Appendix "A"

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA STATE OF OKLAHOMA

KEITH ELMO DAVIS,

Petitioner,

v.

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No. PC-2019-451

AUG 2 0 2019

JOHN D. HADDEN CLERK

STATE OF OKLAHOMA,

Respondent.

ORDER AFFIRMING DENIAL OF APPLICATION FOR POST-CONVICTION RELIEF

Petitioner appeals from an order of the district court of Latimer County denying him post-conviction relief in Case No. CF-2004-65 wherein he was convicted of forcible sodomy and lewd or indecent proposals to a child under 16. The convictions were affirmed on direct appeal in Case No. F-2005-1044. This is the third denial of a postconviction application to be appealed to this Court. Orders denying post-conviction relief were affirmed by this Court in Case Nos. PC-2012-338 and PC-2008-73.

Although stated various ways, Petitioner contends the district court was without jurisdiction to try him because he is a member of the Cherokee tribe. Petitioner also asserts the district court erred in denying his application without holding a hearing. Petitioner's claims turn on the outcome of *Royal v. Murphy*, 875 F.3d 896 (10th Cir. 2017). The Supreme Court granted certiorari in *Murphy. See Royal v. Murphy*, _____U.S. ____, 138 S.Ct. 2026, 201 L.Ed.2d 277 (2018). As the Supreme Court has yet to decide *Murphy*, we find Petitioner's claims to be premature.

Petitioner has failed to establish he is entitled to post-conviction relief. Accordingly, the order of the district court of Latimer County in Case No. CF-2004-65, denying Petitioner's application for postconviction relief is **AFFIRMED**. The Clerk of this Court is directed to transmit a copy of this order to the District Court of Latimer County, the Honorable Bill Welch, Associate District Judge, the Court Clerk of Latimer County, Petitioner and counsel of record. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 20th day of alignet 2019.

DAVID B. LEWIS, Presiding Judge

EHN, Vice Presiding Judge KU DA

GARY L. LUMPKIN, Judge

ROBERT L. HUDSON, Judge

SCOTT ROWLAND, Judge

ATTEST:

John D. Hadden Clerk

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Appendix "B"

IN THE DISTRICT COURT OF LATIMER COUNTY STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,

Plaintiff,

vs.

KEITH ELMO DAVIS,

Defendant.

Case Number CF-04-65

<u>ORDER</u>

This matter comes on for consideration of the Defendant's Application for Post-Conviction Relief filed on the 3rd day of July, 2018. In his petition the defendant lists in support of his application three issues, generally in the words of the defendant, being (1) Conviction and Sentence is in violation of Constitution of the U.S. and Federal Laws, and of the State of Oklahoma; (2) New - evidence trial court lacked jurisdiction; and (3) new evidence, witness's and changes in law, not previously heard or available.

A review of the file indicates that this is no less than the fifth Application for Post-Conviction relief filed by the Defendant. Based on the three abovementioned issues and the Defendant's brief it appears to this Court that the Defendant has renewed his argument that the Court lacks jurisdiction due to his Indian heritage and the location of the crime. This issue was most recently raised in his Motion to Vacate Judgment filed on the 1st day of June, 2012, which the Court treated as another Application for Post-Conviction Relief. Denied the motion for the reason that the Defendant either knew or should have known from the day of the filing of the case the Indian status of the victim, his own Indian status, and the Indian status of his own homestead. The Court found that jurisdictional objections could have and should have been raised long ago. The Defendant did not appeal the order of the Court denying his Motion to Vacate Judgment therefore it is a final order, and the Defendant now raises the same issue that he previously presented.

Statutory law pertaining to the issues raised in the Defendant's most recent Application for Post-Conviction Relief has not significantly changed since the Court's denial of the Defendant's Motion to Vacate Judgment; however, the United States Court of Appeals for the 10th Circuit decided *Murphy v. Royal.* In *Murphy* the Court found that Congress had not disestablished the Creek Reservation, and consequently the crime in that case occurred within the Indian country as defined in 18 U.S.C. Section 1151(a), and because Mr. Murphy was an Indian the federal court has exclusive jurisdiction.

For *Murphy* to apply to this case, the Defendant would have to be an Indian, the crime would have to have been committed within the Indian Country, and the crime would have to be a crime defined in 18 U.S.C.A 1153. In support of the first requirement the Defendant has attached copies of what appear to be documents from the United States Department of the Interior and the Cherokee nation that together indicate that the Defendant is 3/16ths Cherokee. In support of the second requirement the Defendant has attached a copy of a Quit Claim Deed conveying an acreage in Latimer County to the Housing Authority of the Choctaw Nation presumably his home where the crimes took place. As explained in *Murphy* the characteristic of being "Indian Country" is the result of Congressional action rather than who happens to hold the title to property. Therefore the ownership of the property by the Defendant or the Housing Authority is not dispositive as to the question of whether the crime occurred within the Indian Country, and the Defendant has offered no other evidence to support the assertion that the crime occurred within the Indian Country.

Notwithstanding the question as to whether the crime occurred within the Indian Country

the Court considers the nature of the crime. 18 U.S.C.A Section 1153(a) defines the kinds of crimes that fall within the category of the statute as:

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Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

The Defendant was charged in the Second Amended Information filed on the 11th day of February, 2005, with Count 1 – Forcible Sodomy and Count 2 – Lewd or Indecent Proposal to a child under sixteen years of age, and the Defendant was convicted by a jury of both counts. Although it is certainly possible that the State could have charged the Defendant with one or more of the crimes enumerated in 18 U.S.C.A. 1153(a) based on the acts which served as a basis for the charges filed in the Second Amended Information the State chose to charge the Defendant with the counts contained in the said Information. Because the Defendant was convicted of crimes that do not fall within the list of crimes specified in 18 U.S.C.A. 1153(a) this Court finds that this court has jurisdiction, and the Defendant's Application for Post-Conviction Relief on the jurisdictional issue is hereby denied.

The Court further finds that all issues other than the jurisdictional issue raised in his most recent Application for Post-Conviction Relief could have been raised on direct appeal or in previous Applications for Post-Conviction Relief and are therefore denied. Done this 10th day of June, 2019.

)Q 24

Judge of the District Court



Office of The Clerk of the Appellate Courts Oklahoma City, Oklahoma

Oklahoma Judicial Center 2100 N Lincoln Blvd., Suite 4 Oklahoma City, Oklahoma 73105-4907 (405) 556-9400

RECEIPT FOR PAYMENT

Receipt # 75444

Receipt Date: 06/19/2019

Appeal: PC-2019-451

Paid	By:
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Payment Method(s)

Keith Elmo Davis 519111 P.O. BOX 548 LEXINGTON, OK 73051

ltem	· ·	Amount
Post Conviction Initial Filing		\$ 0.00
	Total Amount	\$ 0.00

End of transmission.

IN THE OKLAHOMA COURT OF CRIMINAL APPEALS FILED STATE OF OKLAHOMA IN COURT OF CRIMINAL APPEALS STATE OF OKLAHOMA STATE OF OKLAHOMA

PG<u>2019</u>451

JUN 19 2019

<u>KEITH ELMO DAVIS</u> ,	
Petitioner/Appellant,	
VS.	

STATE OF OKLAHOMA Respondent/Appellee.

