

## APPENDIX TABLE OF CONTENTS

Opinion of the Court of Criminal Appeals, State of Oklahoma (April 8, 2021) .....	1a
District Court of Tulsa County, State of Oklahoma, Findings of Fact and Conclusions of Law (November 12, 2020) .....	12a
Agreed Stipulation (September 25, 2020) .....	18a
Muscogee (Creek) Nation Enrollment Verification (August 27, 2020) .....	21a
Court of Criminal Appeals, State of Oklahoma, Order Remanding for Evidentiary Hearing (August 21, 2020) .....	23a

**OPINION OF THE COURT OF CRIMINAL  
APPEALS, STATE OF OKLAHOMA  
(APRIL 8, 2021)**

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IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

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TRAVIS DRAY STEWART,

*Petitioner,*

v.

STATE OF OKLAHOMA,

*Respondent.*

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Case No. C-2017-1223

An Appeal from the District Court of Tulsa County,  
the Honorable Tracy L. Priddy District Judge

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

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**OPINION**

**HUDSON, JUDGE:**

Petitioner, Travis Dray Stewart, was charged in Tulsa County District Court, Case No. CF-2010-4428, with Child Sexual Abuse, After Former Conviction of Two Felonies, in violation of 10 O.S.Supp.2002,

§ 7115(E).<sup>1</sup> Petitioner entered a blind guilty plea to the charge on May 15, 2012, before the Honorable Dana Kuehn, Associate District Judge. The trial court accepted Petitioner's plea and deferred sentencing pending the completion and filing of a presentence investigation report. On June 29, 2012, Judge Kuehn sentenced Petitioner to thirty years imprisonment and a \$500.00 fine. Petitioner must serve 85% of his sentences before becoming eligible for parole consideration. 21 O.S.Supp.2002, § 13.1.

On July 9, 2012, Petitioner filed a motion to withdraw his blind plea. A hearing on Petitioner's motion was held on November 21, 2017, before the Honorable James Caputo, District Judge.<sup>2</sup> After hearing testimony from Petitioner and plea counsel, along with argument from counsel for both parties, Judge Caputo denied Petitioner's motion to withdraw his plea. Petitioner now seeks a writ of certiorari.

In Proposition One, Petitioner claims the District Court lacked jurisdiction to accept his plea. Petitioner argues that he is a citizen of the Creek Nation and the crime 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

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<sup>1</sup> Both the Information and Judgment and Sentence cite Section 843.5 of Title 21 as the statute violated by Petitioner. The alleged crime occurred between June 1, 2003, and September 13, 2005. Section 7115 of Title 10 was not renumbered as 21 O.S.Supp. 2009, § 843.5 until May 21, 2009. Thus, the version of the child sexual abuse statute in effect at the time of Petitioner's crimes was Section 7115 of Title 10.

<sup>2</sup> The delay in Petitioner's withdrawal hearing is the subject of Petitioner's Proposition Two.

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 on September 25, 2020, 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 a blood quantum of 1/16; that Petitioner is a citizen of the Creek Nation and was so at the time of the charged crime; that the Creek Nation is an Indian Tribal Entity recognized by the federal government; the verification for Petitioner's tribal enrollment and blood quantum are attached to the written stipulation submitted by the parties; 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 Agreed Stipulation signed by all counsel reflecting these stipulations.

The District Court 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 or the federal government and therefore Petitioner is an Indian. Finally, the District Court adopted 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 a blood quantum of 1 / 16 Creek blood and being a member of the Creek 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.<sup>3</sup> The Judgment and Sentence in this

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<sup>3</sup> 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).

case is hereby reversed and the case remanded to the District Court of Tulsa County with instructions to dismiss the case.<sup>4</sup>

### **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.<sup>5</sup>

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

#### **APPEARANCES AT TRIAL**

Danny Joseph  
Nicollette Brandt  
Okla. Indigent Def. System  
P.O. Box 926  
Norman, OK 73070  
Counsel for Defendant

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<sup>4</sup> This disposition renders moot the other seven propositions raised in Petitioner's brief in chief.

<sup>5</sup> By withholding issuance of the mandate for twenty days, the State's request for time to determine further prosecution is rendered moot.

Eric Grayless  
First Asst. District Atty.  
Tulsa County  
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Tulsa, OK 74103  
Counsel for the State

Mike Hunter  
Okla. Attorney General  
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Counsel for the State

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Counsel for Respondent

**OPINION BY: HUDSON, J.**

Kuehn, P.J.: Recused  
Rowland, V.P.J.: Concur  
Lumpkin, J.: Concur in Results  
Lewis, J.: Concur in Results

**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's 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>6</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

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<sup>6</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 sections 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).

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:**

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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)**

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IN THE DISTRICT COURT IN AND FOR  
TULSA COUNTY, STATE OF OKLAHOMA

\_\_\_\_\_  
TRAVIS DRAY STEWART,

*Petitioner,*

v.

THE STATE OF OKLAHOMA,

*Respondent.*

\_\_\_\_\_  
Tulsa County District Court Case No. CF-2010-4428

Court of Criminal Appeals Case No. C-2017-1223

Before: Tracy L. PRIDDY, District Judge.

