

McGirt v. Oklahoma: the case that showed America how to give power back to the tribes

By Rainer Shea

What led to the case?

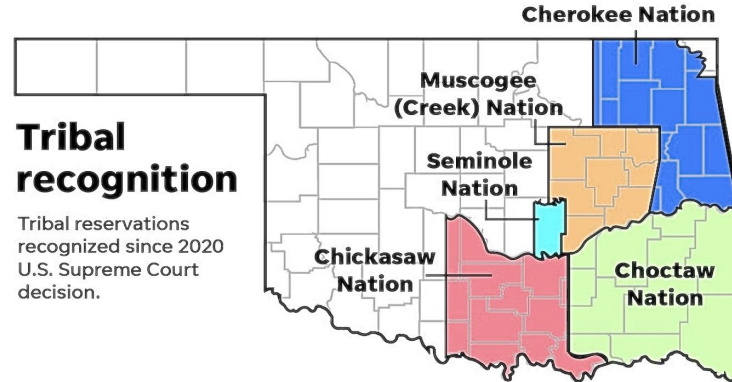
In 2020, when a man named Jimcy McGirt was convicted of sexual assault against a child, his lawyers argued that because he was a member of the Muscogee nation, the state of Oklahoma's jurisdiction didn't apply to him. To support their argument, they cited the Major Crimes Act, which says that Natives aren't subject to the state's jurisdiction if they've been accused of a crime within Native territory.

What did the court have to decide?

On the surface, the issue the Supreme Court faced was whether Oklahoma had the right to exercise jurisdiction, despite what the Major Crimes Act said. By extension, the Court was deciding how much tribal sovereignty as a concept matters.

What did it decide?

The Court said that under the Major Crimes Act, tribal members should be subject to either federal jurisdiction or tribal jurisdiction, implicitly deciding that the eastern half of Oklahoma remains Indian country. It was a 5-4 decision, with Ginsberg, Breyer, Sotomayer, Kagan, and Gorsuch voting yes while Roberts, Thomas, Alito, and Kavanaugh voted no.



Writing for the majority, Gorsuch explained:

“Today we are asked whether the land these treaties promised remains an Indian reservation for purposes of federal criminal law. Because Congress has not said otherwise, we hold the government to its word.”

Writing for the dissent, Roberts argued this disruption wasn't worthwhile: “The state's ability to prosecute serious crimes will be hobbled and decades of past convictions could well be thrown out. On top of that, the court has profoundly destabilized the governance of eastern Oklahoma.”

Did the dissent's warning come true?

In full, it did not. Convicts were only given 30 days to appeal their convictions after the ruling, and after that they couldn't escape them. This was decided when the Oklahoma Court of Criminal Appeals ruled *McGirt* didn't apply retroactively.

Has the norm the case established been maintained?

To the disappointment of indigenous rights advocates, it's not. In July of 2022, the Supreme Court narrowly sided with Oklahoma in a follow-up decision. Writing for the majority, Kavanaugh observed how “The Oklahoma courts have reversed numerous state convictions on that same jurisdictional ground” that was established in *McGirt*.

Native organizations that have decried *McGirt's* reversal

- National Congress of American Indians
- Native American Rights Fund
- Inter-Tribal Council of the Five Civilized Tribes