



ORIGINAL

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUL 21 2020

JOHN D. HADDEN
CLERK

IN THE OKLAHOMA COURT OF CRIMINAL APPEALS

SHAUN MICHAEL BOSSE,

Petitioner,

-vs-

THE STATE OF OKLAHOMA,

Respondent.

McClain County District Court
Case No. CF-2010-00213

Court of Criminal Appeals
Direct Appeal Case No.
D-2012-1128

Court of Criminal Appeals Prior Post
Conviction Case No. PCD-2013-360

Post Conviction Case No.
PCD-2019-124

PETITIONER'S MOTION FOR LEAVE TO
FILE ATTACHED SUPPLEMENTAL BRIEF
LIMITED TO PROPOSITION I

Petitioner, Shaun Michael Bosse, through undersigned counsel, hereby moves this Court for leave to file the attached supplemental brief in support of Proposition I of his pending Second Application for Post-Conviction Relief. As grounds for this Motion, Petitioner states as follows:

Proposition I of Petitioner's pending Second Application for Post-Conviction Relief (APCR) asserts the State lacked jurisdiction to charge, try, convict, and sentence him in this case because the crimes at issue occurred in Indian Country and all of the victims were Indians. At the time the APCR was filed, Petitioner relied heavily on the decision of the United States Court of Appeals for the Tenth Circuit in *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017). When the Supreme Court granted the State's petition for a writ of certiorari in *Murphy*, this Court abated the case pending the outcome of that case.

On July 9, 2020, the Supreme Court affirmed the Tenth Circuit's opinion in *Murphy* and reversed this Court's opinion in *McGirt v. Oklahoma*, which addressed the same issue. Although the

ORIGINAL

Supreme Court's rulings in those cases discuss only the Creek Reservation, their holdings also apply with equal force to the other four of the Five Tribes. The attached supplemental brief sheds light on the important question regarding the reach of the Supreme Court's opinions in those cases.

Granting this Motion will not cause Respondent any prejudice. This Court has granted Respondent sixty days in which to file a response to Proposition I. Having Petitioner's supplemental brief in the record will allow the Court (and Respondent) a more complete record in which to address the important issues raised in this case.

WHEREFORE, Petitioner respectfully requests this Court to grant leave to file the attached supplemental brief.

Respectfully submitted,



MICHAEL W. LIEBERMAN, OBA #32694

SARAH M. JERNIGAN, OBA #21243

Assistant Federal Public Defenders

Office of the Federal Public Defender - WDOK

215 Dean A. McGee, Suite 707

Oklahoma City, OK 73102

Telephone: (405) 609-5975; Fax (405) 609-5976

michael_lieberman@fd.org

sarah_jernigan@fd.org

Attorneys for Petitioner Shaun Michael Bosse

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 2020, a true and correct copy of the foregoing document was delivered to the Clerk of the Court for delivery to the Office of the Attorney General pursuant Rule 1.9 (B), Rules of the Court of Criminal Appeals.



Sarah M. Jernigan

IN THE OKLAHOMA COURT OF CRIMINAL APPEALS

SHAUN MICHAEL BOSSE,

Petitioner,

-vs-

THE STATE OF OKLAHOMA,

Respondent.

McClain County District Court

Case No. CF-2010-00213

Court of Criminal Appeals

Direct Appeal Case No.

D-2012-1128

Court of Criminal Appeals Prior Post

Conviction Case No. PCD-2013-360

Post Conviction Case No.

PCD-2019-124

PETITIONER'S SUPPLEMENTAL BRIEF
REGARDING GROUND I OF HIS SECOND
APPLICATION FOR POST-CONVICTION RELIEF

Now pending before this Court is Petitioner Shaun Bosse's Second Application for Post-Conviction Relief (APCR). For purposes of this supplemental brief, counsel focuses exclusively on Ground I of the APCR, in which Bosse challenges his convictions and death sentences on the assertion that the state court that tried him was without jurisdiction to do so. In fact, every state court lacked jurisdiction to try Bosse. That is so because the Major Crimes Act, 18 U.S.C. § 1151, The General Crimes Act, *Id.* at § 1152, and numerous cases from this Court all mandate that certain crimes (of which murder and arson are included) committed by or against an Indian in Indian Country must be tried, if at all, in Federal court. *See* APCR at 15-16. To put it differently, "the State of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country." *Cravatt v. State*, 1992 OK CR 6 ¶ 15, 825 P.2d 277, 279 (citing *State v. Klindt*, 1989 OK CR 75, 782 P.2d 401, 403).

ATTACHMENT

As set out in greater detail in the pending APCR, the State lacked authority to try Mr. Bosse in this case because the site of the crime was in Indian Country – more specifically, within the territorial boundaries of the Chickasaw Reservation – and victims Katrina Griffin and her two children were Indians, all being members of the Chickasaw Tribe. *See* APCR at 17-18 and attachments thereto.

