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

**LLEWELLYN EAGLE,
Petitioner/Appellant**

vs.

Appeal No. 210

**FORT PECK TRIBES
Defendant/Appellee**

O P I N I O N

This is an appeal from a judgment issued by the Honorable Leland Spotted Bird on March 2, 1994 sentencing LLEWELLYN EAGLE to thirty days in the Tribal jail for violation of Title IX CCOJ Section 107 (a). Sentence was stayed by this Court on March 11, 1994 pending this appeal.

Justice Sullivan writes the following opinion for the majority of the court, Chief Justice Beaudry writes a separate dissenting opinion.

STATEMENT OF THE CASE

Defendant/appellant LLEWELLYN EAGLE (herein "appellant") was charged on October 4, 1993 with violating Title IX CCOJ, Section 107 (a), "Driving a motor vehicle while under the influence of intoxicating liquor or drugs". Having been arraigned on October 4, 1993 and entering a plea of "not guilty" and after trial in the matter was continued on two occasions, Appellant entered a plea of "guilty" on March 2, 1994. The Court's minutes for March 2, 1994 reflect that appellant was being charged with two (2) prior convictions, with the plea of "guilty" to the instant charge constituting the third conviction. The Tribal Court pronounced a "thirty days - flat" jail sentence, ostensibly due to the two (2) priors. The original charging documents do not reflect the two (2) prior convictions and it is not known whether appellant was advised that the prior convictions would be used as enhancements for sentencing. Appellant was ordered to report to the Tribal Jail on March 7, 1994 at 8:00 a.m.

to begin serving his sentence. This appeal and a request for stay was filed timely by the appellant on March 7, 1994. On March 11, 1994 this Court, per Chief Justice Beaudry, issued its Order releasing the appellant from jail and staying execution of the sentence pending this appeal.

ISSUES RAISED BY APPELLANT

Appellant cites two (2) issues giving rise to this appeal:

1. Whether Title IX CCOJ Section 107 (c) mandates a thirty (30) day jail sentence for a third conviction of "driving under the influence" regardless of whether the third conviction was within one (1) year of the first conviction? and

2. If Title IX CCOJ Section 107 (c) does mandate a thirty (30) day jail sentence regardless of the time span between the third conviction and the first conviction, is it in conflict with Title II CCOJ 601 (f) and 25 U.S.C. Section 1302?

We hold that Section 107 (c) does not mandate a thirty (30) day jail term for a third conviction **unless** the third conviction was within one (1) year of the first such conviction. therefore it is not necessary to reach appellant's second issue.

STANDARD OF REVIEW

Our task is to interpret and apply Section 107 (c) of Title IX CCOJ. Title I CCOJ Section 201 provides: "The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgment of the Tribal Court. The Court of Appeals shall review **de novo** all determinations of the Tribal Court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence". Such interpretation presents a question of law which is subject to de novo review. In making such interpretation it is this Court's burden to first ascertain the intent of the Tribal Council in order to ensure that we effectuate the purpose of the law. (Brown v. Superior Court (1984) 37 Cal.3d 477, 484 [208 Cal. Rptr. 724, 691 P.2d 272].) Every section of the CCOJ should be construed and applied "with reference to the whole system of law of which it is a part so that all may be harmonized and have effect." (Travelers Indemnity Co. v. Gillespie (1990) 50 Cal.3d 82, 100 [266 Cal.Rptr. 117, 785 P.2d 500]; Select Base Materials v. Board of

DISCUSSION

Title IX CCOJ Section 107 (c) states:

“Any person who is convicted of a violation of this Section is guilty of a Class A misdemeanor, except that the fifth (5th) and subsequent convictions **within one (1) year of the first (1st) such conviction** shall be felonies. In addition to the penalties prescribed, the Court in its discretion may suspend such person’s right to operate a motor vehicle for a period of not to exceed one (1) year.

