

No. 21-6507

**ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED  
NOV 19 2021  
OFFICE OF THE CLERK

Lyle Quinton Brown — PETITIONER  
(Your Name)

vs.

State Of Oklahoma "etal" — 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

Lyle Quinton Brown  
(Your Name)

North Fork Correctional Center  
(Address)

1605 E. Main street  
(City, State, Zip Code)

Sayre, OK. 73662

### QUESTION(S) PRESENTED

1. Whether or not Matloff v. Wallace, 2021 OK CR 21 non-retroactivity decision conflicts with the holding in Sharp v. Murphy, 140 S.Ct. 2412 (2020) and McGirt v. Oklahoma 440 S.Ct. 2452 (2020)?

2. Whether or not Matloff v. Wallace, 2021 OK CR 21 non-retroactivity decision conflicts with United States v. Dashney, 52 F.3d. 298, 299 (10th Cir 1995)?

3. Whether or not Matloff v. Wallace, 2021 OK CR 21 non-retroactivity decision conflicts with United States v. Johnson 102 S.Ct. 2579 (1982)?

## LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

John O'Connor  
Attorney General for the State of Oklahoma  
313 N.E. 21 st.  
Oklahoma City, Ok. 73105

## RELATED CASES

Brown v. McCollum, case No. 13-6099 (this court)

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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 is unpublished.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 is unpublished.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 is unpublished.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 Coal County State District court appears at Appendix B to the petition and is unpublished.

Oklahoma Court of Criminal Appeals order to District Court for an evidentiary hearing, appears at Appendix C

## 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 9/29/21.  
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).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitutional Amendment XIV (section 1)  
... nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of law.

### 18 USC § 1153 (a)

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely murder... within 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 USC § 1151 (a)

Formal (recognized treaty boundaries) and informal (tribal trust lands) reservations (including rights-of-way/roads),



## STATEMENT OF THE CASE

The Oklahoma Court of Criminal Appeals decided an important federal question in a way that conflicts with *United States v. Dashney* 52 F.3d 298, 299 (10<sup>th</sup> Cir 1995)

If allowed to stand, the Oklahoma court's decision will leave thousands of individuals with state convictions that the State had no authority to impose. The court is trying to preserve legally void convictions that the state never had authority to impose. The state court's decision violates bedrock principles of due process and centuries-old understandings of habeas corpus. A conviction cannot stand where a state lacks authority to criminalize the conduct, and habeas courts have long set aside judgments by a court that lacks jurisdiction.

The Major Crimes Act is the jurisdictional statute at the heart of this case. It applies to enumerated crimes committed by Indians in "Indian Country" when the MCA applies, jurisdiction is exclusively federal, see, *Negonsott v. Samuels* 507 U.S. 99, 103 (1993) ("Federal jurisdiction over the offenses covered by the MCA is exclusive of state jurisdiction (quotations omitted) U.S. v. Sands 968 F.2d 1058, 1062 (10<sup>th</sup> Cir 1992) ("The state of Oklahoma does not have jurisdiction over a criminal offense committed by one Indian against another in Indian Country") *Cravatt v. State* 825 P.2d 277, 279 (Okla. Crim. App. 1992) ("quite simply the state of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country") (quotations omitted) "The policy of leaving Indians free from State jurisdiction and control is deeply rooted in the nation's history." *Rice v. Olson* 324 U.S. 786, 789 (1945) (citing *Worcester v. Georgia* 31 U.S. (6 Pet.) 515 (1832)

In *Davis v. U.S.* 417 U.S. 333, 94 S.Ct. 2298 (1974) The Supreme Court held that where a habeas petitioner has been convicted of violating a law and an intervening decision establishes that the petitioner's conduct was not a violation of that law then habeas relief is appropriate. 417 U.S. 346-47 94 S.Ct. 2298.

