ORIGINAL

NO. 20-8335

IN THE SUPREME COURT OF THE UNITED STATES

GEORGE A CHRISTIAN, JR -- PETITIONER

vs.

THE STATE OF OKLAHOMA -- RESPONDENT (S)

PETITION FOR WRIT OF CERTIORARI

APPEAL FROM OKLAHOMA COURT OF CRIMINAL APPEALS, CASE NO. CF-1998-3134

GEORGE A. CHRISTIAN, JR.

(Your Name)

P.O. Box 260

(Address)

Lexington OK 73051

(City, State, Zip Code)

(Phone Number)

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CONSTITUTIONAL PROVISION AND STATUTES

QUESTION PRESENTED

Whether the State's denial of the post-conviction relief lacked subject matter jurisdiction because the offense occurred in indian country and **18 U.S.C. § 1153** provides for exclusive federal jurisdiction and his conviction(s) are void *AB INITIO*. *Mcgirt v. Oklahoma*, 140 S.Ct. 2452 (2020) WL 3848063 (DECIDED JULY 9, 2020) this issue anew in light of *Mcgirt*.

PARTIES TO THE PROCEEDING

Petitioner, *pro se*:

George A. Christian Jr. # 276900, P.O. Box 260, Lexington, OK, 73051.

For Respondents: The State of Oklahoma,

Jennifer M. Hinsperger Assistant District Attorney, 320 Robert S. Kerr Ave. Ste 505, Oklahoma City, OK 73102.

OPINION BELOW

The following opinions and orders below are pertinent here, all of which are unpublished: [1] First Application for Post-Conviction Relief was filed on (11/1/16), an amendment to the application was filed on (5/8/2010), district court denied (APCR) on (1/7/21), the OCCA affirmed the district court's denial of Petitioner's application for post-conviction relief. *See Christian v. State*, PC-2021-75 (March 23rd, 2021).

JURISDICTION

The District Court of Oklahoma and the Oklahoma Court of Criminal Appeals denied petitioner Application for Post-Conviction Relief on a claim of Ineffective Assistance of Trial Counsel in light of *McGirt v. Oklahoma*, 148 S.Ct. 2452, 2020 WL 3848063 (2020); *Murphy v. Royal*, 875 F.3d 869, 907-090, 966 (2017), cert. granted 589 U.S.___ (2019); See *Sharp v. Murphy*, 591 U.S.___(2020) (Per Curiam (affirming the Tenth Circuit); See also *Cox v. State*, 2006 OK CR 51, 152 P.3d 244 ¶ 6, 247, a lack of subject matter jurisdiction, pursuant to 28 U.S.C. § 1257(a), the United States Supreme Court has jurisdiction by U.S. Sup.Ct. Rules 10(c) and 13(1) on certiorari, to review a

denial of a Post-Conviction Claim denied by a state's highest court any procedural default to be excused and considered on this issue anew in light of *McGirt.*

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The right of a state prisoner to seek certiorari is guaranteed in 28 U.S.C § 2254. The standard for relief under "AEDPA" is set forth in 28 U.S.C. § 2254(d)(1).

United States Constitution, Amendment XIV.

Okla. Const Art, II §§ 6 and 7

STATEMENT OF THE CASE

COMES NOW, George A. Christian, the Petitioner is a citizen of the seminole nation appearing and proceeding pro se[1] moves the court for an Order vacating and setting aside the judgment entered in this action and all subsequent proceedings thereon, and to vacate under *McGirt v. Oklahoma*, 148 S.Ct. 2452, 2020 WL 3848063 (2020), pursuant to and in accord with the applicable provisions of **Rule 10 is** grounds for relief on certiorari and just terms, the court may relieve a party or its legal representative from a denial of a Application for Post-Conviction Relief, final judgment, order, or proceeding entered in this action on [March 23rd, 2021], denying him relief on certain claims contained in the petition for the following reasons to seek a petition for certiorari before this court. Including the notice of intent to appeal form required by Rule 1.14(C), Rule 3.14(1)(2) the decision is in conflict with an express statute or controlling decision to which the attention of this court was not called either in the brief or in oral argument.

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[1] **Haines v. Kerner**, 404 U.S. 519 (1972) holding a Pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. In **Hall v. Bellmon**, 935 F.2d 1106, 1110 (10th Cir. 1991) the Court stated "we believe this [Haines pro se litigant] means that if the court can reasonably read the pleadings to state a valid [Certiorari civil action] claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion with various legal theories, his poor syntax and sentence construction or his unfamiliarity with pleading requirements. Id....and the Plaintiff whose factual allegations are close to stating a claim but are missing some important element that may not have occurred to him, should be allowed to amend his complaint.

