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**OPINION OF THE COURT OF CRIMINAL
APPEALS, STATE OF OKLAHOMA
(APRIL 1, 2021)**

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

MATTHEW STEVEN JANSON,

Petitioner,

v.

STATE OF OKLAHOMA,

Respondent.

Case No. C-2017-1027

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

OPINION

HUDSON JUDGE:

Petitioner, Matthew Steven Janson, was charged in Tulsa County District Court, Case No. CF-2016-5428, with Count 1: Aggravated Possession of Child Pornography, in violation of 21 O.S.2011, § 1040.12a; and Count 2: Distribution of Child Pornography, in violation of 21 O.S.2011, § 1021.2. Petitioner entered a blind plea to the charges on February 27, 2017, before

the Honorable Sharon Holmes, District Judge. The trial court accepted Petitioner's plea and deferred sentencing pending the completion and filing of a pre-sentence investigation report. On August 8, 2017, Judge Holmes sentenced Petitioner to ten years imprisonment each on Counts 1 and 2, to run concurrently, with the last five years suspended. Petitioner must serve 85% of his sentences before becoming eligible for parole consideration.

On August 15, 2017, Petitioner filed a motion to withdraw his blind plea. A hearing on Petitioner's motion was held on September 7 and 27, 2017. After hearing argument from counsel for both parties, Judge Holmes denied Petitioner's motion to withdraw his plea. Petitioner now seeks a writ of certiorari.

In his sole proposition of error, Petitioner claims the District Court lacked jurisdiction to accept his plea. Petitioner argues that he is a citizen of the Cherokee Nation and the crimes occurred within the boundaries of the Creek Reservation. Pursuant to *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), Petitioner's claim raises two separate questions: (a) his Indian status; and (b) whether the crimes occurred on the Creek Reservation. These issues require fact-finding. We therefore remanded this case to the District Court of Tulsa County for an evidentiary hearing.

Recognizing the historical and specialized nature of this remand for evidentiary hearing, we requested the Attorney General and District Attorney work in coordination to effect uniformity and completeness in the hearing process. Upon Petitioner's presentation of *prima facie* evidence as to Petitioner's 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 jurisdiction. The District Court was ordered to determine whether Petitioner has some Indian blood and is recognized as an Indian by a tribe or the federal government. The District Court was further ordered to determine whether the crimes in this case occurred in Indian Country. In so doing, the District Court was directed to consider any evidence the parties provided, including but not limited to treaties, statutes, maps, and/or testimony.

We also directed the District Court that in the event the parties agreed as to what the evidence would show with regard to the questions presented, the parties 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. The District Court was also ordered to file written findings of facts and conclusions of law with this Court.

A status hearing was held in this case before the Honorable Tracy L. Priddy, District Judge. Thereafter, a written findings of fact and conclusions of law was timely filed with this Court. The record indicates that appearing before the District Court on this matter were attorneys from the Oklahoma Attorney General's Office, the Tulsa County District Attorney's Office and counsel for Petitioner.

In its written findings of fact and conclusion of law, the District Court stated that the parties have stipulated that Petitioner has 3/128 degree Cherokee blood; that Petitioner is a member of the Cherokee Nation and was so at the time of the charged crimes; that the Cherokee Nation is an Indian Tribal Entity recognized by the federal government; and the crimes charged in this case occurred within the boundaries

of the Creek Reservation. The District Court attached as Exhibit 1 to its findings of facts and conclusions of law a document entitled Stipulations signed by all counsel reflecting these stipulations.

The District Court accepted and adopted the stipulations made by the parties and concluded in its findings of fact and conclusions of law that Petitioner has some Indian blood, that he is also recognized as an Indian by a tribe and the federal government and therefore Petitioner is an Indian under federal law. Finally, the District Court accepted the stipulation of the parties that the crimes in this case occurred on the Creek Reservation and, thus, found the crimes occurred in Indian Country for purposes of federal law.

On November 24, 2020, the State filed with this Court a supplemental brief after remand. In its brief, the State acknowledges the District Court accepted the parties' stipulations as discussed above and references the District Court's findings. The State contends in its brief that should this Court find Petitioner is entitled to relief based on the District Court's findings, this Court should stay any order reversing the conviction for thirty (30) days so that the appropriate authorities can review his case, determine whether it is appropriate to file charges and take custody of Petitioner. *Cf.* 22 O.S.2011, § 846.

