

**FORT PECK COURT OF APPEALS
ASSINIBOINE & SIOUX TRIBES
WOLF POINT, MONTANA**

IN THE MATTER OF:

FORT PECK ASSINIBOINE AND)	
SIOUX TRIBES,)	
)	
Plaintiff/Appellee,)	Cause No. <u>435</u>
)	
-vs-)	
)	OPINION AND ORDER
KERRI COMES LAST,)	
)	
Defendant/Appellant.)	

This matter comes from an appeal of an Order dated June 21, 2005 issued by the Honorable Judge Richard Jackson. The Order revoked the probation of Appellant, Kerri Comes Last, and invoked the original 90-day sentence. The underlying charge was Child Abuse/Neglect. The original sentence was 90 days jail time, suspended for 1 year on conditions.

Appearances:

Kerri Comes Last appeared pro se, accompanied by her mother, Linda Comes Last. Linda Comes Last filed the Notice of Appeal and Brief on behalf of Kerri Comes Last, and this Court allowed oral argument by Kerri Comes Last only, since Linda Comes Last is not admitted to practice before the Fort Peck Tribal Court.

Imogene A. Lilley, Tribal Prosecutor, appeared on behalf of the Fort Peck Tribes. She filed a Brief in response to the Notice of Appeal, and argued orally on behalf of Fort Peck Tribes.

APPEAL ISSUES

The basic issue on appeal was whether the factual determinations of the Tribal Court were supported by substantial evidence.

A secondary issue was as to service of notice of the hearing.

Another issue was whether Appellant's mother could appear in court proceedings on behalf of Appellant.

OPINION AND ORDER

The judgment of the Tribal Court is affirmed.

STANDARD OF REVIEW

The Fort Peck Court of Appeals shall not set aside factual determinations of the Tribal Court if such determinations are supported by substantial evidence.
II CCOJ § 202

FACT OVERVIEW

A hearing was held in the Fort Peck Tribal Court on a Petition to Revoke the Probation of Kerri Comes Last. The hearing was set by Order to Show Cause and was duly scheduled before the Court with service upon the appropriate parties. The hearing was held on June 21, 2005, Hearing Transcript (HT) page 1 et seq.

There was a question as to whether Kerri Comes Last, Appellant, had been properly served with Notice of Hearing of the Petition to Revoke Probation, HT pages 2, 3. At oral argument, this Court found that Appellant had notice of the hearing, identified by case number on the Notice documents. We find that service of process was properly made in the matter.

At the Show Cause Hearing, the Tribes presented witnesses, who testified as to Appellant's actions and failure to comply with terms of probation, HT page 16 et seq. There was no cross-examination of the witnesses for the Tribes.

Appellant called her mother, Linda Comes Last, as a witness. Appellant also testified briefly, HT, page 23.

At the conclusion of the hearing, Judge Jackson revoked probation, with credit for in-patient alcohol treatment, HT, page 25.

DISCUSSION

As to the notice issue presented, the Court finds that Appellant did have proper notice of the probation revocation hearing. Although there was some confusion on her part as to the nature of the hearing, the notice provided a case number. Appellant, even if appearing pro se, has an obligation to be prepared for the matter before the Court.

Further, the CCOJ is clear as to who can serve as attorney or lay counselor in the Fort Peck Tribal Court. Appellant's mother, Linda Comes Last, did not meet the qualification requirements of attorney or lay counselor as set forth in CCOJ § 501, and therefore could not represent her daughter in court proceedings.

As to the basic issue, the issues of fact upon which the Order was made are all supported by substantial evidence. The Tribes' witnesses and their testimonies at the Show Cause Hearing were not questioned or refuted.

CONCLUSION

This Court finds no basis on which to set aside the Court's Order, and it is therefore the Order of this Court that the Judgment of the Tribal Court is affirmed.

DATED this 11 day of January, 2007.

FORT PECK COURT OF APPEALS

By: Brenda C Desmond
BRENDA DESMOND, Chief Justice

Joseph Raffiani JR
JOE RAFFIANI, Associate Justice

Gerard M. Schuster
GERARD M. SCHUSTER, Associate Justice