

Capital Case

Case No. _____

**In the
Supreme Court of the United States**

JAMES CHANDLER RYDER, by and through
Next Friend, SUE RYDER,
Petitioner,
v.
THE STATE OF OKLAHOMA,
Respondent

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

PETITION FOR A WRIT OF CERTIORARI

EMMA V. ROLLS, OBA # 18820*
MEGHAN LeFRANCOIS, OBA # 32643
Assistant Federal Public Defenders
Office of the Federal Public Defender
Western District of Oklahoma
215 Dean A. McGee, Suite 707
Oklahoma City, OK 73102
405-609-5975 (phone)
405-609-5976 (fax)
Emma_Rolls@fd.org
Meghan_LeFrancois@fd.org

ATTORNEYS FOR PETITIONER,
JAMES CHANDLER RYDER

No. _____

CAPITAL CASE

QUESTION PRESENTED

Whether *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), applies retroactively to convictions that were final when *McGirt* was announced.

PARTIES TO THE PROCEEDINGS

The parties to this action are named in the caption.

RELATED PROCEEDINGS

Ryder v. State, No. PCD-2020-613, Oklahoma Court of Criminal Appeals, Successive Application for Post-Conviction Relief denied October 21, 2021 (originally granted April 29, 2021, then vacated August 31, 2021).

United States v. Ryder, No. 21-MJ-273-KEW, United States District Court for the Eastern of Oklahoma, Notice of Dismissal filed June 2, 2021.

Oklahoma v. Ryder, No. 20A168, United States Supreme Court, Application to Stay Mandate of the Oklahoma Court of Criminal Appeals Pending Review on Certiorari, withdrawn by State May 28, 2021.

In re Ryder, No. 17-7004, United States Court of Appeals for the Tenth Circuit, Order denying motion for authorization to file successive capital habeas application filed February 10, 2017.

Ryder v. Royal, No 16-5970, United States Supreme Court, Petition for a Writ of Certiorari denied November 28, 2016.

Ryder v. Warrior, No. 13-7073, United States Court of Appeals for the Tenth Circuit, Judgment entered January 11, 2016.

Ryder ex rel. Ryder v. Trammell, No. CIV-05-24-JHP-KEW, United States District Court for the Eastern District of Oklahoma, Judgment entered October 11, 2016.

Ryder v. State, No. PCD-2002-257, Oklahoma Court of Criminal Appeals, Application for Post-Conviction Relief denied March 18, 2004.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, James Chandler Ryder, by and through his next friend, Sue Ryder,¹ respectfully petitions this Court for a writ of certiorari to review the judgment of the Oklahoma Court of Criminal Appeals (OCCA) in *Ryder v. State*, No. PCD-2020-613 (Okla. Crim. App. Oct. 21, 2021).

OPINIONS AND ORDERS BELOW

The opinion of the OCCA denying Mr. Ryder's subsequent state post-conviction action is available at 2021 WL 4929914 and included in Petitioner's Appendix. See Appendix A (Pet. App. at 1-2) (Opinion Denying Second

¹Sue Ryder, Mr. Ryder's mother, was appointed as his next friend by the federal district court in the Eastern District of Oklahoma in *Ryder ex rel. Ryder v. Workman*, Case No. CIV-05-24-JHP-KEW (E.D. Okla. Sept. 28, 2012) (sealed).

Application for Post-Conviction Relief and Denying Motion to Stay Proceedings, *Ryder v. State*, __ P.3d __, No. PCD-2020-613 (Okla. Crim. App. Oct. 21, 2021). That court's order vacating its previous order and judgment granting post-conviction relief and withdrawing the opinion from publication is available at *Ryder v. State*, 495 P.3d 669 (Okla. Crim. App. 2021) (mem.). See Appendix B (Pet. App. at 3). The OCCA's opinion granting Mr. Ryder state post-conviction relief was (but is no longer) available at *Ryder v. State*, 489 P.3d 528 (Okla. Crim. App. Apr. 29, 2021) (withdrawn) and is included in Petitioner's Appendix. See Appendix C (Pet. App. at 4-26).

JURISDICTION

The OCCA denied post-conviction relief on October 21, 2021. This petition is being filed within 90 days of that denial pursuant to Rule 13, Rules of the Supreme Court of the United States. The Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Commerce Clause of the United States Constitution, Article I, Section 8, provides in relevant part:

The Congress shall have Power . . . To regulate Commerce . . . with the Indian Tribes.