Although Davis involved a change in non constitutional substantive law rather than a change in non-constitutionally based jurisdictional rule, petitioner contends the instant case is more analogous to Davis than Matloff surpa. In the instant case, the trial court never had jurisdiction over petitioner's case. similar to the result in Davis, this court can conclude that the judgment entered by the trial court in the absence of jurisdiction "inherently, results in a complete miscarriage of justice and presents exceptional circumstances that justify collateral relief" Davis 417 U.S. 346-47, 94 S. Ct. 2298 (quotation marks omitted)

The instant case does not involve any new constitutional rules of criminal procedure. Rather the claims in this case relate to the jurisdiction of the court, pursuant to treaties between the United States and the five civilized tribes Nation and subsequent legislation as interpreted by the federal courts to impose criminal penalties. The McGirt holding concluded when an Indian commits a crime enumerated in the MCA within Indian country the state lacks subject matter jurisdiction McGirt v. Oklahoma 140 S. Ct. 2452 (2020) and it was determined the Muscogee Nation reservation had not been disestablished by congress. McGirt surpa, and even though the state laws applied over the lands within the historical boundaries of the Muscogee Nation for over a hundred years. Leaving thousands of inmates serving void sentences in prisons who were denied due process of law guaranteed by the U.S. C.A. Fourteen. The McGirt holding involved jurisdictional issues which were resolved without reference to constitutional principles, and the court is, therefore, not bound by the non-retroactivity holding in Teague v. Lane 489 U.S. 288, 310, 109 S. Ct. 1060 (1989), see eg. U.S. v. Dashney 52 F.3d 298, 299 (10th Cir 1995) (holding that Teague was inapplicable because the new decision at issue in Dashney "did not announce a new rule of constitutional criminal procedure but only declared what the law meant from the date of its enactment")

In *U. S. v Johnson*, 457 U.S. 537, 550, 102 S. Ct. 2579 (1982) (recognizing that full retroactivity is a necessary adjunct to the ruling that a trial court lacked authority to convict or punish a criminal defendant in the first place based on the notion that the prior inconsistent judgments or sentences were void ab initio)

In *Landgraf v. USI Film Products*, 511 U.S. 244, 274 114 S.Ct. 1483 (1994) (recognizing that in cases of a new jurisdictional rule, "present law normally governs in such situations because jurisdictional statutes speak to the power of the court rather than to the rights or obligations of the parties")

History of proceedings in instant case  
Petitioner's third Post Conviction Relief application  
case # CF-2006-64

- 3/26/2020 - Post Conviction Relief - filed
- 4/23/2020 - Post Conviction Relief denied
- 5/2/2020 - Notice of Intent to Appeal - filed
- 5/19/2020 - (case # PC-2020-338) OCCA, Petition and Error with Brief in support of petition and Error - filed
- 7/20/2020 - Motion to amend petitioner's Brief in support of petition and error - filed
- 12/2/2020 - OCCA, Order remanding for Evidentiary Hearing - filed
- 12/14/2020 - Request for appointed counsel (District Court)
- 1/14/2021 - Evidentiary Hearing by zoom technology
- 1/29/2021 - Transcripts filed for Evidentiary Hearing
- 2/23/2021 - Finding of facts and conclusions of law, filed
- 3/18/2021 - Attorney General's Brief after Remand - filed
- 6/24/2021 - Petitioner's motion to submit supplemental evidence - filed
- 7/9/2021 - Objection to petitioner's request to supplement the record and alternative motion to stay and abate Post-conviction proceedings - filed
- 7/19/21 - Reply to AG's objection to petitioner's request to supplement the record and alternative motion to stay and abate PCR proceedings
- 9/29/21 - OCCA, Order denying PCR - filed
- 10/1/21 - Order, Mandate (District Court) - filed

## REASONS FOR GRANTING THE PETITION

(1) Because of all the erroneous legal strategy introduced into the case by the state, as defined below, is abusive, deny due process, was inaccurate and inadequate to protect the constitutional rights of the petitioner and should require reversal and remand. United States Constitutional Amendment Fourteen, XIV.

