



IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

DEWAYNE SHOMO,)
)
)
Appellant,)
v.)
)
STATE OF OKLAHOMA)
)
Appellee.)

Case No. F-2020-510

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JAN 13 2022

JOHN D. HADDEN
CLERK

OPINION

LUMPKIN, JUDGE:¹

Appellant Dewayne Shomo was convicted in a non-jury trial before the Honorable Gary Brock, Special Judge, of Possession of a Firearm, After Former Conviction of Two or More Felonies (21 O.S.Supp.2014, § 1283(A), in the District Court of McCurtain

¹As stated in my separate writing in *Sizemore v. State*, 2021 OK CR 6, 485 P.3d 867 (Lumpkin, J., concurring in result), I am bound by my oath and adherence to the Federal-State relationship under the U.S. Constitution to apply the edict of the majority opinion in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). However, I continue to share the position of Chief Justice Roberts' dissent in *McGirt*, 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.

County, Case No. CF-2018-189. Appellant was sentenced to eighteen (18) months in prison. Appellant appeals from this conviction and sentence.

In Proposition I of his appellate brief, Appellant claims the State of Oklahoma lacked jurisdiction to prosecute him pursuant to *McGirt v. Oklahoma*, 140 S.Ct. 2542 (2020) because he is a member of the Choctaw Nation and the crime occurred within the boundaries of the Choctaw Reservation.

On April 19, 2021, this Court ordered the case remanded to the District Court of McCurtain County pursuant to *McGirt*, for an evidentiary hearing to determine Appellant's status as Indian and the location of the crime as within the Choctaw Reservation.

On October 20, 2021, the District Court filed a *Findings of Fact* with this Court stating in part that the parties had entered into agreed stipulations regarding Appellant's status as Indian and the location of the crime as within the Choctaw Reservation. The District Court approved the stipulations, making the following findings of facts and conclusions as set out in the parties' stipulation.

1. Dewayne Shomo, [Appellant, holds an assigned Choctaw Nation Number (#CN134046) and a verified Certificate of Degree of Indian Blood (CDIB). Appellant was an enrolled

member of the Choctaw Nation of Oklahoma at the time of the charged offenses; the Choctaw Nation of Oklahoma is an Indian Tribal Entity recognized by the federal government. Accordingly, Appellant is an “Indian” for purposes of criminal jurisdiction. *See Bosse v. State*, 2021 OK CR 3, ¶ 7, 484 P.3d 286.

2. The Choctaw Nation of Oklahoma is a federally recognized Indian Tribe. 85 F.R. 5465 (2020).
3. The alleged act charged against Appellant occurred at 3298 North Central Avenue in Idabel, McCurtain County, Oklahoma.
4. The above listed location falls within the boundaries set forth in the Treaty of Dancing Rabbit Creek in 1830, 7 Stat. 333, as modified by the Treaty of Washington, June 22, 1855, 11 Stat. 611, the Treaty of Doaksville, 11 Stat. 573, and the Treaty of Washington, April 28, 1866, 14 Stat. 769.

The State filed a supplemental brief after remand recognizing this Court is bound by *McGirt* and that this Court has applied *McGirt* to hold that the Choctaw Nation has a reservation. *See Sizemore v. State*, 2021 OK CR 6, ¶¶ 10-16, 485 P.3d 867, 871. The State argues that it disagrees the *McGirt* decision and preserves the right to ask the Supreme Court to review its decision. Thus, for preservation purposes, the State contends that the crime in this case was not committed within Indian Country as defined by 18.U.S.C. § 1151(a).

The State further argues that should this Court find Appellant is entitled to relief, this Court should stay any order reversing the conviction for twenty (20) days to allow the United States Attorney's Office for the Eastern District of Oklahoma to secure custody of Appellant. *Cf.* 22 O.S. 2011, § 846.

After thorough consideration of the arguments and the entire record before us on appeal including the original record, transcripts, and briefs of the parties, we find that under the law and the evidence relief is warranted. Under the record before us, we find the District Court did not abuse its discretion and its findings are supported by the parties' agreed stipulation. *See State v. Delso*, 2013 OK CR 5, ¶ 5, 298 P.3d 1192, 1194. We find Appellant has met his burden of establishing his status as Indian, having proof of his enrollment in the Choctaw Nation of Oklahoma on the date of the charged offense and that the charged crime occurred within the Choctaw Nation Reservation. Pursuant to *McGirt*, we find Congress established a reservation for the Choctaw Nation and has not taken steps to disestablish that reservation.

The ruling in *McGirt* governs this case and requires us to find that the State of Oklahoma did not have jurisdiction to prosecute Appellant in this matter.² The Judgment and Sentence in this case is hereby reversed and the case remanded to the District Court of McCurtain County with instructions to dismiss the case.³

DECISION

The **JUDGMENT and SENTENCE is REVERSED AND REMANDED with instructions to Dismiss.** The **MANDATE** is not to be issued until **twenty (20) days** from the delivery and filing of this decision.⁴

AN APPEAL FROM THE DISTRICT COURT OF McCURTAIN COUNTY
THE HONORABLE GARY BROCK, SPECIAL JUDGE

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² While Art. 7 of the Oklahoma Constitution vests the district courts of Oklahoma with “unlimited original jurisdiction of all justiciable matters,” the federal government has pre-empted the field as it relates to major crimes committed by or against Indians in Indian country.

³ This resolution renders the other three (3) propositions of error raised in Appellant’s brief moot.

⁴ By withholding the issuance of the mandate for 20 days, the State’s request for time to determine further prosecution is rendered moot.

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OPINION BY: LUMPKIN, J.
ROWLAND, P.J.: Concur
HUDSON, V.P.J.: Specially Concur
LEWIS, J.: Concur in Result

HUDSON, VICE PRESIDING JUDGE: SPECIALLY CONCURS

Today's decision dismisses a conviction for felonious possession of a firearm from the District Court of McCurtain 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*. The record shows Appellant had some Indian blood and was recognized as an Indian by a tribe and/or the federal government at the time of the crime. The record further shows this crime took place within the historic boundaries of the Choctaw Reservation. Under *McGirt*, the State has no jurisdiction to prosecute Appellant for the crime in this case. Instead, Appellant must be prosecuted in federal court where the exclusive jurisdiction for this crime lies. See *Roth v. State*, 2021 OK CR 27, 499 P.3d 23. 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, e.g., *State v. Lawhorn*, 2021 OK CR 37, 499 P.3d 377 (Hudson, V.P.J., Specially Concurs); *Sizemore v. State*, 2021 OK CR 6, 485 P.3d 867 (Hudson, J., Concur in Results).