The Supremacy Clause to the United States Constitution, Article VI, provides in relevant part:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Due Process Clause of the Fourteenth Amendment, Section 1, to the U.S. Constitution provides in relevant part:

No State shall . . . deprive any person of life, liberty, or property, without due process of law.

Title 18, United States Code, Section 1151 (Indian country defined) provides:

Except as otherwise provided in sections 1154 and 1156 of this title, the 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, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Title 18, United States Code, Section 1152 (Laws governing) provides in relevant part:

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.

Section 1080 of Title 22 of the Oklahoma Statutes provides:

Any person who has been convicted of, or sentenced for, a crime and who claims:

(a) that the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this state;

(b) that the court was without jurisdiction to impose sentence;

(c) that the sentence exceeds the maximum authorized by law;

(d) that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(e) that his sentence has expired, his suspended sentence, probation, parole, or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

(f) that the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy;

may institute a proceeding under this act in the court in which the judgment and sentence on conviction was imposed to secure the appropriate relief. Excluding a timely appeal, this act encompasses and replaces all common law and statutory methods of challenging a conviction or sentence.

Section 1089(D) of Title 22 of the Oklahoma Statutes provides in relevant part:

8. If an original application for post-conviction relief is untimely or if a subsequent application for post-conviction relief is filed after filing an original application, the Court of Criminal Appeals may not consider the merits of or grant relief based on the subsequent or untimely original application unless:

a. the application contains claims and issues that have not been and could not have been presented previously in a timely original application or in a previously considered application filed under this section, because the legal basis for the claim was unavailable, or

9. For purposes of this act, a legal basis of a claim is unavailable on or before a date described by this subsection if the legal basis:

a. was not recognized by or could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date, or

b. is a new rule of constitutional law that was given retroactive effect by the United States Supreme Court or a court of appellate jurisdiction of this state and had not been announced on or before that date.

STATEMENT OF THE CASE

A. Prior History

Mr. Ryder was convicted in Pittsburg County District Court of two counts of first degree murder (Okla. Stat. tit. 21, § 701.7(B) (Supp. 1998)) for the deaths of Sam and Daisy Hallum. Two aggravating circumstances were found to have attended the murder of Daisy Hallum: 1) Mr. Ryder created a great risk of death to more than one person, and 2) there existed a probability that Mr. Ryder would commit criminal acts of violence that would constitute a continuing threat to society. The jury recommended a sentence of death for Daisy Hallum's murder, and a sentence of life imprisonment without the possibility of parole for Sam Hallum's murder.

Mr. Ryder appealed his convictions and sentence of death to the OCCA. After remanding the case to the Pittsburg County District Court for competency proceedings, the OCCA denied all grounds for relief and affirmed the convictions and sentences. *Ryder v. State*, 83 P.3d 856 (Okla. Crim. App. 2004). A petition for writ of certiorari was filed in this Court and denied on October 4, 2004. *Ryder v. Oklahoma*, 543 U.S. 886 (2004). Mr. Ryder also petitioned the OCCA for post-conviction relief. The court denied the petition in an unpublished decision. Opinion Denying Application for Post-Conviction Relief and Evidentiary Hearing, *Ryder v. State*, Case No. PCD-2002-257 (Okla. Crim. App. Mar. 18, 2004).

Mr. Ryder filed a petition for habeas corpus in the United States District Court for the Eastern District of Oklahoma. Petition for a Writ of Habeas Corpus by a Person in State Custody Pursuant to 28 U.S.C. § 2254, *Ryder v. Mullin*, No. CIV-05-24-JHP-KEW (E.D. Okla. Sept. 13, 2005). The court ordered an evidentiary hearing to determine Mr. Ryder's competency and found him incompetent. *See Ryder ex rel. Ryder v. Trammell*, No. CIV-05-24-JHP-KEW, 2013 WL 5603851, at *6 (E.D. Okla. Oct. 11, 2013) (unpub.). The district court denied habeas relief. *See id.* at *38.

On January 11, 2016, the Tenth Circuit affirmed, acknowledging "the tragic reality in this case: that Mr. Ryder's untreated mental illness may have

influenced his decision to withhold mitigating evidence from the jury.” *Ryder ex rel. Ryder v. Warrior*, 810 F.3d 724, 749 (10th Cir. 2016). The ensuing petition for writ of certiorari in this Court was denied November 28, 2016. *Ryder v. Royal*, 137 S. Ct. 498 (2016).

