

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

FORT PECK TRIBES.)	
)	
Plaintiff/Appellant,)	Cause No. <u>500</u>
)	
-vs-)	
)	OPINION AND ORDER
T. M.,)	
(D.O.B. 11/02/1990))	
)	
Defendant/Appellee.)	
)	

Appearances:

Mary Lou Azure, Prosecutor, P.O. Box 1027, Poplar MT 59255, Counsel for Fort Peck Tribes, Plaintiff/Appellant.

Erin Shanley, Public Defender, P.O. Box 1027, Poplar, MT 59255, Counsel for Defendant/Appellee T.M.

On January 22, 2008 Appellant Fort Peck Tribes filed a Petition alleging T.M., a youth under the age of 18, had committed delinquent offenses within the meaning of the Fort Peck Tribes Comprehensive Code of Justice (“CCOJ”) Title IX Section 102(g) with the underlying offenses of Rape and Unlawful Possession of Dangerous Drugs With Intent to Sell, in violation of CCOJ Title VII Sections 220 and 413-B. The youth appeared in Court on January 22, 2008 with his Mother.

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He was not represented by legal counsel. However the transcript shows that the presiding Judge clearly explained his rights to him and his Mother. The youth admitted to the charge involving drugs and denied the Rape charge. Sentencing for the drug charge was postponed until after the fact-finding hearing on the other charge, set for February 26, 2008.

On January 26, 2008, at the request of the Tribes, the Rape charge was dismissed with prejudice. On January 28, 2008, at the dispositional hearing on the remaining charge, T.M. was sentenced to 180 days in the Juvenile Detention Center with all time suspended for probation. Following the hearing, the Youth obtained the services of the Public Defender's Office.

On January 29, 2008, the youth filed a Motion to withdraw his plea to the drug offense. The Tribes objected, relying on procedural rules applicable to adults. Following a hearing, on February, 2008, the Court granted the youth's Motion to withdraw his plea.

The Court held that the interests of justice and fairness, within the meaning of CCOJ Title VI, Section 403 would be upheld by allowing the youth to withdraw his plea, primarily because the Court has a duty to uphold civil rights and the Court saw no harm or bias in allowing the withdrawal. The Court was influenced by allegations concerning the validity of seizure of the drugs at the time the youth was

taken into custody and noted that the allegations could only be addressed in a fact finding hearing.

We find no error in the Court's exercise of its discretion in this youth.

IT IS NOW, THEREFORE, THE ORDER OF THIS COURT THAT:

The Judgment of the Tribal Court is affirmed.

DATED this 27 day of ~~April~~ ^{July}, 2009.

FORT PECK COURT OF APPEALS

By: Brenda Desmond
BRENDA DESMOND, Chief Justice

Joe Raffiani
JOE RAFFIANI, Associate Justice