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

IN THE CUSTODY OF
TERESA LYNN OLSON
(Levi Olson--Writ)

Appeal No. 157

THIS MATTER came before the Appeals Court on a Petition for Writ of Habeas Corpus; the Court held a hearing on said Petition for Writ of Habeas Corpus on July 17, 1992. The issue on oral argument was limited to whether the medical needs of Levi Olson Sr. could be met at the BIA/Tribal jail facility at Poplar, Montana.

Levi Olson, Sr. appeared in person and with counsel, Mary Zemyan, Attorney at Law, Wolf Point, Montana.

Gary M. Beaudry, Attorney at Law, Tribal Special Prosecutor, appeared on behalf of the Fort Peck Tribes.

The Court having considered the testimony of the parties, the evidence presented and the argument of counsel, finds the following:

FACTS

1. Levi Olson, Sr. was ordered to be confined in the BIA/Tribal Jail, Poplar, Montana pending an evaluation in a pending civil matter.

2. Levi Olson, Sr. was released from the Jail facility after filing the Writ of Habeas Corpus, to be transferred to Poplar Community Hospital. The release order was subsequently modified since there was no medical reason for hospitalization. He was ordered released pending hearing hereof, with certain conditions of release.

3. Counsel for Levi Olson, Sr. alleged as primary basis for the Petition for Writ of Habeas Corpus that "Levi Olson, Sr. is a paraplegic and has certain medical needs that cannot be properly met in the confines of the BIA/Tribal Jail." REF. Petition dated June 23, 1992.

4. The medical evidence offered at the hearing was the medical record of Levi Olson, Sr., specifically the PCC Ambulatory Encounter Record, a chart review by Dr. Comma, Indian Health Service, on July 17, 1992. The review concludes "No contraindication to jail per safety issue. Do recommend privacy for toileting." REF. PCC Ambulatory Encounter Record.

5. Levi Olson, Sr. testified on his own behalf as to the problems he encountered with his physical needs while incarcerated at the BIA/Tribal Jail.

OPINION

1. The issue before the Court is whether the medical needs of Levi Olson, Sr. can be met at the BIA/Tribal Jail facility at Poplar, Montana.

2. The uncontroverted medical evidence offered at the hearing showed that the medical needs of Levi Olson, Sr. can be met at the Poplar Jail facility.

3. The evidence and testimony at the hearing indicated some physical inconveniences and deficiencies to Levi Olson, Sr. while incarcerated, but did not show that his medical needs were unmet while at the facility.

It is the opinion of this Court that the medical needs of Levi Olson, Sr. can be met at the BIA/Tribal Jail facility at Poplar, Montana.

The Court would note that the issue at hand is moot in that Levi Olson, Sr. has been released from the Jail during this proceeding.

DATED this _____ day of September, 1992.

BY THE COURT OF APPEALS:

GERARD M. SCHUSTER, CHIEF JUSTICE

FLORENCE YOUPEE, ASSOCIATE JUSTICE

Associate Justice, Debra A. Johnson dissents and may issue a separate dissenting opinion.

DEBRA A. JOHNSON, ASSOCIATE JUSTICE