Any Oklahoma State District Court in Indian territory or the Unassigned Lands are deprived of subject-matter jurisdiction to hear any claim, civil or criminal because the State ceded jurisdiction to the United States upon entry into the Union. Okla. Const. art I § 3 is the Enabling Act, *In re Initiative Petition No.* 363, 1996 OK 122, 927,P.2d 558. *See* ***McGirt v. Oklahoma***, 591 U.S.___, 140 S.Ct. 2452, 2462, 207 L.Ed.2d 985 (2020) [a] person may not be punished for a crime without a formal and sufficient accusation even if he voluntarily submits to the jurisdiction of the court." ***Albrecht v. U.S.***, 273 U.S. 1, 8, 47 S.Ct. 250, 71 L.Ed. 505 (1927) has been violated and that he has been denied his constitutional rights.

The Petitioner urges reconsideration of his original argument to withdraw his plea because the district court lacked subject-matter jurisdiction and that his sentence should be voided. Oklahoma statehood did not disestablished the Reservation. Shortly after Congress expressly preserved the Seminole Nation's government, it passed the Oklahoma Enabling Act, 34 Stat. 267 (1906), paving the way for Oklahoma Statehood. Ultimately, because no act of congress bears any, of the textual evidence of intent to disestablish the Seminole Reservation since 1866, when Oklahoma entered the Union, it disclaimed any right to the jurisdiction regardless of the Major Crimes Act (MCA)-- 18 U.S.C. § 1153 or the General Crimes Act (GCA)--18 U.S.C. § 1152.

The state has erroneously argued it has concurrent jurisdiction under the General Crimes over non-Indians in Indian Country which is incorrect. A plain language reading of the State Constitution forever disclaimed any jurisdiction over Indian land or unassigned lands which deprived the state Court of subject-matter jurisdiction over felony or misdemeanor offenses because exclusive jurisdiction was ceded to the United States under Okla. Const. art I § 3 as a matter of law. Nor has congress ever passed a law conferring jurisdiction on Oklahoma.

REASON FOR GRANTING WRIT

Argument

District Court abused it's discretion as to any unreasonable or arbitrary action taken without proper consideration of the facts and law in light of ***McGirt v. Oklahoma,*** 591 U.S.___, 140 S.Ct. 2452, 2462, 207 L.Ed.2d 985 (2020), pertaining to the matter at issue or a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented. ***Neloms v. State***, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170.

District Court lacked jurisdiction to accept the plea of kidnapping due to the fact that petitioner is a citizens of the Seminole Nation and the crime occurred within the boundaries of the Seminole Nation. Under the particulars facts and circumstances of this case, and based on the pleadings of this case before the court *See* ***McGirt v. Oklahoma***, 591 U.S.___, 140 S.Ct. 2452, 2462, 207 L.Ed.2d 985 (2020). Mr. Christian is a citizen within the meaning of 18 U.S.C. § 1151, and that the crimes at issue occurred within the historical boundaries of the Seminole Nation. The Seminole Reservation boundaries as established by treaty since 1866 have not been diminished or disestablished. Seminole Nation reservation is Indian country under 18 U.S.C. § 1151(a) and therefore the State of Oklahoma lacks subject matter jurisdiction to prosecute Mr. Christian for the crime of Kidnapping and pursuant to a plea agreement that was illegal due to the facts that oklahoma district court lacked jurisdiction at the time of the plea agreement made on May 3rd 1999, was sentenced to imprisonment for five years, all suspended. A trial court is without jurisdiction to modify, suspend, or otherwise alter a judgment which has been satisfied except to set aside a judgment void on its face as shown by the record. ***Fitchen v. State***, 826 P.2d 1000, 1001 (Okl.Cr. 1992). See. *See* ***McGirt v. Oklahoma***, 591 U.S.___, 140 S.Ct. 2452, 2462, 207 L.Ed.2d 985 (2020).

Oklahoma Has No Criminal Jurisdiction Over Crimes Committed By or Against Indians in Indian Country.

The Court of Criminal Appeals recognized more than thirty years ago that Oklahoma failed to assume criminal and civil jurisdiction under Public Law 280 before it was amended to require tribal consent, 25 U.S.C. § 1321, and that Oklahoma "does not have jurisdiction over crimes committed by or against an Indian in Indian Country." See *Cravatt v. State*, 1992 OK CR 6, ¶ 16, 825 P.2d 277, 279 (citing *State v. Klindt*, 1989 OK CR 75, ¶ 3, 782 P.2d 401, 403).