After thorough consideration of this proposition and the entire record before us on appeal including the original record, transcripts and the briefs of the parties, we find that under the law and evidence relief is warranted. Based upon the record before us, the District Court's findings of fact and conclusions of law are supported by the stipulations jointly made

by the parties on remand. We therefore find Petitioner has met his burden of establishing his status as an Indian, having 3/128 degree Cherokee blood and being a member of the Cherokee Nation. We further find Petitioner met his burden of proving the crimes in this case occurred on the Creek Reservation and, thus, occurred in Indian Country.

Pursuant to *McGirt*, we find the State of Oklahoma did not have jurisdiction to prosecute Petitioner in this matter.¹ The Judgment and Sentence in this case is hereby reversed and the case remanded to the District Court of Tulsa County with instructions to dismiss the case.

DECISION

The Petition for Writ of Certiorari is **GRANTED**. The Judgment and Sentence of the District Court is **REVERSED AND REMANDED WITH INSTRUCTIONS TO DISMISS**. The MANDATE is not to be issued until twenty (20) days from the delivery and filing of this decision.²

¹ 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 (Okl. Cr., Feb. 25, 2021) (Hudson, J., Specially Concurs) (unpublished).

² By withholding issuance of the mandate for twenty days, the State's request for time to determine further prosecution is rendered moot.

**AN APPEAL FROM THE DISTRICT COURT
OF TULSA COUNTY THE HONORABLE
TRACY L. PRIDDY, DISTRICT JUDGE**

Appearances at Trial

Kevin D. Adams
Attorney at Law
417 West 7th Street
Suite 202
Tulsa, Ok 74119
Counsel for Defendant

Eric Grayless
First Asst. District Atty.
Tulsa County
500 South Denver Ave
Suite 900
Tulsa, Ok 74103
Counsel for the State

Mike Hunter
Okla. Attorney General
Jennifer Crabb
Asst. Attorney General
313 N.E. 21st Street
Oklahoma City, Ok 73105
Counsel for the State

Appearances on Appeal

Kevin D. Adams
Attorney at Law
417 West 7th Street
Suite 202
Tulsa, Ok 74119
Counsel for Petitioner

Mike Hunter
Okla. Attorney General
Randall Young
Asst. Attorney General
313 N.E. 21st Street
Oklahoma City, Ok 73105
Counsel for Respondent

Opinion by: Hudson, J.

Kuehn, P.J.: Concur

Rowland, V.P.J.: Concur

Lumpkin, J.: Concur in Result

Lewis, J.: Specially Concur

**LUMPKIN, JUDGE
CONCURRING IN RESULTS**

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.¹ 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.

¹ 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.

**LEWIS, JUDGE,
CONCURRING IN RESULTS**

Based on my special writings in *Bosse v. State*, 2021 OK CR 3, ___ P.3d ___ and *Hogner v. State*, 2021 OK CR 4, ___ P.3d ___, I concur in the decision to dismiss this case for the lack of state jurisdiction.

**DISTRICT COURT OF TULSA COUNTY,
STATE OF OKLAHOMA, FINDINGS OF
FACT AND CONCLUSIONS OF LAW
(NOVEMBER 12, 2020)**

IN THE DISTRICT COURT OF
TULSA COUNTY, STATE OF OKLAHOMA

MATTHEW STEVEN JANSON,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

Tulsa County District Court Case No. CF-2016-5428

Court of Criminal Appeals Case No. C-2017-1027

Before: Tracy L. PRIDDY, District Judge.

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

This matter came on for a status conference on October 5, 2020 pursuant to the remand order of the Oklahoma Court of Criminal Appeals (“OCCA”) issued August 21, 2020. Kevin Adams appeared on behalf of Petitioner, Matthew Steven Janson, whose appearance was waived. Assistant Attorney General Jennifer Crabb appeared for Respondent. Tulsa County First Assistant District Attorney Erik M. Grayless also

appeared. An evidentiary hearing was not held pursuant to the parties' announcement that they had agreed and stipulated to facts supporting the issues to be determined by this Court.

The Petitioner, in his sole proposition of error claims the District Court lacked jurisdiction to accept his plea as he is a citizen of the Cherokee Nation and that his crime occurred within the boundaries of the Creek Reservation. Petitioner's claim raises two questions: (a) his Indian status, and (b) whether the crime occurred on the Creek Reservation. These issues require fact-finding to be addressed by the District Court per the OCCA Order Remanding.

