



## STATE ex rel. DISTRICT ATTORNEY v. WALLACE

2021 OK CR 15

Decided: 05/21/2021

STATE ex rel. MARK MATLOFF, DISTRICT ATTORNEY, Petitioner v. THE HONORABLE JANA WALLACE, DISTRICT JUDGE, Respondent.



Cite as: 2021 OK CR 15, \_\_\_ \_\_

### ORDER GRANTING STAY OF PROCEEDINGS AND DIRECTING SUPPLEMENTAL BRIEFS

¶1 The State of Oklahoma, by Mark Matloff, District Attorney of Pushmataha County, petitions this Court for the writ of prohibition against enforcement of Judge Jana Wallace's April 13, 2021 order granting post-conviction relief, vacating and dismissing the second degree murder conviction of Clifton Merrill Parish in Pushmataha County Case No. CF-2010-26.

¶2 Parish was tried by jury and found guilty of second degree felony murder in March, 2012. The jury sentenced him to twenty-five years imprisonment. This Court affirmed the conviction on direct appeal in *Parish v. State*, No. F-2012-335 (Okl.Cr., March 6, 2014)(unpublished). Parish did not petition for rehearing, and apparently did not petition the United States Supreme Court for a writ of certiorari within the allowed ninety-day time period. On or about June 4, 2014, Parish's conviction became final.<sup>1</sup>

¶3 In August, 2020, Parish sought post-conviction relief, alleging that the State of Oklahoma lacked subject matter jurisdiction to try him for murder under the Supreme Court's decision in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). Judge Wallace held a hearing and found that Parish was an Indian and committed his crime within the Choctaw Reservation, the continued existence of which was recently recognized by this Court, applying *McGirt*, in *Sizemore v. State*, 2021 OK CR 6, ¶ 16, \_\_\_ P.3d \_\_, \_\_.

¶4 Because the Choctaw Reservation is Indian Country, Judge Wallace found that the State lacked subject matter jurisdiction to try Parish for murder under the Major Crimes Act, 18 U.S.C. § 1153. Applying the familiar rule that defects in subject matter jurisdiction can never be waived, and can be raised at any time, Judge Wallace held that Parish's conviction for second degree murder was void and ordered the charge dismissed.

¶5 Judge Wallace initially stayed enforcement of the order until April 21, 2021, then effectively extended the stay by setting the matter for status conference on June 10, 2021. Petitioner Matloff filed in this Court a verified request for a stay of all trial court proceedings, which is hereby **GRANTED**. Pursuant to Rules 10.1(C)(2), (3), and (4), and 10.5(5), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2021), Petitioner Matloff is hereby directed to file with the Clerk of this Court a certified copy of the original record containing the documents previously designated, with an original or certified copy of the transcript of proceedings, if any.

¶6 Petitioner Mark Matloff and Attorney Debra K. Hampton, post-conviction counsel for party-in-interest Clifton Parish, are hereby directed within twenty days of this order to submit briefs of not more than twenty pages, addressing the following question:

In light of *Ferrell v. State*, 1995 OK CR 54, 902 P.2d 1113, *United States v. Cuch*, 79 F.3d 987 (10th Cir. 1996), *Edwards v. Vannoy* (No. 19--5807), 593 U.S. \_\_\_ (May 17, 2021), cases cited therein, and related authorities, should the recent judicial recognition of federal criminal jurisdiction in the Creek and Choctaw Reservations announced in *McGirt* and *Sizemore* be applied retroactively to void a state conviction that was final when *McGirt* and *Sizemore* were announced?

¶7 Representatives of the Attorney General of Oklahoma and the Choctaw Nation are also invited to enter appearances and file briefs according to these guidelines. The Clerk is directed to immediately forward copies of this order to the following parties and counsel:

The Honorable Jana Wallace  
Associate District Judge  
302 S.W. B  
Antlers, OK 74523

Debra K. Hampton  
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District Attorney  
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Antlers, Oklahoma 74523

Jacob Keyes  
Choctaw Nation  
P.O. Box 1210  
Durant, OK 74702

¶8 IT IS SO ORDERED.

¶9 WITNESS OUR HANDS AND THE SEAL OF THE COURT this 21st day of May, 2021.

/S/DANA KUEHN, Presiding Judge

/S/SCOTT ROWLAND, Vice Presiding Judge

/S/GARY L. LUMPKIN, Judge

/S/DAVID B. LEWIS, Judge

/S/ROBERT L. HUDSON, Judge

ATTEST:

John D. Hadden  
CLERK

## FOOTNOTES

<sup>1</sup> *Walker v. State*, 1997 OK CR 3, ¶ 3 n.7, 933 P.2d 327, 330 n.7 (citing *Teague v. Lane*, 489 U.S. 288, 295 (1989)) (defining a final conviction as one where judgment was rendered, the availability of appeal exhausted, and the time to petition for certiorari had elapsed).

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**Cite Name****Level****Oklahoma Court of Criminal Appeals Cases**

Cite	Name	Level
<u>1995 OK CR 54, 902 P.2d 1113,</u>	<u>FERRELL v. STATE</u>	Discussed
<u>2021 OK CR 6,</u>	<u>SIZEMORE v. STATE</u>	Cited
<u>1997 OK CR 3, 933 P.2d 327,</u>	<u>WALKER v. STATE</u>	Discussed