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

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

ARNOLD DEAN HOWELL,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

NOT FOR PUBLICATION

Case No. C-2017-998

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

ROWLAND, VICE PRESIDING JUDGE:

Petitioner Arnold Dean Howell entered a guilty plea in the District Court of Creek County, Case No. CF-2015-186, to First Degree Murder (Count 1), in violation of 21 O.S.Supp.2012, § 701.7(A), and First Degree Robbery (Count 2), in violation of 21 O.S.2011, § 798. The Honorable Douglas W. Golden, District Judge, accepted Howell's guilty plea. The district court

sentenced Howell to life imprisonment without the possibility of parole on Count 1 and to twenty-five years imprisonment on Count 2 with the sentences to be served consecutively. Howell filed a timely motion to withdraw his guilty plea. The district court denied the motion after a hearing and Howell now appeals the denial of his motion, raising the following issues:

- (1) whether the State of Oklahoma lacked jurisdiction to prosecute his case;
- (2) whether he was competent to enter a plea;
- (3) whether his plea was knowingly and voluntarily entered in light of his intellectual disability;
- (4) whether he received effective assistance of counsel; and
- (5) whether his sentence is excessive.

We find relief is required on Howell's jurisdictional challenge in Proposition 1, rendering his other claims moot. Howell 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 Howell's case to the District Court of Creek County for an evidentiary hearing. The District Court was directed to make findings of fact and conclusions of law on two issues: (a) Howell's status as an Indian; and (b) whether the crime occurred within the boundaries of the Muscogee Creek Nation 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 18, 2020, the parties filed a written stipulation in which they agreed:(1) that Howell has some Indian blood; (2) that he was a registered citizen of the Muscogee Creek Nation on the date of the charged offenses; (3) that Howell is an Indian for purposes of the Major Crimes Act; and (4) that the charged crimes occurred within the Muscogee Creek Nation Reservation. The district court accepted the parties' stipulation.

On November 23, 2020, the District Court 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 Howell is an Indian under federal law and that the charged crimes occurred within the boundaries of the Muscogee Creek Nation 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 Creek County did not have jurisdiction to prosecute and accept Howell's plea. 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 Creek County
the Honorable Douglas W. Golden, District Judge

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OPINION BY: ROWLAND, V.P.J.
KUEHN, P.J.: Concur
LUMPKIN, J.: Concur in Result
LEWIS, J.: Concur
HUDSON, 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.

HUDSON, J.: SPECIALLY CONCURS

Today's decision dismisses convictions for first degree murder and first degree robbery from the District Court of Creek 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 these crimes on the Creek Reservation. Under *McGirt*, the State has no jurisdiction to prosecute Petitioner for the murder and robbery 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 Concur); and *Krafft v. State*, No. F-2018-340 (Okl. Cr., Feb. 25, 2021) (Hudson, J., Specially Concur) (unpublished).

**SUPPLEMENTAL ORDER OF THE DISTRICT
COURT OF CREEK COUNTY STATE OF
OKLAHOMA SAPULPA DIVISION
(NOVEMBER 18, 2020)**

IN THE DISTRICT COURT OF CREEK COUNTY
STATE OF OKLAHOMA
SAPULPA DIVISION

ARNOLD DEAN HOWELL,

Defendant/Petitioner,

v.

STATE OF OKLAHOMA,

Plaintiff/Respondent.

Creek County Case No. CF-2015-186

Court of Criminal Appeals Case No. C-2017-998

Before: Douglas W. GOLDEN, District Judge.

COMES before the trial court the above-styled matter as previously remanded for an evidentiary hearing on the issues of whether the Defendant is an Indian as defined by the Federal Code and, if so, whether the acts leading to his criminal charges occurred within the bounds of the Creek Reservation.

PROCEDURAL HISTORY

By Order of the Criminal Court of Appeals dated August 19, 2020, the matter was remanded to the trial court with instructions to only address the issues of Howell's status as an Indian and whether the crime occurred within the boundaries of the Creek Reservation. The trial court was further instructed to hold an evidentiary hearing to determine these issues. The Order of the Court of Criminal Appeals also provided that a joint stipulation by the parties could be entered in lieu of a hearing.

