoma Court of Criminal Appeals* Rule 10.6(C) writ for habeas corpus.

Petitioner struggles with constant confusion, serious loss of recall, constant fatigue and mental distress (I’m 70) and I inadvertently omit important facts. I received the court’s order November 09, 2017 and immediately I submitted my timely November 09, 2017 notice of intent to appeal and designation of record to the trial court clerk, received by the clerk November 16, 2017, but, November 14, 2017 I inadvertently sent the post-conviction appeal petition without the certified record I requested from the court clerk on November 09, 2017, received by the appellate clerk November 17, 2017, *McGirt v. Warden Bryant*, HC-2017-1169, I received the certified record from the district court clerk November 23, 2017 and made copies and mailed it to the appellate courts clerk November 27, 2017 (received and returned November 30, 2017) but with 7 days left before my December 06, 2017 deadline, on November 29, 2017, the OCCA’s final order declined jurisdiction and dismissed my petition for writ of habeas corpus because I failed to include the certified record.

C. STATE POST-CONVICTION PROCESS:

Pursuant to the UNIFORM POST-CONVICTION PROCEDURES ACT: 22 O.S. § 1080—Right to challenge conviction or sentence[s]:

Any person who has been convicted of, or sentenced for, a crime and who claims ... (b) that the court was without jurisdiction to impose sentence; ... may institute a proceeding under this act in the court in which the judgment and sentence[s] on conviction was imposed to secure the appropriate relief. Excluding a timely appeal, this act encompasses and replaces all common law and statutory methods of challenging a conviction or sentence[s].

June 18, 2018, Petitioner challenged the jurisdiction of the Wagoner County District Court to impose sentences with a single proposition. June 22, 2018, the Court directed state's response by August 03, 2018. State failed to respond and Petitioner submitted his August 09, 2018, entered August 17, 2018, Motion for Summary Disposition per 22 O.S. § 1083(c)—Disposition of Application, entered August 17, 2018, when state failed to respond by August 03, 2018. State filed his Motion for Leave to File Answer out of Time and State's Response August 17, 2018.

State wrote, "Petitioner's petition is obviously based on the *Murphy v. Royal*, 875 F.3d 896, 2017 ruling by the United States Court of Appeals for the Tenth Circuit", and that, "all of defendant's (sic) arguments are based on without mentioning or citing the *Murphy* case in his actual petition", and that, "if the Supreme Court should determine a ruling in the *Murphy* case sometime in the future which may cause the defendant to believe he has any additional standing based on such ruling, he could then refile his petition."

The Court entered its August 21, 2018 order dismissing *Petition* as, "Petition's arguments mirror the arguments in the Tenth Circuit *Murphy v. Royal* case", and because *Murphy* is pending in the *United States Supreme Court*, "no further action will be taken until a final decision has been made by the United States Supreme Court No. 17-1107 (* See Exhibit B*); therefore Petitioner's *Petition* will be denied."

POST-CONVICTION APPEAL:

August 28, 2018, Petitioner submitted his notice of intent to appeal the court's August 21, 2018 order with designation of record, entered September 04, 2018, to district court clerk with notice to Asst. District Attorney Dry.