On January 12, 2017, Mr. Ryder filed a Motion for Authorization to File a Second or Successive Petition for Writ of Habeas Corpus Pursuant 28 U.S.C. § 2244(B)(2)(A), based on *Hurst v. Florida*, 577 U.S. 92 (2016). The Tenth Circuit denied the motion. Order, *In re: Ryder*, No. 17-7004 (10th Cir. Feb. 10, 2017).

B. Current Controversy

On September 8, 2020, Mr. Ryder filed a subsequent application for post-conviction relief challenging the State’s jurisdiction to prosecute him under *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), and *Sharp v. Murphy*, 140 S. Ct. 2412 (2020) (mem.). See Appendix D (Pet. App. at 27-66) (Successive Application for Post-Conviction Relief, *Ryder v. State*, PCD-2020-613 (Okla. Crim. App. Sept. 8, 2020)). Mr. Ryder asserted exclusive jurisdiction rests with the federal courts because the victims were citizens of the Choctaw Nation and the crimes occurred within the boundaries of the Choctaw Nation Reservation.

The OCCA remanded the case to the District Court for Pittsburg County for an evidentiary hearing. See Appendix E (Pet. App. at 67-71) (Order Remanding for Evidentiary Hearing, *Ryder v. State*, No. PCD-2020-613 (Okla.

Crim. App. Sept. 25, 2020). Mr. Ryder submitted a brief prior to the hearing. *See* Appendix F (Pet. App. at 72-99) (Petitioner’s Remanded Hearing Brief Applying *McGirt* Analysis to Choctaw Nation Reservation, *State v. Ryder*, No. CF-1999-147 (Pittsburg Cnty. Dist. Ct. Oct. 9, 2020)). After the hearing, the district court concluded Mr. Ryder had established the victims were Indian and the crimes for which Mr. Ryder was convicted occurred in Indian Country. *See* Appendix G (Pet. App. at 100-10) (Court Order with Findings of Fact and Conclusions of Law in Accordance with Order Remanding for Evidentiary Hearing Issued September 25, 2020, *State v. Ryder*, No. CF-1999-147 (Pittsburg Cnty. Dist. Ct. Nov. 9, 2020)).

Both parties filed supplemental briefing in the OCCA. *See* Appendix H (Pet. App. at 111-39) (Petitioner’s Post-Hearing Supplemental Brief in Support of Successive Application for Post-Conviction Relief, No. PCD-2020-613 (Okla. Crim. App. Nov. 23, 2020)); Appendix I (Pet. App. at 140-67) ((Supplemental Brief of Respondent After Remand, *Ryder v. State*, No. PCD-2020-613 (Okla. Crim. App. Nov. 23, 2020)). The State did not argue that *McGirt* announced a new rule that could not be retroactively applied. Instead, the State vigorously argued *McGirt* did not announce a new rule. *See* Appendix I (Pet. App. at 159-60) (citing *Teague v. Lane*, 489 U.S. 288, 301, 307 (1989); *Walker v. State*, 933 P.2d 327, 338-39 (Okla. Crim. App. 1997) (“*McGirt* was a mere application of, and was

dictated by, *Solem* [*v. Bartlett*, 465 U.S. 463 (1984)]. Further, the decision did not break new ground or impose a new obligation on the State”). *See also* Appendix J (Pet. App. at 173) (State’s Supplemental Brief Regarding Whether *McGirt* Was Previously Available for Purposes of Barring Claims, *Ryder v. State*, No. PCD-2020-613 (Okla. Crim. App. Jan. 22, 2021)² (“As Petitioner’s *McGirt* claim was based on well-established precedent, it could have been reasonably formulated before *McGirt* and is not based on a new rule of constitutional law.”)).

While Mr. Ryder’s application was pending, the OCCA applied *McGirt* to find the continued existence of and lack of State jurisdiction over the Choctaw Nation Reservation, where the crimes of which Mr. Ryder was convicted occurred. *See* Appendix L (Pet. App. at 188-94) (*Sizemore v. State*, 485 P.3d 867, 870-71 (Okla. Crim. App. 1, 2021), *petition for cert. pending*, No. 21-326 (filed Aug. 27, 2021)). Around this time, similar rulings applied *McGirt* to each of Oklahoma’s “Five Civilized Tribes,” and the OCCA issued published opinions granting post-conviction relief to several capital defendants who were convicted

²Mr. Ryder’s response to this filing is available at Appendix K (Pet. App. at 180-87) (Petitioner’s Response to State’s Supplemental Brief, *Ryder v. State*, No. PCD-2020-613 (Okla. Crim. App. Jan. 29, 2021)).

in the absence of jurisdiction in Oklahoma state courts, regardless of whether the void state court convictions were final when *McGirt* was announced.³

On April 29, 2021, the OCCA held the victims in Mr. Ryder’s case were Indian and the crimes occurred in Indian Country, and concluded the State did not have jurisdiction to prosecute him. *See* Appendix C (Pet. App. at 18-19). The OCCA reversed and remanded the case to the District Court of Pittsburg County with instructions to dismiss.⁴ *See* Appendix C (Pet. App. at 19).