A Stipulation by the parties answering both questions in the affirmative was filed on September 18, 2020. An Order Accepting Stipulation, which included a copy of the Stipulation, was filed by the trial court on October 19, 2020, and forwarded to the Court of Criminal Appeals.

On November 13, 2020, the Court of Criminal Appeals issued an Order to the trial court for entry of a proper order that contained findings of fact and conclusions of law. Furthermore, the Order specifically stated the trial court's Order Accepting Stipulation did not contain conclusions of law.

FINDINGS OF FACT

Without a hearing, the parties entered a joint stipulation agreeing that the acts occurred within the boundaries of the Muscogee Creek Nation and that Arnold Dean Howell, Jr. is an Indian for the purposes of the Major Crimes Act. The Court finds that the acts occurred within the boundaries of the Muscogee Creek Nation and that Arnold Dean Howell,

Jr. is an Indian for the purposes of the Major Crimes Act.

CONCLUSIONS OF LAW

The issue of subject matter jurisdiction has been raised by the defendant. *See Sharp v. Murphy*, 591 U.S. ___, 140 S. Ct. 2412 (2020) and *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452 (2020). While a close reading of the *McGirt* case does leave some question as to whether procedural bars by the State may apply in some circumstances (footnote 15), the case at hand had not yet reached any potential procedural bar. As this is clearly a case that falls under the federal Major Crimes Act, the trial court concludes the matter should be referred to Federal Court.

/s/ Douglas W. Golden
District Judge
Creek County Case No.
CF-2015-186
Court of Criminal Appeals
Case No. C-2017-998

**ORDER OF THE COURT OF CRIMINAL
APPEALS, STATE OF OKLAHOMA,
REMANDING FOR ENTRY
OF PROPER ORDER
(NOVEMBER 13, 2020)**

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

ARNOLD DEAN HOWELL,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

Case No. C-2017-998

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

Arnold Dean Howell entered a guilty plea in the District Court of Creek County, Case No. CF-2015-186, to First Degree Murder (Count 1), in violation of 21 O.S.Supp.2012, § 701.7(A) and First Degree Robbery (Count 2), in violation of 21 O.S.2011, § 798. On March 20, 2017, the Honorable Douglas W. Golden, District Judge, accepted Howell's guilty plea. Howell was sentenced to life without the possibility of parole

on Count 1 and twenty-five years imprisonment on Count 2 with the sentences to be served consecutively. Howell filed a timely motion to withdraw his guilty plea. After a hearing on the motion to withdraw held on September 28, 2017, the motion was denied. Howell appeals the denial of this motion.

On August 19, 2020, this Court remanded this case to the District Court of Creek County for an evidentiary hearing. On October 23, 2020, a document titled “Order Accepting Stipulation” was filed in this Court. This document, signed by the trial court, shows that the parties agreed by stipulation that Howell is a member of the Muscogee Creek Nation. The parties also agreed by stipulation that the location of the crime, in Sapulpa, Oklahoma, is within the boundaries of the Muscogee Creek Nation Reservation.

This Court’s Order remanding this case for evidentiary hearing specifically instructed the District Court (a) to make written findings of fact and conclusions of law, and (b) set forth the procedure for filing those findings and conclusions, and any material presented below, with this Court. We take this opportunity to further clarify those procedures.

If the parties have stipulated to one or more issues, but an evidentiary hearing was held, 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 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 Appellant/Petitioner, within five (5) days after the District Court has filed its findings of fact and conclusions of law below.

Where, as here, the parties have stipulated to one or more issues on remand, if no evidentiary hearing is held, the District Court Clerk shall transmit the stipulations, the District Court's findings of fact and conclusions of law, and any other materials made a part of the record, within five (5) days of the date of that stipulation.

The District Court must make written findings of fact and conclusions of law. Parties may suggest proposed findings and conclusions, but the District Court must adopt them and file its findings of fact and conclusions of law in the District Court. In this case, the parties stipulated only to the facts. The document filed in this Court titled "Order Accepting Stipulation" does not contain conclusions of law. This matter is **REMANDED** to the District Court for entry of an order specifically containing the court's findings of fact and conclusions of law. The finding of fact shall be filed in this Court within five (5) days from the date of this order.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 13th day of November, 2020.

