

In the Supreme Court of the United States

STATE OF OKLAHOMA,

Petitioner,

v.

PATRICK WAYNE OLIVE,

Respondent.

**On Petition for a Writ of Certiorari to the
Oklahoma Court of Criminal Appeals**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), should be overruled.

LIST OF PROCEEDINGS

Oklahoma Court of Criminal Appeals

F-2019-496

Patrick Wayne Olive, Appellant v.

The State of Oklahoma, Appellee

Date of Final Opinion: September 30, 2021



Oklahoma District Court (Muskogee County)

No. CF-2018-187

The State of Oklahoma, Plaintiff v.

Patrick Wayne Olive, Defendant

Date of Judgment and Sentence: June 26, 2019

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OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals, dated September 30, 2021, was not designated for publication but is included in the Appendix at App.1a-9a. The Judgment and Sentence of the District Court in and for Muskogee County, Oklahoma, dated June 26, 2019, is included in the Appendix at App.10a-13a.



JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on September 30, 2021. App.1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).



STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1151 (in relevant part) **Indian country defined**

[T]he term ‘Indian country’, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.

18 U.S.C. § 1152 (in relevant part) **Law governing (Indian country)**

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.



STATEMENT OF THE CASE

Thousands of state criminal prosecutions have been called into question by this Court's decision in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). Like the pending petition in *Oklahoma v. Castro-Huerta*, No. 21-429, this case presents the question whether *McGirt* should be overruled. For the same reasons given in the *Castro-Huerta* petition, review is warranted to examine that question. The petition in *Castro-Huerta* should be granted, and this petition should be held pending a decision there. In the alternative, the petition in this case should be granted.

1. On March 2, 2018, respondent was pulled over for speeding, then arrested on an outstanding warrant. Tr. II-A 25-32.* Officers booking respondent into jail discovered methamphetamine on his person. Tr. II-A 34.

Respondent was convicted of trafficking in illegal drugs, speeding, and possession of contraband in a penal institution. He was sentenced to thirty-two years' imprisonment, a \$35 fine, and one year in county jail, respectively.

2. Respondent then appealed to the Court of Criminal Appeals, claiming the State lacked authority to prosecute him because he was an Indian and committed his crimes in Indian country. The State agreed the record should be supplemented with the evidence offered by respondent to establish his status

* All fact citations are to the transcripts of respondent's trial (Tr.), which are available below. *See* Sup. Ct. R. 12.7.

as Indian and the location of the crimes. 7/28/2021 Application to Supplement the Record on Appeal. The State further argued that *McGirt* was wrongly decided. 8/23/2021 Response to Show Cause Order and Request to Stay Appeal Pending Disposition of Petition for Writ of Certiorari in *Oklahoma v. Bosse*, No. 21-186 (U.S.).

The Court of Criminal Appeals reversed the convictions, finding respondent “has some Indian blood, was an enrolled member of the Cherokee Nation” and the “ruling in *McGirt* governs this case” because the crimes were committed on the Muscogee (Creek) Reservation. App.3a. Two judges wrote separate opinions.

Vice Presiding Judge Hudson specially concurred based on *stare decisis*, but stated his “previously expressed views on the significance of *McGirt*, its far-reaching impact on the criminal justice system in Oklahoma and the need for a practical solution by Congress.” App.6a.

Judge Lumpkin concurred in the result, noting his view that *McGirt* “contravened . . . the history leading to the disestablishment of the Indian reservations in Oklahoma”. App.7a.



REASONS FOR GRANTING THE PETITION

In the decision below, the Oklahoma Court of Criminal Appeals applied *McGirt* to free yet another criminal from state custody, exacerbating the crisis in the criminal-justice system in Oklahoma. As the State of Oklahoma explains in its petition in *Castro-Huerta*, reconsideration of *McGirt* is the only realistic avenue for ending the ongoing chaos affecting every corner of daily life in Oklahoma. *See* Pet. at 17-29, *Oklahoma v. Castro-Huerta*, No. 21-429. This case presents yet another opportunity to end the damage caused by *McGirt*. If the petition in *Castro-Huerta* is granted, this petition should be held pending a decision in *Castro-Huerta* and then disposed of as is appropriate. In the alternative, this petition should be granted.

As explained more fully in *Castro-Huerta*, *McGirt* was wrongly decided, and the Court's review is urgently needed because no recent decision has had a more immediate and disruptive effect on life in an American State. *McGirt* contravened longstanding precedent on the disestablishment of Indian reservations. 140 S.Ct. at 2485 (Roberts, C.J., dissenting). It did so by wrongly reasoning that historical materials showing the original public meaning of statutes may be considered in the disestablishment inquiry "only" to "clear up" statutory ambiguity. *See id.* at 2467-2468, 2469-2470 (majority opinion). But consideration of history is necessary precisely because it is unclear whether Congress's alienation of Indian lands at the turn of the century changed the Indian country status of the land. *See id.* at 2488 (Roberts, C.J., dissenting). Under the correct framework prescribed by this Court's precedent, it is

clear that Congress disestablished the Creek territory in Oklahoma, as well as the territories of the four other Oklahoma tribes. And with that conclusion, it is clear the decision below is incorrect and warrants reversal.

Overruling *McGirt* and restoring the state jurisdiction it stripped is important not only for this case. As the Chief Justice correctly predicted, the “burdens” of the *McGirt* decision on the State of Oklahoma have been “extraordinary.” 140 S.Ct. at 2500. The challenges from that seismic shift in jurisdiction have rippled through every aspect of life in Oklahoma. Most immediately, *McGirt* has jeopardized the State’s jurisdiction over thousands of criminal cases—this case being just one of them.

The question presented in this case is materially identical to the second question presented in *Castro-Huerta*. For the compelling reasons explained in the petition in *Castro-Huerta*, review on this question is warranted.



CONCLUSION

The petition for a writ of certiorari in *Castro-Huerta* should be granted, and the petition in this case should be held pending a decision there and then disposed of as is appropriate. In the alternative, this petition should be granted.

Respectfully submitted,

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