ORIGINAL

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

ERIK SHERNEY WILLIAMS,	)	
	)	
Appellant,	)	**NOT FOR PUBLICATION**
	)	
v.	)	**Case No. F-2016-937**
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

OPINION

ROWLAND, VICE PRESIDING JUDGE:

Appellant Erik Sherney Williams was tried by jury and convicted of First Degree Murder, in violation of 21 O.S.Supp.2012, § 701.7, in the District Court of Tulsa County, Case No. CF-2014-4936. In accordance with the jury's recommendation, the Honorable James M. Caputo sentenced Williams to life in prison without the possibility of parole.

Williams raises the following errors on appeal:

(1) The district court was without jurisdiction over his case because the State did not initiate prosecution within the time frame mandated by the Interstate Agreement on Detainers Act;

(2) Ineffective assistance of counsel deprived him of a fair trial; and

(3) The district court lacked jurisdiction over his case because the victim was an "Indian" and the crime occurred in "Indian Country."

This appeal turns on whether the victim was an Indian as defined by federal law, and whether the alleged crime was committed within Indian country as that term is defined by federal law. Because the answer to both questions is yes, federal law grants exclusive criminal jurisdiction to the federal government. Because we find relief is required on Williams's jurisdictional challenge in Proposition 3, his other claims are moot.

1. Controlling Law: *McGirt v. Oklahoma*

In *McGirt v. Oklahoma*, 591 U.S. __, 140 S.Ct. 2452 (2020), the Supreme Court held that land set aside for the Muscogee-Creek Nation in the 1800's was intended by Congress to be an Indian reservation, and that this reservation remains in existence today for purposes of federal criminal law because Congress has never explicitly disestablished it.

2. Jurisdiction

Federal and tribal governments, not the State of Oklahoma, have jurisdiction to prosecute crimes committed by or against Indians on the Muscogee Creek Reservation. 18 U.S.C. §§ 1152,

some Indian blood (17/64 degree Indian blood); (2) she was a recognized member of the Muscogee Creek Nation on the date of her death; (3) the Muscogee Creek Nation is a federally recognized tribe; and (4) the charged crime occurred within the boundaries of the Muscogee Creek Nation Reservation. The district court accepted the parties' stipulation.

The district court issued written Findings of Fact and Conclusions of Law on December 8, 2020. Judge Priddy correctly concluded, based on the joint stipulation and the supporting documentation submitted, that on the date of the charged crimes, the victim was an Indian for purposes of federal law. As to the second question on remand, whether the crimes were committed in Indian country, Judge Priddy correctly concluded the crime occurred on the Muscogee Creek Nation Reservation which, based on *McGirt*, is Indian country under federal law.

The State raised the issue of concurrent jurisdiction below. The State briefed and argued that Oklahoma and the federal government have concurrent jurisdiction over all crimes committed by non-Indians in Indian country, including Williams's case. Williams moved to strike the State's brief and the parties presented brief argument

on the issue. The district court refused to strike the State's brief, but made no ruling on the issue of concurrent jurisdiction, finding the issue was beyond the scope of the remand order. The parties filed supplemental briefs in this Court following remand, addressing concurrent jurisdiction. We rejected the State's same argument regarding concurrent jurisdiction in *Bosse v. State,* 2021 OK CR 3, ¶¶ 23-28, ___P.3d___.

For these reasons, we hold, under the analysis in *McGirt,* that the District Court of Tulsa County did not have jurisdiction to try Williams for murder. Accordingly, we grant Proposition 3.

DECISION

The Judgment and Sentence of the district court is **VACATED** and this matter is **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 **ORDERED** to issue in twenty (20) days from the delivery and filing of this decision.

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

APPEARANCES AT TRIAL

KEVIN D. ADAMS
ATTORNEY AT LAW
212 WEST 12TH ST.
TULSA, OK 74119
COUNSEL FOR DEFENDANT

ERIK GRAYLESS
BECKY JOHNSON
ASST. DISTRICT ATTORNEYS
TULSA COUNTY
COURTHOUSE
500 S. DENVER, RM. 900
TULSA, OK 74103
COUNSEL FOR STATE

APPEARANCES ON APPEAL & EVIDENTIARY HEARING

JAMES L. HANKINS
MON ABRI BUSINESS CENTER
2524 N. BROADWAY
EDMOND, OK 73034
COUNSEL FOR APPELLANT

MIKE HUNTER
ATTORNEY GENERAL
OF OKLAHOMA
THOMAS LEE TUCKER
RANDALL YOUNG
JENNIFER L. CRABB
ASSISTANT ATTORNEYS
GENERAL
313 N.E. 21ST STREET
OKLAHOMA CITY, OK 73105
COUNSEL FOR APPELLEE

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

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:

I write separately to note that I am bound by my special writings in *Bosse v. State*, 2021 OK CR 3, ___ P.3d ___ and *Hogner v. State*, 2021 OK CR 4, ___ P.3d ___. Following the precedent of *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), Oklahoma has no jurisdiction over persons who commit crimes against Indians in Indian Country. This crime occurred within the historical boundaries of the Muscogee (Creek) Nation Reservation and that Reservation has not been expressly disestablished by the United States Congress. Additionally, the crime occurred against Indian victims, thus the jurisdiction is governed by the Major Crimes Act found in the United States Code.

Oklahoma, therefore, has no jurisdiction, concurrent or otherwise, over the appellant in this case. Thus, I concur that this case must be reversed and remanded with instructions to dismiss. Jurisdiction is in the hands of the United States Government.

HUDSON, J., SPECIALLY CONCURS:

Today's decision dismisses a first degree murder conviction from the District Court of Tulsa 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 the victim and the occurrence of this 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).