

ORIGINAL



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

RYAN CORTLAN JOHNSON,

APR - 1) 2021 NOT FOR PUBLICATION

Appellant,

vs.

JOHN D. HADDEN
CLERK

No. F-2020-208

THE STATE OF OKLAHOMA,

Appellee.

OPINION REMANDING WITH INSTRUCTIONS TO DISMISS

KUEHN, PRESIDING JUDGE:

Ryan Cortland Johnson was tried by jury and convicted of Murder in the First Degree in the District Court of Okmulgee County, Case No. CF-2017-316. In accordance with the jury's recommendation the Honorable Kenneth E. Adair sentenced Appellant to life imprisonment. Appellant must serve 85% of his sentence before becoming eligible for parole. Appellant appeals from this conviction and sentence.

Appellant filed a Motion for Supplementation of the Record and Request to Remand for Evidentiary Hearing, challenging the State's subject-matter jurisdiction pursuant to the Supreme Court's decision in *McGirt v. Oklahoma*, 591 U.S. ___, 140 S.Ct. 2452 (2020). Appellant

claims in Proposition I that he is an enrolled member of the Chickasaw Nation and that the crimes were committed on Creek Nation tribal land. The State filed a motion to stay briefing until Appellant's motion was resolved. This Court granted the motions and remanded the case for an evidentiary hearing in the District Court of Okmulgee County. This Court noted in the Order that no evidentiary hearing would be necessary if the parties entered into a written stipulation setting forth those facts upon which they agree and which answer the questions presented, and provided the stipulation to the District Court.

On December 7, 2020, the parties filed in the District Court a motion, *Stipulations and Joint Motion to Strike Evidentiary Hearing*. The parties stipulated that the crime occurred at 3415 Cincinnati Ave. in Beggs, and that the location is within the boundaries of the Muscogee (Creek) Nation Reservation. The parties further stipulated that Appellant has some Chickasaw blood and is an enrolled member of the Chickasaw Nation, that the Chickasaw Nation is a federally recognized Indian tribe, and that Appellant was enrolled no later than June 6, 2008. The District Court accepted these stipulations.

On December 9, 2020, the District Court issued its Findings of Fact and Conclusions of Law; these were filed with this Court on

December 14, 2020. Based on the parties' stipulations, the District Court found the following facts: that Appellant has some Indian blood and has been a member of the Chickasaw Nation since June 6, 2008; that the Chickasaw Nation is a federally recognized tribe; and that Appellant committed the crime within Okmulgee County, which is entirely within the boundaries of the Muscogee (Creek) Reservation. The record supports these findings.

Based on these findings of fact, the District Court made the following conclusions of law:

- 1) Pursuant to *McGirt*, Appellant is an Indian for purposes of federal criminal jurisdiction.
- 2) The crime occurred within the boundaries of the Creek Reservation.

We adopt these conclusions of law. Appellant is a member of the Chickasaw Nation, and the crime was committed within the boundaries of the Muscogee (Creek) Nation Reservation. The ruling in *McGirt* applies to this case. The District Court of Okmulgee County did not have jurisdiction to try Appellant.

Accordingly, Proposition 1 is granted. The remaining propositions are moot.

DECISION

The Judgment and Sentence of the District Court of Okmulgee County is **VACATED and REMANDED with instructions to DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2021), the **MANDATE** is **STAYED** for twenty (20) days from the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKMULGEE COUNTY
THE HONORABLE PANDEE RAMIREZ, DISTRICT JUDGE

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OPINION BY KUEHN, P.J.

ROWLAND, V.P.J.: CONCUR IN RESULTS
LUMPKIN, J.: CONCUR IN RESULTS
LEWIS, J.: SPECIALLY CONCUR
HUDSON, J.: SPECIALLY CONCUR

ROWLAND, VICE PRESIDING JUDGE, CONCURRING IN RESULTS:

I concur in the result of today's opinion. However, consistent with my separate opinion in *Bosse v. State*, 2021 OK CR 3, __ 3d __. I would find that the State lacked territorial jurisdiction and not subject matter jurisdiction.

LUMPKIN, JUDGE: CONCURRING IN RESULTS:

Bound by my oath and the Federal-State relationships dictated by the U.S. Constitution, I must at a minimum concur in the results of this opinion. While our nation's judicial structure requires me to apply the majority opinion in the 5-4 decision of the U.S. Supreme Court in *McGirt v. Oklahoma*, __ U.S. __, 140 S. Ct. 2452 (2020), I do so reluctantly. Upon the first reading of the majority opinion in *McGirt* I initially formed the belief that it was a result in search of an opinion to support it. Then upon reading the dissents by Chief Justice Roberts and Justice Thomas I was forced to conclude the Majority had totally failed to follow the Court's own precedents, but had cherry picked statutes and treaties, without giving historical context to them. The Majority then proceeded to do what an average citizen who had been fully informed of the law and facts as set out in the dissents would view as an exercise of raw judicial power to reach a decision which contravened not only the history leading to the disestablishment of the Indian reservations in Oklahoma, but also

willfully disregarded and failed to apply the Court's own precedents to the issue at hand.

