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**OPINION OF THE COURT OF CRIMINAL  
APPEALS, STATE OF OKLAHOMA  
(MARCH 18, 2021)**

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IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

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WILLIAM CLAYTON BROWN,

*Petitioner,*

v.

THE STATE OF OKLAHOMA,

*Respondent.*

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NOT FOR PUBLICATION

Case No. C-2018-1118

Before: Dana KUEHN, President Judge.,  
Scott ROWLAND, Vice President Judge.,  
Gary L. LUMPKIN, Judge., David B. LEWIS,  
Judge., Robert L. HUDSON, Judge.

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**OPINION**

**ROWLAND, VICE PRESIDING JUDGE:**

William Clayton Brown entered a guilty plea in the District Court of McIntosh County, Case No. CF-2017-257, to First Degree Manslaughter, in violation of 21 O.S.2011, § 711. On October 2, 2018, the Honorable James D. Bland, District Judge, accepted Brown's

guilty plea and sentenced Brown to life with the possibility of parole. Brown filed a timely motion to withdraw his guilty plea. After a hearing on the motion to withdraw held on October 25, 2018, the motion was denied. Brown appeals the denial of this motion, raising the following issues:

- (1) whether the State of Oklahoma had jurisdiction to prosecute him;
- (2) whether his plea was entered as a result of coercion, duress, and pressure from the district attorney;
- (3) whether his plea was knowingly, voluntarily, and intelligently entered;
- (4) whether he received effective assistance of counsel;
- (5) whether he should be allowed to withdraw his plea because he had a valid defense; and,
- (6) whether an accumulation of errors deprived him of a fair trial.

We find relief is required on Brown's jurisdictional challenge in Proposition 1, rendering his other claims moot. Brown claims the State of Oklahoma did not have jurisdiction to prosecute him. He relies on 18 U.S.C. § 1153 and *McGirt v. Oklahoma*, 591 U.S., 140 S. Ct. 2452 (2020).

On August 19, 2020, this Court remanded this case to the District Court of McIntosh County for an evidentiary hearing. We directed the District Court to make findings of fact and conclusions of law on two issues: (a) Brown's status as an Indian; and, (b) whether the crime occurred within the boundaries of

the Muscogee Creek Reservation. Our order provided that if the parties agreed as to what the evidence would show with regard to the questions presented, the parties could enter into a written stipulation setting forth those facts, and no hearing would be necessary.

On September 24, 2020, the parties appeared before the Honorable Mike Hogan for a status conference. On September 29, 2020, the parties filed a written Supplemental Stipulation in which they agreed: (1) that Brown has some Indian blood; (2) that he was a recognized member of the Choctaw Nation on the date of the charged offense; (3) that the Choctaw Nation is a federally recognized tribe; and, (4) that the charged crime occurred within the Muscogee Creek Reservation.

The District Court accepted the parties' stipulation and on October 2, 2020, filed its Findings of Fact and Conclusions of Law. The District Court found the facts recited above in accordance with the stipulation. The District Court concluded that Brown is an Indian under federal law and that the charged crimes occurred within the boundaries of the Muscogee Creek Reservation. The District Court's findings are supported by the record. The ruling in *McGirt* governs this case and requires us to find the District Court of McIntosh County did not have jurisdiction to prosecute Brown. Accordingly, we grant relief on error raised in Proposition 1.

## DECISION

The Judgment and Sentence of the district court is **VACATED** and the matter is **REMANDED WITH INSTRUCTIONS TO DISMISS**. Pursuant

to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2021), the **MANDATE** is **ORDERED** to issue in twenty (20) days from the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF  
MCINTOSH COUNTY, THE HONORABLE  
JAMES D. BLAND, DISTRICT JUDGE**

**APPEARANCE AT PLEA HEARING**

Cynthia Viol  
Oklahoma Indigent Defense System  
Po Box 926  
Norman, OK 73070  
Attorney for Defendant

