

IN THE MUSCOGEE (CREEK) NATION SUPREME COURT

TIMMY JOE VANDECAR,)
)
Appellant,)
)
v.)
)
MUSCOGEE (CREEK) NATION)
)
Respondent.)

Case No.: SC-2022-01
(District Court Case No.: CF-2020-097)

SUPREME COURT
FILED

AUG 30 2022

cd
COURT CLERK
MUSCOGEE (CREEK) NATION

Appeal from District Court, Okmulgee District, Muscogee (Creek) Nation.

Carla R. Stinnett, Sapulpa, Oklahoma for the Appellant, Timmy Joe Vandecar.

David Pierce, William Hunter Dodson, Jr., and Bill Hoskison, Okmulgee, Oklahoma, for
the Respondent, the Muscogee (Creek) Nation.

ORDER AND OPINION

MVSKOKVLKE FVTCECKV CUKO HVLWAT VKERRICKV HVYAKAT OKETV
YVNKE VHAKV HAKATEN ACAKKAYEN MOMEN ENTENFVTCETV, HVTVM
MVSKOKE ETVLWVKE ETEHVLVTKE VHAKV EMPVTAKV.¹

Before: LERBLANCE, C.J.; MCNAC, V.C.J.; ADAMS, DEER, HARJO-WARE, SUPERNAW,
THOMPSON, JJ.

PER CURIAM

Order of the District Court remanded.

¹ “The Muscogee (Creek) Nation Supreme Court, after due deliberation, makes known the following decision based on traditional and modern Mvskoke law.”

Per Curiam.

Timmy Joe Vandecar (hereinafter, the “Appellant”) submits a Rule 2 final order appeal “from a denial of a motion to dismiss the charges against [him,]”² filed by the Muscogee (Creek) Nation District Court on December 28, 2021. The Appellant asserts that his right to speedy trial under M(C)NCA Title 14, § 1-303 (F), the Indian Civil Rights Act, and the United States Constitution was violated as a result of his incarceration in the Nation’s custody for two hundred forty eight (248) days (starting from his initial tribal detention through his release from tribal custody on May 3, 2021); further that he is still awaiting trial at this time.³ On the record presented, and for the reasons set forth below, we remand the matter back to the District Court for consideration of the Appellant’s speedy trial violation claims.

BACKGROUND

On June 9, 2020, the State of Oklahoma filed a *Complaint and Information* charging the Appellant with one count of *Domestic Abuse, Assault and Battery in Presence of Minor*, and one count of *Threatening to Perform Act of Violence*. The Appellant was taken into custody on May 24, 2020, by the State of Oklahoma and remained in the State’s custody until August 28, 2020.

² See, M(C)NCA Title 27, App. 2, Rule 2 (B), which provides, “[a]n appeal may be taken by a defendant only from a final judgment of conviction, orders after judgment which affect the substantial rights of the defendant, or from a denial of a motion to dismiss the charges against the defendants.”

³ The Appellant’s January 7, 2022, *Notice of Appeal* also included a second issue for appellate review; specifically, whether the Muscogee (Creek) Nation can enhance criminal charges using prior state court criminal convictions following the United States Supreme Court’s decision in McGirt v. Oklahoma. During the parties’ July 22, 2022, oral argument, both the Appellant and the Respondent informed the Court that the Appellant is not an Indian person, and, as such, the prior state court convictions are valid, and may be used to enhance the Appellant’s criminal charges. Both parties requested that this Court allow the Appellant to withdraw this second issue from appellate review. The Court notes that the Appellant’s July 31, 2020, *Motion to Dismiss for Lack of Subject Matter Jurisdiction* (filed in Case No: BCF-2020-138, Creek County, State of Oklahoma) specifically states that the Appellant “is a member of the Muscogee-Creek Nation, enrolled 6-4-1981, Roll Number 13558[.]” and also provides a certification letter from the Muscogee (Creek) Nation Citizenship Board verifying the same. However, as the Appellant has requested that the Court withdraw this issue from appellate review, and the Respondent has expressed no objection, the Court grants the Appellant’s request and allows the withdrawal of the Appellant’s argument concerning enhancement of criminal charges using prior state court convictions.

