

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

**JAMES CHANDLER RYDER, by)
and through Next Friend,)
SUE RYDER,)**

Petitioner,)

vs.)

Case No. 05-CV-24-JHP-KEW

**TOMMY SHARP, Warden,)
Oklahoma State Penitentiary,¹)**

Respondent.)

(Capital Case)

**PETITIONER JAMES CHANDLER RYDER’S UNOPPOSED MOTION FOR
ORDER GRANTING PERMISSION FOR FEDERAL COUNSEL TO FILE
SUBSEQUENT STATE POST-CONVICTION APPLICATION BASED ON
McGIRT v. OKLAHOMA, AND REQUEST FOR EXPEDITED DISPOSITION**

Petitioner James Chandler Ryder, through his next friend, Sue Ryder, requests permission from this Court for his federal habeas attorneys to file a Subsequent Application for Post-Conviction Relief based on *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020) and *Sharp v. Murphy*, 140 S. Ct. 2412 (2020), in the Oklahoma Court of Criminal Appeals (OCCA). Counsel for Respondent, Jennifer Crabb, has been contacted and does not object. In support of this request, Petitioner shows the following:

I. State Court Procedural Background

Mr. Ryder was sentenced to death in the district court of Pittsburg County on June 21, 2000. The Oklahoma Court of Criminal Appeals remanded Mr. Ryder’s case to the Pittsburg

¹On February 12, 2020, Mr. Sharp became Warden of the Oklahoma State Penitentiary. Pursuant to Fed. R. Civ. P. 25(d), he is substituted as party respondent.

County District Court for retrospective competency proceedings. The OCCA denied all grounds of relief and affirmed the convictions and sentences. *Ryder v. State*, 83 P.3d 856 (Okla. Crim. App. 2004). Mr. Ryder petitioned for certiorari in the Supreme Court of the United States but was denied. *Ryder v. Oklahoma*, 125 S.Ct. 215 (2004). Mr. Ryder also filed an application for post-conviction relief which was denied by the OCCA. *Ryder v. State*, Case No. PCD-2002-257 (Okla. Crim. App. Mar. 18, 2004).

II. Basis For This Request

The claim Mr. Ryder will raise in a subsequent state post-conviction action is that Oklahoma lacked jurisdiction to convict and sentence him for the murders in this case because the offenses occurred within the reservation boundaries of the Choctaw Nation, boundaries never disestablished by Congress; criminal jurisdiction in Indian country was never conferred on the state of Oklahoma by any congressional action; and the victims were Indians – enrolled citizens of the Choctaw Nation. *See The General Crimes Act*, 18 U.S.C. § 1152; *McGirt/Murphy*. Habeas counsel, having recently uncovered the status of the victims, are diligently attempting to pursue this jurisdiction claim.

Choctaw Nation is a federally recognized Indian tribe. It is one of five tribes that are often treated as a group for purposes of federal legislation (Cherokee, Muscogee (Creek), Choctaw, Chickasaw, and Seminole Nations, historically referred to as the “Five Civilized Tribes” or “Five Tribes”). *McGirt* addressed the Muscogee (Creek) Nation (MCN); however, the treaty and allotment history of the Choctaw Nation is very similar to that of the Creek and

applying *McGirt* to the Choctaw will likely produce the same result as portended by the dissent. *McGirt*, 140 S. Ct at 2482 (Roberts, J. dissenting).

III. Federal Court Background.

This Court appointed the Federal Public Defender's Office for the Western District of Oklahoma to represent Mr. Ryder in accordance with 18 U.S.C. § 3599. Dkt. 3. The appointment has continued through competency hearings and affirmance by the Tenth Circuit Court of Appeals. *Ryder ex rel. Ryder*, 810 F. 3d 724 (10th Cir. 2016). Undersigned counsel has represented Mr. Ryder since 2008 and the office continues to represent him in preparation for state clemency proceedings.

The relevant portion of § 3599 provides:

Unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, **each attorney so appointed shall represent the defendant throughout every subsequent stage of available judicial proceedings, including** pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and **all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures**, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.

18 U.S.C. § 3599(e) (emphasis added). In *Harbison v. Bell*, the Supreme Court held "a district court may determine on a case-by-case basis that it is appropriate for federal counsel to exhaust a claim in the course of her federal habeas representation." 556 U.S. 180, 190 n.7 (2009). It is appropriate to do so here.

Counsel have completed sufficient investigation and research to recognize there is a viable jurisdictional claim that needs to be pursued promptly. While counsel have done considerable research with regard to both the Muscogee (Creek) Nation (MCN) reservation and the Cherokee Nation (CN) reservation, they have not yet completed the in-depth research related to the Choctaw reservation necessary to plead this claim. Different counsel would have to pursue the matter *pro bono* and would have to duplicate or familiarize herself with the work already performed pursuant to the *McGirt/Murphy* Supreme Court decision. *See Anderson v. Sirmons*, 476 F.3d 1131, 1138 n.6 (10th Cir. 2007).

Moreover, counsel have an ongoing relationship with Sue Ryder, who serves as Mr. Ryder's next friend. Counsel are well acquainted with the Tenth Circuit's analysis in *Murphy* and the Supreme Court's analysis in *McGirt*. As such, counsel are in a uniquely well-placed and qualified position to present the issue in state court.

A rule *arguably* applicable to Mr. Ryder is the so-called "sixty (60) day rule," Rule 9.7(G)(3) of the *Rules of the Oklahoma Court of Criminal Appeals*. Although the sixty (60) day rule is subject to a number of challenges, Mr. Ryder intends to file his subsequent state post-conviction application within sixty (60) days of the Supreme Court's decision in *McGirt*. Such may be difficult without the Court's permission being expeditiously granted.

CONCLUSION

For the aforementioned reasons, and in the interest of judicial efficiency, Petitioner requests the Court to authorize appointed federal counsel to file on his behalf a Subsequent Application for Post-Conviction Relief in the Oklahoma Court of Criminal Appeals.

Respectfully submitted,

s/ Patti Palmer Ghezzi

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CERTIFICATE OF SERVICE

I certify that on this 12th day of August, 2020, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk will transmit a Notice of Electronic Filing to the following ECF registrants: Jennifer Dickson, Assistant Attorney General of Oklahoma.

s/ Patti Palmer Ghezzi

PATTI PALMER GHEZZI