Parnell v. White, 2023 WL 5407398 (N.D. Okla., August 22, 2023).

- **Holding**: The Supreme Court's holding in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), did not establish a new constitutional right that would trigger a new, one year period for enrolled member of Quapaw Nation to seek habeas corpus relief from a state court conviction for murder within the boundaries of the Muscogee (Creek) Nation Reservation eleven years earlier.
- **Summary**: In 2009, a Tulsa County jury convicted Parnell of first-degree murder, in violation of Oklahoma laws, for causing the death of her boyfriend's 23-month-old son, Parnell was an enrolled member of the Quapaw Nation, and the crime occurred within the boundaries of the Muscogee (Creek) Nation Reservation. Following the Supreme Court's decisions in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), Parnell, through counsel, filed a third application for postconviction relief in 2020, alleging that, pursuant to the dictates of McGirt, the convicting court lacked jurisdiction.

  The court held that the filing of her habeas corpus petition 11 years after final judgment was untimely under the Antiterrorism and Effective Death Penalty Act's one-year statute of limitations for filing habeas corpus petitions, rejecting petitioner's assertion that the Supreme Court's decision in *McGirt* established a new constitutional right that triggered a new one-year filing period, since that exact argument had been rejected by the Tenth Circuit in *Pacheco v. Habti*, 62 F.4th 1233, 1246 (10th Cir. 2023), and further rejecting her assertion that due process claims alleging an absence of jurisdiction in the convicting court are not subject to the one-year statute of limitations. The court also found equitable tolling to be inapplicable "because nothing in Parnell's submissions indicates either that she diligently pursued the Indian-country jurisdiction claim or that extraordinary circumstances prevented her from filing a federal habeas petition to assert that claim."

  The court had initially ruled that post conviction relief was not available to Parnell because she had failed to exhaust all state remedies—while Parnell's appeal of her conviction was dismissed because of untimely filing, an Oklahoma procedural rule permitted Parnell to seek an out-of-time postconviction appeal, which she had not done. While this alone would have been grounds for denying the habeas corpus petition, the court concluded that "dismissing the petition so that Parnell may return to state court to exhaust that remedy would only create false hope for future federal habeas relief" due to the failure to file within one year of her conviction.
- **Relevant (2023) Deskbook Section**: none