Custard v. Farris, ___ F. Supp. 3d ___, 2023 WL 1530742 (W.D. Okla., Feb. 3, 2023).

- **Holding**: The fact that habeas petitioner convicted of major crime in state court could not have understood the legal significance of his tribal status until the Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), did not avoid the one-year filing limitation in the Antiterrorism and Effective Death Penalty Act (AEDPA).
- **Summary** Petitioner Custard was convicted in Oklahoma state court of knowingly concealing stolen property after having been previously convicted of two or more felonies. For his crime, Custard received a sentence of thirty years' imprisonment, affirmed by the Oklahoma Court of Criminal Appeals. Some twenty-five years later, Custard filed a § 2254 Petition for habeas relief, arguing that the state lacked jurisdiction to prosecute him in light of the Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). The court held that the petition was untimely under the Antiterrorism and Effective Death Penalty Act (AEDPA), 28 U.S.C.A. § 2254, which requires filing within one year of the date on which the factual predicate of the claim presented could have been discovered through the exercise of due diligence. "'[T]he limitations period begins to run when the petitioner knows of the facts giving rise to the habeas claim,' not the date on which he 'understand[s] the legal significance of those facts.'" 2023 WL 1530742 at *2 (quoting Klein v. Franklin, 437 F. App'x 681, 684 (10th Cir. 2011)). The fact that Custard's Petition raised issues of subject matter jurisdiction did not prevent the application of section 2244(d)'s timeliness limitation. And, while s credible showing of actual innocence can provide a basis for avoiding the one-year filing requirement, Custard failed to provide such a showing.
- **Relevant (2023) Deskbook Section:** 4:9