I. Petitioner's status as an Indian

To determine the Indian status of the Petitioner, the OCCA directed the District Court to make findings of fact as to whether (1) Petitioner has some Indian blood, and (2) is recognized as an Indian by a tribe or the federal government.¹ The Court finds as follows:

Findings of Fact

1. Matthew Steven Janson is the named Defendant/Petitioner in the above-entitled matter.

2. The parties filed Stipulations on October 5, 2020 which incorrectly identifies Matthew Steven Janson as Defendant/Appellant, but will be referred to by this Court as Defendant/Petitioner.

¹ *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). *Generally Goforth v. State*, 1982 OK CR 48, ¶ 6, 644 P.2d 114, 116.

3. The parties hereto stipulated and agreed that Appellant [Petitioner] has 3/128 degree Cherokee blood.²

4. The parties hereto stipulated and agreed that Appellant [Petitioner] is, and was at the time of the charged offenses, a member of the Cherokee Nation.³

5. The parties hereto stipulated and agreed that the Cherokee Nation is an Indian Tribal Entity recognized by the federal government.⁴

Conclusions of Law

Regarding the first determination, the Court answers the first inquiry in the affirmative. The Court adopted the Stipulation of the parties filed on October 5, 2020 and made findings of fact thereon. Matthew Steven Janson has 3/128 degree Cherokee blood. Although the term “Indian” is not statutorily defined and various terms such as “sufficient”⁵, “substantial”⁶, “significant percentage of”⁷ or “some”⁸ have been used by courts in an attempt to define the quantity of Indian blood required to satisfy this inquiry, the OCCA mandate ordered this Court to

² Exhibit 1, Stipulations 2a.

³ Exhibit 1, Stipulations 2b.

⁴ Exhibit 1, Stipulations 2c.

⁵ *United States v. LaBuff*, 658 F.3d 873, 874-75 (9th Cir. 2011)

⁶ *Vialpando v. State*, 640 P.2d 77, 79-80 (Wyo. 1982).

⁷ *Goforth v. State*, 1982 OK CR 48, ¶ 6, 644 P.2d 114, 116.

⁸ *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012).

determine “whether the Petitioner has *some* Indian blood.”⁹ Thus, according to the term used by the OCCA in its Order, this Court concludes Matthew Steven Janson has some Indian blood.

Additionally, the Court answers the second part of the inquiry in the affirmative. The Court adopted the Stipulations and made findings of fact thereon. While there was no documentation or verification of Matthew Steven Janson’s enrollment as a citizen of the Cherokee Nation or the date thereof, based upon the parties’ stipulations, this Court finds Matthew Steven Janson was a member of the Cherokee Nation at the time of the charged offenses. The Cherokee Nation is an Indian Tribal Entity recognized by the federal government. Therefore, Matthew Steven Janson is recognized as an Indian by a tribe or the federal government.

Having answered both inquiries in the affirmative, this Court concludes Matthew Steven Janson is an Indian.

II. Whether the Crime Occurred on the Creek Reservation

The OCCA further ordered the District Court to determine whether the crime occurred on the Creek Reservation, referred to as Indian Country.¹⁰ The Court finds as follows:

⁹ Order Remanding for Evidentiary Hearing August 21, 2020.

¹⁰ *McGirt v. Oklahoma*, 140 S.Ct.2452 (2020); 18 U.S.C. §§ 1152, 1153.

Findings of Fact

1. The parties hereto stipulated that the crime in this case occurred at 5354 W. 2nd Street in Tulsa, OK.¹¹

2. The parties further stipulated that this address is within the boundaries of the Muscogee (Creek) Nation's Reservation.¹²

Conclusions of Law

The final inquiry is answered in the affirmative. This Court adopted the parties' Stipulations and made findings of fact thereon. The crime occurred at a location identified by a specific address that is within the boundaries of the Creek Reservation. These boundaries were established through a series of treaties between the Muscogee (Creek) Nation and the United States Government, and are explicitly recognized as a reservation defined by 18 U.S.C. § 1151(a). Based upon the Supreme Court's ruling in *McGirt v. Oklahoma*, 140 S. Ct. 2452, 207 L.Ed.2d 985 (2020), this Court concludes that the crime occurred on the Creek Reservation which is Indian Country.

