
**FORT PECK COURT OF APPEALS
ASSINIBOINE AND SIOUX TRIBES
FORT PECK INDIAN RESERVATION
POPLAR, MONTANA**

FORT PECK ASSINIBOINE AND SIOUX TRIBES.
Plaintiff/Appellee.

vs.

Appeal No. 057

JODY HOWARD,
Defendant/Appellant.

THIS APPEAL is from the Fort. Peck Tribal Court. Assiniboine and Sioux Tribes. Fort Peck Indian Reservation. Poplar. Montana. Judge Violet E. Hamilton presided.

FOR APPELLANT: Clayton Reum, Lay Counselor, 821 6th Ave. So.. Wolf Point. Montana 99201.

FOR APPELLEE: Emmett Buckles. Tribal Prosecutor, P. O. Box 1027. Poplar. Montana 59295.

CRIMINAL: FAILURE TO HOLD HEARING IN OPEN COURT PURSUANT TO (I CCOJ 602(b) 15 A DENIAL OF DUE PROCESS; FAILURE TO PERMIT TO CONFRONT WITNESSES, CROSS-EXAMINE, AND PRESENT EVIDENCE IS A VIOLATION OF AN INDIVIDUAL'S ICRA RIGHTS; PROCEEDINGS MUST BE RECORDED; AND TWO JUSTICES MAY HEAR ARGUMENTS AND RENDER DECISIONS.

ARGUED: SEPTEMBER 16, 1988. DECIDED: SEPTEMBER 16, 1988.

OPINION by Arnie A. Hove. Chief Justice, Joined by Gary James Melbourne, Justice.

APPELLANT WAS DENIED DUE PROCESS UNDER II CCOJ 602(b) AND APPELLANT'S RIGHTS UNDER THE ICRA WERE VIOLATED. THIS MATTER IS REMANDED TO TRIBAL COURT FOR A HEARING IN ACCORDANCE WITH THIS OPINION AND APPELLANT ES TO RECEIVE 15 DAYS CREDIT FOR TIME SERVED IN THE EVENT ANOTHER SENTENCE IS IMPOSED. THE HEARING SHALL BE HELD WITHIN THIRTY (30) DAYS FROM THE DATE OF THE FILING OF THIS OPINION AND NOTICE OF THE SAME TO THE TRIBAL COURT.

On February 8, 1988, Appellant was found guilty of having violated III CCOJ 214(d), Neglect of child. Appellant was sentenced to one year probation.

On June 10, 1988, Judge Hamilton issued an order directing the Appellant to show cause why he should not be found guilty of contempt pursuant to Ill CCOJ 410. On June 15, 1988, Appellant was arrested pursuant to a Warrant to Apprehend issued by Judge Hamilton. On June 15, 1988, Appellant was found guilty of criminal contempt and ordered to the Spotted Bull Treatment Center for a period of thirty-one (31) days and one (1) year of follow-up. A Notice of Appeal and Request for Waiver of Court Costs was filed June 30, 1988. A Motion for Stay of Sentence Pending Appeal was signed and filed July 1, 1988.

Appellant presented the following issue on appeal:

WHETHER THE DEFENDANT' S RIGHTS UNDER THE INDIAN CIVIL RIGHTS ACT WERE VIOLATED WHEN SHE WAS FOUND GUILTY OF ORDER TO SHOW CAUSE CONTEMPT.

This Court will also address the issue of whether two Justices can proceed and hear oral arguments by its own order or by stipulation of the parties. Before addressing Appellant's issue, this Court will address its own issue in the following.

I.

This Court is to be composed of one chief justice and two associate justices. In Tribes vs. Lilley, Appeal No. 055 (September 16, 1988) and Tribes vs. Onstad, Appeal No. 056 (September 16, 1988), this Court determined that two justices could hear arguments and render decisions.

It is the position of this Court that two justices may hear oral argument and render a decision in this matter, since, it is in the interest of justice or of expediting decision that oral arguments not be delayed herein. Before proceeding with oral argument, the parties were asked to stipulate to only two justices hearing this matter and rendering a decision. The parties so stipulated.

II.

In answering Appellant's issue, Appellant's rights under the ICRA were violated. Appellant's ICRA rights she alleged were violated were as follows:

- a. Right to confront witnesses;
- b. Right to cross-examine;
- c. Right to present evidence; and
- d. Right to due process under II CCOJ 602(b).

The discussion below will address Appellant's allegations and whether the file and transcript or recording reflects and supports the Appellant's allegations of violations of ICRA rights and denial of due process under II CCOJ 602(b).

This Court has received the tribal court file which did not contain a transcript or recording of the hearing held on the probation violation. The lack of a transcript or recording makes it extremely difficult for this Court to review any matter on appeal and determine if Appellant was denied due process or there is a violation of her individual ICRA rights. This Court will still address each right set forth herein based on the tribal court file.

As for the right to confront witnesses, cross-examine and present evidence, TI CCOJ 602(b) governs hearing-s on violations of conditions of probation. This section reads,

"If any person violates the terms and conditions of probation, the Court may, after giving- him notice and the opportunity for a hearing in open court, revoke or alter the terms of his probation, and may, as a penalty for violation of the probation, impose an additional fine or imprisonment."

This section does provide an individual the opportunity for a hearing in open court. This Court can not determine whether Appellant was given an opportunity to confront witnesses, cross-examine or present evidence. As discussed above, there exists no transcript or recording- of the proceeding-s. A transcript or recording- of a probation violation hearing- is important and to be made available to the parties and this Court in the event of an appeal. A transcript or recording- is also vital to insuring that tribal courts are affording- individuals due process and protecting- an individual's ICRA rights.

Because of the allegations of Appellant and lack of a transcript or recording, this Court will have to find Appellant was not advised or permitted to exercise her right to confront witnesses, cross-examine, or present evidence. In addition, this Court will have to find that Appellant was denied due process under II CCOJ 602(b).

Therefore, Appellant was deprived of her liberty for an alleged violation of II CCOJ 602(b) without due process of law and in violation of her rights under the ICRA. Before leaving- this issue, the Court will again refer the tribal prosecutors and judges to Tribes vs. Onstad, Appeal No. 056 (Sept. 16, 1988) wherein was discussed the procedure presently used by the tribal judges, prosecutors and clerks in handling probation violations under [I CCOJ 602(b) and giving direction as to proper procedure. Probation violations under TI CCOJ 602(b) should be handled as directed in Onstad and not handled as new charges under III CCOJ 410, Criminal contempt.

APPELLANT WAS DENTED DUE PROCESS UNDER II CCOJ 602(b) AND APPELLANT'S RIGHTS UNDER THE ICRA WERE VIOLATED. THIS MATTER IS REMANDED TO TRIBAL COURT FOR A HEARING IN ACCORDANCE WITH THIS OPINION AND APPELLANT IS TO RECEIVE 15 DAYS CREDIT FOR TIME SERVED IN THE EVENT ANOTHER SENTENCE IS IMPOSED. THE HEARING SHALL BE HELD WITHIN THIRTY (30) DAYS FROM THE DATE OF THE FILING OF THIS OPINION AND NOTICE OF THE SAME TO THE TRIBAL COURT.

DONE this day of November, 1988.

BY THE COURT OF APPEALS:

Arnie A. Hove, Chief Justice

Gary James Melbourne, Justice