JOHN D. HADDEN
<u>Clérk</u>
CASE NO. <u>(F-2004-0065</u>
(Appeal From District
COURT LATIMER COUNTY)

PETITION IN ERROR

- 1. The trial court and the trial court case number: <u>CF-2004-0065</u>, <u>LATIMER</u> County District Court
- 2. The crime and statute under which you were convicted: <u>Ct. 1- Forcible Sonomy</u>
- 2105 888, Count 2-lewd or INDECENT PROPOSAL to Child UNDER (16).
- 2105 1123 (A)(D) 3. The date of the Judgment and Sentence: OCtober 20, 2005 Count 1- 20 yrs, Count 2-15 yrs,
- 4. The name and address of the facility in which you are incarcerated: <u>Joseph HARP</u> CORRECTIONAL CENTER POBOX 548, LEXINGTON, OKIAhoma 73051
- 5. The Petitioner/Appellant filed an Application for Post-Conviction relief with the District Court of <u>LATIMER</u> County in Case No. CF- 2004-0065 which was denied on the <u>10th</u> day of <u>JUNE</u>, 2019
- The Petitioner/Appellant now brings an Appeal pursuant to <u>Title 22 O.S. §1087</u>, from the final judgment entered in the District Court. <u>A certified copy of said denial is attached</u> <u>hereto and made part hereof</u>.
- 7. Petitioner/Appellant has further annexed his Brief in Support; a copy of his application for Post-Conviction Relief; and a copy of the State's Response; and a certified copy of

IN 192019 JUN 192019 CLERK'S OFFICE

Page 1 of 2

the Notice of Intent to Appeal. <u>All of the aforementioned documents are attached hereto</u> and made part hereof.

WHEREFORE, Petitioner/Appellant seeks review of the District Court's denial of His Application for Post-Conviction Relief based on an abuse of discretion, an erroneous conclusion of law, and an unreasonable determination of the facts and law in light of the evidence presented. Petitioner/Appellant seeks reversal and remand to the District Court for further instructions and/or an evidentiary hearing for the reasons more specifically set forth in the attached Brief in Support.

Dated: JUNP 17. 2019 Signature: /s/ Heith Elina Joseph Harp Correctional Center P.O. Box 548

P.O. Box 548 Lexington, OK 73051

CERTIFICATE OF MAILING

This is to certify that on this <u>17</u>th day of <u>)</u> <u>unc</u>, 20<u>19</u>, a true and correct copy of the above and foregoing was placed in the prison mailbox, postage prepaid to: <u>Michael</u> <u>S. Richie, Appellate Court Clerk, Oklahoma Supreme/Oklahoma Court of Criminal Appeals</u> <u>Court Clerk, Oklahoma Judicial Center, Ste 4, 2100 N. Lincoln Blvd., Oklahoma City, OK</u> <u>73105-4907</u> and the District Court:

Signature: /s/ MR. KEith Elmo DAVIS, Doct 519111.

OCCAONLINE Rules of the Court of Criminal Appeals

Form 13.2 Affidavit in Forma Pauperis

The Affidavit in Forma Pauperis must be in the following form:

I, <u>KEith E. DAVIS</u>, state that I am a poor person without funds or property or relatives willing to assist me in paying for filing the within instrument. I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

Signed this 17 day of UUNP, 2019 at Lexington, Cleveland, OKlahama (Print City, County, & State) Signature of Affiant) am MR. KEITH ELMO DAVIS Doc#519111 (Print Name) << Prior Section Index Next Section>> Return to OCCA Online Service provided by the IS department of the Oklahoma Court of Criminal Appeals Email our webmaster with any of your comments or suggestions.

NO. PC-2019-451

Stomp file Return JUNE 19,2019

IN THE OKLAHOMA COURT OF CRIMINAL APPEALS

STATE OF OKLAHOMA

KEITH ELMO DAVIS,]	
Petitioner-Appellant]	
VS.]	CF-04-65 Appeal from Latimer County.
THE STATE OF OKLAHOMA,	j	
Respondent-Appellee.	1	

BRIEF IN SUPPORT

COMES NOW, Keith Elmo Davis, Pro Se and moves the Court of Criminal Appeals liberally construct his Pro Se Brief In Support under Hall V. Bellmon, 935 F.2d. at 1110. n.[6] (10thCir.1991), citing Haines V. Kerner, supra. <u>Title</u> 22 O.S. 1970, Section 1083(b)..Regardless of defect of form.

Appellant appeals the Order filed June 10th, 2019, in Case Number CF-2004-65, denying Application for Post Conviction Relief to the Oklahoma Court of Criminal Appeals.

Proposition

The District Court Abused it's discretion denying relief on material issues of fact without holding an evidentiary hearing requires reversal and remand for further fact findings after an evidentiary hearing. 22 O.S. 1970, Sections 1083(b), 1084, 1085. U.S.C.A. Const. Amend. 14. Okla. Const. Art. 2, sections 7, 6.

<u>Boggs V. State</u>, 1976 OK CR 155, 551 p.2d 1161, <u>Chase V. State</u>, 1973 OK CR 16, 505 p.2d 1003, <u>Bowen V. State</u>, 1972 OK CR 146, 497 P.2d 1094, n.[2]; <u>Ex Parte Duty</u>, 1957 OK CR 111, 318 p.2d 900, <u>Wackerly V. State</u>, 2000 OK CR 15, 12 p.3d 1. <u>Title</u> 18 U.S.C.A. Sections 1151(a). 1153, 3231, 3242. Appellant is a enrolled member of a federally recognized tribe as was the victims alleged by the Appellee's information filed with the Latimer County District Court. The tac: appellee did not establish subject matter jurisdiction beyond a reasonable doubt and did not invoke the jurisdiction of the district court of Latimer County. Oklahoma. Appellant is entitled to a dismissal of charges for lack of subject matter jurisdiction or in the minimum this appellate Court order the district court conduct an evidentiary hearing on material issues of fact.

NO.

IN THE OKLAHOMA COURT OF CRIMINAL APPEALS

STATE OF OKLAHOMA

KEITH ELMO DAVIS,]
Petitioner-Appellant]
VS.]
THE STATE OF OKLAHOMA,]
Respondent-Appellee.]

CF-04-65 Appeal from Latimer County.

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<u>The Identity of defendant or victim as enrolled member</u> of a tribe or nation as a prerequisite to Jurisdiction......

<u>Goforth V. State</u>, 1982 OK CR 48, 644 p.2d 114, 116, n. [2-3]; <u>State V. Klindt</u>, 1989 OK CR 75, 782 p.2d 401, 403, n.[2]. <u>See Attached Documentation in support.</u>

Q. Are you a Native American? Yes [X]. No. [].

Q. Is the victim or victims Native American(s)? Yes X. No. [].

Q. Are you an enrolled member of the Nation or Tribe ? Yes M? No. [].

Q. Is the victim or victims enrolled member(s) of the Nation or Tribe ? Yes []. No. []

And State Courts have been allowed to try non-Indians who committed crime against each other on a reservation...But if the crime was by or against an Indian, Tribal jurisdiction or that expressly conferred on other Courts by Congress has remained exclusive. <u>See Williams V. Lee</u>, 358 U.S. 217, 220, 3 L.ed 2d 251, 253-254, n.[2], 79 S. Ct. 269 (Decided Jan. 12, 1959). <u>See McClanahan V. ArizonaTax Commission</u>, 411 U.S. 164, 171, 177-178, 36 L.Ed.2d 129, 135-136, n.[5-6], 139, n.[15] (Decided March 27, 1973)(State Laws generally are not applicable to Tribal Indians on an Indian Reservation except when Congress has expressly provided that State Laws shall apply). <u>See Title</u> 18 U.S.C.A. 1151, 1153, 3231, 3242. The Major Crimes Act defines the Federal Courts jurisdiction of Indian Offenses and where victim or defendant is a member of Tribe.

Subject Matter Jurisdiction cannot be waived nor procedurally barred by accused and can be raised at any time or stage of the collateral proceedings.