The jurisdictional parameters of criminal jurisdiction in Indian country are clearly defined by federal law. First, under the Major Crimes Act (MCA), federal courts have exclusive jurisdiction, as to Oklahoma, over prosecutions for certain enumerated crimes committed by Indians against Indians or non-Indians in Indian country. See *McGirt*, 140 S.Ct. at 2459. Second, Oklahoma lacks jurisdiction over prosecutions of crimes defined by federal law committed by or against Indians in Indian country within Oklahoma under the General Crimes Act (GCA) (also known as the "Indian Country Crimes Act" (ICCA)); such crimes are subject to federal or tribal jurisdiction. *McGirt*, 140 S.Ct. at 2478. The GCA expressly protects tribal courts' jurisdiction over prosecutions of "a broader range of crimes by or against Indians in Indian country." Id. at 2479. *See United States v. Prentiss*, 273 F.3d 1277, 1278 (10th Cir. 2001) (noting that GCA "establishes federal jurisdiction over 'interracial' crimes, those in which the defendant is an Indian and the victim is a non-Indian, or vice-versa"). Third, Oklahoma has jurisdiction over all offenses committed by non-Indians against non-Indians in Indian country, but it extends no further. *McGirt* at 2460, citing *United States v. McBratney*, 104 U.S. 621, 624 (1882). See also Indian Country Criminal Jurisdiction Chart: justice.gov/usao-wdok/page/file/1300046/download (last visited 09/16/2020).

McGirt laid to rest Oklahoma's position that the MCA and the GCA do not apply in Oklahoma. Oklahoma's claim to a special exemption from the MCA for the eastern half of Oklahoma where Creek lands can be found was said to be "one more error in historical practice." *McGirt*, 140 S.Ct. at 2471. Oklahoma's use of "statutory artifacts" to argue it was granted criminal jurisdiction in Indian country, even if the MCN reservation was intact, was a "twist" even the dissent declined to join. *Id.* at 2476. Because Petitioner [or the alleged victim] is Indian and the crime occurred within the boundaries of the intact Seminole Nation reservation, Oklahoma has no jurisdiction over Petitioner and his conviction is void.

The Seminole Nation Has Not Been Disestablished But Rather Remains Extant.

1. Introduction.

Seminole Nation is a federally recognized Indian tribe. It is one of the five tribes that are often treated as a group for purposes of federal legislation (Seminole, Muscogee (Creek), Choctaw, Chickasaw, and Cherokee Nations, historically referred to as the "Five Civilized Tribes" or "Five Tribes"). *Indian Country, U.S.A., Inc. v. Oklahoma ex rel. Okla. Tax Comm'n*, 829 F.2d 967, 970, n.2 (10th Cir. 1987). These tribes once inhabited land stretching across what are now Georgia, Alabama, and northern Florida. In the 1830s, the United States forced the Five Tribes to abandon their homes and migrate west to the designated "Indian Territory" in present-day Oklahoma. *Indian Country*, 829 F.2d 971. A Series of treaties between the United States and the Seminole Nation, and congressional acts and legislation after the Seminole were removed from Florida, established the Seminole Nation lands in Oklahoma as a reservation. The Seminole reservation boundaries mainly track the borders of Seminole County, with a slight deviation in the northeastern region. This strip of land along the northeast boundary is part of the Creek

reservation. See Exhibit A, Bureau of Indian Affairs (BIA) map of the boundaries of the Seminole Nation of Oklahoma.

The Court of Criminal Appeals addressed whether the Seminole reservation has ever been disestablished ruling that the Seminole and Choctaw nations have never been disestablished, completing the process of shifting criminal jurisdiction in most of eastern Oklahoma to the federal government and the Five Tribes in cases involving Native Americans. The Court of Criminal Appeals overturned the murder conviction of Kadetrix Devon Grayson from state district court in Seminole nation ruling that the defendant should have been tried by the federal government because Grayson is Indian and the crime was committed on the Seminole reservation. *Grayson v. State*, F-2018-1229. The United States Supreme Court had not addressed reservation status as to any of the Five Tribes until it decided *McGirt*. *McGirt*, 140 S.Ct. at 2463-81. Although *McGirt* did not specifically address whether land reserved for the Seminole Nation since the 19th century remains "Indian country," by applying *McGirt's* analysis and methodology to the question of the Seminole Nation reservation, the inevitable conclusion is that, like the Creek, there was a promise "[o]n the far end of the Trail of Tears." Congress "forever secured and guaranteed" the Seminole reservation and has never disestablished it. *McGirt*, 140 S.Ct. at 2459.

2. The Crimes Occurred Within the Historical Boundaries of the Creek Nation of Oklahoma.

The entire City of Seminole and indeed almost the entirety of Seminole County is located within the Seminole reservation boundaries. The State should stipulate the alleged offense occurred within the Seminole Nation boundaries but further Petitioner can prove it if given the opportunity as set forth in Part E. As Congress never explicitly erased those boundaries and

disestablished that reservation, then the crimes occurred within Indian country as defined by 18 U.S.C. § 1151(a).