On July 9, 2020, the United States Supreme Court issued its decision in McGirt v. Oklahoma, finding, that for purposes of establishing criminal jurisdiction, the Creek reservation has never been disestablished by the United States Congress and, as such, the State of Oklahoma lacks jurisdiction to prosecute certain criminal defendants.⁴ On July 31, 2020, a *Motion to Dismiss for Lack of Subject Matter Jurisdiction* was filed on the Appellant's behalf in the Oklahoma case (based on the McGirt ruling), and on August 28, 2020, an *Order Sustaining Defendant's Motion to Dismiss* was filed in the State of Oklahoma.

However, the Appellant was never released from custody, as the Muscogee (Creek) Nation filed a *Criminal Complaint and Information* on August 21, 2020, charging the Appellant with one count of *Domestic Abuse Second Offence* (Pursuant to M(C)NCA Title 14, § 2-303 (C), as amended by NCA 16-038) and one count of *Domestic Abuse in the Presence of a Minor* (Pursuant to M(C)NCA Title 14, § 2-303 (E), as amended by NCA 16-038). The Appellant's *Initial Appearance* was conducted on August 31, 2020, and a five thousand dollar (\$5,000.00) surety bond was set by the Court. The *Minute* submitted by the District Court for the August 31, 2020 appearance states that the "Defendant waived his right to an attorney and entered a plea of Guilty to counts (1) and two (2). The Court accepted pleas as to counts one (1) and two (2)." A *Sentencing* date was then set by the District Court for October 5, 2020.

On September 29, 2020, the Muscogee (Creek) Nation filed an *Amended Criminal Complaint and Information* against the Appellant adding an additional charge of *Terroristic Threats* (Pursuant to M(C)NCA Title 14, § 2-617 (1)). It is unclear based on the *Record on Appeal* if the Appellant was ever arraigned on this additional charge.

⁴ See, McGirt v. Oklahoma, 140 S. Ct. 2452. (July 9, 2020).

On February 4, 2021, the Appellant filed an *Application and Order for Appointed Counsel* wherein the Appellant submitted information concerning his assets and prior legal representation and bond information. The District Court concluded that the Appellant was indigent and ordered a public defender to be appointed to represent the Appellant. Counsel was appointed on May 3, 2021, during a *Review Hearing*. At this time the District Court's *Minutes* reflect that counsel argued the Appellant should be released on his own recognizance, as, it was argued, the "Defendant has been incarcerated for ten (10) months and has not had a trial." The request was granted and a *Disposition* date was set for May 11, 2021.

On May 11, 2021, the Appellant was advised of his rights and received the *Amended Criminal Complaint* in court. The Appellant, through counsel, requested that his previous "Guilty" pleas be withdrawn and that a plea of "Not Guilty" be entered on the Nation's charges. This request was granted by the District Court.

On June 2, 2021, the Appellant filed a *Motion to Dismiss*, arguing (1) that his right to speedy trial had been violated, and (2) that the Nation's reliance on prior Oklahoma state court convictions to enhance its charges to felonies were invalid based on the decision in McGirt. The Nation filed its *Response to Motion to Dismiss* on July 2, 2021. Due to illness of the Appellant's counsel on August 17, 2021, the *Motion Hearing* was reset to September 23, 2021, at which time the District Court took the matter under advisement and set a new *Hearing* date for October 26, 2021. The matter was then reset to November 16, 2021, at which time a *Minute* was entered stating the District Court's intention to file "findings and rulings...by Monday[.]" On December 28, 2021, the District Court issued its *Order* denying the Appellant's *Motion to Dismiss*, though, only issuing a ruling with respect to the Appellant's enhancement issue (which the Appellant has now

withdrawn from review by this Court). The District Court did not address the Appellant’s speedy trial violation claims. This *Order* is the subject of the above-styled Rule 2 appeal.

JURISDICTION, SCOPE, AND STANDARD OF REVIEW

Appellate jurisdiction is proper under M(C)NCA Title 27, § 1-101 (C).⁵ This Court will review issues of law *de novo* and issues of fact for clear error.⁶ Each respective question will be addressed based on its applicable standard of review.

ISSUES PRESENTED

1. Does the Muscogee (Creek) Nation recognize a right to speedy trial and, if so, how are violations of this right determined?⁷

DISCUSSION

Part 1. Right to Speedy Trial

As this Court has previously explained, “all criminal defendants prosecuted within the Muscogee (Creek) Nation Courts are entitled to certain due process rights as defined by statute.”⁸

⁵ M(C)NCA Title 27, § 1-101 (C), vests this court with exclusive jurisdiction to review final orders of the Muscogee (Creek) Nation District Court.

