

IN AND FOR THE DISTRICT COURT OF MCINTOSH COUNTY  
STATE OF OKLAHOMA

**FILED**  
AUG 23 2023

STATE OF OKLAHOMA, )  
Plaintiff, )  
vs. )  
Joseph Nocona Long, )  
Defendant. )

LISA RODEBUSH, Court Clerk  
McINTOSH COUNTY  
By                      Deputy

Case No.: CF-2023-86

**MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION, AND  
MOTION FOR POST-CONVICTION RELIEF, OR IN THE ALTERNATIVE,  
PETITION FOR HABEAS CORPUS AND MOTION TO EXPUNGE**

COMES NOW, the Defendant, **Joseph Nocona Long**, by and through his attorney, Cindy M. Dawson, and respectfully moves this Court to dismiss these actions with prejudice due to lack of subject matter jurisdiction per *McGirt v. Oklahoma*, 18-9526, 2020 WL 3848063, 591 U.S. \_\_\_ (2020). The Defendant alleges the following:

1. The Defendant is a citizen of the Cherokee Nation, a federally recognized Indian tribe.
2. The State of Oklahoma seeks to Accelerate the Deferred Sentence of the Defendant for the commission of Bringing Contraband (Weapons/Explosives/Drugs/Intoxicating Beverage/Low Point Beer/Money) Into Jail/Penal Institution and Trespassing after being forbidden in CF-2023-86.
3. As the State does not have jurisdiction to prosecute the applications to accelerate against the Defendant, the applications should be dismissed. Further, as the State never had jurisdiction to bring an action again the Defendant, the Defendant prays this Court will grant post-conviction relief and dismiss and expunge both charges against the defendant herein identified.
4. If the Court will not grant post-conviction relief as requested, the Defendant, in the alternate, seeks a Writ of Habeas Corpus, so that the Defendant may be brought before the Court and good cause shown as to why the Court has jurisdiction to hold the same.
5. Proof of tribal citizenship is attached as Exhibit "A".
6. That Defendant is accused of committing this offense in McIntosh County, Oklahoma.
7. That the location of the offense in McIntosh County, Oklahoma, is within the boundaries of the Muscogee (Creek) Nation and subject to all treaties between the Muscogee (Creek) Nation and the United States Government.

8. That the Treaty with the Creeks was signed on August 7, 1790 and proclaimed on August 13, 1790.
9. That said Treaty conceded certain lands which are now modern-day McIntosh County to the Muscogee (Creek) Nation.
10. That said Treaty has not been rescinded by either party and remains in full force and effect today.
11. That any crimes to have allegedly occurred involving Defendant shall be subject to the local tribal jurisdiction in accordance with 18 U.S.C. § 1152.
12. That the State of Oklahoma is excluded from jurisdiction over this matter as a result of the federal statute cited above and in accordance with the Supremacy Clause of the United States Constitution, Article IV, Clause 2.
13. The locations of the alleged crimes are within the Muscogee Creek Nation Reservation.
14. The alleged locations are subject to the decision in *McGirt and Kraft*.
15. The McIntosh County District Attorney's Office acting on behalf of the State of Oklahoma does not possess subject matter jurisdiction to prosecute Indians for crimes committed in Indian country. *McGirt v. Oklahoma*, 18-9526, 2020 WL 3848063 at \*18, 591 U.S. \_\_\_ (2020).

