

**IN THE DISTRICT COURT OF THE EIGHTEENTH JUDICIAL DISTRICT OF
THE STATE OF
OKLAHOMA SITTING IN AND FOR MCINTOSH COUNTY**

THE STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
vs.)
)
JOSEPH NOCONA LONG)
ADDR: PO BOX 29)
EUFAULA, OK 74432)
SSN: *-**-0935**)
DOB: JANUARY, 1991)

Defendant(s).)

Case No. CF-2023-0086

FILED
SEP 18 2023
LISA RODEBUSH, Court Clerk
McINTOSH COUNTY
By X Deputy

**STATE’S RESPONSE TO DEFENDANT’S MOTION TO
DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

COMES NOW, the State of Oklahoma by and through District Attorney, Carol Iski, and Assistant District Attorney, Sara Dupree, and files this Response to Defendant’s Motion to Dismiss for Lack of Subject Matter Jurisdiction, and Motion for Post-Conviction Relief, or in the Alternative, Petition for Habeas Corpus and Motion to Expunge and alleges as follow:

1. The Defendant has pled to Count 1: Bringing Contraband into Jail/Penal Institution and Count 2: Trespassing after Being Forbidden in CF-2023-86.
2. Defendant pled to a deferred sentence on June 27, 2023.
3. Defendant now seeks to have the Court dismiss this case under *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020).
4. The Defendant pled to committing these offenses in McIntosh County, more specifically for Count 1, in the McIntosh County Jail.
5. One of Defendant’s crimes occurred within a facility operated by McIntosh County in the State of Oklahoma.
6. Defendant has never raised any claims of being tribal before entering a plea with the State of Oklahoma.

Brief in Support

In *Oklahoma v. Castro-Huerta*, 142 S.Ct. 2486, 213 L.ed.2d 847 (2022), the Court held that “Indian country is part of the State, not separate from the State.”

The Court has long departed from its prior view that State laws have no power within the reservation. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 141 (1980).

There have been decisions that indicate that “even on reservations state laws may be applied to Indians unless such application would interfere with reservation self-government or impair a right granted or reserved by federal law.” *Organized Village of Kake v. Egan*, 369 U.S. 60, 75 (1962).

According to *White Mountain Apache Tribe v. Bracker*, “There is no rigid rule by which to resolve the question whether a particular state law may be applied to an Indian reservation or to tribal members.” *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980).

Under *Bracker*, the State has two obstacles to overcome when determining whether the State has jurisdiction over a matter.

The first obstacle is whether there is a federal statute that preempts state law. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142-43 (1980).

Under *Castro*, the Court held that “by its terms” the General Crimes Act, 18 U.S.C. §1152, does not say that “federal jurisdiction is exclusive in Indian country, or that state jurisdiction is preempted in Indian country.”

This is directly in contrast with the Major Crimes Act 18 U.S.C. §1153, which the Court ruled, grants the federal government exclusive jurisdiction over certain crimes. *Oklahoma v. Castro-Huerta*, 142 S.Ct. 2486, 2496 213 L.ed.2d 847 (2022).

The majority specifically states that the General Crimes Act would not preempt the State from pursuing criminal charges against Indians but acknowledges that there may be principles of tribal self-government that the Court did not touch on because the specific question was not in front of them at the time. *Oklahoma v. Castro-Huerta*, 142 S.Ct. 2486, n. 2, 213 L.ed.2d 847 (2022).

Th other potential statute that the Court cites is Public Law 280, or 18 U.S.C. §1162.

In *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 513-514 (1991), the Court recognizes that Public Law 280 does not operate as a bar from State’s right whether a State has elected to assume jurisdiction or not.

In *Castro-Huerta*, the Court states that Public Law 280 is not necessarily a preemption to the State’s ability assert jurisdiction.

The Supreme Court has stated previously that Public Law 280 was not meant to preempt the State’s jurisdiction. *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C.*, 476 US 877 (1986) and *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C.*, 467 U.S. 138 (1984).