3. A Reservation Was Established For The Seminole Nation.

Under *McGirt* remand Orders issued by the Court of Criminal Appeals and as is proper, Petitioner need only make a prima facie case that the crime occurred on the Seminole Nation's reservation, which is "Indian country" as defined by §1151 (a). The Court of Criminal Appeals has defined "prima facie case" to suffice "until contradicted and overcome by other evidence." *Hill v. State*, 1983 OK CR 161, ¶ 3, 672 P.2d 308, 310; see also *Malone v. Royal*, No. CIV-13-1115-D, 2016 WL 6956646, at *15 (W.D. Okla. Nov. 28, 2016) (holding a prima facie case is a "low threshold" to meet). Petitioner meets the low threshold and more.

The Seminole Nation's reservation is intact and nearly two centuries of history prove it. At the time of the Spanish discovery and settlement of the Florida Territory in 1512, the land was occupied by "regionalized aboriginal cultures." *United States v. Seminole Indians*, 180 Ct. Cl. 375, 378 (U.S. 1967). The Seminole are a Muskhogean tribe, originally made up of emigrants from the Lower Creek towns on the Chattahoochee River who moved down into Florida after 1700. JOHN R. SWANTON, EARL HISTORY OF THE CREEK INDIANS & THEIR NEIGHBORS 398 (Jerald T. Melanich ed., University Press of Florida 1998 (1992)). Their population increased in 1715 by Native Americans who fled from Carolina after an uprising known as the Yamasee war. *Seminole Indians*, 180 Ct. Cl. at 380. Further population increases occurred when Spain, seeking to change Indian loyalties from the British, "undertook to encourage additional elements among the Lower Creeks to settle in the depopulated areas of northern Florida." *Id.* Having previously been classed with the Lower Creeks, this native population began to be known as the "Seminole," a Muscogee word that was applied by the

Creeks to people who removed themselves from populous towns to live by themselves. SWANTON at 398.

Three different treaties resulted in the eventual removal of the Seminoles from their land in Florida. By 1812, when the United States purchased Florida from Spain, the Seminole tribe was the dominant aboriginal culture in Florida. *Seminole Indians*, 180 Ct. Cl. at 383. In 1823, the Seminoles and the United States entered into a treaty, commonly known as the Treat of Moultrie Creek, in which the Seminoles relinquished all claims to land in the Florida Territory in exchange for a reservation in the center of the Florida peninsula, and certain payments, supplies, and services. See, Treaty of Moultrie Creek, Sept. 18, 1823 (1823 Treaty), 7 Stat. 224. *See generally Miccosukee Tribe of Indians of Fla. v. United States*, 716 F.3d 535, 545-46 (11th Cir. 2013).

After the election of Andrew Jackson in 1828, the movement to transfer all Indians west of the Mississippi River grew, and in 1830, the United States Congress passed the Indian Removal Act, Pub. L. 21-148, 4 Stat. 411 (1830), which authorized President Jackson to negotiate with the southeastern tribes for their removal west. In May 1832, the Seminoles were called to a meeting at Payne's Landing on the Oklawaha River and forced to "relinquish to the United States, all claims to the lands they at present occupy in the Territory of Florida, and agree to emigrate to the country assigned to the Creeks, west of the Mississippi River." See, Treaty of Payne's Landing, 7 Stat. 368, Art. I (1832). This treaty called for the Seminoles to move west if the land was found to be suitable.

In 1833, the United States entered the Treaty with the Creeks, designed, in part, to "secure a country and permanent home to the whole Creek nation of Indians, including the Seminole nation who are anxious to join them..." February 14, 1833 Treaty, preamble, 7 Stat.

418, (1833 Treaty). *McGirt v. Oklahoma*, 140 S.Ct. at 2461. By Article IV, 7 Stat. 417, 419, the Creek agreed that the "Seminole Indians of Florida, whose removal to this country is provided for by [7 Stat. 368] shall also have a permanent and comfortable home on the lands hereby set apart as the country of the Creek nation: and they (the Seminoles) will hereafter be considered a constituent part of said nation, but are to be located on some part of the Creek country by themselves." Pursuant to the terms of the 1832 Seminole Treaty, a special delegation appointed by the United States as a "permanent and comfortable home" before being removed there. Seven chiefs toured the area for several months and conferred with the Creeks who had already settled there. Suitable lands were found and approved by the delegation, and a "tract of country" was assigned to the Seminole as a "separate future residence." Treaty with the Seminoles, March 28, 1833, 7 Stat. 423.