**APPEARANCES ON APPEAL AND REMAND**

Virginia Sanders  
Oklahoma Indigent Defense System  
PO Box 926  
Norman, OK 73070  
Attorney for Petitioner

**APPEARANCE ON MOTION TO WITHDRAW**

Max E. Moss, Jr.  
Moss Law Office  
105 West Main Street  
Stigler, OK 74462  
Attorney for Defendant

David K. Pierce  
Assistant District Attorney  
110 North 1st Street  
Eufaula, OK 74432  
Attorney for State at Both Hearings

Mike Hunter  
Attorney General of Oklahoma  
Joshua Fanelli  
Asst. Attorney General  
313 N.E. 21st Street  
Oklahoma City, OK 73105  
Attorneys for State

Carol Iksi  
Greg Stidham  
Asst. District Attorney  
110 North 1st Street  
Eufaula, OK 74432  
Attorney for State

**LUMPKIN, JUDGE:  
CONCURRING IN RESULTS**

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Bound by my oath and the Federal-State relationships dictated by the U.S. Constitution, I must at a minimum concur in the results of this opinion. While our nation's judicial structure requires me to apply the majority opinion in the 5-4 decision of the U.S. Supreme Court in *McGirt v. Oklahoma*, \_\_\_ U.S. \_\_\_, 140 S. Ct. 2452 (2020), I do so reluctantly. Upon the first reading of the majority opinion in *McGirt* I initially formed the belief that it was a result in search of an opinion to support it. Then upon reading the dissents by Chief Justice Roberts and Justice Thomas I was forced to conclude the Majority had totally failed to follow the Court's own precedents, but had cherry picked statutes and treaties, without giving historical context to them. The Majority then proceeded to do what an average citizen who had been fully informed of the law and facts as set out in the dissents would view as an exercise of raw judicial power to reach a decision which contravened not only the history leading to the disestablishment of the Indian reservations in Oklahoma, but also willfully disregarded and failed to apply the Court's own precedents to the issue at hand.

My quandary is one of ethics and morality. One of the first things I was taught when I began my service in the Marine Corps was that I had a duty to follow lawful orders, and that same duty required me to resist unlawful orders. Chief Justice Roberts' scholarly and judicially penned dissent, actually following the Court's precedents and required analysis, vividly reveals the failure of the majority opinion to

follow the rule of law and apply over a century of precedent and history, and to accept the fact that no Indian reservations remain in the State of Oklahoma.<sup>1</sup> The result seems to be some form of “social justice” created out of whole cloth rather than a continuation of the solid precedents the Court has established over the last 100 years or more.

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<sup>1</sup> Senator Elmer Thomas, D-Oklahoma, was a member of the Senate Committee on Indian Affairs. After hearing the Commissioner’s speech regarding the Indian Reorganization Act (IRA) in 1934, Senator Thomas opined as follows:

I can hardly see where it (the IRA) could operate in a State like mine where the Indians are all scattered out among the whites and they have no reservation, and they could not get them into a community without you would go and buy land and put them on it. Then they would be surrounded very likely with thickly populated white section with whom they would trade and associate. I just cannot get through my mind how this bill can possibly be made to operate in a State of thickly-settled population. (emphasis added).

John Collier, Commissioner of Indian Affairs, *Memorandum of Explanation* (regarding S. 2755), p. 145, hearing before the United States Senate Committee on Indian Affairs, February 27, 1934. Senator Morris Sheppard, D-Texas, also on the Senate Committee on Indian Affairs, stated in response to the Commissioner’s speech that in Oklahoma, he did not think “we could look forward to building up huge reservations such as we have granted to the Indians in the past.” *Id.* at 157. In 1940, in the Foreword to Felix S. Cohen, *Handbook of Federal Indian Law* (1942), Secretary of the Interior Harold Ickes wrote in support of the IRA, “[t]he continued application of the allotment laws, under which Indian wards have lost more than two-thirds of their reservation lands, while the costs of Federal administration of these lands have steadily mounted, must be terminated.” (emphasis added).