<u>See Bowen V. State</u>, 1972 OK CR 146, [2], 497 p.2d 1094(Jurisdiction of subject matter can neither be waived nor conferred by Consent and objection may be raised at any time or stage). <u>Patterson V. Beall</u>, 1997 OK CIV APP. 64, 947 p.2d 617 (Subject Matter jurisdiction is invoked by pleadings filed with Court). <u>Ex Parte Duty</u>, 1957 OK CR 111, n.[4], 318 p.2d 900 (Objection that trial court has no jurisdiction of criminal offense or subject matter cannot be waived by accused). <u>See U.S. V. Cook</u>, 922 F.2d 1026, 1031, n. [3,4] (2nd Cir. 1991)(Whether the crime occurred in Indian Country was thus a jurisdictional fact susceptible of determination without reference to any facts involved in determining...guilt or innocence).

It is from this test set forth that the Court must make this factual determination.

Proposition

<u>The District Court does not have subject matter jurisdiction</u> for crime committed within Indian Country where defendant or victim is a enrolled tribal member. Title 22 O.S. 1080(b).

<u>Standard of Review</u>

The first and governing principal is that only Congress can divest a reservation of its land and diminish its boundaries. Once a block of land is set aside for an Indian Reservation and no matter what happens to the title of individual plats within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise. <u>See</u> Solem V. Bartlett, 465 U.S. 463, 470, n.[7], 104 S. Ct. 1161, 79 L.Ed.2d 443 (Decided Feb. 22, 1984). <u>See</u> United States V. Choctaw Nation, 179 U.S. 494, 21 S. Ct. 149, *152 ("Map of Choctaw & Chickasaw Nations"). 45 L.Ed.2d. 291 (Decided Dec. 10, 1900). <u>See</u> Choctaw Nation & Chickasaw Nation V. The Cherokee Nation, 393 F. Supp. 224 (E.D. Okla. April 15, 1975)(The Choctaw-Chickasaw-Cherokee Boundary Dispute Act). <u>See Exhibits [1]</u> Map & Diagram of Land in Suit, with explanatory Notes. <u>See Exhibits [2]</u> Map of Tribal Jurisdictions in Oklahoma, provided by Bureau of Land Management. 35 U.S. Op. Atty. Gen. 251, (U.S.A.G.), 1927 WL 2311 July 12, 1927. Title To Land In Bed Of Red River.

TREATY WITH THE CHOCTAW AND CHICKASAW March 4, 1855, 11 Stat. 611.

Art. 1 (Future boundaries of the Choctaw and Chickasaw country)

The following shall constitute and remain the boundaries of the Choctaw and Chickasaw country. Viz: Beginning at a point on the Arkansas River, one hundred paces east of old Fort Smith, where the western boundary line of the State of Arkansas crosses the said river, and running thence due south to Red River; thence up Red River to the point where the meridian of hundred degrees west longitude crosses the same; thence north along said meridian to the main Canadian River; thence down said river to its junction with the Arkansas River; thence down said river to the place of beginning.

<u>See</u> Solem, 465 U.S. at 468. Act of June 25, 1948, ch. 645, Section 1151, 62 Stat. 757.

Only in 1948 did Congress uncouple reservation status from Indian ownership, and statutorily define Indian Country to Include lands held in Fee by non-Indians within reservation boundaries.

3

The boundaries of the Choctaw and Chickasaw Nations remain intact and constituted Indian Country as to all lands within a reservation. This would make Indian Offense a Federal crime against the laws of the United States Major Crimes Act 1153, 1151, 3231, 3242 ,of Title 18 U.S.C.A. Wherever the defendant/victim is a member of the Nation or Tribe. <u>William V. Lee</u>, 358 U.S. 217, 220, 3 L.ed 2d 251, 253-254, n.[2], 79 S. Ct. 269 (Decided Jan. 12,1959); <u>McClanahan V. Arizona Tax</u> Com'n., 411 U.S. 164,171, 177-78, 36 L.Ed.2d 129, 135-136, n.[5-6], 139, n. [15].

The Chickasaw and Choctaw Nations boundaries have not been extinguished, diminished, disestablished by an Act of Congress and history confirms this fact. The State of Oklahoma would not have subject matter jurisdiction under the Major Crimes Act for offenses committed by an Indian within Indian Country which would be Federal District Court.

<u>See</u> Organic Act of Congress, May 2, 1890, c. 182, section 1, 26 Stat. 81. May 2, 1890, c. 182, section 29, 26 Stat. 93. May 2, 1890, c. 182, section 30, 26 Stat. 94.

<u>See</u> Enabling Act of Congress, June 16, 1906, c. 3335, section 1, 34 Stat. 267. June 16, 1906, c. 3335, section 22, 34 Stat. 278.

<u>See</u> April 22, 1907, Wm. H. Murray president of Convention signed Ordinance Accepting Enabling Act as Irrevocable. Which is not subject to recall once contract terms signed on effective date. Proclamation signed by President November 16, 1907 admitting Oklahoma in the Union as a State. <u>Okla.</u> Const. Art. 1, section 3. Oklahoma's Disclaimer as impediment not amended to assume jurisdiction over Indians within Indian Country.

Footnote: Exhibit 2. There are (38) federally recognized Tribes in the State of Oklahoma. <u>Title</u> 68 O.S.2010, section 348. Definitions. <u>Title</u> 68 O.S. 2004, section 346.A.2. Recognition of Tribal Sovereignty of federally recognized Tribes. <u>Title</u> 68 O.S. section 425. Definitions. <u>Title</u> 68 O.S. section 500.3. Definitions. <u>Title</u> 68 O.S. section 500.63. Sale of motor fuels by Indian Tribes. <u>Title</u> 10 O.S. 1982, section 40.2. Definitions. <u>Title</u> 68 O.S.2014, section 349.1. Sale of Tobacco by Indian Tribes.

<u>See</u> Press Release, Secretary Jewell, 2015 WL 5813847 October 6, 2015. Department of the Interior. The Choctaw Nation is the third largest Native American Tribe in the United States, with approximately 176,000 enrolled members and 10,864 square miles of tribal lands in Southeastern Oklahoma.

The Chickasaw Nation has more than 60,000 enrolled members and includes 7,648 square miles of South-Central Oklahoma, encompassing all or parts of 13 Oklahoma Counties.

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Proposition

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<u>Oklahoma does not have subject matter jurisdiction over the</u> crimes committed by or against an Indian in Indian Country.

A] Oklahoma never amended its Constitution to remove the disclaimer pursuant to the Act of August 15, 1953, Pub. L. No. 88-280, 67 Stat. 588. Okla. Const. Art. 1, section 3. <u>See</u> Washington V. Yakima Indian Nation, 439 U.S. 463, 481-482, 58 L.Ed.2d 740, 755-756, (footnote 25-listed Oklahoma having disclaimer to be amended), 99 S. Ct. 740 (Decided Jan. 16, 1979).

B] Oklahoma never obtained consent of the affected tribe under Title IV of the Civil Rights Act of 1968. 25 U.S.C. Sections 1321-1326. 18 U.S.C.A. Section 3243.

The State of Oklahoma has never acted pursuant to Public Law Number 280 or Title IV of the Civil Rights Act of 1968 to assume jurisdiction over Indian Country within its borders. Any act on part of the State of Oklahoma against a tribal member without the consent of a sovereign nation is void ab initio.

<u>See</u> United States V. Fidelity & Guaranty Co., et al., 309 U.S. 506, 60 S. Ct. 653, n.[10], 84 L.Ed 894 (Decided March 25, 1940)(Consent alone gives jurisdiction to adjudge against a sovereign and in absence of that Consent, attempted exercise of judicial power is void).

<u>See</u> Enabling Act of Congress, June 16, 1906, c. 3335, Section 22, 34 Stat. 278. June 16, 1906, c. 3335, Section 1, 34 Stat. 267.

<u>See</u> Ordianace Accepting Enabling Act, April 27, 1907, adopted at 11:41 a.m., 22nd day of April Anno Domini, 1907.

<u>See</u> Black's Law Dictionary-Ninth Edition: Irrevocable: Unalterable; committed beyond recall.