My quandary is one of ethics and morality. One of the first things I was taught when I began my service in the Marine Corps was that I had a duty to follow lawful orders, and that same duty required me to resist unlawful orders. Chief Justice Roberts' scholarly and judicially penned dissent, actually following the Court's precedents and required analysis, vividly reveals the failure of the majority opinion to follow the rule of law and apply over a century of precedent and history, and to accept the fact that no Indian reservations remain in the State of Oklahoma.¹ The result seems to be some form of "social

¹ Senator Elmer Thomas, D-Oklahoma, was a member of the Senate Committee on Indian Affairs. After hearing the Commissioner's speech regarding the Indian Reorganization Act (IRA) in 1934, Senator Thomas opined as follows:

I can hardly see where it (the IRA) could operate in a State like mine where the Indians are all scattered out among the whites and **they have no reservation**, and they could not get them into a community without you would go and buy land and put them on it. Then they would be surrounded very likely with thickly populated white section with whom they would trade and associate. I just cannot get through my mind how this bill can possibly be made to operate in a State of thickly-settled population. (emphasis added).

John Collier, Commissioner of Indian Affairs, *Memorandum of Explanation* (regarding S. 2755), p. 145, hearing before the United States Senate Committee on Indian Affairs, February 27, 1934. Senator Morris Sheppard, D-Texas, also on the Senate Committee on Indian Affairs, stated

justice” created out of whole cloth rather than a continuation of the solid precedents the Court has established over the last 100 years or more.

The question I see presented is should I blindly follow and apply the majority opinion or do I join with Chief Justice Roberts and the dissenters in *McGirt* and recognize “the emperor has no clothes” as to the adherence to following the rule of law in the application of the *McGirt* decision?

My oath and adherence to the Federal-State relationship under the U.S. Constitution mandate that I fulfill my duties and apply the edict of the majority opinion in *McGirt*. However, I am not required to do so blindly and without noting the flaws of the opinion as set out in the dissents. Chief Justice Roberts and Justice Thomas eloquently show the Majority’s mischaracterization of Congress’s actions and

in response to the Commissioner’s speech that in Oklahoma, he did not think “we could look forward to building up huge reservations such as we have granted to the Indians in the past.” *Id.* at 157. In 1940, in the Foreword to Felix S. Cohen, *Handbook of Federal Indian Law* (1942), Secretary of the Interior Harold Ickes wrote in support of the IRA, “[t]he continued application of the allotment laws, **under which Indian wards have lost more than two-thirds of their reservation lands**, while the costs of Federal administration of these lands have steadily mounted, must be terminated.” (emphasis added).

history with the Indian reservations. Their dissents further demonstrate that at the time of Oklahoma Statehood in 1907, all parties accepted the fact that Indian reservations in the state had been disestablished and no longer existed. I take this position to adhere to my oath as a judge and lawyer without any disrespect to our Federal-State structure. I simply believe that when reasonable minds differ they must both be reviewing the totality of the law and facts.

LEWIS, JUDGE, SPECIALLY CONCURRING:

Based on my special writings in *Bosse v. State*, 2021 OK CR 3, ___ P.3d ___ and *Hogner v. State*, 2021 OK CR 4, ___ P.3d ___, I specially concur in the decision to dismiss this case for the lack of state jurisdiction.

HUDSON, J., SPECIALLY CONCURS:

Today's decision dismisses a first degree murder conviction from the District Court of Okmulgee County based on the Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). This decision is unquestionably correct as a matter of *stare decisis* based on the Indian status of Appellant and the occurrence of the crime on the Creek Reservation. Under *McGirt*, the State has no jurisdiction to prosecute Appellant for the murder in this case. Instead, Appellant must be prosecuted in federal court. I therefore as a matter of *stare decisis* fully concur in today's decision. Further, I maintain my 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. See *Bosse v. State*, 2021 OK CR 3, __P.3d__ (Hudson, J., Concur in Results); *Hogner v. State*, 2021 OK CR 4, __P.3d__ (Hudson, J., Specially Concurs); and *Krafft v. State*, No. F-2018-340 (Okl.Cr., Feb. 25, 2021) (Hudson, J., Specially Concurs) (unpublished).