#### **BRIEF IN SUPPORT**

When a crime is committed, the State of Oklahoma must prove it has jurisdiction and this right cannot be waived. The Federal Government has exclusive jurisdiction over this proceeding under the General Crimes Act, 18 U.S.C. § 1152, which states:

Except as otherwise expressly provided by law, the general laws of the United States as the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who

has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

Under 18 U.S.C. § 1152, the “general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, ...extend to the Indian country.” The “laws” thus extended are those applicable within the Special Maritime and Territorial Jurisdiction of the United States, as defined in 18 U.S.C. § 7, popularly known as “federal enclave laws”. See *United States v. Markiewicz*, 978 F.2d 786 (2d Cir. 1991), *cert. denied, sub nom. Beglen v. United States*, 113 S. Ct. 1065 (1993). Among these statutes are: arson, 18 U.S.C. § 81; assault, 18 U.S.C. § 113; maiming, 18 U.S.C. § 114; theft, 18 U.S.C. § 661; receiving stolen property, 18 U.S.C. § 662; murder, 18 U.S.C. § 1111; manslaughter, 18 U.S.C. § 1112; and sexual offenses, 18 U.S.C. § 2241 et. seq. The Administrative Crimes Act, 18 U.S.C. § 13, is also one those extended to the Indian country by 18 U.S.C. § 1152, allowing the borrowing of state law when there is no applicable federal statute. *Williams v. United States*, 327 U.S. 711 (1946); *Duro v. Reina*, 495 U.S. 676, 680 n. 1 (1990).

Quite simply the State of Oklahoma does not have jurisdiction over crimes committed against an Indian in Indian Country. “The policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation’s history.” *Rice v. Olson*, 324 U.S. 786 (1945) (citing *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 8 S.Ct. 483 (1832)).

Defendant claims he is an Indian and Solem analysis is required to be conducted in this case. *Murphy v. Sharp*, 875 F.3d 896 (10<sup>th</sup> Circuit, 2017, affirmed 2020). *Murphy* holds that the Court must apply the *Solem v. Bartlett* analysis to decide if the reservation remains to decide if the crime was committed in Indian Country.

#### Status as an Indian

To qualify as an Indian; *U.S. v. Diaz*, 679 F.3d 1183, 1187 (10<sup>th</sup> Circuit). Some degree of Indian blood (however the quantum of blood does not have to be traced to a tribe – *U.S. v. Zepeda*, 792 F.3d 1103 (9<sup>th</sup> Circuit), and recognized as an Indian by the tribe or the federal government

(social life activities/enrollment, *U.S. v. Bruce*, 394 F.3d 1215, *U.S. v. Cruz*, 554 F.3d 840, *Maggi*, 598 F.3d 1073). A stipulation of Indian status is sufficient. *U. S. v. Martin*, 777 F.3d 984.

The Defendant is an enrolled member of the Cherokee Nation, with a measurable quantum of "Indian" blood.

### INDIAN COUNTRY JURISDICTION

It is undisputed that McIntosh County and the land where this crime occurred are with the historical boundary of the Muscogee (Creek) Nation. So, the only question is whether the original boundaries of the reservation have been extinguished. Under the recent ruling in *McGirt v. Oklahoma*, U.S. \_\_\_\_\_ (2020), no such extinguishment has occurred.

The only issue before the Court is whether at the time the crime was committed, was it a case the State of Oklahoma had jurisdiction to prosecute. The Court of Criminal Appeals has previously ruled on this matter in *Klindt v. State*, 1989 OK CR 75. In *Klindt*, the defendant was charged with Assault with a Dangerous Weapon, a felony, and Interfering with an Officer, a misdemeanor. The Offense occurred at a smoke shop for the Delaware Tribe, which was determined to be "Indian Country" (para 3), and the defendant claimed to be an "Indian." The trial court dismissed the case for lack of jurisdiction, which the Court of Criminal Appeals returned back to the trial court to determine whether the defendant was Indian, as no proof of his heritage was adduced (Para 5-7, 11). Further, the Court made further ruling that "If Klindt establishes that he is an Indian, the case shall then be dismissed" (para 11). The Court of Criminal Appeals also found that "Jurisdiction over Indian Country has been given to either the states or the federal government through statutes. The [782 P.2d 403] Act of August 15, 1953, Pub.L. No. 83-280, 67 Stat. 588 (1953) provided the states permission to assume criminal and civil jurisdiction over any "Indian Country" within the borders of the state. Under this public law, Oklahoma could have, without the consent of the affected Indians, assumed jurisdiction over any Indian Country in the state by constitutional amendment. Because of Title IV of the Civil Rights Act of 1968, 25 U.S.C. §§ 1321-1326 (1970), however, the consent of the affected Indians is now required before a State is permitted to assume criminal and civil jurisdiction over "Indian Country." See 25 U.S.C. §§ 1321(a) and 1322(a) (1970); *State v. Littlechief*, 573 P.2d 263 (Okl.Cr. 1978). The State of Oklahoma has never acted pursuant to Public Law 83-280 or Title IV of the Civil Rights Act to

