IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

MATTHEW STEVEN JANSON,	)	
	)	
Petitioner,	)	**NOT FOR PUBLICATION**
	)	
v.	)	**Case No. C-2017-1027**
	)	
STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	

O P I N I O N

HUDSON, JUDGE:

Petitioner, Matthew Steven Janson, was charged in Tulsa County District Court, Case No. CF-2016-5428, with Count 1: Aggravated Possession of Child Pornography, in violation of 21 O.S.2011, § 1040.12a; and Count 2: Distribution of Child Pornography, in violation of 21 O.S.2011, § 1021.2. Petitioner entered a blind plea to the charges on February 27, 2017, before the Honorable Sharon Holmes, District Judge. The trial court accepted Petitioner's plea and deferred sentencing pending the completion and filing of a presentence investigation report. On August 8, 2017, Judge Holmes sentenced Petitioner to ten years imprisonment each on Counts 1 and 2, to run concurrently, with the last five years

suspended. Petitioner must serve 85% of his sentences before becoming eligible for parole consideration.

On August 15, 2017, Petitioner filed a motion to withdraw his blind plea. A hearing on Petitioner's motion was held on September 7 and 27, 2017. After hearing argument from counsel for both parties, Judge Holmes denied Petitioner's motion to withdraw his plea. Petitioner now seeks a writ of certiorari.

In his sole proposition of error, Petitioner claims the District Court lacked jurisdiction to accept his plea. Petitioner argues that he is a citizen of the Cherokee Nation and the crimes occurred within the boundaries of the Creek Reservation. Pursuant to *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), Petitioner's claim raises two separate questions: (a) his Indian status; and (b) whether the crimes occurred on the Creek Reservation. These issues require fact-finding. We therefore remanded this case to the District Court of Tulsa County for an evidentiary hearing.

Recognizing the historical and specialized nature of this remand for evidentiary hearing, we requested the Attorney General and District Attorney work in coordination to effect uniformity and completeness in the hearing process. Upon Petitioner's presentation of *prima facie*

evidence as to Petitioner's legal status as an Indian and as to the location of the crime in Indian Country, the burden shifts to the State to prove it has jurisdiction. The District Court was ordered to determine whether Petitioner has some Indian blood and is recognized as an Indian by a tribe or the federal government. The District Court was further ordered to determine whether the crimes in this case occurred in Indian Country. In so doing, the District Court was directed to consider any evidence the parties provided, including but not limited to treaties, statutes, maps, and/or testimony.

We also directed the District Court that in the event the parties agreed as to what the evidence would show with regard to the questions presented, the parties may enter into a written stipulation setting forth those facts upon which they agree and which answer the questions presented and provide the stipulation to the District Court. The District Court was also ordered to file written findings of facts and conclusions of law with this Court.

A status hearing was held in this case before the Honorable Tracy L. Priddy, District Judge. Thereafter, a written findings of fact and conclusions of law was timely filed with this Court. The record indicates that appearing before the District Court on this matter were

attorneys from the Oklahoma Attorney General's Office, the Tulsa County District Attorney's Office and counsel for Petitioner.

In its written findings of fact and conclusion of law, the District Court stated that the parties have stipulated that Petitioner has 3/128 degree Cherokee blood; that Petitioner is a member of the Cherokee Nation and was so at the time of the charged crimes; that the Cherokee Nation is an Indian Tribal Entity recognized by the federal government; and the crimes charged in this case occurred within the boundaries of the Creek Reservation. The District Court attached as Exhibit 1 to its findings of facts and conclusions of law a document entitled Stipulations signed by all counsel reflecting these stipulations.

The District Court accepted and adopted the stipulations made by the parties and concluded in its findings of fact and conclusions of law that Petitioner has some Indian blood, that he is also recognized as an Indian by a tribe and the federal government and therefore Petitioner is an Indian under federal law. Finally, the District Court accepted the stipulation of the parties that the crimes in this case occurred on the Creek Reservation and, thus, found the crimes occurred in Indian Country for purposes of federal law.

On November 24, 2020, the State filed with this Court a supplemental brief after remand. In its brief, the State acknowledges the District Court accepted the parties' stipulations as discussed above and references the District Court's findings. The State contends in its brief that should this Court find Petitioner is entitled to relief based on the District Court's findings, this Court should stay any order reversing the conviction for thirty (30) days so that the appropriate authorities can review his case, determine whether it is appropriate to file charges and take custody of Petitioner. *Cf.* 22 O.S.2011, § 846.

After thorough consideration of this proposition and the entire record before us on appeal including the original record, transcripts and the briefs of the parties, we find that under the law and evidence relief is warranted. Based upon the record before us, the District Court's findings of fact and conclusions of law are supported by the stipulations jointly made by the parties on remand. We therefore find Petitioner has met his burden of establishing his status as an Indian, having 3/128 degree Cherokee blood and being a member of the Cherokee Nation. We further find Petitioner met his burden of proving the crimes in this case occurred on the Creek Reservation and, thus, occurred in Indian Country.

Pursuant to *McGirt*, we find the State of Oklahoma did not have jurisdiction to prosecute Petitioner in this matter.[1] The Judgment and Sentence in this case is hereby reversed and the case remanded to the District Court of Tulsa County with instructions to dismiss the case.

DECISION

The Petition for Writ of Certiorari is **GRANTED**. The Judgment and Sentence of the District Court 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.[2]

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE TRACY L. PRIDDY, DISTRICT JUDGE

APPEARANCES AT TRIAL	**APPEARANCES ON APPEAL**
KEVIN D. ADAMS ATTORNEY AT LAW 417 WEST 7TH STREET SUITE 202 TULSA, OK 74119 COUNSEL FOR DEFENDANT	KEVIN D. ADAMS ATTORNEY AT AW 417 WEST 7TH STREET SUITE 202 TULSA, OK 74119 COUNSEL FOR PETITIONER

[1] 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).

[2] By withholding issuance of the mandate for twenty days, the State's request for time to determine further prosecution is rendered moot.

ERIC GRAYLESS
FIRST ASST. DISTRICT ATTY.
TULSA COUNTY
500 SOUTH DENVER AVE
SUITE 900
TULSA, OK 74103
COUNSEL FOR THE STATE

MIKE HUNTER
OKLA. ATTORNEY GENERAL
JENNIFER CRABB
ASST. ATTORNEY GENERAL
313 N.E. 21ST STREET
OKLAHOMA CITY, OK 73105
COUNSEL FOR THE STATE

MIKE HUNTER
OKLA. ATTORNEY GENERAL
RANDALL YOUNG
ASST. ATTORNEY GENERAL
313 N.E. 21ST STREET
OKLAHOMA CITY, OK 73105
COUNSEL FOR RESPONDENT

OPINION BY: HUDSON, J.

KUEHN, P.J.:	**CONCUR**
ROWLAND, V.P.J.:	**CONCUR**
LUMPKIN, J.:	**CONCUR IN RESULT**
LEWIS, J.:	**CONCUR IN RESULT**

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 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

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 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

---

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).

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, CONCURRING IN RESULTS:

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 concur in the decision to dismiss this case for the lack of state jurisdiction.