Oklahoma signed a Ordinance of Irrevocability not subject to recall in agreement with the Enabling Act of Congress which is a contract with sovereign nations. Accepting its conditions of this Enabling Act Sections 1, 22, in conjunction with its disclaimer under Okla. Const. Art. 1, section 3. Oklahoma being binded with contract terms and breached that terms of the contract against nations which cannot be waived without the consent of nations. Where enrolled members are convicted within Indian Country by the State of Oklahoma without their Tribe or Nations consent. <u>See</u> Washington V. Fishing Vessel Ass'n., 443 U.S. 658, 675-676, 61 L.Ed.2d 823, 839, 99 S. Ct. 3055 (Decided July 2, 1979)(A Treaty, including one between the United States and a Indian Tribe, is essentially a contract between two sovereign Nations, e.g., Lone Wolf V. Hitchcock, 187 U.S. 553, 47 L.Ed. 299, 23 S. Ct. 216. When the the signatory nations have not been at war and neither is the vanquished, it is reasonable to assume that they negotiated as equals at arm's length. There is no reason to doubt that this assumption, applies to the Treaty at issue here). See Northern P.R. Co. V. Wall, 241 U.S. 87, 60 L.Ed. 905, 36 Sup. Ct. Rep. 493 (The law existing when a contract is made, and affecting its performance, becomes a part of it). See The Choctaw Nation, the Chickasaw Nation V. Cherokee Nation, 393 F. Supp. 224 (E.D. Okla. April 15, 1975)(Discussion of Treaties and the Choctaw-Chickasaw-Cherokee Boundary Dispute Act). A full comprehensive analysis was conducted pursuant to a Three Judge Court pursuant to an Act of Congress. The terms of a contract was addressed within the United States and Nations or Tribes. The terms are forever binding unless Repeal or Altered by another Act of Congress.

Footnote: See The Oklahoman, Monday, December 10, 2018, 5A. Five Tribes await high Court's Creek Ruling. (By Mr. Stephen H. Greetham). "The Chickasaw Nation carefully assessed the question of its own treaty boundaries as part of its work in recent water negotiations." Said Stephen Greetham, Senior Counsel for that tribe. "It is certainly our conclusion, consistent with our Constitution, that the Nation's boundaries remain intact." See 35 U.S. Op. Atty. Gen. 251 (U.S.C.A.), 1927 WL 2311 July 12, 1927. "Title To land In Bed Of Red River." The Choctaw Nation and the Chickasaw Nation V. Cherokee Nation, 397 F. Supp. 224 (E.D. Okla. April 15, 1975)(The Choctaw-Chickasaw-Cherokee Boundary Dispute Act). See Morris V. Watt, 640 F.2d 404 (Jan. 27, 1981)(The Choctaw 1860 and Chickasaw 1868 Constitutions were not repudiated by any lawful acts of the federal government).

<u>Choctaw Nation V. U.S.</u>, 21 S. Ct. 149, *152, 179 U.S. 494, *501. <u>See Exhibit [1]</u> Copy of Choctaw Nation, Diagram of Land in Suit, with Explanation Notes. Tracts 4 Cheyennes and Arrappahoes. Tract 5 Wichitas. Tract 6 Kiowas, Commanches, and Apache. Tract 7 Greer County.

In 2019 where the State of Oklahoma will work in partnership with the Indian Nations through Compacts, Cooperation Agreements as Sovereign Nations. Further strengthens recognition of existing jurisdictional boundaries within the old reservation boundaries have survived diminishment, disestablishment, extinguishment by Acts of Congress.

A congressional determination to terminate an Indian reservation must be expressed on the face of the Act or be clear from surrounding circumstances and Legislative History. See Mattz V. Arnett, 412 U.S. 481, 504-505, 35 L. Ed.2d 92, 106-107, 93 S. Ct. 2245 (Decided June 11, 1973). Seymour V. Superintendent, 368 U.S. 351, 395, n.[5], 7 L.ed 2d 346, 351, n.[5], 82 S. Ct. 424 (Decided Jan. 15, 1962)(When Congress has once established an Indian reservation all tracts included within it remain a part of the reservation until seperated by Congress).

6

Proposition

<u>Continuation of tribal existence and tribal government by Acts</u> of Congress extending its ultimate power of life or death for a <u>Nation or Tribe cannot be reversed except by another Act of</u> <u>Congress</u>.

The U.S. Supreme Court held:

The Act of 1906, 34 Stat. 137. Congress at one time planned to terminate the existence of the Five Civilized Tribes in 1906, and the Act of 1906 was introduced into the House of Representatives with the object of preserving Indian interests after tribal dissolution. In the course of discussion, Congress determined to continue tribal existence, and the Act was **amended** to that effect **before passage**.

<u>See</u> Seminole Nation V. United States, 318 U.S. 629, 63 S. Ct. 784, ** 789, n. [4], 87 L. Ed. 1046 (Decided April 5, 1943); <u>See</u> August 19, 1907 26 U.S. Op. Atty. Gen.390, 1907 WL 486, ** 5 <u>states</u>: "Congress may abrogate a formal treaty with a sovereign nation ... it may alter or repeal an agreement of this kind with an Indian Tribe." <u>See</u> Chae Chan Ping V. United States, 130 U.S. 581 9 S. Ct. 623 (May 13, 1889).

The State of Oklahoma as part of the Union was non-existent prior to November 16, 1907, before its entering into Statehood. The negotiations of tribal extinguishment, disestablishment, diminishment took place before Oklahoma was admitted into the Union as a State on November 16, 1907. The date the proclamation signed by the President of the United States.

The only realistic question is the state of the State, the Five Tribes, the United States on or after November 16, 1907?

Congress Acts are directives and laws as to the Commerce Clause with the Nations or Tribes within a Territory or State. These Congressional Acts are not to be discarded or disregarded by those whom are in disagreement with them.

March 2, 1906, Congress had the power to Legislate for the existence of the Nations or Tribes and to extend this Act indefinitely prior to the deadline Congress itself set for March 4, 1906. When tribal government was to end, but Congress repealed its March 4th, 1906 deadline set by its Act with another Act from Congress itself. The State of Oklahoma cannot be heard to disagree with that decision Congress made on March 2nd, 1906 in the House of Representatives on behalf of the Nations or Tribes. <u>See</u> Act of April 26, 1906, section 28, 34 Stat. 148. Until otherwise provided by Law. Title 74 O.S.2011, section 1207. Oklahoma Native American Liaison, reads:

A. The State of Oklahoma recognizes the status of the federally recognized tribal governments residing in the geographical boundaries of the State as sovereign nations and the state recognizes the need for further cooperation between the state and the tribes and their citizens and the importance of the government-to-government relationship between the state and the tribes.

To the present date as of Statehood the State of Oklahoma Legislature recognizes, acknowledges, federally recognized Nations or Tribes within the Geographical boundaries of the State of Oklahoma. Federal Statutes, Supreme Court Decisions, Department of Interior, Secretary of Interior, Congress. These Nations or Tribes are wards of the United States and under its protection. The State of Oklahoma should recognize and acknowledge this fact through its own State Legislations.

<u>Title</u> 74 O.S. 2012, section 1221. Indian Tribes-Acknowledgement of Federal Recognition-Cooperative Agreements-Surface water and/or Ground water resources, reads:

A. The State of Oklahoma acknowledges Federal recognition of Indian Tribes recognized by the Department of Interior, Bureau of Indian Affairs.

B. The State of Oklahoma recognizes the unique status of Indian Tribes within the Federal Government and shall work in a spirit of cooperation with all Federally recognized Indian Tribes in furtherance of federal policy for the benefit of both the State of Oklahoma and Tribal Government.