⁶ See A.D. Ellis v. Checotah Muscogee Creek Indian Community, et al., SC 10-01 at 3, ___ Mvs. L.R. ___ (May 22, 2013); In the Matter of J.S. v. Muscogee (Creek) Nation, SC 93-02, 4 Mvs. L.R. 124 (October 13, 1994); McIntosh v. Muscogee (Creek) Nation, SC 86-01, 4 Mvs. L.R. 28 (January 24, 1987); Lisa K. Deere v. Joyce C. Deere, SC 17-02 at 5, ___ Mvs. L.R. ___ (May 17, 2018); Muscogee (Creek) Nation v. Bim Stephen Bruner, SC 18-03 at 5, ___ Mvs. ___ (September 6, 2018); Derek Huddleston v. Muscogee (Creek) Nation, SC 18-02 at 3, ___ Mvs. ___ (October 4, 2018); Bim Stephen Bruner v. Muscogee (Creek) Nation, SC 18-04 at 4, ___ Mvs. ___ (May 13, 2019).

⁷ See footnote 3 concerning the Appellant’s request to withdraw a second issue contained in the January 7, 2022, *Notice of Appeal*, involving the United States Supreme Court’s decision in McGirt v. Oklahoma, and the Muscogee (Creek) Nation’s ability to enhance criminal charges using prior state court convictions. The Appellant’s request to withdraw this argument has been granted by the Court.

⁸ See, Derek Huddleston v. Muscogee (Creek) Nation, SC-18-02, at 4, ___ Mvs. L.R. ___ (October 4, 2018), citing Muscogee (Creek) Nation v. Johnson, SC-11-13, at 11, ___ Mvs. L.R. ___ (August 15, 2013), and M(C)NCA Title 14 § 1-303 [as amended by NCA 16-038], Rights of defendants. In all criminal proceedings, the defendant shall have the following rights:

- A. Representation. The defendant shall have the right to appear and represent himself; to be represented by a Indigent Defense Attorney upon application and approval by the Court if found qualified for free representation; to be represented at his or her own expense by any attorney admitted to practice before the District Court.
- B. Nature of charges. The defendant shall have the right to be informed of the nature of the charges against him and to have a written copy of the complaint containing all information required by Title 14, § 1–401 herein.

M(C)NCA Title 14, § 1-303 (F) [as amended by NCA 16-038] specifically provides that a criminal defendant “shall have the right to have a speedy public trial...before an impartial judge or jury[.]”⁹ Further, the sixth amendment right to speedy trial guaranteed under the United States Constitution is made applicable to Indian tribes through the Indian Civil Rights Act of 1968.¹⁰ In the above-styled action the Appellant asserts that the two hundred and forty eight (248) days he was detained

-
- C. Testimony by defendant. The defendant shall have the right to testify in his or her own behalf, or to refuse to testify regarding the charge against him or her, provided, however, that once a defendant takes the stand to testify on any matter relevant to the immediate proceeding against him or her, he or she shall be deemed to have waived all right to refuse to testify in that immediate criminal proceeding. However, such a waiver in one distinct phase of the criminal trial process, such as a motion hearing, trial or sentencing hearing, shall not be deemed to constitute a waiver of defendant’s right to remain silent in other distinct phases of the criminal trial process.
 - D. Confront witnesses. The defendant shall have the right to confront and cross-examine all witnesses against him, subject to evidentiary requirements in the Judicial Code or other applicable law of the Muscogee (Creek) Nation.
 - E. Subpoena. The defendant shall have the right to compel by subpoena the attendance of witnesses on his or her own behalf.
 - F. Speedy trial. The defendant shall have the right to have a speedy public trial. The defendant may waive his or her right to a speedy trial, otherwise, said trial is to be held before an impartial judge or jury as provided in this Title or other applicable law of the Nation.
 - G. Appeal. The defendant shall have the right to appeal in all cases.
 - H. Right to Habeas Corpus, Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Muscogee (Creek) Nation and may petition the court to stay further detention pending the habeas proceedings.
 - 1. The Court may grant a stay if the court:
 - a. Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and
 - b. After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under the conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.
 - I. Spouse’s testimony. The defendant shall have the right to prevent his or her present or former spouse from testifying against him concerning any matter which occurred during such marriage, except that:
 - 1. The defendant’s present or former spouse may testify against him in any case in which the offense charged is alleged to have been committed against the spouse or the immediate family, or the children of either the spouse or the defendant, or against the marital relationship; and
 - 2. Any testimony by the spouse in the defendant’s behalf will be deemed a waiver of this privilege.
 - J. Double jeopardy. The defendant shall have the right to not be twice put in jeopardy by the Nation for the same offense, provided that nothing herein shall be construed as prohibiting the prosecution in the Muscogee (Creek) Nation Courts of a defendant following a state or federal jeopardy.

