



ORIGINAL

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

BILLY ZANE DEO

Petitioner,

v.

THE HONORABLE LAWRENCE PARISH,
DISTRICT JUDGE OF OKFUSKEE COUNTY,
TWENTY-FOURTH JUDICIAL DISTRICT,

Respondent.

No. MA 2022-937

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

FEB - 1 2023

JOHN D. HADDEN
CLERK

RESPONSE BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF MANDAMUS

OKFUSKEE COUNTY DISTRICT COURT

CASE NOS. CF-2018-56, CF-2018-104

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Thereafter, the State filed an Application to Terminate him from Drug Court on February 27, 2019. That Application has been pending for some time because of both Mr. Deo's subsequent incarceration in Department of Corrections in his Okmulgee County cases and the Covid Pandemic, which both prevented and delayed hearings.

Mr. Deo filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction on the 31st day of August, 2022. Hearing was held on that matter on the 6th day of September, 2022. The District Court of Okfuskee County denied Mr. Deo's Motion to Dismiss the Application to Terminate him from Drug Court on September 6, 2022 finding that McGirt did not apply.

The Honorable Lawrence Parish in his ruling stated:

' I am denying your McGirt motion Mr. Allen and finding specifically for the record that Mr. Deo's charges were filed On the 27th of June of the year 2018; that he entered a plea of guilty to those charges on August the 15th of 2018; that he was represented by counsel when he entered those pleas of guilty; that he was given notice of his right to appeal that day and he was represented by Mr. Jay Ramey. This goes for the other cases as well, and I'll invite you with all due respect, to take this up.'

This is the matter before the Court. It is the state's contention that Judge Parish is correct and that the McGirt finding does not apply to the case before the Court.

QUESTION PRESENTED

Should the ruling in McGirt prevent the defendant's termination from Drug Court and the associated imposition of the agreed sentence where the Defendant upon his plea into drug court, pled guilty and had been apprised by the Judge of his appeal rights?

ANSWER

It is the State's contention that just as court's have logically limited the McGirt application in cases such as *Matloff v Wallace*, 497 P.3d 686, 2021 OK CR 21, and *Oklahoma v. Castro-Huerta*, 597 U.S. ____, 142 S. Ct. 2486 (2022), where as here, the crimes and the pleas of guilty occurred prior to McGirt, this court should follow suit and find the State's position represents a logical limitation on McGirt. Here the defendant appeared before the appropriate judge and pled into drug court with pleas of guilty and agreed to his sentences should he fail Drug Court. The Judge also advised him of his appeal rights. He then entered the drug court program, which represents a portion of his sentence. All of this occurring before the date of the McGirt ruling. McGirt should not apply.

ARGUMENT AND AUTHORITY

Previous decisions by this Court and other courts have more crystallized both the definition and coverage of *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). *Matloff v. Wallace* 497 P.3d 686, 2021 OK CR 21 clarified that McGirt did not have a retroactive imposition. *Oklahoma v. Castro-Huerta*, 597 U.S. ____, 142 S. Ct. 2486 (2022), clarified that the State and Federal government had concurrent jurisdiction to prosecute individuals that perpetrated a crime against a member of a Federally recognized Native American tribe.

These cases represent both a refinement and a clarification of McGirt. These were greatly needed in order to administer criminal law in the State of Oklahoma.

The issue contended by petitioner is that even though the crime, and prosecution, plea of guilty, agreed recitation of the sentence as well as appeal rights were given to defendant prior to McGirt and he entered drug court, that defendant's plea into Drug Court required McGirt's application and hence the cases necessarily would be dismissed.

It should be noted that in this post McGirt ruling era, many pre-McGirt defendants are still in specialty courts such as drug court, mental health court, veterans court etc.. The enforcement of those sentences for failure to complete the specialty court curriculum would likewise be affected.

Petitioner's contention of the lack of conviction thereby imposing McGirt is the heart of the question. Turning first to the federal courts, in U.S. v Vela, 992 F.2d 1116, 1993 WL 137528 the tenth circuit recited that defendant's deferred state sentence was a 'criminal justice sentence' as it pertained to criminal history score. The Drug Court plea is likewise a criminal justice sentence whose application begins immediately by his entry into drug court with the associated rules penalties and sentences. Pleading into drug court and having the outcome thereof clearly defined is a finality as to the disposition of this case.

In State Ex Rel Matloff v Wallace, 497 P.3d 686, 2021 OK CR 21, the Court ruled that McGirt did not apply retroactively. Petitioner properly recites that in Matloff the court then ruled that it was exercising its independent state law authority to interpret the remedial scope of the state post conviction statutes to hold that McGirt and its post conviction standards did not apply.

It is the State's proposition that the plea into Drug Court represents yet another unique fact situation which should not be negated by imposition of the McGirt standard. Here the Petitioner(Defendant) appeared before the District Judge in Okfuskee County executing a Plea Summary for entry into Drug Court. All of these actions happened prior to McGirt. This is indeed different from a standard deferred sentence where the sentencing will necessarily be undefined until later determined by the court.

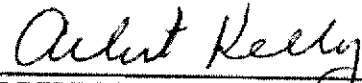
In a Drug Court plea, guilt is admitted and accepted by the Court, the sentence for the violations of law are clearly set out and agreed upon, the appeal rights of the defendant are recited by the court. Therefore, upon a termination, the sentence is then served. We put forward that this creates a fact situation akin to a final conviction and lends itself to imposition rather than to a McGirt exclusion.

Consequently, this case is not based on a deferred sentence. There is only a delay of the sentence based completely upon the success or failure in the drug court program. The guilty plea has been received and the sentence agreed upon. All events happening prior to McGirt.

Petitioner cites authority that would cast this strictly into a deferred sentence analysis. This case presents a hybrid just as Matloff and Castro-Huerta did. A determination that a Drug Court plea is different from a deferred sentence imposition and hence not voidable by McGirt is likewise a 'watershed' event and is procedural in as much as Matloff was procedural. The Drug Court-specialty court is a separate resolution hence different from a straight deferred sentence.

CONCLUSION

The case presents an opportunity for the court to clarify the drug court pleas given by Petitioner pre-McGirt and whether the ruling in McGirt prevents enforcement of the agreed upon guilty plea and sentences even though termination from drug court was subsequent to McGirt. The State contends that the drug court plea of guilty and companion sentencing should not be subject to McGirt and hence should be enforced.



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CERTIFICATE OF DELIVERY

This is to certify that on the 31 day of JAN, 2023, the original and ^{ten} ~~seven~~ copies of the foregoing Response were mailed to: Clerk of the Court of Appellate Courts, Oklahoma Judicial Center, Ground Floor, 2100 N. Lincoln Blvd., Suite 4, OKC, OK 73105 and the Okfuskee County Court Clerk's Office, 209 North 3rd, Okemah, OK 74859.



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