On the second (2nd) and subsequent convictions under this Section **within one (1) year of the first (1st) such conviction**, the Court must suspend the defendant’s right to operate a motor vehicle for at least thirty (30) days. On the third conviction the Court must impose a penalty of at least thirty (30) days imprisonment. On the fourth (4th) conviction, the judge must impose a penalty of at least sixty (60) days imprisonment. On the fifth (5th) conviction and any subsequent convictions, the Court must impose a sentence of at least six (6) months imprisonment.” (emphasis added)

While appellant does not expressly attack the statute as vague and ambiguous, such a contention is implicit in his argument. We agree with appellant that the statute is vague and ambiguous on its face and thus requires judicial interpretation.

The question posed by construction of this section is whether the Tribal Council intended to omit the time frame of “within one (1) year of the first (1st) such conviction” thus imposing mandatory sentences for the third (3rd), fourth (4th), fifth (5th) and subsequent convictions without regard to the period within which the convictions arose, or should the section be construed to read “within one (1) year of the first (1st) such conviction” for the third (3rd), fourth (4th), fifth (5th) and subsequent convictions?

The first paragraph categorizes convictions of this section into Class A misdemeanors and felonies. It is clear that all convictions of this Section are misdemeanors **except** the fifth (5th) and subsequent convictions which occur **within one (1) year of the first (1st) such conviction**. The fifth (5th) and subsequent convictions

which occur **within one (1) year of the first (1st) such conviction** are felonies. The first paragraph also allows the Court to suspend the defendant's right to operate a motor vehicle for a period not to exceed one (1) year.

In the second paragraph, the Court is given a mandate to suspend the defendant's right to operate a motor vehicle for at least thirty (30) days where the defendant has one or more prior convictions **within one (1) year of the first such conviction**. In the very next sentence a mandatory 30 day imprisonment is imposed for a third (3rd) conviction, however, the time frame of "within one (1) year of the first (1st) such conviction" is missing. In the next sentence, a mandatory imprisonment of sixty (60) days is imposed for a fourth (4th) conviction, however, once again, the time frame of "within one (1) year of the first (1st) such conviction" is missing. The paragraph concludes with a mandatory imprisonment of six (6) months for the fifth (5th) and subsequent convictions, without any reference to a time frame within which the offenses must occur. Thus, on the face of this statute, it would appear that the Tribal Council's intent was to impose progressively more severe penalties for repeat offenders of this Section by mandating that the Tribal Court suspend for thirty (30) days the driving privilege of repeat offenders on the second (2nd) and subsequent convictions **which occur within one (1) year of the first (1st) such conviction**, impose imprisonment for the third (3rd) conviction (30 days), fourth (4th) conviction (60 days) , fifth (5th) and subsequent convictions (6 months).

It is without question that the Tribal Council has the absolute right and full authority to deal with the everyday matters of those within the exterior boundaries of the Fort Peck Reservation. That the Tribal Council has a keen interest in protecting its' citizens and visitors from the carnage visited upon them by drunk drivers is equally without question. This Court assumes no right, and indeed, has no right, to presume to tell the Tribal Council how to go about its' responsibilities. Neither does this Court assume the right to replace its' judgment for that of the Tribal Council. This Court's responsibility is to interpret the statute to properly construct the words and phrases of the Tribal Council and to render clarification, if necessary. Where the Tribal Council's intent is so apparent from the face of the statute that there can be no question as to its meaning, there is no room for construction thereof, and this Court will follow the "rule of literal interpretation" in applying the words of the statute and not indulge in rendering its' own interpretation. On the other hand, if the meaning of the words of a statute (and thus the intent of the Tribal Council) can only be determined with reference to the context in which the words are used; that is, with reference to such purpose as may be discerned from examining the entire enactment of which the words are part, then this Court has the duty to render a judicial interpretation. Thus, the objective sought to be achieved by a statute, as well as the evil to be prevented, is of prime consideration. This

Court In interpreting a statute, will apply to the words and phrases of the statute, their plain, ordinary and commonly understood meaning, and consideration will also be given to the ordinary sense of statutory words, the context in which they are used, and the purpose which prompted their enactment. In applying these rules, if a plain reading of a statute fails to resolve the question, this Court will render its' interpretation and construction of the Statute to clarify and effectuate the intent of the Tribal Council.

