

**FILED**

JUL 21 2011

CHOCTAW SUPREME COURT  
BY: [Signature]  
COURT CLERK

**IN THE SUPREME COURT  
OF THE  
MISSISSIPPI BAND OF CHOCTAW INDIANS**

JASON GORDON THOMAS

APPELLANT

VS.

SC 2007-09

MISSISSIPPI BAND OF CHOCTAW INDIANS

APPELLEE

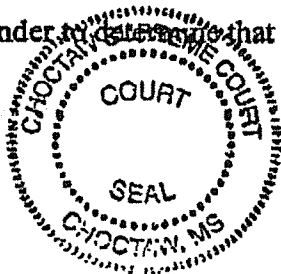
**OPINION AND JUDGMENT**

This matter came before the Court upon briefs and then oral argument on February 04, 2011. All justices heard the argument and reserved its ruling. Associate Justice Jones was assigned this case for the issuance of an opinion to be reviewed by the Court.

This appeal originates from the Appellant having been convicted of Battery (Domestic) pursuant to TC-3-10-2(5)(a)(3) in the Criminal Court of The Mississippi Band of Choctaw Indians.

The lower Court trial was conducted on a Complaint charging the Appellant as a first-time offender. Appellant argues that he was wrongfully convicted upon conflicting evidence and that the enhanced sentence (as second offender) was not appropriate. The enhanced penalty was applied by the lower court under Tribal Code §3-10-20.

The evidence presented in the underlying facts are conflicting, and there is sufficient evidence for a fact-finder to determine that the Appellant violated the charged



criminal code violation beyond a reasonable doubt as stated in *State vs. Edge, Jr.* 945 So2d 1004 (Miss. App. 2007 and *State vs. Lambert*, 904 So2d 1150(Miss.App.2004).

It is with respect to the remaining issue which was an imposition of the enhanced penalty, this Court finds more difficult.

The original complaint, which was not amended prior to trial, charged the Appellant as a first offender violator. It was only at the subsequent sentencing hearing that the Appellant was informed of the risk of enhancement punishment.

Since the Appellant has already served the entire jail sentence, this Court addresses this issue for future ruling and to provide clarity with uniformity to this Court's position on future prosecutions for potential crimes that are subject to enhanced penalties. This Appellant's peril is controlled by the authority cited by the Appellee in *U.S. vs. Diaz-Parraguierre*, 2010 WL 4272689 (CA 5 Miss).

As to subsequent cases in tribal lower court, this court is of the opinion that if a defendant is charged with a crime that is subject to an enhanced penalty, then that risk should be made known to the defendant in the charging document or upon a timely amended complaint. There are many reasons for the government to knowingly elect not to enhance, i.e., lack of evidence to prove the prior offense, which is an essential element of an enhanced charge, or other knowledge known to the investigating authority. However, the defendant should not have to guess which avenue the government is proceeding and should have the right to make a knowing decision as to a plea by seeking a plea bargain or the right to a jury trial.

Thus, for future cases, this opinion should provide the necessary guidance for the lower court to interpret how this court would review an enhancement sentence for a charge to be pursued against a defendant that has enhancement elements.

SO ORDERED AND ADJUDGED, on this the 4th day of Feb, 2011.

Hilda Nickey  
Hilda Nickey, Chief Justice

Brenda T. Pipstern  
Brenda T. Pipstern, Associate Justice

Robert Jones  
Robert Jones, Associate Justice

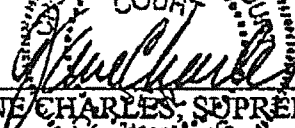
CERTIFICATE OF SERVICE

I do hereby certify that I have this, the 21st day of July 2011, caused to be forwarded by United States Mail a true and correct copy of the above and foregoing document to the below listed counsel of record.

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JANE CHARLES, SUPREME COURT CLERK  