The State filed two motions to stay the mandate, the first based on the OCCA’s order staying the mandate for 45 days in *Bosse v. State*, 484 P.3d 286 (Okla. Crim. App. 2021) (withdrawn), pending certiorari review, *see* Appendix

³ *See, e.g., Bosse v. State*, 484 P.3d 286 (Okla. Crim. App. Mar. 11, 2021) (opinion granting relief), *superseded by* No. PCD-2019-124, 2021 WL 4704316, __ P.3d __ (Okla. Crim. App. Oct. 7, 2021) (opinion denying relief); *Cole v. State*, 492 P.3d 11 (Okla. Crim. App. Apr. 29, 2021) (opinion granting relief), *superseded by* No. PCD-2020-529, 2021 WL 4704035, __ P.3d __ (Okla. Crim. App. Oct. 7, 2021) (opinion denying relief); *Bench v. State*, 492 P.3d 19 (Okla. Crim. App. May 6, 2021) (opinion granting relief), *withdrawn and vacated by* 495 P.3d 670 (Okla. Crim. App. Aug. 31, 2021) (mem.). Consistent with the State’s arguments in Mr. Ryder’s and others’ cases, in granting post-conviction relief to Shaun Bosse, the OCCA noted the State had argued “that waiver should apply because there is really nothing new about the claim.” *Bosse*, 484 P.3d at 293 n.8.

⁴ Post-conviction relief having been granted on Mr. Ryder’s state convictions, on June 1, 2021 the United States filed a criminal complaint against him for the same conduct in the United States District Court for the Eastern District of Oklahoma (*United States v. Ryder*, No. 21-MJ-273-KEW). The next day, the complaint was dismissed “based upon the interests of justice.” Notice of Dismissal, *United States v. Ryder*, No. 21-MJ-273-KEW (E.D. Okla. June 2, 2021).

M (Pet. App. at 199-208) (Brief in Support of Motion to Stay the Mandate for Good Cause Pending Certiorari Review, *Ryder v. State*, No. PCD-2020-613 (Okla. Crim.App. Apr. 29, 2021)⁵; and the second based on this Court’s stay of the mandate in *Bosse* pending certiorari review, see Appendix P (Pet. App. at 213) (Order in Pending Case, *Oklahoma v. Bosse*, No. 20A161 (U.S. May 26, 2021)); Appendix Q (Pet. App. at 214-23) (Brief in Support of Motion to Further Stay the Mandate in Light of the United States Supreme Court’s Order Staying the Mandate in *Oklahoma v. Bosse*,⁶ *Ryder v. State*, No. PCD-2020-613 (Okla. Crim. App. May 26, 2021)). On May 28, 2021, the OCCA stayed the issuance of the mandate indefinitely. See Appendix R (Pet. App. at 225-27) (Order Staying Issuance of Mandates Indefinitely, *Ryder v. State*, No. PCD-2020-613 (Okla. Crim. App. May 28, 2021)).

On August 12, 2021, the OCCA reversed course and discarded the settled law it had been relying on (and bedrock jurisdictional principles) by issuing *State of Oklahoma ex rel. Matloff v. Wallace*, No. PR-2021-366, 2021 WL 3578089, __

⁵ See Appendix N (Pet. App. at 209-10)(Petitioner’s Response to State’s Motion to Stay the Mandate for Good Cause Pending Certiorari Review, *Ryder v. State*, No. PCD-2020-613 (Okla. Crim. App. May 3, 2021)); Appendix O (Pet. App. at 211-12) (Order Staying Issuance of Mandate, *Ryder v. State*, No. PCD-2020-613 (Okla. Crim. App. May 12, 2021)).

⁶ After the OCCA subsequently vacated its previous order granting post-conviction relief to Mr. Bosse, a joint stipulation was filed in this Court on September 3, 2021, resulting in its dismissal of Mr. Bosse’s case.