The Five Civilized Tribes within the State of Oklahoma are documented as federally recognized tribes under the Department of the Interior and Bureau of Indian Affairs. The Five Tribes have their own police, Tribal Courthouse. The Five Tribes are under superintendence of the United States within their Jurisdictional Boundaries within the State of Oklahoma. Land that is set aside for use of the Indians under the superintendence of the government of the United States. Congress still Legislate for the benefit of the tribes or nations as long as they shall exist. The Cooperation Agreements, Compacts between the State of Oklahoma and Tribal Governments established the existence of these Sovereign Nations. That Indian Country still exists within the old reservation boundaries.

8.

<u>The Choctaw and Chickasaw Nations constitute an dependent</u> <u>Indian Community within their boundaries of the consolidated</u> <u>1855 treaties is Indian Country USA. Title 18 USCA 1151(a).</u>

The Supreme Court has adopted Indian Tribes as "Dependent Indian Communities" under protection of the United States Government. <u>Title</u> 18 U.S.C.A. 1151(a) identifies dependent Indian Communities as "Indian Country." The Population of the Choctaw Nation 176,000 enrolled members and 10,864 square miles of Southeastern State of Oklahoma. The Population of the Chickasaw nation 60,000 enrolled members and 7,648 square miles of South-Central State of Oklahoma. <u>Choctaw nation V. United States</u>, 119 U.S. 1, 27, 75 S. Ct. 90, 30 L.Ed 306 (Decided Nov. 15, 1886)(These Indian Tribes are wards of the United States. They are communities dependent on the United States***). <u>See Chocatw Nation and Chickasaw Nation V. Atchison, T. & S.F. Ry. Co.</u>, 396 F.2d 578, n.[3] (10thCir. March 6, 1968)(The Chocatw and Chickasaw Nations are each a dependent Indian community under guardianship of the United States). <u>Missouri-Kansas R. Co. V.</u> <u>Early</u>, 641 F.2d 856, n.[1-2] (10thCir. Feb. 20,1981)(Cited with approval the precedent determined by previous earlier decisions citing also 396 F.2d 578 for authority).

The Choctaw and Chickasaw Nations boundaries have been fully adjudicated and determined that the Oklahoma admission in the Union did not affect the Nations Titles to the River Beds that make the Boundary Lines for the Nations. Beginning on the South Canadian River down to the Arkansas River, along the Oklahoma and Arkansas Boundary Line down to the Red River. Up the Red River to the Ninety-Eighth Meridian and North along the 98th Meridian to the point of beginning on the South Canadian River. <u>See Exhibit [1]</u> Map & Diagram of Land in Suit, with explanatory Notes. <u>See Exhibit [2]</u> Map of Tribal Jurisdiction in Oklahoma, provided by Bureau of land Management. The Chocatw and Chickasaw Nations also constituted a reservation with boundaries drawn on Maps as Jurisdictional boundaries of the nations. <u>Title</u> 18 U.S.C.A. Sections 1151(a), 1153, 3231, 3242.

The State of Oklahoma is prempted from prosecuting any Indian on Indian Major Crime, or where the defendant or victim is a enrolled member of the Tribe where a Major Crime is involved under the Major Crimes Act. Under these conditions Major Crimes Acts belong with the Federal Government which prempted the State Courts of Subject Matter Jurisdiction over these types of felony offenses. Postconviction relief should be granted in the interest of justice and judicial economy. <u>Title</u> 22 O.S. 1070, sections 1085, 1080(b) seq.

9

VERIFICATION UNDER PENALTY OF PURJURY

I, KEHT ELMO DAVIS, # 519111, state on the 17 H day of $10 \mu R$, 20 19, under penalty of perjury that the foregoing statement(s)/document(s), <u>Petition</u> IN EPROR, BRIEF IN SUPPOR

is true and correct to the best of my knowledge, understanding, belief, and abilities. See Title 12 O.S. Supp.2004 § 426, Oklahoma Court of Criminal Appeals, Rule 1.13 L.

K Elmo Davis

Petitioner, pro-se Joseph Harp Correctional Center P.O. Box 548 Lexington, OK 73051-0548

CERTIFICATE OF MAILING

I, <u>KEtth ELMI DAVIS</u> # 519111, residing at Joseph Harp Correctional Center, P.O. Box 548, Lexington, OK 73051-0548, hereby certify that on the <u>17 ¹⁴</u> day of <u>June</u>, 2019, I mailed a correct copy of the foregoing attached, <u>PETITION</u>, <u>IN EARCH</u>, <u>BRIEF IN SUMPAT</u>

postage prepaid to:

Name

Address

City, State, Zip

OKIAhoma JUDIKIAL Centrez Name 2100 M. LINCOLN BLVD, Ste. 4 Address OKIAhoma City, OKIA. 73105 City, State, Zip

BI Kett Elmo Dacks AFFINIT/MR. KEHL E. DAVIS.



IN THE GOU	27 OF CRIMINAL	APPEALS
	State of OKIA	thoma
KEITH ELMO DAVIS,]	
Petitioner/Appellant,]	
VS.]	No. <u>CF-2004-65</u>
State of oklahoma,]	
Respondent/Appellee.]	

BRIEF IN SUPPORT

Comes Now, Keith Elmo Davis, Pro Se petitioner and moves the Court liberally construe his pro se Brief In Support pursuant to Hall V. Bellmon, 935 F.2d., at 1110, n. [6] (10thCir.1991), citing Haines V. Kerner, supra. The U.S. Supreme Court held that Pro Se litigants pleadings are to be liberally construed and held to less stringent standard required from members of Bar.

JURISDICTIONAL STATEMENT

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The District Court of Latimer County, State of Oklahoma has jurisdiction to grant the proper remedy under the Post-Conviction Procedures Act of 1080(b), 1085 of Title 22. The District Court in Case Number CF-2004-65 did not have subject matter jurisdiction to impose sentences for crimes charged by Information occuring within Indian Country by an Indian within the historical boundaries of the Choctaw Nation of Oklahoma. The defendant was a certified Cherokee Citizen of the Cherokee Nation of Oklahoma and the alleged victim is also Native American. The District Court can dismiss the judgment and sentence as void ab initio from the face of the record of judgment roll for lack of subject matter jurisdiction to impose sentences.

THE MAJOR CRIMES ACT

The offenses alleged occurred on an Indian Allotment held in trust by the United States for benefit of the Nation or Individual members use within Latimer County, State of Oklahoma. The allotment land is part of the MCA 1151(c) of Title 18 U.S.C.A. An offenses enumerated under 1153(a) of title 18 U.S.C.A. alleged by Information occurred on allotted land which constituted a violation of laws against the United States which prempted the State prosecution for these offenses. Under Title 18 U.S.C.A. Section 3231 Subject Matter Jurisdiction was the United States District Court for the Eastern District of Oklahoma or Tribal Court within the Chocatw Nation. <u>U.S. V. Cook</u>, 922 F.2d 1026, 1031, n. [3,4] (2ndCir.1991)(Whether the site of an offense is Indian Country have been held to be for the Court alone)?

