

IN THE DISTRICT COURT OF THE CHOCTAW NATION OF OKLAHOMA

CHOCTAW NATION OF OKLAHOMA,)
 Plaintiff,)
)
 v.)
James Capps)
 Defendant.)
 SS# 2152 D.O.B. 8-1996)
13845 S. Glenwood Pl.)
Glenpool, OK 74033)
 (Home Address))

Case No. CM-21-485

[NOTE: The trial judge shall ensure the defendant is sworn either prior to completing the Summary of Facts or prior to inquiry by the Court on the Plea. If the defendant is entering a nolo contendere, or other type guilty plea, correct by pen change where term "guilty" used.]

FILED
 CHOCTAW NATION OF OKLAHOMA
 DISTRICT COURT CLERK
 DEC 29 2021
 SUSAN LOZANO
 COURT CLERK
 BY [Signature]
 DEPUTY
 CIRCLE

PLEA OF NO CONTEST
SUMMARY OF FACTS

PART A: Findings of Fact, Acceptance of Plea

1. Is the name just read to you your true name? Yes No
 If no, what is your correct name? _____
 I have also been known by the name(s): Keith _____
2. My lawyer's name is Courtney Levy
3. (a) Do you wish to have a record made of these proceedings by a Court Reporter? Yes No
 (b) Do you wish to waive this right? Yes No
4. Age: 45 Grade completed in school: Some College
5. Can you read and understand this form? (If the answer above is no, Addendum A is to be completed and attached.) Yes No
6. Are you a member of the Choctaw Nation of Oklahoma or a member of another federally recognized Indian tribe? Yes No
7. Are you currently taking any medications or substances which affect your ability to understand these proceedings? Yes No
8. Have you been prescribed any medication that you should be taking, but you are not taking? Yes No
 If so, what kind and for what purpose? _____
9. Have you ever been treated by a doctor or health professional for mental illness or confined in a hospital for mental illness? Yes No
 If yes, list the doctor or health professional, place, and when occurred:
PTSD - 2013

10. Do you understand the nature and consequences of this proceeding? Yes No
11. Have you received a copy of the Information and read its allegations? Yes No
12. Does the Choctaw Nation move to dismiss or amend any case(s) or count(s) in the information? If so, set forth the cases/counts dismissed or amended: Yes No

13. A. Do you understand you are charged with:

Crime	Statutory Reference	Yes	No
(1) <u>Actual Physical Control</u>	<u>C.N.S. 11-902</u>	<input checked="" type="radio"/>	<input type="radio"/>
(2) <u>Carrying Fire arm while under influence of intoxicant</u>	<u>C.N.S. 23-9</u>	<input checked="" type="radio"/>	<input type="radio"/>
(3) <u>Obstructing officer</u>	<u>C.N.S. 540</u>	<input checked="" type="radio"/>	<input type="radio"/>
(4) _____	<u>C.N.S. _____</u>	<input type="radio"/>	<input type="radio"/>

For additional charges: List any additional charges on a separate sheet and label as PLEA OF NO CONTEST ADDENDUM B.

14. Have you previously been convicted of a felony? If so, when, where and for what felony/felonies? Yes No

15. _____ (Check if applicable) Do you understand that a conviction on a plea of no contest to the offense(s) of _____ Yes No

will subject you to mandatory compliance with the Oklahoma Sex Offender Registration Act?

16. What is the charge(s) to which the defendant is entering a plea today?

Actual Physical Control
Carrying Firearm while under influence of Intoxicant
Obstructing Officer

17. Do you understand the range of punishment for the crime(s) is/are: (List in same order as in No. 13 above)?

- | | | |
|---|--------------------------------------|--------------------------|
| (1) Minimum of <u>10 d</u> to a maximum of <u>1 yr</u> and/or a fine of \$ <u>1,000</u> | <input checked="" type="radio"/> Yes | <input type="radio"/> No |
| (2) Minimum of <u>10 d</u> to a maximum of <u>6 mo</u> and/or a fine of \$ <u>500</u> | <input checked="" type="radio"/> Yes | <input type="radio"/> No |
| (3) Minimum of _____ to a maximum of <u>1 yr</u> and/or a fine of \$ <u>500</u> | <input checked="" type="radio"/> Yes | <input type="radio"/> No |
| (4) Minimum of _____ to a maximum of _____ and/or a fine of \$ _____ | <input type="radio"/> Yes | <input type="radio"/> No |

18. Read the following statements: You have the right to a speedy trial before a jury for the determination of whether you are guilty or not guilty and if you request, to determine sentence. At the trial:

- (1) You have the right to have a lawyer represent you, either one you hire yourself or if you are indigent a court appointed attorney.
- (2) You are presumed to be innocent of the charges.