With a copy of the certified record from the district court clerk, I submitted the post-conviction appeal petition October 09, 2018, entered October 15, 2018, asserting the state's lack of jurisdiction and two propositions: Proposition I—TRIAL COURT ERRED DISMISSING MY POST-CONVICTION RELIEF APPLICATION ARGUMENTS AS "MIRRORING" THE 10TH CIRCUIT'S ARGUMENTS IN *MURPHY V. ROYAL*, 875 F.3D 896 (10TH CIR 2017) because the Doctrine of Stare Decisis applied and Petitioner must present precedent cases in support of his arguments; and Proposition II—TRIAL COURT ERRED DISPOSING OF MY APPLICATION WITHOUT A HEARING STATING THE COURT'S FINDINGS AND CONCLUSIONS REGARDING THE ISSUES PRESENTED, 22 O.S. § 1083(C) because there were six issues of facts raised in my post-conviction relief petition: my claims that 1) I am an enrolled member of the federally recognized Seminole Nation of Oklahoma¹; 2) the alleged crimes were in Indian country within the federally recognized reservation boundaries of the federally recognized Mvskoke (Creek) Nation of Oklahoma; 3) the alleged crimes are enumerated in the Indian Major Crimes Act, under exclusive federal jurisdiction; 4) the State of Oklahoma was never granted, but merely assumed criminal jurisdiction over Indian Country within its borders, and lacks subject matter jurisdiction; 5) the June 24, 1997 judgment of convictions of the Wagoner County district court, rendered without subject matter jurisdiction, are *void ab initio* as rendered without jurisdiction; 6) because Indians accused of major crimes in Indian Country, are under

¹ See June 18, 2018 petition exhibits A, B, and E (1/2 Seminole/Creek Indian, enrolled Seminole)

exclusive federal jurisdiction and Oklahoma courts lack subject matter jurisdiction.

Petitioner sought reverse and remand to state trial court with instructions to grant my post-conviction relief petition, dismiss the case as *void ab initio* for lack of subject matter jurisdiction and release Petitioner forthwith, or in the alternative, for judicial economy stay the proceedings pending this Court's final disposition of *Carpenter v. Murphy*, No. 17-1107 certiorari to the United States Court of Appeals for the Tenth Circuit.

February 25, 2019, the OCCA's final order (Appendix A) affirmed the state trial court's August 21, 2018 final order (Appendix B) dismissing my June 18, 2018 post-conviction relief petition.

Section V., Rule 5.5, *Rules of the Oklahoma Court of Criminal Appeals* prohibits a rehearing:

Once this Court has rendered its decision on post-conviction appeal, that decision shall constitute a final order and the petitioner's state remedies will be deemed exhausted on all issues raised in the petition in error, brief, and any prior appeal. *A petition for rehearing is not allowed* and these issues may not be raised in any subsequent proceeding in a court of this state. *(emphasis added)*

I struggle with undiagnosed and untreated constant confusion, serious loss of recall, dizziness, constant fatigue, constant nausea and mental distress over undiagnosed and ineffectively treated as allergies, painful, chronic, cascading and subacute symptoms that cause painfully swelling and aching salivary glands, sore and congested sinuses, ears, and whole mouth (chronic musty taste and order; sore and tender gums—feels like chewing cellophane when I eat—; while sleeping I grit my teeth so hard my teeth chip; slightly swollen tongue, lip & cheek linings with tiny bumps; sore and very tender palate; and constant throat irritation that causes frequent coughing)—no remedy (administrative or court), or treatment. *See McGirt v. Jones, et al.* CV-2012-2049 (relief granted June 2, 2014 SD-111661 Court of Civil Appeals, Div. 4 and October 2015, Oklahoma County district court); *McGirt v. Allbaugh, et al.* CV-2015-2263 (dismissed as untimely filed).

I inadvertently omit important facts due to the above and we are allowed to co-pay (collect when money becomes available in inmate account) only one original document and one copy to the district attorney or attorney general.

Following my 1997 incarceration I sought and received documents I never saw during the proceedings: affidavit of probable cause, investigative reports of law enforcement, doctor's reports and reports given by witnesses. Upon research I found the prosecutor withheld the testimony and reports of the D.A. investigator—affidavit of probable cause conflicted with later preliminary hearing (p.h.) and trial testimony of the mother and aunt of the alleged victim (witnesses); the deputy sheriff's report conflicted with the witnesses, testimony at p.h. and trial; the doctor's report showed no signs of rape—there were no scars, no tears and the hymen was still intact though the allegations were they occurred every day and night for a week.; and no reports from two child abuse counselors—DHS and Victory Christian Center.