This arrangement brought about tension between the two tribes. The Seminoles desired their own sovereign government and political autonomy, entirely separate from the Creeks. Eventually the two tribes entered into a new treaty. Treaty with the Creeks and Seminoles, Aug. 7, 1856 (1856 Treaty), 11 Stat. 699. The 1856 Treaty was intended to bring peace between the two tribes. Among its other provisions, Article I defined specific boundaries for the Seminoles, described as:

> "[B]eginning on the Canadian River, a few miles east of the ninety-seventh parallel of west longitude, where Ock-hi-appo, or Pond Creek, enters into the same; thence, due north to the north fork of the Canadian; thence up said north fork of the Canadian to the southern line of the Cherokee country; thence, with that line, west, to the one hundredth parallel of west longitude; thence, south along said parallel of longitude to the Canadian River, and thence down and with that river to the place of the beginning." 11 Stat. 699, Art. I.

But the 1856 Treaty territory would not remain their homeland for long. Ten years later, the United States and the Seminoles entered into yet another treaty, signed on March 21, 1866.

Treaty with the Seminoles, 14 Stat. 755 (1866). By this time, the Civil War had just ended. There was a tense relationship between the Seminoles and the federal government, as most of the Seminoles had aligned with the Confederacy during the war. Meanwhile, on top of the complications brought on by reconstruction, westward expansion continued its relentless pace. Settlers demanded more land, and Congress accommodated. The 1866 Treaty was designed to make peace between the Seminole Nation and the federal government, but it also redefined the Nation's reservation territory - this time, with a much smaller land base. See 14 Stat. 755 (1866). Under Article III of the 1866 Treaty, the Seminoles agreed to "cede and convey to the United States their entire domain" that had previously been guaranteed to them under the 1856 Treaty. *Id.*, Art. III. Article III established a new reservation for the Seminoles, made of lands that the United States had just recently acquired from the Creeks, described as follows:

> "Beginning on the Canadian River where the line dividing the Creek lands according to the terms of their sale to the United States by their treaty of February 6, 1866, following said line due north to where said line crosses the north fork of the Canadian River; thence, up said fork of the Canadian River a distance sufficient to make two hundred thousand acres by running due south to the Canadian River; thence, down said Canadian River to the place of the beginning." 14 Stat. 755, Art. III.

As this definition indicates, to ascertain the exact metes and bounds of this new reservation, it was necessary to first identify "the line dividing the Creek lands according to the terms of their sale to the United States." Unfortunately, it would prove difficult for the United States to accurately locate that boundary. Late in 1866, before the boundaries of the Seminole domain had been located, the Seminoles moved to what was assumed to be their treaty land. *Seminole Nation v. United States*, 316 U.S. 310, 311-12, 62 S.Ct. 1061, 1062 (1942). The first survey of the line dividing the Creek and Seminole territories, one drawn by a surveyor named Rankin in 1867, was not approved by the Department of the Interior. In 1871, another surveyor named Bardwell

re-surveyed the dividing line and placed it seven miles west of the Rankin line. *Id.* The Department adopted the Bardwell line, i.e., in what appeared to be Creek territory. See *Seminole Nation v. United States*, 316 U.S. at 313, 62 S.Ct. at 1063. Seeking an equitable solution, the United States decided to purchase those lands for the Seminoles. Consequently, in a purchase negotiated in 1881, the Creeks were paid $175,000 - a dollar per acre - and the extra land became part of the Seminole Reservation. *Id.*; see also 22 Stat. 257, 265 (1882). This area of approximately 375,000 acres constituted the Seminole Nation's reservation when Indian Territory was joined with Oklahoma Territory and admitted as a single state in 1907.

This reservation, first defined in the 1866 Treaty and then supplemented with the 1881 land purchase from the Creeks, endures to this day. This Court should "[s]tart with what should be obvious," as the *McGirt* court did: Congress established a reservation for the Seminole. *McGirt*, 140 S.Ct. at 2460. Like the Creek, the Seminole were promised a permanent home, assured the right of self-government on those homelands, and promised the lands "would lie outside both the legal jurisdiction and geographic boundaries of any State. Under any definition, this was a reservation." *Id.* at 2462.

4. Congress Has Not Specifically Erased Seminole Nation Boundaries Or Disestablished The Reservation.

There is a presumption that the Seminole reservation continues to exist until Congress acts to disestablish it. *Solem v. Bartlett*, 465 U.S. 463, 470 (1984). It is further clear that it is not Petitioner's burden to show that the reservation has not been disestablished. *Murphy v. Royal*, 875 F.3d 896, 926 (10th Cir. 2017) (holding the Oklahoma Court of Criminal Appeals improperly demonstrated by more than prima facie evidence that a reservation was established and the crime thus occurred in Indian country. The burden now shifts to the State to prove it has subject matter jurisdiction. Because the reasoning and analysis of *McGirt* clearly supports the ultimate

conclusion that Congress never disestablished the Seminole reservation, Petitioner will briefly address the disestablishment issue.