App.16a

/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

ATTEST

/s/ John D. Hadden
Clerk

**ORDER OF THE DISTRICT COURT OF CREEK
COUNTY, STATE OF OKLAHOMA,
ACCEPTING STIPULATION
(OCTOBER 19, 2020)**

IN THE DISTRICT COURT OF CREEK COUNTY
STATE OF OKLAHOMA
SAPULPA DIVISION

ARNOLD DEAN HOWELL,

Defendant/Petitioner,

v.

STATE OF OKLAHOMA,

Plaintiff/Respondent.

Creek County Case No. CF-2015-186

Court of Criminal Appeals Case No. C-2017-998

Before: Douglas W. GOLDEN, District Judge.

COMES before the trial court the above-styled matters as remanded for an evidentiary hearing on the issues of whether the Defendant is an Indian as defined by the Federal Code and if so, whether the acts leading to his criminal charges occurred within the bounds of the Creek Reservation.

Without conducting a hearing on these issues, the parties have conferred and entered a joint stipulation which answered both questions in the affirmative.

App.18a

A certified copy of the joint stipulation is attached as Exhibit "A".

The Stipulation is accepted by the trial court and the matter now referred to the Court of Criminal Appeals.

Dated this 19th day of October, 2020.

/s/ Douglas W. Golden
District Judge
Creek County Case No.
CF-2015-186
Court of Criminal Appeals
Case No. C-2017-998

**AGREED STIPULATION,
RELEVANT EXCERPT
(OCTOBER 19, 2020)**

IN THE DISTRICT COURT OF CREEK COUNTY

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

- a. The crime in this case occurred at 15631 W. 188th Place S., Sapulpa, OK 74066-1904. This address is 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. § 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).

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

- a. The defendant, Arnold Dean Howell, Jr., is an Indian, for purposes of the Major Crimes Act. Mr. Howell has 1/2 Creek blood and was a member of the Muscogee Creek Nation (Roll Number 66723) at the time of the crimes.

App.20a

/s/ Katrina Conrad-Legler
Counsel for Defendant/Appellant

/s/ Jennifer Crabb
Counsel for Plaintiff/Appellee

/s/ Steve Rouse
Counsel for Plaintiff/Appellee

I, Amanda Van Orsdol, Court Clerk for Creek County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears on of record in the Court Clerks office of Creek County, Oklahoma, This 19th day of October, 2020.

/s/ Doris Doane
Deputy

Amanda Van Orsdol
County Clerk

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

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

ARNOLD DEAN HOWELL,

Petitioner,

v.

THE STATE OF OKLAHOMA,

Respondent.

Case No. C-2017-998

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

Arnold Dean Howell entered a guilty plea in the District Court of Creek County, Case No. CF-2015-186, to First Degree Murder (Count 1), in violation of 21 O.S.Supp.2012, § 701.7(A) and First Degree Robbery (Count 2), in violation of 21 O.S.2011, § 798. On March 20, 2017, the Honorable Douglas W. Golden, District Judge, accepted Howell's guilty plea. Howell was sentenced to life without the possibility of parole on Count 1 and twenty-five years imprisonment on

Count 2 with the sentences to be served consecutively. Howell filed a timely motion to withdraw his guilty plea. After a hearing on the motion to withdraw held on September 28, 2017, the motion was denied. Howell 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 March 16, 2018, Howell claims the District Court lacked jurisdiction to try him. Howell argues that he is a citizen of the Muscogee (Creek) Nation and the crimes occurred within the boundaries of the Creek Reservation. Howell, in his certiorari appeal, relies on jurisdictional issues raised 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).¹

Howell'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 Creek 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

¹ On March 25, 2019, we held Howell'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 Howell'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 Howell'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 Howell's status as an Indian. The District Court must determine whether (1) Howell has some Indian blood, and (2) is recognized as an Indian by a tribe or the federal government.²

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

² 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.

materials made a part of the record, to the Clerk of this Court, and counsel for Howell, 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 Howell's Brief-in-Chief and Application for Evidentiary Hearing on Sixth Amendment Claim with this Order, to the District Court of Creek County.

IT IS SO ORDERED.

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

App.25a

/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

ATTEST

/s/ John D. Hadden
Clerk