D. FEDERAL STATUTES:

18 U.S.C § 1151, Indian Country defined:

The "term Indian Country" 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;
- b) all dependant Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof; and whether within or without the limits of a state, and
- c) all Indian allotments, the Indian titles to which have not been extinguished, including right-of-way running through the same.

18 U.S.C. § 1153, Offenses committed [by or against Indians] within Indian Country:

The Indian Major Crimes Act provides in relevant part:

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely....sex abuse of a minor....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.

18 U.S.C. § 1162, State jurisdiction over offenses committed by or against Indians in the Indian Country:

“The State of Oklahoma has never acted pursuant to Public Law 83-280 (280) or Title IV of the Civil Rights Act to assume jurisdiction over the “Indian Country” within its borders. *See CMG v. State*, 594 P.2d 798 (Okl.Crim.App. 1979); *cert. denied*, 444 U.S. 992, 100 S.Ct. 524 (1979) *State v. Burnett*, 671 P.2d 1165 (Okl.Crim.App. 1983); *State ex rel. May v. Seneca-Cayuga Tribe*, 711 P.2d 77 (Okl. 1985); *State v. Klindt*, OK CR 75, 782 P.2d 401 (Accordingly, the State of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country.); *Also Cravatt v. State*, 825 P.2d 277, 279 (Okl.Crim.App. 1992) ([Q]uite simply the State of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country).

The United States allowed states to assume criminal jurisdiction without the consent of the Indian Nation[s] (Tribe) affected until the Civil Rights Act of 1968, codified at 25 U.S.C. §§ 1321, 1326, where an Indian Nation must approve by special election the assumption by State of criminal jurisdiction.

18 U.S.C. § 3242, Indians committing certain offenses; acts on reservation:

All Indians committing any offense listed in the first paragraph of and punishable under section 1153 (relating to offenses committed within Indian Country) of this title shall be tried in the same courts and in the same manner as are all other persons committing such offense within the exclusive jurisdiction of the United States.

REASON FOR GRANTING PETITION:

OCCA's decision conflicts with federal statutes, precedents of this Court, the United States Court of Appeals for the Tenth Circuit (10th Circuit), as well as prior OCCA cases which recognize the Creek Nation as Indian Country in relation to exclusive federal jurisdiction.

June 18, 2018, Petitioner challenged the subject matter jurisdiction of state trial and appellate courts to render 1997-1998 convictions by indisputable facts in evidence that showed: 1) I am a member of the federally recognized Seminole/Creek (Mvskoke) Nations of Oklahoma, enrolled Seminole¹; 2) the alleged crimes were in Wagoner County, Oklahoma, federally recognized Indian Country within the federally recognized reservation boundaries of the federally recognized Mvskoke Nation of Oklahoma²; 3) the alleged crimes are enumerated within the Indian Major Crimes Act, 18 U.S.C. § 1153(a) (IMCA) (*see above*); and 4) Oklahoma courts lack subject matter jurisdiction; therefore the state convictions are *void ab initio* as rendered without subject matter jurisdiction and must be dismissed and Petitioner must be released forthwith.

A. EXCLUSIVE FEDERAL JURISDICTION:

Three prerequisites for federal jurisdiction under the IMCA are that: 1) the accused must be Indian, 2) the offense must occur in Indian Country, and 3) the offense occurred against a person or against the property of a person.

P.L. 99-654, 100 Stat. 3660, Sexual Abuse Act of 1986, amended 18 U.S.C. § 1153, and added Chapter 109A, adding sex abuse of a minor as a federal offense within Indian Country.

Oklahoma courts have a long history of ignoring federal statutes, *see above*, precedent decisions of this

¹ See June 18, 2018 petition for post-conviction relief exhibits A, B, & E and Seminole/Mvskoke Treaty of 1856, August 7, 1856, 11 Stat. 699, *available at* 1856 WL 11367.

² See *id* exhibit C and Mvskoke Treaty of 1866, June 14, 1866, 14 Stat. 785, *available at* 1866 WL 18777.