Residence of Keith Elmo Davis

Located at HC 64 Box 5830, Tuskahoma, Oklahoma, within latimer County, State of Oklahoma within the boundaries of the Historical Choctaw Nation of Oklahoma. According to the Secretary of the Department of Interior 2015 WL 5813847 October 6, 2015 stated the Choctaw Nation is the third largest native American Tribe in the United States. The Nation has approximately 176, 000 enrolled members and 10, 864 square miles of tribal lands in Southeastern State of Oklahoma. <u>See</u> United States V. Choctaw Nation, December 10, 1900 179 U.S. 494, 21 S. Ct. 149, *153, 45 L. Ed. 291, depicts a map drawn showing the Choctaw and Chickasaw Nations of Oklahoma. <u>See Cravatt V. State</u>, 825 P.2d 277, 1992 OK CR 6. <u>Exhibits 1,2,3,4,5</u>

> <u>Proof Keith Elmo Davis a Certified enrollee as</u> a member of the Cherokee Nation of Oklahoma

Keith Elmo Davis is born on March 5, 1941. Mr. Davis is a certified Cherokee Indian enrolled as a member of the Historical Cherokee Nation of Oklahoma. Mr. Davis has a Certificate of Degree of Indian Blood Card [CDIB] that shows he is 3/16 Indian Blood of the Cherokee Nation. This CDIB Card was issued on May 2, 1980 by Officer Lela J. Latokee (BIA). Mr. Davis being a certified member of the Cherokee Nation satisfies the requirement set forth by a Federally recognized Nation or Tribe. Cherokee Registry Number C00053043. Date approved: 12/9/1985. See State V. Klindt, 1989 OK CR 75, 782 p.2d 401, 403, n. 2. <u>States</u>:

Proof of one's status as an Indian under federal law is necessary before one can claim exemption from prosecution under State law. This is necessary because federal jurisdiction over crimes committed in Indian Country does not extend to crimes committed by non-indians against non-indians.

Syllabus (2) supra. OCCA held:

We suggest that in future cases a defendant's status as an indian be proved when he challenges the State Court's jurisdiction. This procedure would save time since proof of status as an indian may be the determing factor in a case similar to the one at bar. <u>See</u> Scrivner V. Tansy, 68 F.3d 1234, 1241 (10thCir.1995); U.S. V. Prentiss, 273 F.3d 1277, 1282 (10thCir. 2001). The Cherokees, pursuant to treaties with the United States, exchanged their aboriginal domain in the East for more than 14,000,000 acres of land West of the Mississippi, than in Indian Territory but now a part of Oklahoma. <u>See</u> Choctaw Nation V. Oklahoma, 397 U.S. 620, 25 L. Ed.2d 615, 626, 90 S. Ct. 1328 (Decided April 27, 1970)(Mr. Justice Douglas concurring). The Cherokee Nation of Oklahoma in 2018 is the largest Federally recognized Indian Tribe, with more than 360, 000 entrolled citizens. <u>See</u> Brief For Upper Skagit Indian Tribe V. Lundgren, 2018 WL 620250, S. Ct. No. 17-387, Jan. 29, 2018 Pet. For Writ Cert. <u>Exhibits 4.5</u>.

Information is void for lack of Subject Matter Jurisdiction over offenses charged by State.

June 18, 2004, Latimer County Sheriff Melvin Ellis Holly a State Official not assisted by the Choctaw Nation Tribal Police came onto Keith Almo Davis allotted land and arrested Keith Elmo Davis at his residence without Jurisdiction. The residence located within the Choctaw Nation historical boundaries. HC 64 Box 5830, Tuskahoma, Oklahoma, within Latimer County within the Chocatw Nation of Oklahoma "Indian Country." October 20, 2005, CF-2004-65 petitioner was sentenced as a result of this void arrest on allotted land within Indian Country for offenses alleged to be committed and charged by information against Indian. Ct. 1 forcible sodomy, 21 O.S. 888, 20 years; consecutive to Ct. 2 lewd and indecent proposal to a child under (16) years of age, 21 O.S. 1123 (A)(1), 15 years under custody of the Oklahoma Department of Corrections. August 27, 2008, CF-2004-74 plea no contest to Information charge as amended to Lewd molestation, 21 O.S. 1123(A)(2), 5 years concurrent with Case number CF-2004-65. Petitioner has since discharged the five years imposed in Case number CF-2004-74 on August 27, 2008. See Patterson V. Beal, 947 P.2d 617 (Okl.Civ.App.1997)(Subject matter Jurisdiction is invoked by pleadings filed with the Court. Lack of Jurisdiction of subject matter cannot be waived or overlooked by the Court). Slover V. Territory, 5 Okl. 506, 49 P. 1009. Jackson V. Virginia, 443 U.S. 307, 61 L.Ed.2d 560, 99 S. Ct. 2781 (Decided June 28, 1979). The State of Oklahoma did not establish the essential elements necessary to sustain subject matter jurisdiction of the Indian Offenses committed within the Indian Country of the Choctaw Nation of Oklahoma.

> <u>Judgment and Sentence is null and void</u> <u>ab initio when Court without jurisdiction</u> <u>over subject matter of the information.</u>

The trial court lacked subject matter jurisdiction to convict and sentence petitioner in case Numbers CF-2004-65, CF-2004-74. <u>Wallace V. State</u>, 935 P.2d 366, 372, n. [10,11] (Okl.Cr.1997); <u>Bowen V. State</u>, 1972 OK CR 146, n.2, 497 p.2d 1094 held that:

> Jurisdiction of subject matter can neither be waived nor conferred by consent and objection may be raised at any time or stage.

The State of Oklahoma has never obtained consent of the Choctaw Nation to prosecute Indian Offenses within the Indian Country as a sovereign Nation. See United States V. United States Fidelity & Guarantee Co., 309 U.S. 506, 84 L.Ed. 894, 60 S. Ct. 653, n. [9-12] (Decided March 25, 1940)(Consent alone gives jurisdiction to adjudge against a sovereign. Absent that consent, the attempted exercise of judicial power is void). Cravatt V. State, 825 P.2d., at 279-280. See Okla. Const. Art. I, section 3. Disclaimer. See Enabling Act of Congress, Sections 1, 22. Irrevocable Ordinance which the inhabitants of the State of Oklahoma contracted with the United States Government regarding the Five Civilized Tribes lands, property. See April 22nd. 1907 Wm. H. Murray approved the Ordinance Accepting Enabling Act of Congress,..by this ordinance irrevocable ... " See Black's Law Ninth-Edition Irrevocable defined as : committed beyond recall. See Washington V. Fishing Vessel Assn., 443 U.S. 658, 675-676, 61 L.Ed.2d 823, 839, 99 S. Ct. 3055 (Decided July 2, 1979)(A Treaty, including one between the United States and an Indian Tribe, is essentially a Contract between two sovereign Nations); Northern <u>P.R. Co. V. Wall</u>, 241 U.S. 87, 60 L.Ed 905, 36 Supt. Ct. rep. 493. (The law existing when a Contract is made, and affecting its performance, becomes a part of it).

This court has jurisdiction to set aside the judgment and sentence as void on the face of judgment roll and the information conferred no subject matter jurisdiction on the offenses committed by Indian on allotted land, prempted State prosecution <u>Title</u> 22 O.S. 1970, Sections 1080(b), 1085. Sheriff Melvin Ellis Holly acknowledged the land occupied by Keith Almo Davis at time of arrest was allotted Indian land with the Choctaw Nation which makes offense Federal under Major Crimes Act. <u>Title</u> 18 U.S.C.A. Sections 1151(c), 1153, 3231. State V. Klindt, 782 p.2d 401, 403 (Okla.Crim. App. 1989)(noting that the State of Oklahoma does not have jurisdiction over crimes committed by or against an Indian in Indian Country). Magnan V. State, 2009 OK CR 19, n.[9], 207 p.3d 397. <u>See</u> Robertson V. State, 888 P.2d 1023, 1025, n. [2-3]; Fitchen V. State, 826 P.2d 1000 (Ok.Cr.1992) states:

4

Trial Court is without jurisdiction to modify, suspend or otherwise alter a judgment which has been satisfied except to set aside judgment void on its face as shown by the record.

Only judgment or sentences void on their face may be set aside after jeopardy has attached, Roberston V. State, Supra. Exhibits 6.7.

Case Number CF-2004-74 has been served but was void under Major Crimes Act from its inception and Case Number CF-2004-65 is null and void as a matter of Law under the Major Crimes Act. In the Interest of Justice and Judicial Economy petitioner ask the Court vacate said judgments and sentences as void ab initio and order petitioner's release from unlawful and void confinement.