This case has been ripe for disposal for over six months after 3/18/2021, Brief of respondent after remand, to 9/29/2021, Oklahoma Court of Criminal Appeal's order denying petitioner's Post-Conviction Relief. Petitioner has no procedural forum to challenge *Matloff v. Wallace*, retroactivity decision which was decided 8/12/2021, 47 days before order denying petitioner's Post-Conviction Relief.

3/19/2021 In *Bosse v. State*, 2021 OK CR3, 484 P.3d 286, at pg. 4, 2nd par., 1st sent. The District Attorney also raises a separate claim, arguing that this court should alter its definition of Indian status, an argument not raised by the attorney general, at pg. 4, 3rd par., 1st and 2nd sent. The D.A. states that the District Judge avoided the issue of blood quantum when making her findings of fact and conclusions of law. He now requests that this court require a specific blood quantum to meet the definition of Indian status to avoid a "jurisdictional loophole".

In the instant case 3/18/2021, Brief of respondent after remand, pg. 3, 2nd par. 1st sent. Assuming petitioner did commit the murder on an Indian reservation, however, the state properly exercised jurisdiction because petitioner was not then recognized as an Indian.

pg. 4, 1st par. 3rd sent. Although this court's remand order used the present tense "is recognized as an Indian", remand order at 3, Indian status for the purpose of the Major Crimes Act must be determined as of the time of the crime(s). *U. S. v. Zepeda* 792 F3d 1103, 1113 (9th Cir 2015) (en banc):

pg. 6, FN 6. It is the state's position that recognition should be measured by membership alone. However, as there is no evidence of recognition in this case beyond enrollment, it is not necessary to reach that question in this case.

pg. 7, 1st. par., last sent., The state respectfully asks this court to hold in accord with every other jurisdiction that has decided this question, that recognition is determined as of the date of the crime.

7/9/2021, Respondent's objection to petitioner's request to supplement the record and alternative motion to stay and abate Post-conviction proceedings.

pg. 5, 1st. par., last sent., This court should adopt a bright line rule in which only enrolled members of federally recognized tribes are considered Indian for purpose of criminal jurisdiction.

In *Bosse surpa*, the state argues specific blood quantum. In the instant case the state argues membership alone or enrollment alone to determine Indian status. In the instant case the state would sporadically wobble back and forth until the time presented it's self to choose of the latter two the suitable definition of Indian status. This conduct by the state presented a confusing and insurmountable challenge to petitioner. In addition the state argued Indian status had to be proven at the time of the crime, as an element of the crime, which the state implies that petitioner fails. Although, word for work, in accord with 12/2/2020 remand order. Defined and ordered 2/23/2021. In District court's finding of fact and conclusions of law, petitioner qualified in both prongs of Indian status in accordance with the United States 10<sup>th</sup> circuit court of Appeals' definition.

(2) The national importance of having the Supreme Court decide this question is this court's decision, being the highest court in the United States, will be as close to final as can be had. The decision will lessen the lower courts litigation and lessen expenditure of judicial resources. The decision could also help restore trust between the Indian tribes and the United States Government.

(3) Oklahoma Court of Appeals, *Matloff v. Wallace* 2021 OKCR 21 non-retroactivity decision is in conflict with the holdings in *Sharp v. Murphy* 140 S.Ct. 2412 (2020). On 7/9/2020 in *McGirt v. Oklahoma surpa*. This court ruled in favor of McGirt. Then following on the same day, This court ruled affirming the 10<sup>th</sup> Circuit Court of Appeals holding in

Murphy v. Royal, 866 F.3d 1164 (10<sup>th</sup> cir. Okla. 2017) implying at least partial retroactivity.  
(4) If this Court ruled in favor of petitioner and ordered that McGirt will be applied fully retroactive to all McGirt challenged post-conviction relief applications prior to and after the McGirt decision, 7/9/2020. This would help others similarly situated to receive due process of law guaranteed by U.S.C.A. XIV. That the state of Oklahoma denied them by assuming subject matter jurisdiction. There are thousands of inmates serving time in Oklahoma prisons on void convictions and sentences handed down by the state of Oklahoma, without jurisdiction to do so.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Lyle Q. Brown

Date: Nov, 16, 2021