The question I see presented is should I blindly follow and apply the majority opinion or do I join with Chief Justice Roberts and the dissenters in *McGirt* and recognize “the emperor has no clothes” as to the adherence to following the rule of law in the application of the *McGirt* decision?

My oath and adherence to the Federal-State relationship under the U.S. Constitution mandate that I fulfill my duties and apply the edict of the majority opinion in *McGirt*. However, I am not required to do so blindly and without noting the flaws of the opinion as set out in the dissents. Chief Justice Roberts and Justice Thomas eloquently show the Majority’s mischaracterization of Congress’s actions and history with the Indian reservations. Their dissents further demonstrate that at the time of Oklahoma Statehood in 1907, all parties accepted the fact that Indian reservations in the state had been disestablished and no longer existed. I take this position to adhere to my oath as a judge and lawyer without any disrespect to our Federal-State structure. I simply believe that when reasonable minds differ they must both be reviewing the totality of the law and facts.

## HUDSON, JUDGE: SPECIALLY CONCURS

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Today's decision dismisses a conviction for first degree manslaughter from the District Court of McIntosh County based on the Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). This decision is unquestionably correct as a matter of *stare decisis* based on the Indian status of Petitioner and the occurrence of this crime on the Creek Reservation. Under *McGirt*, the State has no jurisdiction to prosecute Petitioner for the manslaughter in this case. Instead, Petitioner must be prosecuted in federal court. I therefore as a matter of *stare decisis* fully concur in today's decision. Further, I maintain my previously expressed views on the significance of *McGirt*, its far-reaching impact on the criminal justice system in Oklahoma and the need for a practical solution by Congress. See *Bosse v. State*, 2021 OK CR 3, \_\_\_ P.3d \_\_\_ (Hudson, J., Concur in Results); *Hogner v. State*, 2021 OK CR 4, \_\_\_ P.3d \_\_\_, (Hudson, J., Specially Concurs); and *Krafft v. State*, No. F-2018-340 (Okla. Cr., Feb. 25, 2021) (Hudson, J., Specially Concurs) (unpublished).

**DISTRICT COURT OF MCINTOSH COUNTY,  
STATE OF OKLAHOMA, JOURNAL ENTRY OF  
FACTS AND CONCLUSIONS OF LAW IN  
ACCORDANCE WITH ORDER REMANDING  
FOR EVIDENTIARY HEARING  
(OCTOBER 2, 2020)**

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IN THE DISTRICT COURT OF MCINTOSH  
COUNTY STATE OF OKLAHOMA

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STATE OF OKLAHOMA,

*Plaintiff,*

v.

WILLIAM CLAYTON BROWN,

*Defendant.*

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Case No. CF-2017-257

Court of Criminal Appeal Number  
F-2018-1118

Before: Michael HOGAN,  
District Judge McIntosh County State of Oklahoma.

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Now on the 24th day of September, 2020, this case comes on for evidentiary hearing for the purpose of determining the following: (a) Defendant's Indian status and (b) whether the crimes occurred on the Creek Reservation. The Defendant did not appear, but appeared through counsel, Virginia Sanders. The

State appears by and through McIntosh County District Attorney, Carol Iski, and assistant district attorney, Greg Stidham. The Oklahoma Attorney General's Office appears by and through counsel, Joshua R. Fanelli.

After receiving argument and evidentiary stipulations the Court hereby FINDS and ORDERS as follows:

### **FINDINGS OF FACT AND CONCLUSION OF LAW**

The first issue for adjudication is the Defendant's status as an Indian as defined by federal law. The Tenth Circuit's decision in *United States v. Diaz*, 679 F.3d 1183 (10th Cir. 2012) articulates the test for making such determination. As *Diaz* states:

To find that a person is an Indian the court must first make factual findings that the person has some Indian blood and, second, that the person is recognized as an Indian by a tribe or by the federal government.