Public Law 280 was designed for promoting the” gradual assimilation of Indians into... American culture.” *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C.*, 476 U.S. 877, 885-886 (1986).

So, under the Court’s ruling in *Castro*, the General Crimes and Public Law 280 are not preemptive of State’s jurisdiction.

The second obstacle is whether the State “unlawfully infringes on the Tribes to make their own laws and be ruled by them.” (Id. *Quoting Williams v. Lee*, 358 U.S. 2197, 220, 79 S. Ct. 269, 271, 3 L.Ed.2d 251 (1959).

The Court should apply the balancing test from *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980) when determining if the exercise of state jurisdiction would unlawfully infringe upon tribal self-government.

Under *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980), the Court said when on-reservation conduct involving only Indians is at issue, the state law is generally inapplicable for the State's regulatory interest is likely to be minimal and federal interest in encouraging tribal self-government is at its strongest."

There are times when the tribe's interest is less than the State's even what the Court has deemed Indian Country.

For example, the Supreme Court required Tribes to cooperate with the State in matters such as tax collections on cigarettes to non-Tribal members. See *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 111 S. Ct. 905, 112 L.Ed.2d 1112 (1991)

In the present case, this crime does not solely involve Indians, but a county facility, the McIntosh County Jail.

The State and its counties have a strong interest in what happens within the walls of its facilities, such as jails and prisons.

The Tribe even has Compacts with counties of Oklahoma to utilize their jails. (See Exhibit A).

The jails do not fall under the control of the Tribes, and the only way for the Tribes to have a say in the jail is for there to be an agreement between the Tribe and county with approval from the Oklahoma Secretary of State.

While the jail is physically located within the historical boundaries of the Creek Nation, it is not a Tribal entity and is not affiliated with the Tribe.

The other issue of interest arises from the plea agreement that Defendant made with the State of Oklahoma.

The State of Oklahoma has an interest in maintaining and upholding plea agreements with Defendants who choose to engage with the State.

Defendant chose to engage with the State of Oklahoma when he entered into a plea agreement with the State of Oklahoma.

There is a deferral of a finding of guilt, but Defendant still had ten days to withdraw his plea agreement and was read his notice of appeals when he made the deal with the State.

Under *Three Affiliated Tribes*, the Supreme Court ordered North Dakota to hear a suit brought by Native Americans even when North Dakota stated that it had no jurisdiction under Public Law 280 and had further disclaimed jurisdiction in a state statute.

When a Tribe, or Tribal Member, chooses to engage with the State on legal matters, this Court should be allowed to continue to hear matters absent preemption by federal law.

The Defendant made a choice to engage with the State Court instead of filing his motion when he was first charged.

It is presumed that the State has jurisdiction over its cases, and Defendant failed to prove that the State lacked jurisdiction before making a plea agreement.

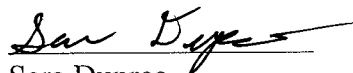
Finally, as *Castro-Huerta* stated, the State has an interest in protecting its commonwealth.

Trespassing and Bringing Contraband into the Jail, are crimes that the State has always had a general interest in prosecuting.

Under the *Bracker* balancing test, the State should have a substantial interest in what goes on in its jails, upholding its plea agreements, and the protection of the health and safety of its citizens.

WHEREFORE, the State requests that Defendant's Motion to Dismiss due to lack of Subject Matter Jurisdiction be denied and that the case be allowed to proceed.

Respectfully submitted,



Sara Dupree

Assistant District Attorney

CERTIFICATE OF SERVICE

This is to certify that on the date filed, I caused a true and correct copy of the above and foregoing Response to be hand delivered to the court house mailbox of the defendant's attorney, Ryan Ferguson located in the McIntosh County Court Clerk's Office located at 110 N. 1st Street, Eufaula, OK 74432.



McIntosh County D.A.'s Office