

FILED

OCT 09 2020

CHOCTAW SUPREME COURT  
BY: *[Signature]*  
COURT CLERK  
4:27 pm

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

JOHN TUBBY

PETITIONER

v.

CAUSE NO. SC 2020-03

MISSISSIPPI BAND OF CHOCTAW INDIANS

RESPONDENT

SUA SPONTE ORDER OF REMAND

This petition seeking issuance of a writ of *habeas corpus* was filed before this Court on the ninth day of October, 2020 under the authority of Miss. Code Ann. C.T.C. §§ 11-43-1 and 9-1-19 as made applicable in Tribal Court proceedings by Choctaw Tribal Code § 1-1-4.

The petition alleges the unlawful detention of petitioner in Tribal Criminal Cause No. 2020-734 on August 20, 2020, by virtue of Tribal Criminal Court Judge Drew Taylor's summary denial of petitioner's release on bond without first conducting a hearing and making a determination in conformity with C.R.Cr.P. Rule 8 that Tubby's release from detention pending trial would not reasonably assure petitioner's appearance as required or put in danger the safety of another person in the community. Rule 8 proscribes petitioner's ongoing detention pending trial without bond in such summary manner as unlawful in that it arbitrarily violates Tubby's right to due process and his constitutional right of freedom.

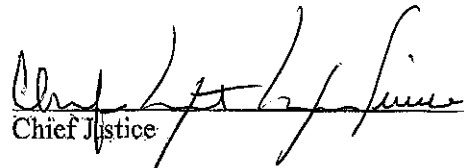
This petition for writ of habeas corpus, petitioner alleges, has been filed with this Tribal Supreme Court instead of the Mississippi Band of Choctaw Indians civil court based on C.T.C. § 1-3-3's jurisdictional language that limits any nontribal member from hearing cases assigned to the criminal court and while a heaviest action is civil in nature, the underlying action that resulted in Tubby's arrest and denial of bond is criminal and was before the Choctaw Criminal Court. Circumstances considered, petitioner further alleges, that this filing of this *habeas* action in civil court would create a problematic scenario in which the civil judge would essentially be required to render judgment against another trial judge: hence, petitioner alleges, the filing in this instant action in this tribal Supreme Court should be entertained in this forum.


This Court disagrees. C.T.C. § 1-3-1 titled Composition of the Choctaw Trial Courts at subsection (2) provides *in para materia* that "the Regular Civil Division shall have jurisdiction over all civil matters; whereas C.T.C. § 1-3-2 titled Composition of the Choctaw Supreme Court provides *in para materia* that "[t]he Choctaw Supreme Court shall \* \* \* hear and decide appeals."


Furthermore, this Court finds and determines that there is created no fundamental problematic scenario *per se* by a situation such as this in which the civil judge would essentially be required to render judgment against another [criminal] trial judge.

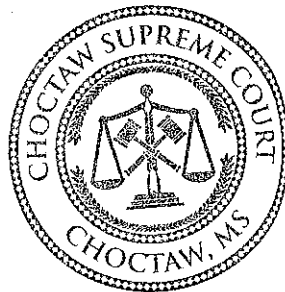
Circumstances considered, it is therefore ordered and adjudged that the above captioned cause be and hereby is ORDERED REMANDED *sua sponte* to the Regular Civil Division for all further lower court actions as are deemed necessary and appropriate.

SO ORDERED this the 9th day of October, 2020.

  
Chief Justice

  
Associate Justice

  
Associate Justice



**CERTIFICATE OF SERVICE**

I, do hereby certify that I have this, the 9<sup>th</sup> day of October, 2020 cause to be forward by electronic mail, United States mail and/or hand delivered, a true and correct copy of the above and foregoing document to the below listed counsel of record.

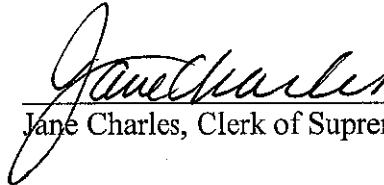
Hon. J. Andrew Hammond  
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Jane Charles, Clerk of Supreme Court