*Id.* at 1187 (internal quotations omitted); *see also Goforth v. State*, 1982 OK CR 48, 644 P.2d 114. Applied to the present matter, the parties jointly stipulate in writing the evidence will show "the Defendant, William Brown is 9/128-degree Indian blood of the Choctaw Nation Tribe." *See Joint Exhibit 1* (attached). In addition, "Defendant Brown was an enrolled member of the Choctaw Nation Tribe of Oklahoma on the dates of the charged offenses." *Id.* Finally, "[t]he Choctaw Nation Tribe of Oklahoma is an Indian Tribal Entity recognized by the federal government." *Id.* The Court accepts and attaches these stipulations to the Court's Findings of Facts and Conclusions of

Law. Applying the elements of *Diaz* to the evidentiary stipulations in the present matter, the Court finds the Defendant has “some Indian blood” and is also “recognized as an Indian by a tribe and the federal government.” For this reason, the Court finds the Defendant is an Indian under federal law.

Having found the Defendant is an Indian under federal law, this Court must now determine if the crime occurred on the Creek Reservation. As *McGirt v. Oklahoma*, 140 S. Ct. 2452, 207 L.Ed.2d 985 (2020) explains “[t]he 1833 Treaty fixed borders for what was to be a ‘permanent home to the whole Creek nation of Indians.’” *Id.* at 2461. The parties in this matter stipulate “[t]he charged crimes occurred within the Creek Reservation.” For this reason, the Court adopts the stipulation and finds the crime occurred on the Creek Reservation.

In accordance with the directives of the Oklahoma Court of Criminal Appeals, the court reporter shall file an original and two certified copies of the transcript of this hearing within (20) days. This District Court Clerk shall transmit the record of the evidentiary hearing, this Journal Entry of Findings of Facts and Conclusions of Law with attachments, and the transcript of this proceeding to the Clerk of the Court of Criminal Appeals.

BE IT SO ORDERED

/s/ Michael Hogan

District Judge McIntosh County  
State of Oklahoma

**SUPPLEMENTAL STIPULATION  
(SEPTEMBER 29, 2020)**

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IN THE DISTRICT COURT OF MCINTOSH  
COUNTY STATE OF OKLAHOMA

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WILLIAM CLAYTON BROWN,

*Defendant/Petitioner,*

v.

THE STATE OF OKLAHOMA,

*Plaintiff/Respondent.*

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McIntosh County District Court  
Case No. CF-2017-257

Court of Criminal Appeal Number  
C-2018-1118

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**SUPPLEMENTAL STIPULATION**

This case is before the Court pursuant to an Order Remanding for Evidentiary Hearing from the Oklahoma Court of Criminal Appeals, dated August 19, 2020. In that Order, the Court of Criminal Appeals directed this Court to make findings of fact on two issues: (1) whether the defendant, William Clayton Brown, has “some Indian blood” and “is recognized as an Indian by a tribe or the federal government” and (2) whether the crime occurred within the boundaries of the Muscogee Creek Reservation.

In response to the two questions this Court has been directed to answer, the parties have reached the following stipulations:

1. As to the location of the crime, the parties hereby stipulate and agree as follows:

- a. The crime in this case occurred at 1929 Quail Drive, Eufaula, OK 74432, and the decedent was found on Comanche Road, Eufaula, OK 74432. Both addresses are within the boundaries of the Muscogee Creek Nation—boundaries established through a series of treaties between the Muscogee Creek Nation and the United States government.
- b. These boundaries have been explicitly recognized as establishing a reservation, as defined by 18 U.S.C. f 1151(a), and reaffirmed by the United States Supreme Court in *McGirt v. Oklahoma*, \_\_\_ U.S. \_\_\_, 140 S. Ct. 2452, 207 L.Ed.2d 985 (2020).

2. As to the status of the defendant, the parties hereby stipulate and agree as follows:

- a. The defendant, William Clayton Brown, has 9/128 Choctaw blood and was a recognized member of the Choctaw Nation of Oklahoma (Membership Number 209512) at the time of the Crime. The Choctaw Nation of Oklahoma is an Indian Tribal Entity recognized by the federal government. (Mr. Brown's verification of tribal membership in the Choctaw Nation of Oklahoma is appended as Exhibit 1.)