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**FINDINGS OF FACTS AND  
CONCLUSIONS OF LAW**

This matter came on for a status conference on September 25, 2020 pursuant to the remand order of the Oklahoma Court of Criminal Appeals (“OCCA”) issued August 21, 2020. Danny Joseph appeared on behalf of Petitioner, Travis Dray Stewart, 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 Proposition One of his application claims the District Court lacked jurisdiction to accept his plea as he is a citizen of the Creek Nation and that the 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.<sup>1</sup> The Court finds as follows:

#### **Findings of Fact**

1. Travis Dray Stewart is the named Defendant/Petitioner in the above-entitled matter.

2. The parties filed an Agreed Stipulation on September 25, 2020 which incorrectly identifies Travis Dray Stewart as Appellant, but will be referred to by this Court as Petitioner.

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<sup>1</sup> *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 Mr. Stewart has a blood quantum of 1/16.<sup>2</sup>

4. The parties hereto stipulated and agreed that Mr. Stewart is a citizen of the Creek nation as of February 7, 1990 and was so at the time of the crime.<sup>3</sup>

5. The parties hereto stipulated and agreed that the Creek Nation is an Indian Tribal Entity recognized by the federal government.<sup>4</sup>

6. The verification for Mr. Stewart's tribal enrollment and blood quantum are attached to this stipulation and the parties agree they should be admitted into the record of this case.<sup>5</sup>

### **Conclusions of Law**

Regarding the first determination, the Court answers the first inquiry in the affirmative. The Court adopted the parties' Agreed Stipulation including the attached documentation from the Muscogee (Creek) Nation of Oklahoma Citizenship Board filed on September 25, 2020 and made findings of fact thereon. Travis Dray Stewart has a Creek blood quantum of 1/16. Although the term "Indian" is not statutorily defined and various terms such as "sufficient"<sup>6</sup>, "substantial"<sup>7</sup>, "significant percentage of"<sup>8</sup> or "some"<sup>9</sup> have

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<sup>2</sup> Exhibit 1, Agreed Stipulation 1A.

<sup>3</sup> Exhibit 1, Agreed Stipulation 1B.

<sup>4</sup> Exhibit 1, Agreed Stipulation 1C.

<sup>5</sup> Exhibit 1, Agreed Stipulation 1D.

<sup>6</sup> *United States v. LaBuff*, 658 F. 3d 873, 874-75 (9th Cir. 2011)

<sup>7</sup> *Vialpando v. State*, 640 P.2d 77, 79-80 (Wyo. 1982).

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 determine “whether the Petitioner has *some* Indian blood.”<sup>10</sup> Thus, according to the term used by the OCCA in its Order, this Court concludes Travis Dray Stewart has some Indian blood.

Additionally, the Court answers the second part of the inquiry in the affirmative. The Court adopted the Agreed Stipulation and made findings of fact thereon. Travis Dray Stewart was a citizen of the Muscogee (Creek) Nation as of February 7, 1990 and was so at the time of the crime. The Creek Nation is an Indian Tribal Entity recognized by the federal government. Therefore, Travis Dray Stewart is recognized as an Indian by a tribe or the federal government.

Having answered both inquiries in the affirmative, this Court concludes Travis Dray Stewart 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.<sup>11</sup> The Court finds as follows:

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<sup>8</sup> *Goforth v. State*, 1982 OK CR 48, ¶ 6, 644 P.2d 114, 116.

<sup>9</sup> *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012).

<sup>10</sup> Order Remanding for Evidentiary Hearing August 21, 2020.

<sup>11</sup> *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 within the Creek reservation boundaries.<sup>12</sup>

### **Conclusions of Law**

The final inquiry is answered in the affirmative. This Court adopted the parties' Agreed Stipulation and made findings of fact thereon. Although, the specific address and location of the crime of child sexual abuse was not included as a stipulation by the parties, Petitioner's brief identifies the address where the crime took place as 3611 S. Lakewood Avenue, Tulsa, Oklahoma.<sup>13</sup> The parties agreed that the location where the crime occurred was within the Creek Reservation boundaries. 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 Travis Dray Stewart 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.

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<sup>12</sup> Exhibit 1, Agreed Stipulation 2A.

<sup>13</sup> Brief of Petitioner, May 8, 2018, p. 5.

App.17a

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

/s/ Tracy L. Priddy  
District Judge

**AGREED STIPULATION  
(SEPTEMBER 25, 2020)**

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IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA

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TRAVIS DRAY STEWART,

*Appellant,*

v.

THE STATE OF OKLAHOMA,

*Appellee.*

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Case Nos. C-2017-1223, CF-2010-4428

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**AGREED STIPULATION**

The Oklahoma Court of Criminal Appeals (OCCA) remanded this matter for an evidentiary bearing pursuant to the recent decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), to determine Mr. Stewart's (a) Indian status and (b) whether the crime occurred on the Creek Reservation. The parties have reached the following stipulations.