151 Herid Elmo Danis

J.H.C.C. PO Box 548

16161 Moffat Road

Lexington, Oklahoma, 73051-0548.

Certificate of Mailing

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Mr. Keith Elmo Davis J.H.C.C. Unit-J-240-A PO Box 548, 16161 Moffat Road Lexington, Oklahoma, 73051-0548.

Oklahoma Land Openings

No Man's Land	Cherokee Outlet
Lands Opened By Alloiment	Paree Cherokee Nation
1891 Turi-travia	Chevenne itards and Creek Nation
1892 Paraper 1904 Ponca, Oto-Vir Pour 1906 Osaly, Haw	a Acapana i <u> </u>
Lands Opened By Run	latest Garvar (n. Tutus) (n. 1997) Garvar (n. Tutus) (n. 1997) Garce Status
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September 16, 1893 (Trustes: Collet	
May 23, 1895 Kirkaput	Lands Opened By Sealed Bid December 1906 Egistation



Oklahoma Historical Society Research Center

Oklahoma History Center 800 Nazih Zuhdi Drive Oklahoma City, OK 73105 Research Center (405) 522-5225 research@okhistory.org

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EXHIBIT 1

U.S. v. Chochw Nation | WestlawNext

WESTLAW

U.S. v. Choctaw Nation Supreme Court of the United States

Supreme Court of the United States December 10, 1900 179 U.S. 494 21 S.Ct. 149 45 L.Ed. 291 (Approx. 22 pages)

21 S.Ct. 149 Supreme Court of the United States

UNITED STATES, Appt.,

v.

CHOCTAW NATION and Chickasaw Nation.

WICHITA and Affiliated Bands of Indians, Appts.,

v.

CHOCTAW NATION, Chickasaw Nation, and United States.

CHOCTAW NATION and Chickasaw Nation, Appts.,

v.

UNITED STATES and Wichita and Affiliated Bands of Indians.

Nos. 88, 89, 90. Argued March 7, 8, 9, 1900. Decided December 10, 1900.

Synopsis

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APPEAL from a decree of the Court of Claims determining rights of Indians in lands and proceeds thereof. *Reversed*.

See same case below, 34 Ct. Cl. 17.

The facts are stated in the opinion.

West Headnotes (8)

Change View

1 Indians 🖅 Construction and operation

The obvious, palpable meaning of the words of an Indian treaty may not be disregarded because of the dependent character of the Indians, or because, in the judgment of the court, the Indians may have been overreached.

5 Cases that cite this headnote

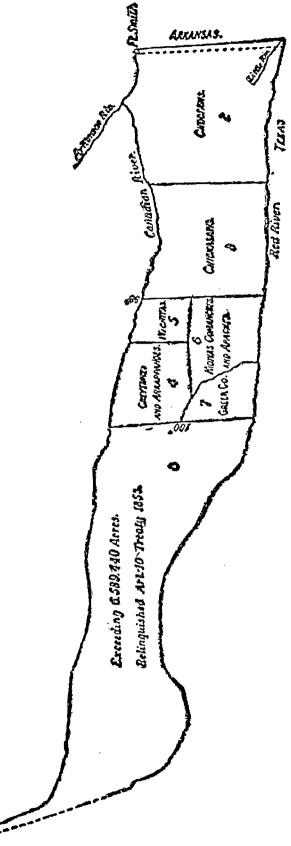
2 Indians Construction and operation

That the result of accepting the interpretation placed by the United States upon the treaty of 1866, 14 Stat. 769, with the Choctaw and Chickasaw Nations will be to render the general government less liberal towards them than towards other tribes constitutes no reason why the court should depart from the ordinary signification of the words used in the treaty.

18 Cases that cite this headnote

3 Indians improvement Title and rights to Indian lands in general A release by the Wichita and affiliated bands of Indians of all claims to any and all lands within the limits of the United States, except those allotted to them, cannot be made a condition of a decree for compensation on account of surplus 3

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WESTLAW

SECRETARY JEWELL ANNOUNCES HISTORIC \$186 MILLION SETTLEMENT OF CHICKASAW AND CHO 2015 WL 5813847 October 6, 2015 (Approx. 3 pages)

2015 WL 5813847 (D.O.I.)

Department of the Interior (D.O.I.)

PRESS RELEASE

SECRETARY JEWELL ANNOUNCES HISTORIC \$186 MILLION SETTLEMENT OF CHICKASAW AND CHOCTAW NATIONS' TRIBAL TRUST LAWSUIT

October 6, 2015

DURANT, Okla. - U.S. Secretary of the Interior Sally Jewell today announced the settlement of The Chickasaw Nation and The Choctaw Nation v. The Department of the Interior, a lawsuit filed by the nations regarding the U.S. government's accounting and management of funds and natural resources that it holds in trust for these communities. The \$186 million agreement resolves a long-standing dispute, with some of the claims dating back more than 100 years, and brings an end to protracted, vigorously contested and expensive litigation that has burdened both nations and the United States for a decade.

Secretary Jewell, Interior's Solicitor Hilary C. Tompkins, and Principal Deputy Assistant Secretary - Indian Affairs Lawrence S. Roberts joined Choctaw Nation Principal Chief Gary Batton, Chickasaw Nation Governor Bill Anoatubby, and other federal and tribal officials at a commemorative signing ceremony held at the Choctaw Nation headquarters in Durant.

"Today's agreement is the latest addition to a record number of long-standing settlements resolved under this Administration," Secretary Jewell said. "This historic settlement is the start of a new chapter in our trust relationships with the Chickasaw and Choctaw Nations, and underscores our commitment to fulfilling those responsibilities to Native communities across the country."

Under the settlement agreement, the United States will pay the Chickasaw Nation \$46.5 million, and the Choctaw Nation \$139.5 million. In return, the nations will dismiss their current lawsuit and forego further litigation regarding the United States' historic management or accounting of the nations' funds and natural resources held in the trust. The agreement is the fifth largest tribal trust settlement to date.

As part of the settlement, the parties agree to undertake new information-sharing procedures that will lead to improved communication concerning the management of the

nations' trust funds and natural resources. The parties will also abide by alternative dispute resolution procedures to reduce the likelihood of future litigation.

"This settlement represents a significant milestone in helping solidify and improve our relationship with the United States," said Governor Anoatubby. "We respect the vital role Secretary Jewell has taken in helping make this historic settlement a reality. We are confident she will play an essential role in our efforts to continue strengthening the relationship between our governments, because we believe she has a unique appreciation for the mutual benefits of a positive government-to-government relationship."

"It is a historic occasion to have the Secretary of the Interior visit the Choctaw and Chickasaw Nations. I am appreciative of having a sovereign-to-sovereign relationship between the Choctaw Nation and the United States government. It is also historic that these three sovereigns have agreed to a settlement of the timber trust account case," said Choctaw Chief Gary Batton. "We plan for the proceeds to be invested in our people - expanding education, creating jobs, promoting economic development and culture, as well as a portion to be invested in a sustainability fund for the future of our citizens.

"This visit marks the start of a revitalized relationship with the United States. Secretary Jewell's presence here, coming soon after President Obama's recent visit, also serves to reaffirm that the foundation of this relationship is government-to-government," Chief Batton said.

The Choctaw Nation is the third largest Native American tribe in the United States, with approximately 176,000 enrolled members and 10,864 square miles of tribal lands in southeastern Oklahoma. The Chickasaw Nation has more than 60,000 enrolled members and includes 7,648 square miles of south-central Oklahoma, encompassing all or parts of 13 Oklahoma counties. Both tribes were relocated to Oklahoma in the 1830s after being removed from their ancestral homelands in the southeastern United States. The removals became known as the Trail of Tears.