3. In addition, included with this Supplemental Stipulation, although not specifically part of the findings of fact remanded to this District Court by the Oklahoma Court of Criminal Appeals, the parties hereby stipulate and agree as follows:

- a. The victim; Damion Rashaud Martin, had 9/128 Muscogee (Creek) blood and was a recognized member of the Muscogee (Creek) Nation (Membership Roll Number 56928) at the time of this crime. The Muscogee (Creek) Nation is an Indian Tribal Entity recognized by the federal government. (Mr. Martin's verification of tribal membership in the Muscogee (Creek) Nation is appended as Exhibit 2.)

/s/ Virginia Sanders  
Counsel for Defendant/Petitioner

/s/ Joshua Fanelli  
Counsel for Plaintiff/Respondent

/s/ Carol Iski  
Counsel for Plaintiff/Respondent





PO Box 1210  
Durant, Oklahoma 74702-1210  
580-924-8280, Ext 4030  
1-800-522-6170

To Whom It May Concern:

This letter is to certify that William Clayton Brown, born on 5/16/1983, with social security number XXX-XX-7499 has a Certificate of Degree of Indian Blood (CDIB), Is 9/128 degree of Indian Blood of the Choctaw/Chickasaw Tribe, and Is a Tribal Member of the Choctaw Nation of Oklahoma (Membership # CN209512). If you have any questions please, contact this office at the number listed above.

Sincerely,

/s/ Terry Stephens

Terry Stephens

Director, CDIB/Membership

Choctaw Nation of Oklahoma



**MUSCOGEE (CREEK) NATION  
ENROLLMENT VERIFICATION**

Re: Name: Damion Rashaud Martin  
Address: 208 J.C. Watts  
Eufaula OK 74432

Birthdate: 12/26/1995  
Enrollment Date: October 15, 1997  
Roll Number: 56928  
Degree of Creek Blood: 9/128  
Deceased Date: 9/15/2017



*Damion Martin*

I hereby certify that Damion Rashaud Martin, DOB: 12/26/1995 Is enrolled with the Muscogee (Creek) Nation. Enrollment Date: 10/15/1997 Roll Number. 56928, Degree of Creek Blood: 9/128.

I attest and certify that the above information is a correct compilation of official records of the Muscogee (Creek) Nation filed and recorded with the Muscogee (Creek) Nation Citizenship Office, the public office responsible for keeping records of enrolled citizens, and that I am an authorized custodian of said records.

Executed this 25th day of September, 2020.

/s/ Nathan Wilson

Director

Muscogee (Creek) Nation  
Citizenship Office

**ORDER OF THE COURT OF CRIMINAL  
APPEALS, STATE OF OKLAHOMA,  
REMANDING FOR EVIDENTIARY HEARING  
(AUGUST 19, 2020)**

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IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

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WILLIAM CLAYTON BROWN,

*Petitioner,*

v.

THE STATE OF OKLAHOMA,

*Respondent.*

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Case No. C-2018-1118

Before: David B. LEWIS, Presiding Judge.,  
Dana KUEHN, Vice President Judge.,  
Gary L. LUMPKIN, Judge.,  
Robert L. HUDSON, Judge.,  
Scott ROWLAND, Judge.

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William Clayton Brown entered a guilty plea in the District Court of McIntosh County, Case No. CF-2017-257, to First Degree Manslaughter, in violation of 21 O.S.2011, § 711. On October 2, 2018, the Honorable James D. Bland, District Judge, accepted Brown's guilty plea and sentenced Brown to life with the possibility of parole. Brown must serve 85% of his

sentence before he is eligible for parole. Brown filed a timely motion to withdraw his guilty plea. After a hearing on the motion to withdraw held on October 25, 2018, the motion was denied. Brown appeals the denial of this motion.