Courts do not lightly infer that Congress has exercised its power to disestablish a reservation. *McGirt*, 140 S.Ct. at 2463, citing *Solem*, 465 U.S. at 470. Once a reservation is established, it retains that status "until Congress explicitly indicates otherwise." *McGirt*, 140 S.Ct. at 2469, citing *Solem*, 465 U.S. at 470. Congressional intent to disestablish a reservation "must be clear and plain." *Id.*, citing *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 343 (1998). Congress must clearly express its intent to disestablish, commonly by "[e]xplicit reference to cession or other language evidencing the present and total surrender of all tribal interests." *McGirt*, 140 S.Ct. at 2463, citing *Nebraska v. Parker*, 577 U.S. 481, ___, 136 S.Ct. 1072, 1079 (2016).

A reservation disestablishment analysis is controlled by the statutory text that allegedly resulted in a reservation disestablishment. The only "step" proper for a court of law is "to ascertain and follow the original meaning of the law" before it. *McGirt*, 140 S.Ct. at 2468. Disestablishment has never required any particular form of words. *McGirt*, 140 S.Ct. at 2463, citing *Hagen v. Utah*, 510 U.S. 399, 411 (1994). A statute disestablishing a reservation may provide an "[e]xplicit reference to cession" or an "unconditional commitment... to compensate the Indian tribe for its opened land." *McGirt*, 140 S.Ct. at 2485, citing *Solem*, 465 U.S. at 470. It may direct that tribal lands be "restored to the public domain," *McGirt*, 140 S.Ct. at 2462, citing *Hagen*, 510 U.S. at 412, or state that a reservation is "'discontinued,' 'abolished,' or 'vacated.'" *McGirt*, 140 S.Ct. at 2463, citing *Mattz v. Arnett*, 412 U.S. 481, 504, n.22 (1973); see also *DeCoteau v. District County Court for the Tenth Judicial Dist.*, 420 U.S. 425, 439-440, n. 22 (1975). However, Congress's language must be explicit. To disestablish Congress must use language expressing the present and total surrender of all tribal interests. Oklahoma can point to

no congressional statute where Congress specifically erased the Seminole Nation boundaries and disestablished the Seminole Nation reservation.

a. None Of The Allotment Acts Disestablished The Seminole Nation Reservation.

Starting in the 1880's, Congress embraced a policy of allotting lands, through which it sought to "extinguish tribal sovereignty, erase reservation boundaries, and force the assimilation of Indians into the society at large." *County of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251, 254 (1992). The policy of allotment was eventually repudiated in 1934 with the passage of the Indian Reorganization Act, 48 Stat. 984, but not before it had reached the Seminole Nation. Although much of the Seminole Nation reservation was never disestablished. The Seminole Allotment Act contained no language of disestablishment.

In 1893, Congress formally authorized allotment of the Five Tribes' reservations. Act of March 3, 1893, 27 Stat. 612, 645. Negotiations were delegated to the Dawes Commission, which reached an agreement with the Seminoles on December 16, 1897, ratified by Congress on July 1, 1898, 30 Stat. 567. The agreement created three classes of land, to be appraised at $5, $2.50, and $1.25 per acre, respectively. *Id.* Each tribal member would be allotted a share of land of equal value, for which they would have the sole right of occupancy. *Id.* Allotments were inalienable until the date of patent, though leases were allowed under some conditions. *Id.* Importantly, nothing in either the statute authorizing allotment or the resulting agreement contained any of the hallmarks of disestablishment. There was no language of cession, no mention of a fixed sum in return for the total surrender of tribal claims, or any other textual evidence of intent to disestablish the Seminole Nation reservation. The congressional policy of allotment itself might have been intended to "create the conditions for disestablishment," but as *McGirt* explains, "to equate allotment with disestablishment would confuse the first step of a march with arrival at its

destination." 140 S.Ct. at 2465; see also *Mattz v. Arnett*, 412 U.S. 481, 497 (1973) (explaining that allotment "is completely consistent with continued reservation status.")

There is no ambiguous language in any of the relevant allotment era statutes applicable to the Creek Nation and Seminole Nation that could plausibly be read as an Act of disestablishment. *McGirt*, 140 S.Ct. at 2468. As *McGirt* makes clear, "Congress does not disestablish by allowing transfer of individual plots, whether to Native Americans or others." Congress knows what language to use to diminish or disestablish reservations. It used such language across the Country and it used it specifically to obtain Seminole territory in the Southeast. *Murphy*, 875 F.3d at 948 ("The absence of such language is notable because Congress is fully capable of stating its intention to disestablish or diminish a reservation"). "If Congress wishes to break the promise of a reservation, it must say so." *McGirt*, 140 S.Ct. at 2462. There are simply no statutes containing any hallmark language altering the Seminole reservation boundaries as they existed after the land purchase of 1881. As with the Creek, what is missing is "a statute evincing anything like the 'present and total surrender of all tribal interests' in the affected land." *Id.* at 2464.

b. Restrictions On Tribal Self-Governance Did Not Disestablish The Seminole Nation Reservation.

