



No. F-2018-1229

ORIGINAL

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

KADETRIX DEVON GRAYSON,

Appellant,

-vs-

THE STATE OF OKLAHOMA,

Appellee.

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

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SUPPLEMENTAL BRIEF OF APPELLEE AFTER REMAND

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NOVEMBER 16, 2020

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IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

KADETRIX DEVON GRAYSON,)
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 Appellant,)
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 v.) **Case No. F-2018-1229**
)
 THE STATE OF OKLAHOMA,)
)
 Appellee.)

SUPPLEMENTAL BRIEF OF APPELLEE AFTER REMAND

Kadatrix Devon Grayson, hereinafter referred to as defendant, was convicted of two counts of Murder in the First Degree, in violation of 21 O.S.Supp.2012, § 701.7 (Counts I and II) and one count of Possession of a Firearm After Former Conviction of a Felony, in violation of 21 O.S.Supp.2014, § 1283 (Count III), in Seminole County District Court Case No. CF-2015-370. Defendant was sentenced to Life imprisonment on Counts I and II and ten (10) years on Count III, with Counts I and II running consecutively, but Count III running concurrently. On direct appeal, defendant claimed in his third proposition that the District Court of Seminole County did not have jurisdiction to try him, arguing he was a citizen of the Seminole Nation, his victims were Native American, and that his crimes occurred within the boundaries of the Seminole Reservation (Brief of Appellant at 15-16).¹

¹ The Brief of Appellant will be referred to as (Brief of Appellant _). This Court's Order Remanding for an Evidentiary Hearing will be referred to as (Order _). The Supplemental Original Record, containing the Findings of Fact and Conclusions of Law, will be referred (continued...)

On July 9, 2020, the United States Supreme Court held in *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2460-2482 (2020), that the Creek Nation's Reservation had not been disestablished. On that same day, and for the reasons stated in *McGirt*, the Court also affirmed the Tenth Circuit's decision in *Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017). *Sharp v. Murphy*, 140 S. Ct. 2412 (2020).

On August 25, 2020, this Court issued an Order Remanding for Evidentiary Hearing, directing the district court to hold a hearing to determine "Appellant's Indian status" and "whether the crime occurred in Indian Country." (Order at 3; Supp. O.R. 3). This Court further instructed that the parties could "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 which case a hearing would be unnecessary (Order at 4; Supp. O.R. 4).

On September 25, 2020, the parties convened before the Honorable Timothy L. Olsen, District Judge of Seminole County, for an evidentiary hearing in accordance with this Court's August 25, 2020, Order. The State of Oklahoma was represented by Theodore M. Peeper and Joshua R. Fanelli, Assistant Attorneys General, as well as Paul Smith, District Attorney for Seminole County. Defendant was represented by Jamie Pybas with the Oklahoma Indigent Defense System

¹ (...continued)

to as (Supp. O.R. _). The transcript of the evidentiary hearing will be referred to as (E.H. Tr. _). Joint Exhibit Number 1 will be referred to as (Jt. Ex. 1). The Findings of Fact and Conclusions of Law will be referred to as (FFCL _).

(OIDS). The Seminole Nation appeared by and through counsel, Brett Stavin. Defendant appeared at the hearing via Skype video. The parties presented the district court with an Agreed Stipulation along with brief argument from the parties and Mr. Stavin (Jt. Ex. 1; E.H. Tr. 6-17). Prior to the hearing, defendant filed a Brief on Remand Applying *McGirt* Analysis to Seminole Nation Reservation and at the district court's invitation, the Seminole Nation also filed an *Amicus Curiae* Brief (Supp. O.R. 8-65; 66-77).

On October 23, 2020, the district court issued its Findings of Fact and Conclusions of Law on Remand from the Oklahoma Court of Criminal Appeals, (FFCL; Supp. O.R. 78-91). The parties stipulated that defendant is an enrolled member of the Seminole Nation with a Seminole blood quantum of 1/4. His Roll Number is 18454, and his date of enrollment is September 29, 1994 (Jt. Ex. 1). Moreover, the parties also stipulated that the location of the crimes occurred within the historical boundaries of the Seminole Nation (Jt. Ex. 1). The district court accepted the parties' stipulations (FFCL, at 3, 13; Supp. O.R. 80, 90).

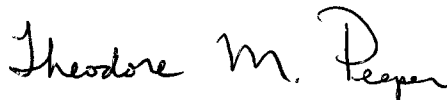
Applying the test for determining whether a person is an Indian found in *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012), and based on the stipulations of the parties, the district court found that defendant "is an 'Indian' as defined by the Oklahoma Court of Criminal Appeals." (FFCL, at 13; Supp. O.R. 90). Further, the district court found, applying the analysis set out in *McGirt*, that

“Congress established a reservation for the Seminole Nation of Oklahoma[,]” and that “Congress has not specifically erased the reservation boundaries and disestablished the Seminole Nation Reservation.” (FFCL, at 13; Supp. O.R. 90). Thus, the district court concluded, “The Crimes that Defendant/Appellant [were] convicted of occurred in Indian Country.” (FFCL, at 13; Supp. O.R. 90).

Should this Court find that defendant is entitled to relief based on the district court’s FFCL, the State respectfully requests this Court to stay any order reversing the convictions in this case for thirty (30) days to allow the United States Attorney’s Office for the Eastern District of Oklahoma to secure custody of defendant. Cf. 22 O.S.2011, § 846 (establishing that “[i]f the offense was committed within the exclusive jurisdiction of another county of this state, the court must direct the defendant to be committed for such time as it deems reasonable to await a warrant from the proper county for his arrest”).

Respectfully submitted,

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CERTIFICATE OF MAILING

On this 16th day of November, 2020, a true and correct copy of the foregoing was mailed to:

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THEODORE M. PEEPER