

**IN THE CONSTITUTIONAL COURT OF THE
CHOCTAW NATION OF OKLAHOMA**

CHOCTAW NATION OF OKLAHOMA

Plaintiff/Appellant/Petitioner,

And

HAROLD DENTON MCCURTAIN,

Defendant/Appellee/Respondent,

Case No. CC-24-01

**FILED
CHOCTAW NATION OF OKLAHOMA
CONSTITUTIONAL COURT CLERK**

SEP 27 2024

**COURT CLERK
BY Cara Schuman Deputy**

ORDER GRANTING CERTIORARI AND AFFIRMING

This matter comes on for hearing on Petition for Certiorari. A hearing was held on July 16, 2024 where The Choctaw Nation of Oklahoma, Appellant (Incorrectly identified as Appellee in the original Petition to this Court) and Harold Denton McCurtain though his counsel, Appellee presented argument. Certiorari is granted as the issue presented is one of substance that has not been decided by this Court and pursuant to Rule 6 of the Rules for the Constitutional Court of the Choctaw Nation of Oklahoma, certiorari is proper and is granted. It is with caution that this court wades into the realm of equitable tolling. In doing so it is important to understand that the McGirt decision, and those cases that followed regarding criminal jurisdiction in Indian Country have arguably had the biggest effect on the Native American people, their governments and their court systems. It is for that reason we feel it necessary to grant cert and review the application of equitable tolling in the case at hand. We decline to apply equitable tolling in this case and affirm the ruling of the District Court, but for different reasons than those set forth by the Court of Appeals in its order of February 28, 2024.

FACTS

This case involves a crime that was allegedly committed by Harold Denton McCurtain between the dates of January 26, 2014, and January 26, 2016, and between September 1, 2017 and October 15, 2017. According to the record these crimes were discovered when the victim disclosed the abuse on November 4, 2017. Appellee was originally charged on March 6, 2019, by the State of Oklahoma in Leflore County and dismissed by the State of Oklahoma on August 18, 2021. Charges were then filed in the Choctaw Nation of Oklahoma court, by information on September 22, 2022, over a year after the dismissal of the Oklahoma state court charges and two years after the tolling of the statute of limitations for the Choctaw Nation.

STANDARD OF REVIEW

This Court reviews the ruling of the Court of Appeals based on Rule 6 of the Rules for the Constitutional Court for the Choctaw Nation of Oklahoma.

SUMMARY OF OPINION

Certiorari is granted and the order of the Court of Appeals affirming the District Court opinion is affirmed for the reasons set forth in this Order.

WHAT IS EQUITABLE TOLLING?

Appellant has asked this court to extend the 3-year statute of limitations applicable to the crimes Appellee is alleged to have committed based on the doctrine of equitable tolling as prescribed by the United States Supreme Court. Upon review of the cases cited and independent research by this Court it is clear that a statute of limitations should only be extended in very rare, very extraordinary cases. In those instances, this Court agrees that it may be necessary to extend a statute of limitation and are willing to review those cases as they are presented. However, in the present case, this Court will not extend the statute of limitations as it could severely prejudice the Appellee as his case was dismissed by the State of Oklahoma after the statute of limitations had run in the Choctaw

Nation. At the time of the dismissal of his state court case, the Choctaw Nation of Oklahoma could no longer charge him. As it relates to the State of Oklahoma and the Choctaw Nation of Oklahoma, when his charge was dismissed by the State of Oklahoma, Appellee could no longer be charged for the crimes he was alleged to have committed when the Leflore County case was dismissed on August 18, 2021. The extinguishment of these claims had nothing to do with any action of Appellee and so reviving a claim against him would defeat the purpose of a statute of limitation in general.

WHAT IS THE PURPOSE OF A STATUTE OF LIMITATIONS?

It is this court's view, a statute of limitations, like many of the criminal civil procedural rules, serve to protect the accused. A statute of limitations is generally recognized as a limitation of time in which a person can be charged with a crime. The purpose for the time limit is to prescribe a finite reasonable amount of time a charge can be brought against an accused. A statute of limitations assures the accused when charges are filed against them, both testimony and evidence needed to defend themselves is still available and memories have not faded. Once the statute of limitations runs on a criminal charge an individual should not have to retain evidence, as charges can no longer be raised against them. When the charges against Mr. Duncan were dismissed in August of 2021, he was free from any charges that could have been brought against him by the Choctaw Nation and under no obligation to retain evidence. Reviving a charge after an individual has reason to believe they are no longer in the sights of the justice system flies in the face of the purpose of a statute of limitations.

IT IS SO ORDERED

IT IS SO ORDERED, this Court grants certiorari to review the opinion of the Court of Appeals and affirms their decision for the reasons set forth in this order.

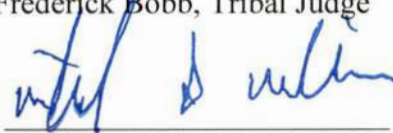
IT IS SO ORDERED:



David Burrage, Chief Justice



Frederick Bobb, Tribal Judge



Mitchell Mullin, Tribal Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of September 2024, a true and correct copy of the above and the foregoing instrument was mailed, first class mail, postage prepaid, and/or delivered electronically to:

CNO Tribal Prosecutor
CNO Public Defenders Office
Sandy Stroud, Clerk of CNO Appeals Court



Cara Schumann, Constitutional Court Clerk