As noted earlier, Section 107 (c) **appears** to provide for progressively more severe penalties for repeat offenders of that Section. Unfortunately, the "plain reading" and a literal interpretation thereof would thwart this objective and leave Section 107 (c) seriously flawed.

We note that many statutes will have a certain amount of vagueness simply because of the ambiguity in the English language. Authors and wordsmiths are the first to acknowledge that the English language is not a paradigm of precision. However, in the instant case we struggle not so much with imprecise terms but with the absence of a phrase which would clarify the Tribal Council's intent. Fortunately, when read in view of its' full context and with the benefit of another section of the CCOJ, light can be cast on the proper construction of this statute.

Did the Tribal Council intend that the third (3rd) conviction would bring a thirty (30) day imprisonment **regardless** of when it occurred in relation to the first (1st) conviction? The plain reading of the statute would suggest just that inasmuch as the qualifying phrase "**within one (1) year of the first (1st) such conviction**" does not appear in the sentence. Nor does it appear anywhere else **thereafter**. Thus, a strong argument could be made to support the contention that the Tribal Council's intent was to mandate an imprisonment term for the third (3rd), fourth (4th), fifth (5th), and subsequent convictions. So, the argument goes on: if the Tribal Council wanted to limit the mandated jail sentences they could have done so by **including** that qualifying phrase. They did not, therefore, **arguendo** it was their intent to impose the mandatory jail sentences without regard to the time frame of the subsequent convictions.

However, there is a disturbing result in the application of that "literal interpretation". Specifically, the fifth (5th) and subsequent convictions mandate a six (6) months' jail term. The statute also defines the fifth (5th) and subsequent convictions **within one (1) year of the first (1st) such conviction** as felonies. Title III CCOJ Section 501[1] provides for a maximum of three months' imprisonment for Class A misdemeanors (sub-section {2}) and for a maximum of one years' imprisonment for felonies (sub-section {1}). Thus, in order to impose a six

months' imprisonment to the fifth (5th) and subsequent convictions, the offense must be a felony and if the fifth (5th) and subsequent convictions are felonies, by definition within Section 107 (c) itself, the fifth (5th) and subsequent convictions must be **within one year (1) of the first (1st) such conviction.** Thus, the intent of the Tribal Council must have been to include the "qualifying phrase" with regard to the fifth (5th) and subsequent convictions. If this were not so, and if this statute is literally interpreted, a third (3rd) conviction, regardless of the time span from the first (1st) such conviction, would carry a mandatory thirty (30) day jail sentence, whereas the fifth (5th) and subsequent convictions, regardless of the elapsed time from the first (1st) such conviction, would not carry any mandatory jail sentence whatsoever! In that case, not only would Section 107 (c) be in serious conflict with Title III, Section 501, but it would thwart the intended purpose of the Tribal Council to impose progressively more severe penalties for repeat offenders. Therefore, we conclude that it was the intent of the Tribal Council to impose a **mandatory** term of imprisonment **only when the third (3rd), fourth (4th), fifth (5th) and subsequent convictions are within one (1) year of the first (1st) such conviction.** This is the only interpretation of Section 107 (c), which allows it to be consistent with Title III CCOJ Section 501. It should be noted that we **do not hold** that the Tribal Court cannot sentence a third time offender, whose third offense is beyond the one-year time frame from the first offense, to a thirty day minimum jail sentence. In such case the Tribal Court may, in its' discretion and following the guidelines set forth in Title II CCOJ Section 601, sentence the offender **up to a maximum of three (3) months.** All that we do say in this opinion is that pursuant to Section 107 (c) a minimum jail sentence is not **mandated.**

