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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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JIMMIE DEWAYNE STARR,

*Petitioner,*

v.

THE STATE OF OKLAHOMA,

*Respondent.*

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Case No. C-2018-640

An Appeal from the District Court of Okmulgee  
County, the Honorable Cynthia Pickering,  
District Judge

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

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**ROWLAND, VICE PRESIDING JUDGE:**

Petitioner Jimmie Dewayne Starr entered a guilty plea in the District Court of Okmulgee County to crimes charged in the following three cases: in Case No. CF-2016-80, Endangering Others While Eluding/

Attempting to Elude a Police Officer (Count 1), in violation of 21 O.S.2011, § 540A(B) and Failure to Wear a Seatbelt (Count 2), in violation of 47 O.S.Supp.2012, § 12-417; in Case No. CF-2017-131, Possession of Controlled Dangerous Substance (Count 1), in violation of 63 O.S.Supp.2012, § 2-402 and Resisting an Officer (Count 2), in violation of 21 O.S.2011, § 268; and, in Case No. CF-2017-132, Bail Jumping, in violation of 22 O.S.2011, § 1110. The felony counts were charged After Former Conviction of Two or More Felonies.

The Honorable Cynthia D. Pickering, Associate District Judge, accepted Starr's plea and sentenced him as follows: in Case No. CF-2016-80, twenty years imprisonment on Count 1 and costs on Count 2; in Case No. CF-2017-131, ten years imprisonment on Count 1 and one year on Count 2; and in Case No. CF-2017-132, three years incarceration. All sentences were ordered to be served concurrently.

Starr filed a timely motion to withdraw his guilty plea. After a hearing on the motion to withdraw held on June 14, 2018, the motion was denied.

Starr appeals the denial of his motion, raising the following issues:

- (1) Whether the district court lacked jurisdiction to sentence him;
- (2) whether he was denied effective assistance of counsel;
- (3) whether the admission of improper evidence resulted in an excessive sentence;
- (4) whether the district court's failure to appoint conflict-free counsel at the hearing on the

motion to withdraw plea resulted in reversible error;

- (5) whether his sentence is excessive; and
- (6) whether the State of Oklahoma lacked jurisdiction to prosecute him.

We find relief is required on Starr's jurisdictional challenge in Proposition 6, rendering his other claims moot. Starr 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 Okmulgee County for an evidentiary hearing. We directed the District Court to make findings of fact and conclusions of law on two issues: (a) Starr'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 October 15, 2020, the parties appeared before the Honorable Cynthia D. Pickering and announced that an agreement had been reached and that no evidentiary hearing was necessary. On October 16, 2020, the parties filed in the District Court a written Agreed Stipulation in which they agreed: (1) that Starr has some Indian blood; (2) that he was a recognized member of the Muscogee Creek Nation on the date of the charged offense; (3) that the Muscogee Creek 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 November 4, 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 Starr is an Indian under federal law and that the charged crimes occurred within the boundaries of the Muscogee Creek Reservation. The ruling in *McGirt* governs this case and requires us to find the District Court of Okmulgee County did not have jurisdiction to prosecute Starr. Accordingly, we grant relief on error raised in Proposition 6.

## DECISION

The Judgment and Sentence of the district court is **VACATED** and the matter is **REMANDED WITH INSTRUCTION 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  
OKMULGEE COUNTY, THE HONORABLE  
CYNTHIA PICKERING, DISTRICT JUDGE**

### APPEARANCES IN THE DISTRICT COURT

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**APPEARANCES ON APPEAL AND REMAND**

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**Opinion by: Rowland, V.P.J.**  
Kuehn, P.J.: Concur  
Lumpkin, J.: Concur in Results  
Lewis, J.: Concur  
Hudson, J.: Specially Concur

**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.

The question I see presented is should I blindly follow and apply the majority opinion or do I join with

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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).



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, J., SPECIALLY CONCURS:**

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Today's decision dismisses convictions for endangering others while eluding/attempting to elude a police officer, possession of controlled dangerous substance and various misdemeanor crimes from the District Court of Okmulgee 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 the crimes on the Creek Reservation. Under *McGirt*, the State has no jurisdiction to prosecute Petitioner for the crimes 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, (Hudson, J., Specially Concur); and *Krafft v. State*, No. F-2018-340 (Okl. Cr., Feb. 25, 2021) (Hudson, J., Specially Concur) (unpublished).

**DISTRICT COURT OF OKMULGEE COUNTY,  
STATE OF OKLAHOMA, FINDINGS OF  
FACT AND CONCLUSIONS OF LAW  
(NOVEMBER 4, 2020)**

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IN THE DISTRICT COURT OF THE  
TWENTY-FOURTH JUDICIAL DISTRICT  
OF THE STATE OF OKLAHOMA SITTING  
IN AND FOR OKMULGEE COUNTY

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JIMMIE DEWAYNE STARR,

*Appellant / Defendant,*

v.