1. Regarding the status of the Appellant:
  - A. Mr. Stewart has a blood quantum of 1/16.
  - B. Mr. Stewart is a citizen of the Creek Nation as of February 7, 1990 and was so at the time of the crime.

- C. The Creek Nation is an Indian Tribal Entity recognized by the federal government.
  - D. The verification for Mr. Stewart's tribal enrollment and blood quantum are attached to this stipulation and the parties agree they should be admitted into the record of this case.
2. Regarding the location of the crime:
- A. The crime in this case occurred within the Creek reservation boundaries.

The parties therefore request that this Court accept the stipulations.

Respectfully submitted,

/s/ Danny Joseph, No. 32812  
Nicollette Brandt, No. 30996  
General Appeals Division  
Oklahoma Indigent Defense System  
P.O. Box 926  
Norman, Oklahoma 73070  
(405) 801-2727

/s/ Jennifer Crabb, No. 20546  
Oklahoma Attorney General's Office  
Assistant Attorneys General  
313 N.W. 21st Street  
Oklahoma City, OK 73105  
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App.20a

/s/ Erik Grayless, No. 21197  
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Assistant Attorney General  
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Oklahoma City, OK 73105  
(405) 521-3921

App.21a

**MUSCOGEE (CREEK) NATION  
ENROLLMENT VERIFICATION  
(AUGUST 27, 2020)**

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**THE MUSCOGEE (CREEK) NATION  
OF OKLAHOMA CITIZENSHIP BOARD**



**Director**

Nathan Wilson

**Managers**

Allan Colbert Jr.

Andy Proctor

**Board Members**

Joan Henson

Elizabeth Yahola

Clarence Johnson

LeaAnn Nix

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DATE: 8/27/2020

TO: Whom It May Concern:

FROM: Muscogee (Creek) Nation  
Citizenship Board  
PO Box 580  
Okmulgee, OK 74447

Subject: Enrollment Verification

App.22a

RE: Name: Travis Dray Stewart  
Address: 2215 S Nogales Ave  
Tulsa OK 74107-2825

Birthdate: 11/7/1979  
Enrollment Date: February 7, 1990  
Roll Number: 42991  
Degree of Creek Blood: 1/16

I hereby certify that Travis Dray Stewart, DOB: 11/7/1979 is enrolled with the Muscogee (Creek) Nation. Enrollment Date: 2/7/1990 Roll Number: 42991, Degree of Creek Blood: 1/16

Sincerely,

/s/ Nathan Wilson

Director

Muscogee (Creek) Nation Citizenship Office

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

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IN THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF OKLAHOMA

TRAVIS DRAY STEWART,

*Petitioner,*

v.

THE STATE OF OKLAHOMA,

*Respondent.*

No. F-2017-1223

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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**ORDER REMANDING FOR  
EVIDENTIARY HEARING**

Petitioner, Travis Dray Stewart, was charged in Tulsa County District Court, Case No. CF-2010-4428, with Child Sexual Abuse, After Former Conviction of Two Felonies, in violation of 10 O.S.Supp.2002,

§ 7115(E).<sup>1</sup> Petitioner entered a blind guilty plea to the charge on May 15, 2012, before the Honorable Dana Kuehn, Associate District Judge. The trial court accepted Petitioner's plea and deferred sentencing pending the completion and filing of a presentence investigation report. On June 29, 2012, Judge Kuehn sentenced Petitioner to thirty years imprisonment and a \$500.00 fine. Petitioner must serve 85% of his sentences before becoming eligible for parole consideration. 21 O.S.Supp.2002, § 13.1.

On July 9, 2012, Petitioner filed a motion to withdraw his blind plea. A hearing on Petitioner's motion was held on November 21, 2017, before the Honorable James Caputo, District Judge.<sup>2</sup> After hearing testimony from Petitioner and plea counsel, along with argument from counsel for both parties, Judge Caputo denied Petitioner's motion to withdraw his plea. Petitioner now seeks a writ of certiorari.

In Proposition One, Petitioner claims the District Court lacked jurisdiction to accept his plea. Petitioner argues that he is a citizen of the Creek Nation and the crime occurred within the boundaries of the Creek Reservation.

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<sup>1</sup> Both the Information and Judgment and Sentence cite Section 843.5 of Title 21 as the statute violated by Appellant. The alleged crime occurred between June 1, 2003, and September 13, 2005. Section 7115 of Title 10 was not renumbered as 21 O.S.Supp.2009, § 843.5 until May 21, 2009. Thus, the version of the child sexual abuse statute in effect at the time of Appellant's crimes was Section 7115 of Title 10.

<sup>2</sup> The delay in Petitioner's withdrawal hearing is the subject of Petitioner's Proposition Two.

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 crime 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 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 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.<sup>3</sup>

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<sup>3</sup> 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.

Second, whether the crime 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) 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.

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2012); *United States v. Prentiss*, 273 F.3d 1277, 1280-81 (10th Cir. 2001).

**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 May 8, 2018; and Respondent's Response Brief, filed October 16, 2018. 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.

/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