At the time Petitioner filed the pending APCR, he relied upon the Tenth Circuit's recent decision in *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017). As of the APCR's filing, however, the Supreme Court had granted the State's petition for certiorari in *Murphy*, and the case had not yet been resolved. As a result, this Court held this case in abeyance until the *Murphy* case became final. The Supreme Court was unable to resolve *Murphy* by the end of the 2018 Term; instead, it held the case over and eventually granted certiorari review in a different case raising the precise same issue as *Murphy*. That case was *McGirt v. Oklahoma*, Case No. 18-9526, 591 U.S. __ (2020), 2020 WL 3848063. In *McGirt*, the Supreme Court applied the well-known and long-standing test set out in *Solem v. Bartlett*, 465 U.S. 463 (1984) for determining whether a tribal Reservation still exists. After applying the *Solem* test, as further clarified in *Nebraska v. Parker*, 577 U.S. 481 (2016), the Court held the Creek Reservation has never been extinguished by Congress, which is the only body with authority to extinguish a reservation. After releasing the opinion in *McGirt*, the Supreme Court, based on the reasoning of *McGirt*, affirmed the Tenth Circuit's opinion in *Murphy*. *Sharp v. Murphy*, Case No. 17-1107, 591 U.S. __ (2020), 2020 WL 3848060.¹

¹ During the pendency of the case, Tommy Sharp replaced Mr. Royal as Warden; therefore, the name of the case was modified to reflect that change.

Although the charges at issue in *Murphy* and *McGirt* arose in the Creek Reservation, there is nothing in either opinion to suggest such cases apply only to the Creek Nation. Indeed, to put to rest any possible argument to the contrary, immediately after issuing those decisions, the Court vacated convictions of four other individuals in light of the *McGirt* ruling, none of which had anything to do with the Creek Reservation. See *Johnson v. Oklahoma*, No. 18-9098 (Seminole Nation); *Davis v. Oklahoma*, No. 19-6428 (Choctaw Nation); *Terry v. Oklahoma*, No. 18-8801 (Ottawa Nation); *Bentley v. Oklahoma*, 19-5417 (Citizen Potawatomi Nation).² Indeed, Chief Justice Roberts (although clearly not in agreement with the result in *McGirt*) recognized its application to other tribal lands, especially those of the Five Tribes (of which the Chickasaw belongs). In his dissent in *McGirt*, Chief Justice Roberts said:

Not only does the Court discover a Creek reservation that spans three million acres and includes most of the city of Tulsa, *but the Court's reasoning portends that there are four more such reservations in Oklahoma*. The rediscovered reservations encompass the entire eastern half of the state.

McGirt, 591 U.S. at ___, slip op at 46 (Roberts, CJ dissenting) (emphasis added). In the event any doubt remains whether *McGirt* applies with equal force to all Five Tribes, Attorney General Mike Hunter explicitly said it does. See <https://www.newson6.com/story/5f09c526c1a44923d073166a/the-hot-seat:-attorney-general-mike-hunter-addresses-mcgirt-v-oklahoma-ruling> (last visited July 20, 2020).

Prior to *McGirt*, courts sometimes faced confusion regarding where to look to determine whether a particular reservation still existed. But *McGirt* put any such confusion to bed. “To

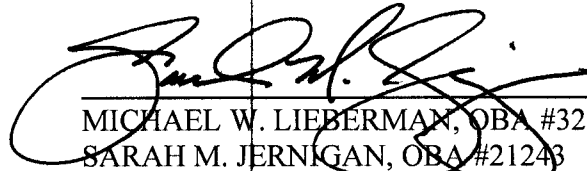
² The vacation of sentences in these four cases can all be found on the Supreme Court’s Order List dated July 9, 2020, the same day on which the opinions in *McGirt* and *Murphy* were decided.

determine whether a tribe continues to hold a reservation, *there is only one place we may look: Acts of Congress.*” *Id.* at ___, slip op at 7 (emphasis added). “Nor will th[e] Court lightly infer such a breach once Congress has established a reservation.” *Id.* (citing *Solem*, 465 U.S. at 470).

As explained in more detail in Mr. Bosse’s pending Application for Post-Conviction Relief, the State cannot point to any statute (because none exists) that terminated the Chickasaw Reservation. The crime for which Bosse was charged, convicted and sentenced to death all occurred on land that is part of the Chickasaw Reservation. Katrina Griffin and her two children were enrolled members of the Chickasaw Tribe. Given these factors, the State of Oklahoma had no jurisdiction to charge, try, convict, or sentence Mr. Bosse for the crimes in this case. The Supreme Court made this result clear when it decided *Solem* in 1984. To the extent any confusion remained, the Supreme Court reiterated in *McGirt* that it meant what it said in *Solem*.

WHEREFORE, this Court should follow the only course those cases leave open to it and vacate Mr. Bosse’s convictions and sentences, and dismiss the state charges against him.

Respectfully submitted,

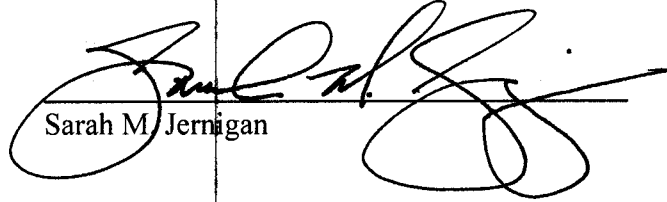


MICHAEL W. LIEBERMAN, OBA #32694
SARAH M. JERNIGAN, OBA #21243
Assistant Federal Public Defenders
Office of the Federal Public Defender - WDOK
215 Dean A. McGee, Suite 707
Oklahoma City, OK 73102
Telephone: (405) 609-5975; Fax (405) 609-5976
michael_lieberman@fd.org
sarah_jernigan@fd.org

Attorneys for Petitioner Shaun Michael Bosse

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 2020, a true and correct copy of the foregoing document was delivered to the Clerk of the Court for delivery to the Office of the Attorney General pursuant Rule 1.9 (B), Rules of the Court of Criminal Appeals.


Sarah M. Jernigan