
McGirt v. Oklahoma

PETITIONER

Jimcy McGirt

RESPONDENT

Oklahoma

DOCKET NO.

18-9526

DECIDED BY

Roberts Court (/courts?court=Roberts Court)

LOWER COURT

Oklahoma Court of Criminal Appeals

CITATION

591 US __ (2020)
(<https://supreme.justia.com/cases/federal/us/591/18-9526>)

ADVOCATES

Ian H. Gershengorn (advocates/ian_h_gershengorn)
for the petitioner

Riyaz A. Kanji (advocates/riyaz_a_kanji)
for the Muscogee (Creek) Nation, as amicus curiae, supporting the petitioner

GRANTED

Dec 13, 2019

Mithun Mansinghani (advocates/mithun_mansinghani)
for the respondent

ARGUED

May 11, 2020

Edwin S. Kneedler (advocates/edwin_s_kneedler)
for the United States, as amicus curiae, supporting the respondent

DECIDED

Jul 9, 2020

Facts of the case

Jimcy McGirt, a member of the Muscogee (Creek) Nation was convicted of sex crimes against a child by the state of Oklahoma within the historical Creek Nation boundaries. He argued that Oklahoma could not exercise jurisdiction over him because under the Indian Major Crimes Act, any

crime involving a Native American victim or perpetrator, or occurring within recognized reservation boundaries, is subject to federal jurisdiction, not state jurisdiction.

Question

Can a state prosecute an enrolled member of the Creek Tribe for crimes committed within the historical Creek boundaries?

Conclusion

Sort: [by seniority](#) [by ideology](#)

5 – 4 DECISION FOR MCGIRT

MAJORITY OPINION BY NEIL GORSUCH

Land in Northeastern Oklahoma reserved for the Creek Nation since the 19th century remains “Indian country” for purposes of the Major Crimes Act.

Clarence Thomas Stephen G. Breyer Sonia Sotomayor Neil Gorsuch



G. Roberts, Jr. Ruth Bader Ginsburg Samuel A. Alito, Jr. Elena Kagan Brett M. Kavanaugh

Land reserved for the Creek Nation since the 19th century remains “Indian country” under the Major Crimes Act (MCA), which grants the federal government exclusive jurisdiction to try certain major crimes committed by enrolled members of a tribe on that land. Justice Neil Gorsuch authored the 5–4 majority opinion holding that Oklahoma lacked jurisdiction to prosecute Jimcy McGirt. The Court first noted that all parties agreed that McGirt’s crimes were committed on lands described as belonging to the Creek Nation in an 1866 treaty and federal statute. Though the early treaties did not refer to the Creek lands as a “reservation,” the Court has held that similar language in treaties from the same era was sufficient to create a reservation. An 1856 treaty promised that “no portion” of

Creek lands “would ever be embraced or included within, or annexed to, any Territory or State” and that the Creek Nation would have the “unrestricted right of self-government,” with “full jurisdiction” over enrolled Tribe members and their property.

Once a federal reservation is established, only Congress can diminish or disestablish it through a “clear expression of congressional intent.” The Court acknowledged that Congress has broken many promises to the Tribe but none has manifested “clear expression of congressional intent” to disestablish the Creek Reservation. The Court rejected Oklahoma’s argument that Congress never established a reservation in the first place, finding that such a conclusion “would require willful blindness to the statutory language.” The Court also rejected Oklahoma’s argument that the Oklahoma Enabling Act transferred jurisdiction from federal courts to state courts as contrary to the plain terms of the MCA. The mere fact that Oklahoma has been exercising jurisdiction in these cases does not make it in any more correct. Indeed, “unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law.”

Chief Justice John Roberts authored a dissenting opinion, in which Justices Samuel Alito and Brett Kavanaugh joined, and in which Justice Clarence Thomas joined in part. The dissent accused the majority of examining the statutes in isolation rather than considering a broader inquiry, which would have led to the conclusion that a reservation did not exist when McGirt committed his crimes.

Justice Thomas authored a dissenting opinion to argue that the Court had no jurisdiction to review the judgment of the Oklahoma Court of Criminal Appeals because it rests on adequate and independent state ground.

Further analysis of the oral argument available at Oral Argument 2.0:

<https://argument2.oyez.org/2020/mcgirt-v-oklahoma/>
(<https://argument2.oyez.org/2020/mcgirt-v-oklahoma/>)

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"McGirt v. Oklahoma." Oyez, www.oyez.org/cases/2019/18-9526. Accessed 18 Jan. 2021.