A court's jurisdiction is power to declare the law and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. *See U.S. v. Tony*, 637 F.3d (10thCir. 2011) (Subject matter jurisdiction cannot be forfeited or waived because it involves a court's power to hear a case, and consequently, defects in subject matter jurisdiction require correction whether the issue was raised in district court); *See also U.S. v. Cook*, 997 F.2d 1312, 1320 (10thCir. 1993) ("jurisdictional issue [which] are never waived and can be raised on collateral attack").

States have no authority over Indians in Indian country, unless it is expressly conferred by Congress. *See Cheyenne-Arapahoe Tribes of Oklahoma v. State of Okl.*, 618 F.2d 618 F.2d 665 (10thCir. 1980); *also Williams v. Lee*, 358 U.S. 217, 223, 79 S.Ct. 269, 272 (1959); *Kagma, alias Pactah Billy, an Indian and another*, 118 U.S. 375, 383-84, 65 S.Ct. 1109, 1113-14 (1886).

State district courts "have unlimited jurisdiction over all justiciable matter **and in all matters where exclusive jurisdiction is not given some other court, or as otherwise provided by State Constitution.** Okla.Const.Art. VII § 7." *Fent v. Oklahoma Natural Gas. Div. of Oneok, Inc.*, 804 P.2d 1146 (Okla.Civ.App. 70 1990). (emphasis mine)

OCCA bases its decision on the Oklahoma Constitution Article VII § 7, that the district courts have original jurisdiction of all justiciable matter—but left out the exceptions where, **in all matters where exclusive jurisdiction is not given some other court, or as otherwise provided by State Constitution.** The good people of Oklahoma waived any jurisdiction over Indian Country:

Oklahoma Constitution Article 1 § 3:

The people inhabiting the state do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, **and to all lands lying within limits owned or held by an Indian tribe, or nation and that until the title to any such public land shall have been extinguished by**

Court, 10th Circuit, as well as the OCCA's own, to encroach upon tribal and federal criminal jurisdiction as "justiciable matter." (See Appendix A, ¶ 2, pgs 2, 3)

The OCCA's decision, as a state criminal court of last resort, clearly conflicts with its own precedents recognizing Indians accused of major crimes covered in the IMCA in Indian Country are under exclusive federal jurisdiction: *United States v. Sands*, 968 F.2d 1058, 1062 (10thCir. 1992) ("The State of Oklahoma does not have jurisdiction over a criminal offense committed by one Creek Indian Against another in Indian Country."); *State v. Klindt, supra* (Accordingly, the State of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country.); *Cravatt v. State, supra*; ([Q]uite simply the State of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country); *Magnon v. Trammell*, 719, F3d 1159 (10thCir. 2013); *Murphy v. Royal*, 866 F.3d 1164 (10thCir. 2017), just to name a few.

In 1948, Act of June 25, 1948, ch. 645, 62 Stat. 683, 757, Congress amended the IMCA and codified the definition of Indian Country. It amended the act to apply in Indian Country as defined in the statute. *id.* 758, thus, the IMCA now applies in all of Indian Country—all land within the limits of any Indian reservation under the jurisdiction of the United States Government....have Indian Country status. See *State of Oklahoma ex rel. Tax Comm'n v. Sac and Fox Nation of Oklahoma*, 113 S.Ct. 1985 (1983) (Congress has defined Indian Country broadly to include formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States.); *Indian Country U.S.A. Inc., v. State of Oklahoma ex rel. Tax Comm'n*, 829 F.2d 967 973 (10thCir. 1987) (A formal designation of Indian lands as a reservation is not required for them to have Indian Country status.).