assume jurisdiction over the "Indian Country" within its borders. See, *C.M.G. v. State*, 594 P.2d 798 (Okla. Cr. 1979) cert. denied, 444 U.S. 992, 100 S.Ct. 524, 62 L.Ed.2d 421 (1979); *State v. Burnett*, 671 P.2d 1165 (Okla. Cr. 1983); *State ex rel. May v. Seneca-Cayuga Tribe*, 711 P.2d 77 (Okla. 1985). Accordingly, **the State of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country.**" (emphasis added, para 3) If a defendant can show they are an "Indian" and that the alleged offense occurred in "Indian Country," then the Court has no jurisdiction. There is no limitation as to type of crime or offense, no differentiation between felony or misdemeanor, but the ruling clearly states that the State does not have jurisdiction if those two factors are satisfied.

Additionally, on February 25, 2021, the Court of Criminal Appeals for the State of Oklahoma issue an unpublished decision that is directly related to this matter before this Court. In *Krafft v. Oklahoma*, the decision stated that the *appellant is Indian and the crime for which he was convicted occurred in Indian Country for purposes of 18 U.S.C §§ 1152 and 1153*. Specifically, that the... "*ruling in McGirt applied to [Krafft v. State] and that the District Court of Tulsa County did not have jurisdiction to try Appellant.*" Of importance here is the inclusion of 18 U.S.C. § 1152, which applies to **general** crimes. Emphasis added. The Court of Criminal Appeals then vacated and remanded the case with instructions to dismiss to the District Court of Tulsa County.

The Defendant Long is an Indian. The crime for which he is charged occurred in Indian Country, specifically on Muscogee Creek Nation land, and the Court of Criminal Appeals ruled that McGirt applies to both 18 U.S.C. §§ 1152 and 1153, which includes both major and general crimes. Based on the ruling in *Krafft*, the District Court of McIntosh County does not have jurisdiction to charge Defendant Dan for this crime.

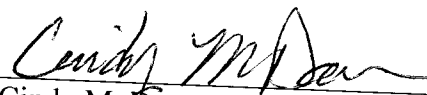
#### Conclusion

As discussed above, none of the language of the allotment acts diminished the Muscogee (Creek) Nation. WHEREFORE, premises considered, Defendant prays that upon hearing this Motion that the Court find that the State of Oklahoma has no jurisdiction to try this case, said case to be dismissed, and that the Defendant be granted such other relief as the Court may deem proper.

**WHEREFORE**, the Defendant, Joseph Nocona Long, respectfully prays this Court to dismiss the above styled criminal cases with prejudice for the above-mentioned reasons.

DATED this 23 day of August, 2023.

Respectfully submitted,




Cindy M. Dawson, OBA #17426  
Dawson Law Office, P.C.  
205 West Foley  
P.O. Box 1352  
Eufaula, OK 74432  
Phone (918) 689-3600  
Fax (918) 689-3942

**CERTIFICATE OF SERVICE**

I, Cindy M. Dawson, do hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, a true and correct copy of the foregoing *Motion to Dismiss for Lack of Subject Matter Jurisdiction* was hand delivered to the following:

District Attorney  
McIntosh County Courthouse  
110 1st St  
Eufaula, OK 74432

  
Cindy M. Dawson