⁹ See, M(C)NCA Title 14, § 1-303 (F) [as amended by NCA 16-038], which provides: “Speedy trial. The defendant shall have the right to have a speedy public trial. The defendant may waive his or her right to a speedy trial, otherwise, said trial is to be held before an impartial judge or jury as provided in this Title or other applicable law of the Nation.”

¹⁰ See, 25 U.S.C. § 1302 (a)(6), which provides: (a) No Indian tribe in exercising powers of self-government shall – (6) deny to any person in a criminal proceeding the right to a speedy public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense (except as provided in subsection (b))[.] [Emphasis Added]

in the Nation's custody after initially entering a plea of guilty to the first set of charges filed against him, then being released from custody on May 3, 2021; subsequently withdrawing his guilty plea on May 11, 2021, and still awaiting trial at this time, violates this statutory right. The Appellant argues that this Court should adopt the four-factor balancing test established by the United States Supreme Court in Barker v. Wingo, wherein that Court looked to (1) the length of the delay, (2) the reason for the delay, (3) whether the defendant had asserted his/her right to speedy trial, and (4) whether there was prejudice to the defendant due to the delay.¹¹

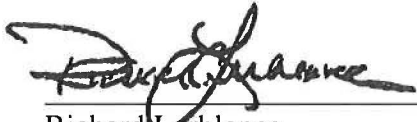
In Brian Scott Casey v. Muscogee (Creek) Nation, this Court was presented with a similar speedy trial violation argument and asked to clarify the manner in which the Mvskoke Courts are to determine speedy trial violations.¹² In that case, this Court adopted the Barker four-factor test and remanded the matter back to the District Court to conduct its analysis and issue a ruling consistent with the Court's findings. In the above-styled action, the Appellant's speedy trial claims were not ruled on by the District Court in its December 28, 2021, *Order*. As such, we remand the matter back to the District Court with orders to review the Court's decision in Casey and in Barker and timely rule on the Appellant's speedy trial claims.

CONCLUSION

For the reasons stated above, the Appellant's speedy trial violation claim is remanded back to the District Court with directions to timely issue a ruling on the matter consistent with the precedent set forth in Brian Scott Casey v. Muscogee (Creek) Nation, SC-2021-11.

¹¹ See, Barker v. Wingo, 407 U.S. 514, 522-525 (1972).

¹² See, Brian Scott Casey v. Muscogee (Creek) Nation, SC-2021-11, at 5-10, ___ Mvs. L.R. ___ (August 1, 2022).



Richard Lerblance
Chief Justice



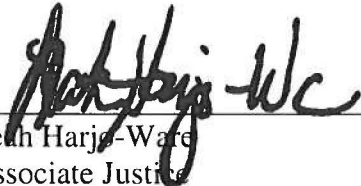
Amos McNac
Vice-Chief Justice



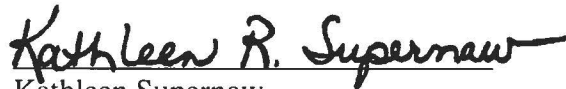
Andrew Adams, III
Associate Justice



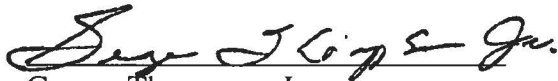
Montie Deer
Associate Justice



Leah Harjo-Ware
Associate Justice



Kathleen Supernaw
Associate Justice



George Thompson, Jr.
Associate Justice

CERTIFICATE OF MAILING

I hereby certify that on August 30, 2022, I mailed a true and correct copy of the foregoing *Order and Opinion* with proper postage prepaid to each of the following: Carla R. Stinnett, 404 E. Dewey Ave., Ste 100, Sapulpa, OK 74066; David Pierce, William Hunter Dodson, Jr., and Bill Hoskison, Muscogee (Creek) Nation, P.O. Box 580, Okmulgee, OK 74447. A true and correct copy was also hand-delivered to Office of the Muscogee (Creek) Nation District Court.



Connie Dearman, Court Clerk