Further, Oklahoma's previous claim that the congressional attacks on tribal self-governance disestablishes reservations was soundly rejected by the Tenth Circuit and the Supreme Court. *Murphy*, 875 F.3d at 939 ("The State's attempts to shift the inquiry into questions of title and governance are unavailing"); *McGirt*, 140 S.Ct. at 2466 ("But Congress never withdrew its recognition of tribal government, and none of these adjustments would have made any sense if Congress thought it had already completed the job"). There were numerous actions on Congress's part that threatened the Seminole Nation's right to self-governance. The Act of 1903

contemplated that "the tribal government of the Seminole Nation shall not continue longer than [March 4, 1906]." 34 Stat. 982, 1008 (1903). Just four days before dissolution, Congress temporarily extended the tribal governments, "until all property of such tribes, or the proceeds thereof, shall be distributed among the individual members of said tribes unless hereafter otherwise provided by law." S.J. Res. 37, 59th Cong., 34 Stat. 822. This was done primarily to avoid disruption of the ongoing allotment process and to prevent railroad companies from receiving a windfall of contingent land grants.

Then on April 26, 1906, Congress passed the Five Tribes Act, ch. 1879, 34 Stat. 137, which expressly recognized "[t]hat the tribal existence and present tribal government" of the Seminole Nation "continued in full force and effect for all purposes authorized by law." Five Tribes Act, 34 Stat. 137, 148 (1906). The Five Tribes Act did not provide any language expressly indicating an intent to disestablish the Reservation.

c. The Oklahoma Enabling Act Did Not Disestablish The Seminole Nation Reservation.

Shortly after Congress expressly preserved the Seminole Nation's government, it passed the Oklahoma Enabling Act, 34 Stat. 267 (1906), paving the way for Oklahoma statehood. But like every other congressional statute that might potentially be cited by the State, nothing in the Oklahoma Enabling Act contained any language suggesting that Congress Intended to terminate the Seminole Nation reservation.

In fact, if anything, the Oklahoma Enabling Act shows that Congress intended that Oklahoma statehood shall not interfere with existing treaty obligations (i.e. reservations). The Act explicitly prohibited Oklahoma's forthcoming constitution from containing anything that

could be construed as limiting the federal government's role in Indian affairs, e.g., its authority "to make any law or regulation respecting such Indians." 34 Stat. at 267.

However, the certiorari for relief from this court to reconsider its prior ruling on procedural default under *Mcgirt* is properly brought under Federal Rule of Civil Procedure 10(c), now that the Supreme Court has established that there is no doubt this claim is properly and timely raised. In at least two recent successive capital post-conviction cases raising Indian country jurisdiction, the Court of Criminal Appeals noted as much in the orders remanding for evidentiary hearings. In *Bosse v. State of Oklahoma*, PCD-2019-124 the Court said Mr. Bosse's Indian country claim was "properly before the court" and that the "[t]he issue could not have been previously presented because the legal basis for the claim was unavailable." Bosse Order Remanding for Evidentiary Hearing of August 12, 2020, p.2 (unpublished). *Bosse*, which involves the Chickasaw Nation, cites to *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020) which involves the Creek Nation specifically but also sets parameters for determining whether Indian Nations in Oklahoma remain intact all as discussed above. The remand order in *Goode v. State of Oklahoma*, PCD-2020-530, which specifically involves the Creek Nation, is of the same effect. The Court remanded for the same timeliness and properly filed reasons as *Bosse*. *Goode* Order Remanding for Evidentiary Hearing of August 24, 2020, p.2-3 (unpublished). In both *Bosse* and *Goode* the Indian country jurisdiction claim was raised for the first time in a successive post-conviction filing. If anything, the procedural rules in capital post-conviction – and in second and successive filings – are more stringent than in non-capital and in initial such filings. Petitioner's case is not capital. [Nor is his post-conviction filing second and successive].

Further illustrating the timeliness of this filing, Mr. Goode attempted initially to raise his Indian country jurisdiction claim before *McGirt*. Goode filed a successor post-conviction application

following the Tenth Circuit's earlier ruling in *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017). (*Murphy* was to the same effect as *McGirt* and was affirmed moments after *McGirt* was decided. *Sharp v. Murphy* 140 S. Ct. 2412 (2020)) The Court of Criminal Appeals dismissed Mr. Goode's effort to apply *Murphy* as "premature" because *Murphy* and *McGirt* were pending in the Supreme Court then and not final. *Goode v. State of Oklahoma*, PCD-2020-33, Order Dismissing of June 9, 2020, p.3 (unpublished). It was Mr. Goode's post-*McGirt* application that was deemed properly filed. Petitioner's instant post-*McGirt* application is, in the words of an old fable concerning Goldilocks, filed at a time that is "just right." In other words it is undoubtedly properly before the Court.