In cases decided in the late nineteenth and early twentieth centuries, this Court explained that

the Major Crimes Act applied to crimes committed within the boundaries of Indian reservations regardless of the ownership of the particular land on which the crimes were committed. *See United States v. Celestine*, 215 U.S. 278, 284-87, 30 S.Ct. 83, (1909); *United States v. Thomas*, 151 U.S. 577, 585-86, 14 S.Ct. 426, 38 L.Ed. 276 (1894). The Court explained in *Celestine*, that reservation status depends on the boundaries Congress draws, not on who owns the land inside the reservation's boundaries; "[W]hen Congress has once established a reservation, all tracts included within it remain a part of the reservation until separated therefrom by Congress." 215 U.S. @ 285, 30 S.Ct. 93. This understanding of reservations has continued. *See Solem v. Bartlett*, 104 S.Ct. 1161 (1984) ("Once a block of land is set aside for an Indian Reservation and no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise (citing *Celestine* 215 U.S. @ 285, 30 S.Ct. 93))" *Murphy v. Royal*, 866 F.3d 1164, 1183 (10thCir. 2017).

"The Supreme Court confirmed this understanding in *Seymour v. Superintendent of Washington State Penitentiary*, 368 U.S. 351, 82 S.Ct. 424, 7 L.Ed. 2d 346 (1962). In that case, an Indian sought federal habeas relief after being convicted in Washington state court of burglary, one of the Major Crimes Act's enumerated offenses. *See* 18 U.S.C. § 1153(a); *see also Seymour*, 368 U.S. @ 357, 82 S.Ct. 424. The State of Washington argued that even though the crime occurred on land within the reservation's borders, the particular parcel was owned by a non-Indian. *See id.* @ 357, 82 S.Ct. 424. Ruling for the Indian petitioner, the Supreme Court said Congress's definition of Indian country in § 1151(a) 'squarely put to rest' this argument. *Id.* 'Since the burglary with which [the defendant] was charged occurred on property plainly located within the limits of [the] reservation, the courts of Washington had no jurisdiction to try him for that offense.' *Id.* @ 359, 82 S.Ct. 424." *Murphy* @ 1184. "Under § 1151(a), therefore, **all lands within the boundaries of a reservation have Indian country status.**" *id.* @ 1185, (emphasis mine)

B. OKLAHOMA COURTS LACK SUBJECT MATTER JURISDICTION:

These arguments presented by Petitioner pre-date *Murphy* by decades, especially the Indian Country status of the Mvskoke (Creek) Nation of Oklahoma.

The facts in evidence show that 1) Petitioner is a federally recognized member of the Seminole/Mvskoke Nations of Oklahoma;³ 2) the alleged crimes were in Wagoner County, Oklahoma, Indian Country, within the federally recognized reservation boundaries of the Mvskoke Nation of Oklahoma;⁴ 3) enumerated within the Indian Major Crimes Act, under exclusive federal jurisdiction;⁵ and 4) Oklahoma courts lack subject matter jurisdiction; therefore the state convictions are *void ab initio* as rendered without jurisdiction of the subject-matter, and the convictions must be dismissed and Petitioner must be released forthwith.

Although, without jurisdiction, the OCCA's February 25, 2019 decision claimed, "However, the prosecution of Petitioner's crimes in that case was a justiciable matter, and thus he has not established that the district court lacked jurisdiction. Okla.Const.Art. VII § 7 (District courts shall have unlimited original jurisdiction of all justiciable matters in Oklahoma)."

When federal issues are involved, the state courts must follow precedent decisions of the federal courts. *See State v. Littlechief*, 573 P.2d 263 (Okla.Crim.App. 1978) (Determination of issue by U.S. federal district court judge was binding on State unless and until determination was overturned by United States court of Appeals or the Supreme Court of the United States, in view of fact that *issue involved construction and application of federal statutes*; Civil Rights Act of 1968 §§ 401-406, 25 U.S.C. §§ 1321, 1326.) (emphasis mine)

The affected Indian nation now must give states permission for assumption of criminal jurisdiction by special election by the Nation affected. §§ 1321, 1326.

³See pg. 13 footnote 1.

⁴ See map Appendix C; Also 18 U.S.C. §§ 1151(a), 1153(a) and pg 13 footnote 2.

