Owens v. Whitten, ___ F. Supp. 3d ___, 2022 WL 14678728 (N.D. Okla. Aug. 25, 2022)

- **Holding:** One-year limitation period for seeking habeas corpus relief under 28 U.S.C. § 2244(d)(1) was not affected by the issuance of *McGirt v. Oklahoma*.
- **Summary:** Petitioner was sentenced in Oklahoma state court in 2011 for three consecutive prison terms totaling 50 years. His direct appeal was unsuccessful, as were other state court post-conviction proceedings following the conviction. The period for seeking federal habeas corpus relief—which he did not pursue—concluded in October 2015. However, after *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), was decided, Petitioner filed a new application for post-conviction relief in state court on the grounds that the offense for which he was convicted had occurred within the Cherokee Nation Reservation and that he possessed some Indian blood. The Oklahoma court of criminal appeals, however, affirmed the denial of this application in 2022. He then filed the pro se habeas corpus petition at issue here.

  The federal district court determined that the petition was likely untimely under the one-year limitation period in 28 U.S.C. § 2244(d)(1). After affording Petitioner the opportunity to respond on that issue, the court dismissed the petition. In relevant part, it rejected the argument that the one-year period expired not in 2015 but, instead, on the date the court of criminal appeals denied his post-*McGirt* post-conviction relief petition. As the district court explained:

  > He alleges the "legal basis" of his claims was not "made available" before *McGirt* was decided. ... He further alleges that he exercised due diligence because he filed his November 2020 APCR "only four months after" *McGirt* was decided. ... These arguments suggest the petition is timely under § 2244(d)(1)(D). Section 2244(d)(1)(D) provides that the one-year limitation period begins to run on "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence."

  The court did not bite on this argument because "the limitation period under § 2244(d)(1)(D) begins on the date that a reasonably diligent petitioner could have discovered the *factual* basis of his or her claims, not the date that a particular petitioner first discovers the *legal* basis of his or her claims." And, here, "Owens's claims rely on facts he should have known when he was prosecuted"—i.e., that (1) "he is a member of a federally-recognized Indian Tribe and he has some degree of Indian blood" and (2) he could have determined that Congress had not disestablished the Cherokee Nation Reservation through the exercise of reasonable diligence.

  The court also deemed unmeritorious Petitioner's contention that *McGirt* should be applied retroactively, reasoning that "the *McGirt* Court did not recognize any new constitutional rights relative to a state's exercise of criminal jurisdiction over crimes committed in Indian country." Nor did it find that the State improperly impeded "the rights of the masses for crimes committed in 'Indian Country'" under Article VII, Section 7 of the Oklahoma Constitution: "Owens's bold assertion that Oklahoma's pre-*McGirt* misunderstanding of the jurisdictional landscape in Oklahoma impeded 'the rights of the masses' is not the type of state-created impediment contemplated by § 2244(d)(1)(B) that necessarily would have prevented Owens from filing a timely habeas petition."
- **Relevant (2022) Deskbook Section:** 3:4 n.6