WHEREFORE, this Court finds that Matthew Steven Janson is an Indian and that the crime for which he was convicted occurred in Indian Country for purposes of the General Crimes Act, 18 U.S.C. § 1152 and the Major Crimes Act, 18 U.S.C. § 1153.

¹¹ Exhibit 1, Stipulations 1a.

¹² Exhibit 1, Stipulations 1a.

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IT IS SO ORDERED this 12th day of November,
2020.

/s/ Tracy L. Priddy

District Judge

**STIPULATIONS
(OCTOBER 5, 2020)**

IN THE DISTRICT COURT OF TULSA
COUNTY, STATE OF OKLAHOMA

MATTHEW STEVEN JANSON,

Defendant/Appellant,

v.

THE STATE OF OKLAHOMA,

Plaintiff/Appellee.

Case No. CF-2016-5428, C-2017-1027

STIPULATIONS

In response to the questions this Court has been directed to answer by the Court of Criminal Appeals, 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 5354 W. 2nd Street in Tulsa, Oklahoma. This address is within the boundaries of the Muscogee (Creek) Nation's Reservation.

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

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- a. Appellant has 3/128 degree Cherokee blood.
- b. Appellant is, and was at the time of the charged offenses, a member of the Cherokee Nation.
- c. The Cherokee Nation is an Indian Tribal Entity recognized by the federal government.

Respectfully submitted,

/s/ Kevin Adams

Counsel for Appellant

/s/ Jennifer L. Crabb

Assistant Attorney General

/s/ Erik Greyles

Assistant District Attorney

Counsel for Appellee

**COURT OF CRIMINAL APPEALS,
STATE OF OKLAHOMA, ORDER REMANDING
FOR EVIDENTIARY HEARING
(AUGUST 21, 2020)**

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

MATTHEW STEVEN JANSON,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

Case No. C-2017-1027

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

**ORDER REMANDING FOR
EVIDENTIARY HEARING**

Petitioner, Matthew Steven Janson, was charged in Tulsa County District Court, Case No. CF-2016-5428, with Count 1: Aggravated Possession of Child Pornography, in violation of 21 O.S.2011, § 1040.12a; and Count 2: Distribution of Child Pornography, in

violation of 21 O.S.2011, § 1021.2. Petitioner entered a blind plea to the charges on February 27, 2017, before the Honorable Sharon Holmes, District Judge. The trial court accepted Petitioner's plea and deferred sentencing pending the completion and filing of a presentence investigation report. On August 8, 2017, Judge Holmes sentenced Petitioner to ten years imprisonment each on Counts 1 and 2, to run concurrently, with the last five years suspended. Petitioner must serve 85% of his sentences before becoming eligible for parole consideration.

On August 15, 2017, Petitioner filed a motion to withdraw his blind plea. A hearing on Petitioner's motion was held on September 7 and 27, 2017. After hearing argument from counsel for both parties, Judge Holmes denied Petitioner's motion to withdraw his plea. Petitioner now seeks a writ of certiorari.

In his sole proposition of error, Petitioner claims the District Court lacked jurisdiction to accept his plea. Petitioner argues that he is a citizen of the Cherokee Nation and the crimes occurred within the boundaries of the Creek Reservation.

Pursuant to *McGirt v. Oklahoma*, No. 18-9526 (U.S. July 9, 2020), Petitioner's claim raises two separate questions: (a) his Indian status and (b) whether the crimes occurred on the Creek Reservation. These issues require fact-finding. We therefore **REMAND** this case to the District Court of Tulsa 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 Petitioner's presentation of *prima facie* evidence as to the Petitioner's legal status as an Indian and as to the location of the crimes 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 Petitioner's status as an Indian. The District Court must determine whether (1) Petitioner has some Indian blood, and (2) is recognized as an Indian by a tribe or the federal government.¹

Second, whether the crimes occurred on 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 Petitioner, within five (5)

¹ See *Goforth v. State*, 1982 OK CR 48, ¶ 6, 644 P.2d 114, 116. See also *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).

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 the following, with this Order, to the District Court of Tulsa County: Petitioner's Brief in Chief, filed December 22, 2017. The present order renders **MOOT** any request made to date for supplemental briefing by either party in this case as well as any request to file an amicus brief.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 21st day of August, 2020.

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/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