With today's holding, we now look to the application of this section to the appellant. First, it should be noted that regardless of the interpretation of Section 107 (c), the Tribal Court, in its' discretion, could have sentenced appellant up to a maximum of three (3) months. The Tribal Court is guided by Title II CCOJ Section 601 and has wide discretion within its' framework. Under no circumstances will this Court substitute its' judgment for the Tribal Court's judgment, and the Tribal Court's judgment of sentencing will only be set aside when there has been clear legal error, or when, in our opinion, the Tribal Court rendered its' judgment under a mistaken impression as to the interpretation of the law. Our record fails to reveal whether the Tribal Court was under the impression that Section 107 (c) mandated thirty (30) days imprisonment when it imposed its' sentence upon the appellant. The appellant, through his attorney, believes this to be the case. (see Appellant's brief, page 1 @ lines 24 - 25.) If so, this Court would remand to the Tribal Court for review of its' sentencing order and consider whether re-sentencing, in light of this opinion, would be necessary. However, it is not necessary for us to know the state of mind of the Tribal Judge in this particular matter because there is yet another issue which, in

connection with the possible “mistaken impression” issue, warrants this case to be remanded for review of the sentencing order and the Court raises this issue ***sua sponte***.

As stated earlier in this opinion (see Statement of the Case, supra), the original complaint does not include the two (2) prior convictions. It is assumed that somewhere in the procedure the Tribal Court became aware of these prior convictions since they appear on the Court’s minutes for March 2, 1994 when appellant was sentenced. Our record does not reveal whether appellant was advised that these two (2) priors would be used to enhance his sentence before he entered his plea of guilty. Although we view this “possible” failure as harmless error inasmuch as the Tribal Court could have reached the same judgment when it sentenced the appellant to thirty (30) days imprisonment with or without the enhancements, we think that the “keen sense of fair play” we spoke of in **Payne v. Payne, FPCOA #212 (@p. 4)** warrants at least a review of the Tribal Court’s sentencing order. Accordingly, we remand this matter to the Tribal Court for its’ review of the sentence imposed, and to determine whether, in the judgment of the Tribal Court, a new and different sentence is warranted. It is so ordered.

Entered this day _____ of August, 1995.

BY FORT PECK COURT OF APPEALS

GARY P. SULLIVAN

Associate Justice

CONCUR:

GERARD M. SCHUSTER

Associate Justice

Chief Justice Beaudry dissenting:

Interpretation of a statute must be reasonable. The majority here construes the statute to mean something it cannot. I would hold that section 107 does not require the third conviction of the defendant occur within one (1) year of the first such conviction in order to impose a penalty of at least thirty-days imprisonment. The Tribal Executive Board did not codify such a requirement and to interpret the statute as such would initiate the practice of judge made law. My interpretation of the statute is literal.

Title III Section 501 gives a clear direction as to penalties and read together with Section 107 there is no conflict. According to Section 501 the maximum penalty for a felony is one (1) year imprisonment, the statute does not state what the Court can impose for a minimum term of imprisonment for felonious crimes.

Section 107 states clearly that if the 5th and subsequent convictions occur "within one (1) year of the first (1st) such conviction" the penalty imposed shall be a felony. The term of the penalty is not stated.

The statute addresses those violations which do not occur within one year of the conviction and imposes specific penalties for such convictions. According to Section 107 the second, third and fourth convictions are Class A misdemeanors and under Title III Section 501 the maximum penalty is three months imprisonment.

In this case the issue is the 3rd conviction, thus we need not answer the question of the 5th and subsequent convictions.

I would affirm the decision, for the reason that it appears that the Tribal Court interpreted the statute literally and consistent with the intent of the Tribal Executive Board.

Dated this ____ day of August 1995.

FORT PECK COURT OF APPEALS

BY _____

GARY M. BEAUDRY

Chief Justice

[1] Title III CCOJ, Section 501 states: "Penalties. Offenses are divided into three (3) classes, which are denominated and subject to maximum penalties, as follows: (1) Felony, for which a maximum penalty of one (1) years' imprisonment, a fine of five thousand dollars (\$5,000.00), or both, may be imposed, (2) Class A misdemeanor, for which a maximum penalty of three months' imprisonment, a fine of five hundred dollars (\$500.00), or both, may be imposed. ...
