

IN THE CRIMINAL APPELLATE PANEL OF THE TRIBAL COURT OF THE
CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD
RESERVATION, PABLO, MONTANA 59855

CONFEDERATED SALISH AND KOOTENAI TRIBES,)	
Appellee,)	Cause No. AP 94-365-CR
)	
vs.)	Opinion
)	
KEVIN KICKING WOMAN,)	
Appellant.)	

An Appeal taken from the
Trial Court of the Confederated Salish
and Kootenai Tribes (Criminal)
94-365-CR, Hon. Acevedo, J.

Argued and Decided: December 13, 1994
Before HALL, LOZAR, and MORAN, Criminal Appellate Court

For Appellant: Pamela McDonald, Adv. Tribal Public Defender
Appellee: Susan Firth, Esquire, Tribal Prosecutor

WRITTEN OPINION
by MORAN, CJ

INTRODUCTION AND STATEMENT OF THE CASE

The Appellant, Kevin Kicking Woman, an Indian Person, was cited by Tribal Officer Vernon Fisher for Operating a Vehicle Without Proof of Liability Insurance, in violation of Section 61-6-302, M.C.A., and operating a motor vehicle with Expired Registration, in violation of Section 61-3-315, M.C.A. where both such sections of the Montana Code Annotated have been incorporated into the Tribal Law and Order Code, Chapter IV, Section H12. The Appellant was cited on August 16, 1994 while driving a vehicle within the exterior boundaries of the Flathead Indian Reservation, Montana. Mr. Kicking Woman entered a plea of guilty to both charges on September 7, 1994 and thereafter was sentenced to a monetary fine of \$250.00 to be paid within six months for the offense of Operating a Motor Vehicle Without Proof of Liability Insurance and a fine of \$50.00 for operating a motor vehicle with Expired Plates, which latter fine of \$50.00 was suspended.

ISSUE

The only issue presented to this appellate court was whether the trial judge abused his

discretion when he sentenced the defendant to a \$250.00 fine without any portion suspended for violation of the statute prohibiting the operation of a motor vehicle on the highways within this jurisdiction without liability insurance coverage.

The court heard oral argument of counsel in the above entitled appeal after having received timely briefing in the matter. The Court is therefor thoroughly advised of the law and facts surrounding this appeal.

ANALYSIS

It is a well settled principle of criminal law that trial courts possess certain discretionary powers in sentencing criminal defendants. The limitations imposed are contained in statutory authorities. In most instances as here, misdemeanants are sentenced from a statutory scheme wherein the trial judge is provided a minimum and maximum sentence legislatively determined to fit a particular crime. The Law and Order Code, Chapter III, K3, d reads:

- d. a monetary fine in an amount not to exceed the maximum permitted under the charged offense, but in no event shall the fine exceed \$5000.00 per offense.

The preceding language set a high monetary limit for the sentencing trial judge. In the instant case a fine of \$250.00 was levied against the offender pursuant to further limitation imposed on the sentencing judge by Chapter IV, Section H12 of the Tribal Law and Order Code and is clearly below the high limit of \$5000.00 per offense and within the range left to the discretion of the sentencing trial judge. Chapter IV, Section H12 incorporates the Montana Code Annotated, Section 61-6-304 as follows:

"(2) Conviction of a first offense under 61-6-301 through 61-6-304 is punishable by a fine of not less than \$250.00 or more the \$500.00 or by imprisonment --- for not more than 10 days or both.

(4) The court may suspend a required fine only upon a determination that the offender is or will be unable to pay the fine."

No showing of indigency was made and therefore the exception to the statutory authority was not applicable. If the sentencing trial court judge would have imposed a sentence of less than the minimum sentence prescribed by the statute his discretion would be subject to attack no less than if he had exceeded the maximum sentence as provided for in the statutory authority. For the reasons stated, we find that the sentencing judge did not exceed his discretionary sentencing authority in this matter.

Judgment is affirmed.

Dated this 14th day of December, 1994.



Wm. Joseph Moran
Wm. Joseph Moran, CJ
Chair, Criminal Appellate Court