

FILED

JUL 29 2016

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

CHOCTAW SUPREME COURT
BY: [Signature]
COURT CLERK

MISSISSIPPI BAND OF CHOCTAW INDIANS

PLAINTIFF

VS.

**S.C. NUMBER: SC2016-07
CR NUMBERS: 2015-1532/15-1590/15-1651**

ZORRO CLAYTON

DEFENDANT

NOTICE OF APPEAL

COMES NOW, the Office of Attorney General of the Mississippi Band of Choctaw Indians, by and through Adam Johnson, Lay Advocate, pursuant to Choctaw Rule of Appellate Procedure §7-1-10, and files this Notice of Appeal, from the final Order rendered in the above cause numbers by Choctaw Tribal Court Judge Timothy Taylor on July 25, 2016 in the above captioned cause numbers.

The aforementioned ruling was issued from the bench regarding the Defendant's Motion to Set Aside Judgment on the date set out above. A stamp filed copy of the Court's Order is attached as Exhibit "A".

Factual Background

Zorro Clayton is an adult enrolled member of the Mississippi Band of Choctaw Indians who is currently being held in the Choctaw Detention center. On November 9, 2015, Zorro Clayton was arrested and charged with Battery Domestic Class B (2015-1532). Subsequently, on November 23, 2015, an arrest warrant was issued on Zorro Clayton for violation of his bond conditions and allegedly contacting the alleged victim Nihiena Thomas. On November 28, 2015, additional arrest warrants were issued on Zorro Clayton for Battery-Domestic Class B (2015-1591) and Criminal Damage to Property- Domestic Class C (2015-1590). Zorro Clayton was then arrested for these warrants on December 1, 2015.

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On January 11, 2016, Zorro Clayton was found guilty for Criminal Damage to Property Class C and Battery-Domestic Class B under CR 2015-1532 and DLOC Class B which was amended from Violation of Protective Order Class A. The Defendant was then placed on supervised probation for 180 days, which was set to expire on July 5, 2016 at 4:30 p.m.

On May 18, 2016, Probation Officer Jannifer Willis filed a Revocation of Probation Request for Zorro Clayton's arrested on March 9, 2016, for Aggravated Batter-Domestic Class B (2016-469). Subsequently, Probation Officer Jannifer Willis filed her second Revocation of Probation Request on May 25, 2016, since Zorro Clayton was placed under arrest for Aggravated Battery-Domestic Class A on March 11, 2016, as well as additional charges of Assault on a Peace Officer (x2) Class A, Resisting Lawful Arrest or Process Class B, Intoxication Class C and Disorderly Conduct Class C on April 22, 2016. The arrests violated his probation agreement that he signed on January 15, 2016.

On June 30, 2016, the Defendant filed a Motion to Set Aside Judgement stating among other issues that, "In *Pierceson Farve v. Mississippi Band of Choctaw Indians*, SC 2014-07 (July 28, 2015), the Supreme Court of the Mississippi Band of Choctaw Indians determined that a non-tribal member judge was not duly qualified to preside over the Choctaw Tribal Criminal Court". See exhibit "B".

On July 5, 2016, the Tribe responded to the Defendant's Motion to Set Aside Judgement and noted that Chief Justice Kevin Briscoe filed an Order Directing Civil Court Judges to Preside on an Interim Basis Only in the Criminal Court of the Mississippi Band of Choctaw Indians. In said order, Chief Justice Briscoe stated the Supreme Court was being mindful of the *Pierceson Farve vs Mississippi Band of Choctaw Indians*, SC2014-7 (July 21, 2015) ruling and applied Choctaw Tribal Code §1-3-6(1)(b), "(1) In the event one of the courts of the Choctaw Court

System is without a judge due to absent or vacancy the following shall govern: [***] (b) a judge of the Civil Court shall preside in the Criminal Court". The order also stated due to Judge Timothy Taylor's absence for emergency medical reasons, both civil court judges, Honorable Jeffery Webb and Honorable Christopher Collins, were ordered to preside over criminal court. A copy of the Tribe's Response is attached as Exhibit "C".

On July 14, 2016, the Defendant filed a Defendant's Response to Plaintiff's Response to Motion to Set Aside Judgment and is attached as Exhibit "D". In the Response, the Defendant stated that the exception in the rule consistent with C.T.C §1-3-6 is not applicable to this particular case due to one of the criminal court judges was available. The Defendant also argued that the order entered by Chief Justice Briscoe should be void due to the fact that it was, "...purely advisory", and that the Supreme Court may only, "hear and decide appeals from judgements, sentences, ruling and/or other orders of the Tribal Court in any and all civil and criminal matters.".

A hearing was set on July 25, 2016 in order to hear the Motion to Set Aside Judgment. A digital copy of the Audio CD of said hearing is attached as Exhibit "E". During the hearing, the Court granted the Defendant's Motion to Set Aside Judgment based on *Pierceson Farve v. Mississippi Band of Choctaw Indians*, SC 2014-07, ruling that non-tribal judges were not duly qualified to preside over the Choctaw Tribal Criminal Court. The Court also found the order that was entered by Chief Justice Briscoe was void as it was advisory in nature. Also, the Court found that Supreme Court can only hear and decide appeals from judgements, sentences ruling and/or other orders of the Tribal Court, and the order was void as it was not issued in response of any scenarios named.

Standard of Review

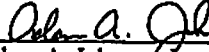
The matter before this Court arises from the Defendant's filing of a direct appeal as a result of a judgment of conviction rendered by the trial court. The standard of review in the consideration of an appeal in a criminal matter is whether "in light of the evidence as a whole, no reasonable, hypothetical juror could find, beyond a reasonable doubt, that the Defendant was guilty." *Mississippi Band of Choctaw Indians v. Henry*, No. 2003 (June 13, 2005), citing *Mississippi Band of Choctaw Indians v. John*, No. 2001-12 (July 29, 2003). Additionally this Court has also ruled that an appeal can give rise to a reversal of a criminal conviction "if the findings of fact are not supported by substantial evidence in the record or if a conclusion regarding applicable law is clearly erroneous;" and, that the Supreme Court "will show deference to such common sense or reasonable inferences made by the trial court that are supported by any evidence that may appear in the record." *Mississippi Band of Choctaw Indians v. Williamson*, No. 2001-32 (2004).

Relief Requested

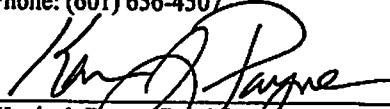
The Tribe would respectfully request that this Court enter an order, certify and file with the Supreme Court all papers and audio recordings comprising the record of the case, and that this matter be set for an expedited review.

Respectfully submitted, this the 29th day of July, 2016.

MISSISSIPPI BAND OF CHOCTAW INDIANS
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