- (3) You may remain silent or, if you choose, you may testify on your own behalf.
- (4) You have the right to see and hear all witnesses called to testify against you and the right to cross-examine them.
- (5) You may have your witnesses ordered to appear in court to testify and present evidence of any defense you have to these charges.
- (6) The state is required to prove your guilt beyond a reasonable doubt.
- (7) The verdict of guilty or not guilty decided by a jury must be unanimous. However, you can waive a jury trial and, if all parties agree, the case could be tried by a Judge alone who would decide if you were guilty or not guilty and if guilty, the appropriate punishment.

Do you understand each of these rights?

- 19. Do you understand by entering a plea of no contest you give up these rights? Yes No
- 20. Do you understand that a conviction on a plea of no contest could increase punishment in any future case committed after this plea? Yes No
- 21. Have you talked over the charge(s) with your lawyer, advised him/her regarding any defense you may have to the charges and had his/her advice? Yes No
- 22. Do you believe your lawyer has effectively assisted you in this case and are you satisfied with his/her advice? Yes No
- 23. Do you wish to change your plea of not guilty to no contest and give up your right to a jury trial and all other previously explained constitutional rights? Yes No
- 24. Is there a plea agreement? Yes No

What is your understanding of the plea agreement? ^{at} 1 yr S/S, D+A or cert from in-patient ^{resid} ~~resid~~ ^{was} ~~was~~
 be followed, DUI School, VIP, Sup. Probation. at 2 1 yr S/S, cons C/C w/ ct 1,
 Surrender firearms, at 3: 1 yr S/S cons C/C w/ ct 2, Court costs
 to be returned after Probation

- 25. Do you understand the Court is not bound by any agreement or recommendation and if the Court does not accept the plea agreement, you have the right to withdraw your plea of no contest? Yes No
- 26. Do you understand that if there is no plea agreement the Court can sentence you within the range of punishment stated in Question 16? Yes No
- 27. What (is)/(are) your plea(s) to the charge(s) (and to each one of them)?

No Contest

- 28. Did you commit the acts as charged in the Information? ~~Yes~~ No

State the factual basis for your plea(s) (attach additional pages as needed, labeled as ADDENDUM C):

- 29. Have you been forced, abused, mistreated, or promised anything by anyone to have you enter your plea(s)? Yes No

30. Do you plead no contest of your own free will and without any coercion or compulsion of any kind? Yes No
31. (a) Do you have any additional statements to make to the Court? Yes No
- (b) Is there any legal reason you should not be sentenced now? Yes No

HAVING BEEN SWORN, I, the Defendant whose signature appears below, make the following statements under oath:

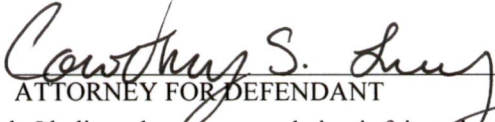
- (1) CHECK ONE
- (a) I have read, understand and completed this form.
- (b) My attorney completed this form and we have gone over the form and I understand its contents and agree with the answers. See Addendum "A".
- (c) The Court completed this form for me and inserted my answers to the questions.
- (2) The answers are true and correct
- (3) I understand that I may be prosecuted for perjury if I have made false statements to this Court.

Acknowledged this 29 day of December, 2021.


DEFENDANT


Notary Public/Deputy Court Clerk/Judge

- 32 I, the undersigned attorney for the Defendant, believe the Defendant understands the nature, purpose and consequence of this proceeding. (S)He is able to assist me in formulating any defense to the charge(s). I am satisfied that the Defendant's waivers and plea(s) of n contest are voluntarily given and he/she has been informed of all legal and constitutional rights.


ATTORNEY FOR DEFENDANT

- 33 The sentence recommendation in Question 24 is correctly stated. I believe the recommendation is fair to the Choctaw Nation of Oklahoma.

- 34 Offer of Proof (Nolo contendere plea): N/C offerant filed with
Instant case


PROSECUTING ATTORNEY

THE COURT FINDS AS FOLLOWS:

- A. The Defendant was sworn and responded to questions under oath.
- B. The Defendant understands the nature, purpose and consequence of this proceeding.
- C. The Defendant's plea(s) of NO Contest is/are knowingly and voluntarily entered and accepted by the Court.
- D. The Defendant is competent for the purpose of this hearing.
- E. A factual basis exists for the plea(s).
- F. The Defendant is guilty as charged or the Court withholds a finding of guilt. [Circle one.]
- G. Sentencing or order deferring sentence shall be: imposed instanter ; or continued until the _____ day of _____, 20____, at _____ .m

DONE IN OPEN COURT this 29 day of December, 2021.

Court Reporter Present



JUDGE OF THE DISTRICT COURT

Deputy Court Clerk

NAME OF JUDGE TYPED OR PRINTED

Part B: Sentence on Plea

Case No. CM-21-485

Choctaw Nation v. James Cupps

Date: 12-29-2021

[NOTE ON USE: Part B to be used with the Summary of Facts if contemporaneous with the entry of plea or may be formatted as a separate sentencing form if sentencing continued to future date.]