THE STATE OF OKLAHOMA,

*Appellee / Plaintiff.*

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Case Nos. C-2018-640, CF-2016-80,  
CF-2017-131, CF-2017-132

Before: Cynthia D. PICKERING,  
Associate District Judge.

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Now on this 4th day of November, 2020, the above-styled matter comes on before the undersigned Judge. The State of Oklahoma appears through District Attorney Carol Iski and Assistant Attorney General Jennifer Crabb. Jimmie Dewayne Starr appears through counsel Nicollette Brandt of the Oklahoma Indigent Defense System.

The Court of Criminal Appeals of the State of Oklahoma remanded the case for an evidentiary hearing. In the remand order, the Court of Criminal Appeals, on page 3, states as follows:

“Upon Starr’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 Court of Criminal Appeals of the State of Oklahoma expressly direct the District Court to address only the following issues:

First, Starr’s status as an Indian. The District Court must determine whether (1) Starr has some Indian blood, and (2) is recognized as an Indian by a tribe or the federal government.

Second, whether the crime occurred within the boundaries of the 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.

### **FINDINGS OF FACT**

1. The Court finds, by stipulation of the parties, that Jimmie Dewayne Starr has 1/4 Indian blood, which shows “some Indian blood” and has been a member of the Muscogee (Creek) Nation since April 2, 1991.

2. The Court finds that the Muscogee (Creek Nation) is a federal recognized tribe.

3. The Court finds that, by stipulation, the crime(s) occurred within the boundaries of the Muscogee (Creek) Nation.

### CONCLUSIONS OF LAW

1. Jimmie Dewayne Starr has 1/4 Indian blood, which shows “some Indian blood” and has been a member of the Muscogee (Creek) Nation since April 2, 1991.

2. Mr. Starr was a member of the Muscogee (Creek) Nation at the time of the crimes.

3. The Muscogee (Creek Nation) is a federal recognized tribe.

4. The crime(s) occurred within the boundaries of the Muscogee (Creek) Nation, which were established through a series of treaties between the Muscogee (Creek) Nation and the United States Government.

5. These boundaries have been explicitly recognized as establishing a reservation, as defined by 18 U.S.C. § 1151(a), and reaffirmed by the United States Supreme Court in *McGirt v. Oklahoma*, U.S. 140 S. Ct. 2452, 207 L.Ed. 985 (2020).

/s/ Cynthia D. Pickering  
Associate District Judge

**APPELLANT'S PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW  
(OCTOBER 21, 2020)**

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IN THE DISTRICT COURT OF OKMULGEE  
COUNTY STATE OF OKLAHOMA

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JIMMIE DEWAYNE STARR,

*Appellant/Defendant,*

v.

THE STATE OF OKLAHOMA,

*Appellee/Plaintiff.*

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Case Nos. C-2018-640, CF-2016-80,  
CF-2017-131, CF-2017-132

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Appellant, through counsel, presents his Proposed Findings of Fact and Conclusions of Law. This matter was set for hearing before the Court on October 15, 2020, in accordance with the remand order of the Oklahoma Court of Criminal Appeals issued on August 19, 2020. The parties entered an Agreed Stipulation and the hearing was stricken with instructions for the parties to submit their Proposed Findings of Fact and Conclusions of Law. Based upon the stipulations and evidence presented by the parties, review of the pleadings, and the briefs and argument of counsel, Appellant respectfully requests that the Court adopts the following findings of fact and conclusions of law.

## PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Tenth Circuit's decision in *United States v. Diaz*, 679 F.3d 1183 (10th Cir. 2012) articulates the test for determining an individual's Indian status under federal law. 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*, 1987 OK CR 48, 644 P.2d 114. Applied to the present matter, the parties jointly stipulated in writing that the evidence will show "Mr. Starr has 1/4 Indian blood and has been a member of the Muscogee (Creek) Nation since April 2, 1991," and that "[t]he Muscogee (Creek) Nation is a federally recognized tribe." The Court accepts and attaches these stipulations to the Court's Findings of Fact and Conclusions of Law. Applying elements of *Diaz* to the evidentiary stipulations in the present matter, the Court finds that Mr. Starr has "some Indian blood" and is also "recognized as an Indian by a tribe and the federal government." For this reason, the Court finds that Mr. Starr is an Indian under federal law.