The Departments of Justice, Interior, and Treasury have been diligently engaged in settlement conversations with more than 100 litigating tribes. On April 11, 2012, the United States announced settlements with 41 tribes for at least \$1 billion. Since that time, the federal government has focused considerable, dedicated effort on the remaining tribal trust accounting and trust mismanagement cases. Including the settlement with the Chickasaw and Choctaw Nations, this Administration has resolved, since October 1, 2010, breach of trust claims with a total of 86 tribes and combined value of about \$2.8 billion.

In addition, the \$3.4 billion Cobell settlement (which was approved in 2010) of individual American Indian trust mismanagement claims resolved the largest class action lawsuit in history.

Contacts: Jessica Kershaw (Interior) Interior_Press@ios.doi.gov .

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Nedra Darling (AS-IA)
 (202) 219-4152
 Wyn Hornbuckle (Justice)
 Wyn.Hombuckle@usdoj.gov

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2015 WL 5813847 (D.O.I.)

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IN THE DISTRICT COURT OF LATIMER COUNTY OCT 2 0 2005

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MELODY LITTLE OHN

Case No.: CF-2004-65

444-40-4131

DOB: 03-05-41

SS#:

- Daparte

-vs-

KEITH ELMO DAVIS,

THE STATE OF OKLAHOMA,

Defendant.

Plaintiff,

JUDGMENT AND SENTENCE

Now, on this 20th day of October, 2005, this matter comes on before the undersigned Judge, for sentencing of the defendant, Keith Elmo Davis, appears personally and by Attorney Warren Gotcher, the State of Oklahoma represented by P. Scot Sampson, and the Defendant, having previously:

(X) Found guilty by jury to/of the crime(s) of:

Statutory Reference

21 O.S. §888

Count 1: Forcible Sodomy, a felony

Count 2: Lewd or Indecent Proposal to a Child Under Sixteen (16) Years of Age, a felony 21 O.S. §1123 (A) (1)

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the Defendant, Keith Elmo Davis, is guilty of the above described offenses and is sentenced as follows:

- (TERM OF IMPRISONMENT) -

(X) Count 1: Sentenced to a term of TWENTY (20) YEARS imprisonment;
(X) Count 2: Sentenced to a term of FIFTEEN (15) YEARS imprisonment;
all under custody and control of: (X) Oklahoma Department of Corrections,
or () Latimer County Sheriff. These terms to be served: ()
concurrently, or (X) consecutively. The Latimer County Sheriff is hereby
ordered to transport the defendant to the Lexington Assessment and
Reception Center, Lexington, Oklahoma, within 72 hours.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED BY THE COURT THAT IN ADDITION TO THE PRECEDING TERMS, THE DEFENDANT IS ALSO SENTENCED TO:

- (FINE) -

(X) The Defendant shall report to the District Court of Latimer County within ten (10) days of release for a hearing on the Defendant's ability to pay fines and costs pursuant to Section VIII of the Rules of the Court of Criminal Appeals, 22 O.S., Ch. 18, App.

EXHIBIT 6



- (COSTS, VCA, RESTITUTION) -

(X) The Defendant shall pay costs in accordance with the schedule attached as Exhibit "A".

It is further ordered that judgment is hereby entered against the Defendant as to the fines, costs, and assessments set forth above.

The Court further advised the Defendant of his rights to appeal to the Court of Criminal Appeals of the State of Oklahoma, and of the necessary steps to be taken by him to perfect such appeal, and that if he desired to appeal and was unable to afford counsel and a transcript of the proceedings, that the same would be furnished by the state without costs to him.

In the event the above sentence is for incarceration in the Department of Corrections, the Sheriff of Latimer County, Oklahoma, is ordered and directed to deliver the Defendant to the Lexington Assessment and Reception Center at Lexington, Oklahoma, and leave therewith a copy of this Judgment and Sentence to be warrant and authority of the Sheriff for the transportation and imprisonment of the Defendant as herein before provided. The Sheriff to make due return to the Clerk of this Court, with his proceedings endorsed thereon.

Witnesses my hand the day and year first above mentioned.

2/RA

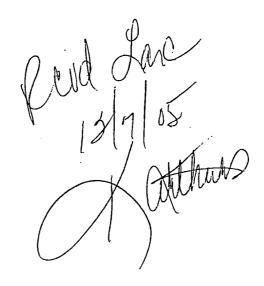
BILL WELCH JUDGE OF THE DISTRICT COURT

(SEAL)

ATTEST:

MELODY LITTLEJOHN, COURT CLERK

, DEPUTY CLERK



IN THE DISTRICT COURT OF LATIMER COUNTY , STATE OF OKLAHOMA

There is a agreed sider No Bago

THE STATE OF OKLAHOM	Plaintiff,	·] .]]	·
-vs-			Case No.: CF-2004-74 DOB: 03-05-1941-ED IN MY OFFICE A
KEITH ELMO DAVIS,	Defendant.		ssn: 444-40-4100urton, Latimer County, C.
,	Derendant.	•	AUG 27 2008

JUDGMENT AND SENTENCE

NCOURT CLERK august Now, on this 21et day of April, 2008, this matter comes on before the undersigned Judge, for sentencing of the defendant, Keith Elmo Davis, appears personally and by Attorney Warren Gotcher, the State of Oklahoma represented by Ronald L. Boyer, and the Defendant, having previously: amended ND Contest

Entered a plea of guilty, with a plea agreement to/of the crime(s) (X) of: Statutory Reference

, A FELONY

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the Defendant, Keith Elmo Davis, is guilty of the above described offenses and is sentenced as follows:

- (TERM OF IMPRISONMENT WITH PART SUSPENDED) -

Sentenced to a term of FIVE (5) YEARS imprisonment with all except the first THREE (3) YEARS suspended under the custody and control of: (X)Oklahoma Department of Corrections, or () the Latimer County Sheriff, pursuant to the rules and conditions of probation entered by the Court. These terms to be served: (X) concurrently, or () consecutively with Latimer County Case No. CE-04-65. The defendant has been informed and understands that he must serve at least 85% of the sentence imposed before becoming eligible for parole consideration.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED BY THE COURT THAT IN ADDITION TO THE PRECEDING TERMS, THE DEFENDANT IS ALSO SENTENCED TO:

- (FINE) -

The defendant shall pay a fine of \$0.00. (X)

The Defendant shall report to the District Court of Latimer County within ten (10) days of release for a hearing on the Defendant's ability (X) to pay fines and costs pursuant to Section VIII of the Rules of the Court of Criminal Appeals, 22 O.S., Ch. 18, App.

(COSTS, VCA, RESTITUTION) -

FXHIBIT 7

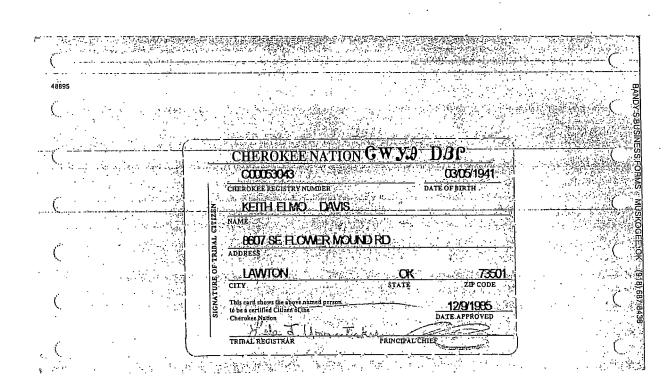
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SH23(A)(2)

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EASTERN OKLAHOMA REGIONAL OFC. Certificate of Degree of Indian Blood This is to certify that KETTH ELMO DAVIS 		UNITED STATES DEPARTMENT OF THE INTERIOR	
KETTH ELMO DAVIS This is to certify that 03/05/1941 3/16 born		BUREAU OF INDIAN AFFAIRS EASTERN OKLAHOMA REGIONAL OFC.	
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