In Proposition 1 of his Brief-in-Chief and related Application for Evidentiary Hearing on Sixth Amendment Claim, filed on April 12, 2019, Brown claims the District Court lacked jurisdiction to try him. Brown argues that he is a citizen of the Choctaw Nation and the crime occurred within the boundaries of the Muskogee (Creek) Reservation. Brown, in his certiorari appeal, relies on jurisdictional issues addressed in *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017), which was affirmed by the United States Supreme Court in *Sharp v. Murphy*, 591 U.S., 140 S. Ct. 2412 (2020) for the reasons stated in *McGirt v. Oklahoma*, 591 U.S., 140 S. Ct. 2452 (2020).<sup>1</sup>

Brown's claim raises two separate questions: (a) his Indian status and (b) whether the crime occurred on the Muskogee (Creek) Reservation. These issues require fact-finding. We therefore **REMAND** this case to the District Court of McIntosh County, for an evidentiary hearing to be held within sixty (60) days from the date of this Order.

Recognizing the historical and specialized nature of this remand for evidentiary hearing, we request

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<sup>1</sup> On June 7, 2019, we held Brown's certiorari appeal in abeyance pending the resolution of the litigation in *Murphy*. Following the decision in *McGirt*, the State asked to file a response to Brown's jurisdictional claim. In light of the present order, there is no need for a response from the State at this time and that request is **DENIED**.

the Attorney General and District Attorney work in coordination to effect uniformity and completeness in the hearing process. Upon Brown's presentation of *prima facie* evidence as to his legal status as an Indian and as to the location of the crime in Indian Country, the burden shifts to the State to prove it has subject matter jurisdiction.

The hearing shall be transcribed, and the court reporter shall file an original and two (2) certified copies of the transcript within twenty (20) days after the hearing is completed. The District Court shall then make written findings of fact and conclusions of law, to be submitted to this Court within twenty (20) days after the filing of the transcripts in the District Court. The District Court shall address only the following issues:

First, the Brown's status as an Indian. The District Court must determine whether (1) Brown has some Indian blood, and (2) is recognized as an Indian by a tribe or the federal government.<sup>2</sup>

Second, whether the crime occurred within the boundaries of the Muskogee (Creek) Reservation. In making this determination the District Court should consider any evidence the parties provide, including but not limited to treaties, statutes, maps, and/or testimony.

The District Court Clerk shall transmit the record of the evidentiary hearing, the District Court's find-

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<sup>2</sup> See *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012); *United States v. Prentiss*, 273 F.3d 1277, 1280-81 (10th Cir. 2001). See generally *Goforth v. State*, 1982 OK CR 48 ¶ 6, 644 P.2d 114, 116.

ings of fact and conclusions of law, and any other materials made a part of the record, to the Clerk of this Court, and counsel for Brown, within five (5) days after the District Court has filed its findings of fact and conclusions of law. Upon receipt thereof, the Clerk of this Court shall promptly deliver a copy of that record to the Attorney General. A supplemental brief, addressing only those issues pertinent to the evidentiary hearing and limited to twenty (20) pages in length, may be filed by either party within twenty (20) days after the District Court's written findings of fact and conclusions of law are filed in this Court.

Provided however, in the event the parties agree as to what the evidence will show with regard to the questions presented, they may enter into a written stipulation setting forth those facts upon which they agree and which answer the questions presented and provide the stipulation to the District Court. In this event, no hearing on the questions presented is necessary. Transmission of the record regarding the matter, the District Court's findings of fact and conclusions of law and supplemental briefing shall occur as set forth above.

**IT IS FURTHER ORDERED** that the Clerk of this Court shall transmit copies of Brown's Brief-in-Chief and Application for Evidentiary Hearing on Sixth Amendment Claim with this Order, to the District Court of McIntosh County.

**IT IS SO ORDERED.**

**WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 19th day of August, 2020.

App.22a

/s/ David B. Lewis

Presiding Judge

/s/ Dana Kuehn

Vice President Judge

/s/ Gary L. Lumpkin

Judge

/s/ Robert L. Hudson

Judge

/s/ Scott Rowland

Judge