P.3d __ (Okla. Crim. App. Aug. 12, 2021), *petition for cert. pending*, No. 21-467 (filed Sept. 27, 2021). *See* Appendix S (Pet. App. at 228-38).⁷ In *Matloff*, the OCCA held *McGirt* “announced a new rule of criminal procedure which we decline to apply retroactively in a state post-conviction proceeding to void a final conviction.” 2021 WL 3578089, at *2. *See* Appendix S (Pet. App. at 230). The OCCA explained that in previously granting post-conviction *McGirt* relief to petitioners like Mr. Ryder, its attention had not “been drawn to the potential non-retroactivity of *McGirt*.” *Matloff*, 2021 WL 3578089, at *3. *See* Appendix S (Pet. App. at 231).

On August 26, 2021, the State filed in Mr. Ryder’s case a Notice of Decision in [*Matloff*] and Request to Modify this Court’s Prior Opinion in this Case Granting Post-Conviction Relief, or Alternatively Request to Continue Stay. *See* Appendix U (Pet. App. at 256-73). On August 31, 2021, the OCCA entered its Order Vacating Previous Order and Judgment Granting Post-Conviction Relief and Withdrawing Opinion from Publication. *See* Appendix B (Pet. App. at 3). The OCCA premised its decision to vacate the previous order and judgment on *Matloff*. On September 2, 2021, Mr. Ryder filed a Motion to

⁷ Counsel for Mr. Ryder submitted an amicus brief in *Matloff*. *See* Appendix T (Pet. App. at 239-55) (*Amicus Curiae* Brief of the Capital Habeas Unit of the Federal Public Defender for the Western District of Oklahoma in Support of Respondent, *Matloff*, No. PR-2021-366 (Okla. Crim. App. July 2, 2021)).

Stay Proceedings along with a brief in support (Appendix V (Pet. App. at 274-88)), pending certiorari review of *Matloff*. Finally, on October 21, 2021, the OCCA issued its order denying *McGirt* post-conviction relief, applying *Matloff*'s holding that *McGirt* announced a rule of criminal procedure that does not apply retroactively to cases with final convictions, and denied Mr. Ryder's motion to stay the proceedings pending certiorari review of *Matloff*. See Appendix A (Pet. App. at 1-2).

REASONS THE PETITION SHOULD BE GRANTED

The petition for writ of certiorari in *Parish v. Oklahoma*, No. 21-467 (arising from *Matloff*), presents the same question presented in this case. As explained in the petition for writ of certiorari in *Parish*, *McGirt* must apply retroactively to convictions that were final when *McGirt* was announced. Mr. Ryder's petition for writ of certiorari is one of several that follows *Parish* and presents the same question.

Under *McGirt*, the federal government has—and always had—exclusive jurisdiction to prosecute the crimes of which Mr. Ryder was convicted that occurred in Indian Country. The State has never had the power to do so. By holding *McGirt* is a mere procedural rule that is not retroactive to cases on collateral review, the OCCA has sought to preserve legally void convictions that the State never had authority to impose. Such a regime violates the Supremacy

Clause by treating an exclusive allocation of power to the federal government as a mere regulation of the State's "manner" of trying a case. The decision also 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. If left unreviewed, *Matloff* would condemn many people, including Mr. Ryder, to bear state convictions and serve state sentences for crimes the State had no power to prosecute.

A favorable decision in *Parish* would vindicate Mr. Ryder's argument that *McGirt* applies retroactively to convictions that were final when *McGirt* was announced. Because the question presented in this case is before the Court in *Parish*, Mr. Ryder respectfully requests that the Court hold this petition pending the Court's decision in *Parish*.

CONCLUSION

Oklahoma has no jurisdiction to proscribe and punish Mr. Ryder's conduct, and the State is now holding him without any valid authority to do so. Mr. Ryder respectfully requests the Court hold this petition pending disposition of the petition for a writ of certiorari in *Parish v. Oklahoma*, No. 21-467, and then dispose of it as appropriate. If *Parish* is resolved in the petitioner's favor, the

Court should grant certiorari, vacate the judgment below, and remand for further proceedings.

Respectfully submitted,

s/ Emma V. Rolls

EMMA V. ROLLS, OBA # 18820*
MEGHAN LeFRANCOIS, OBA # 32643
Assistant Federal Public Defenders
Office of the Federal Public Defender
Western District of Oklahoma
215 Dean A. McGee, Suite 707
Oklahoma City, OK 73102
405-609-5975 (phone)
405-609-5976 (fax)
Emma_Rolls@fd.org
Meghan_LeFrancois@fd.org

ATTORNEYS FOR PETITIONER,
JAMES CHANDLER RYDER

* Counsel of Record

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