Perhaps also worth mentioning, Mr. Goode's case was remanded for a hearing on Indian country jurisdiction on his **fourth** post-conviction application. He had apparently filed a second post-conviction application in 2012 prior to pursuing the Indian country claim for the first time. *Goode* Order Dismissing. Counting his first post-conviction application, the apparently non-Indian country second application, and the dismissed application relying on the Tenth Circuit's 2017 *Murphy* ruling (the third), the remand order thus came on Mr. Goode's fourth application. It was this post-*McGirt* fourth post-conviction filing that was properly filed for him. The number of the application does not matter. An application filed post-*McGirt* is timely.

Even further, subject matter jurisdiction, the claim here, can be raised at any time. "[L]ack of jurisdiction" is a constitutional right, which is "never finally waived." *Johnson v. State*, 1980 OK CR 45, ¶30, 611 P.2d 1137, 1145. In three capital cases in which Indian Country issues were arguably raised belatedly, the Oklahoma Court of Criminal Appeals repeatedly confirmed such a fundamental jurisdictional issue can be raised at any time. *See Cravatt v. State*, 1992 OK CR 6 at ¶3, 825 P.2d 277, 278 (deciding Indian Country jurisdictional question though

raised for the first time on the day appellate oral argument was set); *Murphy v. State*, 2005 OK CR 25, ¶2, 124 P.2d 1198 (remanding for evidentiary hearing and deciding Indian country jurisdictional issue though raised for first time in successor post-conviction relief action); and *Magnan v. State*, 2009 OK CR 16, ¶9, 207 P.3d 397, 402 (remanding for evidentiary hearing and deciding Indian country jurisdictional issue even though issue was not raised in the trial court where appellant plead guilty and waived his appeal). Oklahoma's decisions that jurisdiction can be raised at any time have existed for nearly a century. *See Armstrong v. State*, 1926 OK CR 259, 35 Okla. Crim. 116, 118, 248 P. 877, 878.

These principles are also matters of Petitioner's federal Due Process rights. *Evitts v. Lucey*, 469 U.S. 387 (1985). Such respect for jurisdictional claims is proper. The Supreme Court defines jurisdiction as "the courts' statutory and constitutional *power* to adjudicate the case." *United States v. Cotton*, 535 U.S. 625, 630 (2002), *See Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 89 (1988). Because subject matter jurisdiction involves a court's power to act, the Supreme Court concludes "it can never be forfeited or waived." *Cotton*, 535 U.S. at 630. Consequently defects in subject matter jurisdiction require correction regardless of whether the error was raised. This concept is so grounded in the law that defects in subject matter jurisdiction cannot be overlooked by the court, even if the parties fail to call attention to the defect, or consent that it be may be waived. *Chicago B & O Ry. Co. v. Willard*, 220 U.S. 413, 421 (1911). Likewise, the Tenth Circuit in *Murphy v. Royal*, 875 F.3d at 907 n.5 recognized issues of subject matter jurisdiction in Oklahoma are "never waived" and can "be raised on a collateral appeal." Oklahoma's Solicitor General has previously acknowledged "Oklahoma allows collateral challenges to subject matter jurisdiction *at any time*." *McGirt v. Oklahoma*, Supreme Court Case No. 18-9526 (Mar. 13, 2020), Brief of Respondent at 43 (emphasis added).

Even if Oklahoma recedes from that position, they were clearly correct in the quoted section of the Brief and these long standing principles of course exist independently of any position of the State. This Court should find Petitioner is an Indian within the meaning of 18 U.S.C. § 1151, and that the crimes at issue occurred within the historical boundaries of the Creek Nation.

Further, this Court must find per *McGirt* and *Murphy*, as set out above, that the Creek Nation reservation boundaries as established by treaty have not been diminished or disestablished. By applying the decisions in *McGirt* and in *Murphy*, there is no doubt the Creek Nation reservation is Indian country under 18 U.S.C. § 1151(a), and therefore the State of Oklahoma lacks subject matter jurisdiction, voiding this conviction.

CONCLUSION

The Petitioner therefore prays that this Court grant relief for Certiorari and order full briefing, reverse the judgment matter be reheard and that his arguments be considered on their merits, and remand the matter to the district court for an evidentiary hearing, and /or grant the writ requested for appeal purpose, whereupon he is confident that this Court will recognize that courts lacks subject matter jurisdiction and that it should be voided on its face is correct and relief is warranted.

George A. Christie Jr.
June 4th 2021, Pro-se