

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

BRANDON L. JENKINS,)
)
Petitioner,)
vs.)
)
STATE OF OKLAHOMA,)
)
Respondent.)

CF-2018-4136

DISTRICT COURT
FILED

DEC 04 2020

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

ORDER DENYING PETITIONER'S "APPLICATION FOR POST-CONVICTION
RELIEF" FILED AUGUST 12, 2020

Comes on for consideration of Petitioner's "Application for Post-Conviction Relief" filed August 12, 2020. The Court has reviewed Petitioner's application seeking relief based on the recent decision of the United Supreme Court in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020) and the docket sheet in this matter. Petitioner's application does not present a genuine issue of material fact requiring a formal hearing with the presentation of witnesses and the taking of testimony. *Johnson v. State*, 1991 OK CR 124, 823 P.2d 370. This matter will therefore be decided based on records the Court has stated it has reviewed.

Petitioner claims, based on *McGirt*, supra, that the offenses for which he was convicted were committed in portions of Oklahoma located in Indian Country, prohibiting Oklahoma courts from exercising jurisdiction over his crimes. However, the prosecution of Petitioner's offenses were justiciable matters, and Petitioner has not established that the trial court lacked jurisdiction. See, Okla. Const. Art. VII, § 7 (District Courts shall have unlimited original jurisdiction of all justiciable matters in Oklahoma).


Additionally, Petitioner has failed to offer any proof that he is an "Indian" for purposes of invoking an exception to state jurisdiction. See *Goforth v. State*, 1982 OK CR 48, 644 P.2d 114 (Two elements must be satisfied before it can be found that appellant is an Indian under federal law. Initially, it must appear that he has a significant percentage of Indian blood. Secondly, the appellant must be recognized as an Indian either by the federal government or by some tribe or society of Indians.) The Petitioner has not presented this Court with any affirmative evidence that he has any significant degree of Indian blood and that he is recognized as an Indian by the federal government or by some tribe or society of Indians. In *Russell v. Cherokee Cty. Dist. Court*, 1968 OK CR 45, 438 P.2d 293, 294, the Court stated:

"It is fundamental that where a petition for writ of habeas corpus, or for post-conviction appeal is filed, the burden is upon the Petitioner to sustain the allegations of his petition, and that every presumption favors the regularity of the proceedings had in the trial court. Error must affirmatively appear, and is never presumed."

Based on the foregoing, the Court finds that Petitioner's application for post-conviction relief filed August 12, 2020, should be, and is hereby DENIED.

IT IS SO ORDERED this 2nd day of December,

2020.



MICHELLE KEELY
JUDGE OF THE DISTRICT COURT

CERTIFICATE OF MAILING

I certify that on the date of filing a true and correct certified copy of the above and foregoing document was deposited with the United States Postal Service with sufficient postage affixed thereto, and addressed to the following recipient(s):

BRANDON L. JENKINS, #379971
JAMES CRABTREE CORRECTIONAL CENTER
ROUTE 1, BOX 8
HELENA, OK 73741-9606

CLERK OF THE APPELLATE COURTS
OKLAHOMA JUDICIAL CENTER
2100 N. LINCOLN BLVD., SUITE 4
OKLAHOMA CITY, OK 73105-4907

DON E. NEWBERRY
TULSA COUNTY COURT CLERK

Alana Higgins

Deputy Court Clerk

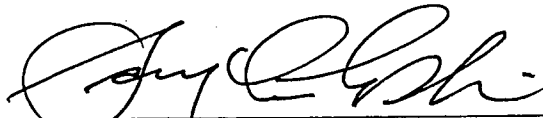
the trial court's denial of post-conviction relief Case Nos. CF-2000-985 and CF-2005-3145 is **AFFIRMED**.

In his post-conviction application filed in Case No. CF-2018-4136 in the trial court Petitioner alleged that the State lacked jurisdiction to charge, try and convict him. Petitioner specifically states his claim is based upon *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020).

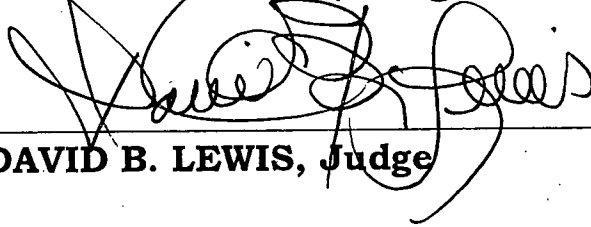
In her May 11, 2021, order the Honorable Michelle Keeley denied Petitioner's request for relief. Judge Keeley found that Petitioner failed to claim, much less establish, that he or his victims are Indian.

In his application filed with this Court, Petitioner alleges that Judge Keeley's ruling is incorrect, but cites no controlling authority in support of this claim. The appeal record in this matter contains no evidence supporting a claim Petitioner or his victims are Indian which is necessary before claiming exemption from prosecution under State law. See *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012); *United States v. Prentiss*, 273 F.3d 1277, 1280-81 (10th Cir. 2001). See generally *Goforth v. State*, 1982 OK CR 48, ¶¶ 5-7, 644 P.2d 114, 116.

There is a presumption of regularity in the trial court proceedings, and the petitioner in post-conviction proceedings has

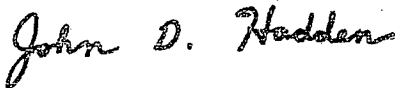


GARY L. LUMPKIN, Judge



DAVID B. LEWIS, Judge

ATTEST:



Clerk

PA

**Additional material
from this filing is
available in the
Clerk's Office.**