Having found that Mr. Starr 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. 242, 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 crimes occurred in Okmulgee County, which lies entirely within the Muscogee (Creek) Reservation boundaries.” For this reason, the Court adopts the stipulation and finds the crime occurred on the Muscogee (Creek) Reservation. Since an Indian reservation is “Indian Country” for the purposes of 18 U.S.C. § 1151(a), Mr. Starr’s crimes occurred in Indian Country.

The State of Oklahoma has no jurisdiction to try an Indian who commits a crime in “Indian Country.” *See Solem v. Barlett*, 465 U.S. 463, 465 n.2, 104 S. Ct. 1161, 1163 n.2, (1984). Since Mr. Starr is an Indian who committed these crimes in Indian Country, the State had no jurisdiction to try him. Therefore, Mr. Starr’s conviction should be vacated.

Respectfully submitted,

/s/ Nicollette Brandt

Nicollette Brandt, No. 30996

Danny Joseph, No. 32812

General Appeals Division

Oklahoma Indigent Defense System

PO Box 926

Norman, Oklahoma 73070

(405) 801-2727



**JOINT MOTION TO STRIKE HEARING  
(OCTOBER 16, 2020)**

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IN THE DISTRICT COURT OF OKMULGEE  
COUNTY STATE OF OKLAHOMA

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JIMMIE DEWAYNE STARR,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

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Case Nos. C-2018-640, CF-2016-80,  
CF-2017-131, CF-2017-132

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Jimmie Dewayne Starr, through appellate counsel, Nicollette Brandt and Danny Joseph, and the State of Oklahoma hereby file their Joint Motion to Strike Hearing. The parties have entered an Agreed Stipulation in this matter and request that the Court render legal conclusions based on the factual stipulations reached by the parties.

Respectfully submitted,

/s/ Nicollette Brandt

Nicollette Brandt, No. 30996  
Danny Joseph, No. 32812  
General Appeals Division  
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/s/ Jennifer Crabb

Jennifer Crabb, No. 20546  
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/s/ Carol Iski

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Assistant District Attorney  
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**AGREED STIPULATIONS  
(OCTOBER 16, 2020)**

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IN THE DISTRICT COURT OF OKMULGEE  
COUNTY STATE OF OKLAHOMA

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JIMMIE DEWAYNE STARR,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

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Case Nos. C-2018-640, CF-2016-80,  
CF-2017-131, CF-2017-132

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The Oklahoma Court of Criminal Appeals remanded this matter for an evidentiary hearing pursuant to the recent decision in *McGirt v. Oklahoma*, No. 18-9526 (U.S. July 9, 2020) to determine Mr. Starr's (a) Indian status and (b) whether the crimes occurred on the Muscogee (Creek) Reservation. The parties have reached the following stipulations:

1. As to Mr. Starr's Indian status, the parties hereby stipulate and agree as follows:
  - a. Mr. Starr has 1/4 Indian blood and has been a member of the Muscogee (Creek) Nation since April 2, 1991.

- b. The Muscogee (Creek) Nation is a federally recognized tribe.
- c. Verification of Mr. Starr's tribal membership and blood quantum are attached to this stipulation as Exhibit A and the parties agree they should be admitted into the record of this case.

2. As to the location of the crimes, the parties hereby stipulate and agree as follows:

- a. The crimes occurred in Okmulgee County, which lies entirely within the Muscogee (Creek) Reservation boundaries.

The parties therefore request that this Court accept the stipulations.

Respectfully submitted,

/s/ Nicollette Brandt

Nicollette Brandt, No. 30996

Danny Joseph, No. 32812

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/s/ Carol Iski

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(918) 756-0794

**COURT MINUTE  
(OCTOBER 15, 2020)**

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IN THE DISTRICT COURT OF THE  
TWENTY-FOURTH JUDICIAL DISTRICT  
OF THE STATE OF OKLAHOMA SITTING  
IN AND FOR OKMULGEE COUNTY

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JIMMIE DEWAYNE STARR,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

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Case Nos. CF-2016-80, CF-2017-131 and  
CF-2017-132

Before: Cynthia D. PICKERING,  
Associate District Judge.

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NOW, on this 15th day of October, 2020, this matter comes on before the Court for hearing as ordered by Oklahoma Court of Criminal Appeals filed of record on August 19, 2020 in The Court of Criminal Appeals of the State of Oklahoma case number C-2018-640.

Present in person is District Attorney, Ms. Carol Iski, who announces the parties have reached an agreement that joint stipulations are being entered, and that the hearing scheduled this date be stricken.

The Court finds the Agreed Stipulation is presented by Ms. Nicollette Brandt, the Oklahoma Indigent Defense System; Ms. Jennifer Crabb, Oklahoma Attorney General's Office; and Ms. Carol Iski, Okmulgee County District Attorney.

The Court accepts and admits into evidence the Agreed Stipulation, and grants the Motion to Strike today's hearing.