THE COURT SENTENCES THE DEFENDANT AS FOLLOWS:

TIME TO SERVE

1. You are sentenced to confinement under the supervision of the Department of Public Safety for a term of years as follows: (list in same order as in Question No. 17 in Part A)

2. The sentence(s) are to run (concurrently/consecutively) _____
or NOT APPLICABLE _____.

3. Defendant shall receive:
____ Credit for time served
____ No credit for time served.

DEFERRED SENTENCE

1. The sentencing date is deferred until _____, 20____, at _____
____.m.
2. You (will/will not) be supervised. The terms set forth in the Rules and Conditions of Probation found in Addendum D shall be the rules you must follow during the period of deferment.

SUSPENDED SENTENCE or SUSPENDED AS TO PART

1. You are sentenced to confinement under the supervision of the Department of Public Safety for a term of years as follows:

CT I - 1 year or until 12/29/2022 at 12:00 PM
CT II - 1 year or until 12/29/2023 at 12:00 PM
CT III - 1 year or until 12/29/2023 at 12:00 PM

To be suspended as follows:

(a) ALL SUSPENDED YES NO

(b) suspended *except* as to the first _____ (months)/(years) of the term(s) during which time you are to be held in the custody of the Department of Public Safety, the remainder of the sentence(s) to be suspended under the terms set forth in the Rules and Conditions of Probation found in Addendum D.

_____ Defendant's term of incarceration shall be calculated as:

2. The sentence(s) to run:

CT I, II & III w/ Court I (concurrently/consecutively)

OR

NOT APPLICABLE.

FINES AND COSTS

You are to pay a fine(s), costs, fees and/or restitution to the Choctaw Nation District Court Clerk as set out in Addendum E which is attached and made a part of this Order. [NOTE ON USE: The District Court may develop and utilize schedules for payment of fines and costs as appropriate and attach as Addendum E.]

500 on Jan 20, 2022

“NOTICE OF RIGHT TO APPEAL”

Sentence to Incarceration, Suspended or Deferred:

To appeal from this conviction, or order deferring sentence, on your plea of no contest, you must file in the District Court Clerk’s Office a written Application to Withdraw your Plea of No Contest within ten (10) days from today’s date. You must set forth in detail why you are requesting to withdraw your plea. The trial court must hold a hearing and rule upon your Application within thirty (30) days from the date it is filed. If the trial court denies your Application, you have the right to ask the Court of Appeals to review the District Court’s denial by filing a Petition for Writ of Certiorari within ninety (90) days from the date of the denial. Within ten (10) days from the date the application to withdraw plea of No Contest is denied, notice of intent to appeal and designation of record must be filed pursuant to Choctaw Nation Court of Appeals Rule—Criminal 4.2(D). If you are indigent, you have the right to be represented on appeal by a court appointed attorney and the right to a record and transcript at public expense.

Do you understand each of these rights to appeal? Yes No

Do you want to remain in the county jail ten (10) days before being taken to the place of confinement? ~~Yes~~ No

Have you fully understood the questions that have been asked? Yes No

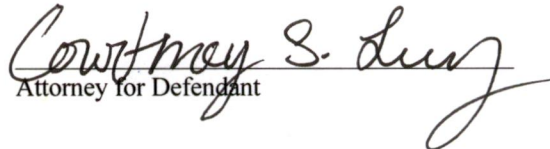
Have your answers been freely and voluntarily given? Yes No

I ACKNOWLEDGE UNDERSTANDING OF RIGHTS AND SENTENCE IMPOSED.



DEFENDANT

I, the undersigned attorney, have advised the Defendant of his appellate rights.



Attorney for Defendant

Done in open Court, with all parties present, this 29 day of December 2021.

Court Reporter Present



Judge of the District Court

Deputy Court Clerk

ADDENDUM "A"
CERTIFICATE OF DEFENSE COUNSEL

As the attorney for the defendant, James Capps, I certify that:

1. The Defendant has stated to me that he/she is (able/unable) to read and understand the attached form, and I have:
(check appropriate option)

determined the Defendant is able to understand the English language.

determined the Defendant is unable to understand the English language and obtained _____
to interpret.

2. I have read and fully explained to the Defendant the allegations contained in the Information in this case.

3. I have read and fully explained to the Defendant all of the questions in the Plea of No Contest/Summary of Facts and the answers to the questions set out in the Summary of Facts are the Defendant's answers.

4. To the best of my knowledge and belief the statements and declaration made by the Defendant are accurate and true and have been freely and voluntarily made.

Dated this 29 day of December, 2021.

Courtney S. Long
Attorney for the Defendant