⁵ See pg 13 ¶¶ 1, 2 under section A. Exclusive Federal Jurisdiction.

the United States the same shall be and remain subject to the jurisdiction, disposal and control of the United States. (emphasis mine)

The Indian Major Crimes Act gives exclusive federal jurisdiction to the federal courts over:

1) Indians, 2) accused of major crimes, 3) in Indian Country—which precludes state jurisdiction.

C. SUBJECT MATTER JURISDICTION NON-WAIVABLE:

Murphy v. Royal, 866 F.3d 1164 (Okla. 10thCir. 2017) footnote 5:

“In Oklahoma, ‘issues of subject matter jurisdiction are never waived and can therefore be raised on a collateral appeal.’” *Wallace v. State*, 935 P.2d 366, 372 (Okla.Crim.App. 1997); *See also Triplet v. Franklin*, 365 Fed.Appx. 86, 95 (Okla. 10thCir. 2010) *unpublished* (recognizing that, in Oklahoma, issues of subject matter jurisdiction are not waivable and can be raised for the first time in collateral proceedings); *Wackerly v. State*, 237 P.3d 795, 797 (Okla.Crim.App. 2010) (Considering jurisdictional claim that crime occurred on federal land raised in prisoner’s second-application for post-conviction relief); *Magnon v. State*, 207 P.3d 397, 402 (Okla.Crim.App. 2009) (Considering Indian Country jurisdictional challenge and explaining subject matter jurisdiction may be challenged at any time). *id.*

“There are, of course, some constitutional rights which are never finally waived.” *Johnson v. State*, 611 P.2d 1137 (Okla.CrimApp. 1980) (Lack of jurisdiction is never waived and can be raised at any time). *id.* at 1145.

Therefore, jurisdictional issues can be raised at any time. *See Armstrong v. State*, 1926 35 Okla.Crim 116, 248 P. 877, 878 (Subject matter jurisdiction cannot be conferred by consent, nor can it be waived, and it may be raised at any time before or after trial and even for the first time on appeal); *see also Staley v. State*, 1953 97 Okla.Crim 114, 259 P. 545; *Wallace v. State*, 935 P.2d 366, 272 (Okla.Crim.App. 1997) (Even though not raised on direct appeal, issues of subject matter are never waived and can therefore be raised on collateral appeal)

These are clearly established laws and I’m sure there are others, but inmates here are allowed thirty minute sessions on one of two research computers (Westlaw) three a.m. hrs. and three p.m. hrs.—along with about six other inmates—weekly, unless we have a court rule or statutory imposed deadline.

Petitioner's single issue is *WHETHER* state courts can maintain jurisdiction over Indians accused of major crimes in Indian Country, ignoring federal statutes, precedent decisions of this Court, the Tenth Circuit and even state district and appellate court decisions that give exclusive federal jurisdiction for Indians accused of major crimes in Indian Country.

The Oklahoma Court of Criminal Appeals is the state's criminal court of last resort—having exclusive jurisdiction of all criminal appeals; therefore, the doubtful decision made without subject matter jurisdiction is *void ab initio* and Petitioner has no further state remedy.

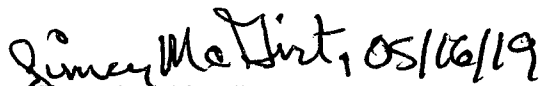
CONCLUSION

This case involves state court actions without subject matter jurisdiction and doubtful determination of important questions of state power over Indian affairs in Indian Country within the Mvskoke (Creek) Nation of Oklahoma. It affects the fairness, integrity, and public reputation of judicial proceedings and the abuse of the state's authority;

THEREFORE, this petition for certiorari should be granted and the case reversed and remanded to state court to dismiss the state convictions as *void ab initio* and release Petitioner forthwith.

EXECUTED under penalty of perjury under 28 U.S.C. §1746 and 12 O.S. § 426 at James Crabtree Correctional Center, Helena, OK and resubmitted May 16, 2019, with corrections to the *in forma pauperis* per Rule 14.5.

Respectfully submitted


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