The Court further **ORDERS** the parties to submit either by agreement or separately proposed **FINDINGS OF FACT, CONCLUSIONS OF LAW** within 10 days of this Order. The Court will take this matter under advisement until such time as the proposed findings are received and this Court renders a formal written order.

/s/ Cynthia D. Pickering  
Associate District Judge

**DISTRICT COURT OF OKMULGEE COUNTY,  
STATE OF OKLAHOMA,  
ORDER SETTING EVIDENTIARY HEARING  
(AUGUST 24, 2020)**

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IN THE DISTRICT COURT OF THE  
TWENTY-FOURTH JUDICIAL DISTRICT  
OF THE STATE OF OKLAHOMA SITTING  
IN AND FOR OKMULGEE COUNTY

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THE STATE OF OKLAHOMA,

*Plaintiff,*

v.

JIMMIE DEWAYNE STARR,

*Defendant.*

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Case Nos. CF-16-80, CF-17-131, CF-17-132

Before: Cynthia D. PICKERING,  
Associate District Judge.

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NOW, on this 24th day of August, 2020, this Court is in receipt of an Order Remanding Cause to District Court of Okmulgee County for Evidentiary Hearing. Pursuant to the Order, the Court finds the same should be set for hearing.

IT IS THEREFORE ORDERED this matter be set for hearing on the 15th day of October, 2020 at 1:30 p.m. The State of Oklahoma is Ordered to prepare a



App.24a

Writ to secure the presence of the Defendant for said hearing.

/s/ Cynthia D. Pickering  
Associate District Judge

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

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IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

---

JIMMIE DEWAYNE STARR,

*Petitioner,*

v.

THE STATE OF OKLAHOMA,

*Respondent.*

---

Case No. C-2018-640

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

---

Jimmie Dewayne Starr entered a guilty plea in the District Court of Okmulgee County to crimes charged in the following three cases: in Case No. CF-2016-80, Endangering Others While Eluding/Attempting to Elude a Police Officer (Count 1), in violation of 21 O.S.2011, 540A(B) and Failure to Wear a Seatbelt (Count 2), in violation of 47 O.S.Supp.2012, § 12-417; in Case No. CF-2017-131, Possession of Controlled Dangerous Substance (Count 1), in violation of 63 O.S.Supp.2012,

2-402 and Resisting an Officer (Count 2), in violation of 21 O.S.2011, § 268; and, in Case No. CF-2017-132, Bail Jumping, in violation of 22 O.S.2011, § 1110. The felony counts were charged After Former Conviction of Two or More Felonies.

The Honorable Cynthia D. Pickering, Associate District Judge, accepted Starr's plea and sentenced him as follows: in Case No. CF-2016-80, twenty years imprisonment on Count 1 and costs on Count 2; in Case No. CF-2017-131, ten years imprisonment on Count 1 and one year on Count 2; and in Case No. CF-2017-132, three years incarceration. All sentences were ordered to be served concurrently.

Starr filed a timely motion to withdraw his guilty plea. After a hearing on the motion to withdraw held on June 14, 2018, the motion was denied. Starr appeals the denial of this motion.

In Proposition 6 of his Brief-in-Chief and related Application to Supplement Appeal Record or in the Alternative Remand for Evidentiary Hearing on Sixth Amendment Claims, filed on December 4, 2018, Starr claims the District Court lacked jurisdiction to try him. Starr argues that he is a citizen of the Muscogee (Creek) Nation and that the crimes occurred within the boundaries of the Creek Reservation. Starr, 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>

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<sup>1</sup> On March 25, 2019, we held Starr's certiorari appeal in abeyance

Starr's claim raises two separate questions: (a) his Indian status and (b) whether the crime occurred on the Creek Reservation. These issues require fact-finding. We therefore **REMAND** this case to the District Court of Okmulgee 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 the Attorney General and District Attorney work in coordination to effect uniformity and completeness in the hearing process. Upon Starr'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 Starr's status as an Indian. The District Court must determine whether (1) Starr has some

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pending the resolution of the litigation in *Murphy*. Following the decision in *McGirt*, the State asked to file a response to Starr'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.

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 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 findings 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 Starr, 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,

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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.

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 Starr's Brief-in-Chief and Application for Evidentiary Hearing on Sixth Amendment Claim with this Order, to the District Court of Okmulgee County.

**IT IS SO ORDERED.**

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

/s/ David B. Lewis  
Presiding Judge

/s/ Dana Kuehn  
Vice Presiding Judge

/s/ Gary L. Lumpkin  
Judge

/s/ Robert L. Hudson  
Judge

/s/ Scott Rowland  
Judge

ATTEST:

/s/ John D. Hadden  
Clerk