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

FORT PECK ASSINIBOINE AND SIOUX TRIBES,
Plaintiff/Appellant,

vs.

Appeal No. 034

GEORGE RED STONE,
Defendant/Appellee.

THIS APPEAL is from the Fort Peck Tribal Court, Assiniboiné and Sioux Tribes, Fort Peck Indian Reservation, Poplar, Montana. Lawyer/Judge Julian H. Brown presided.

FOR APPELLANT: Emmett Buckles, Tribal Prosecutor, Poplar, Montana.

FOR APPELLEE: Ralph J. Patch, Attorney at Law, Wolf Point, Montana.

Appellant and Appellee filed no Briefs with the Clerk of the Fort Peck Tribal Court. At the time for oral argument, Appellant and Appellee presented oral argument.

OPINION by Arnie A. Hove, Chief Justice, joined by Daniel R. Schauer, Justice and Gary James Melbourne, Justice.

REMANDED TO TRIBAL COURT FOR ANY FURTHER PROCEEDINGS BROUGHT IN REGARD TO ALLEGED VIOLATIONS BY APPELLEE OF A PLEA AGREEMENT AND ORDER DATED DECEMBER 30, 1986.

On December 24, 1986, Appellee was charged with Resisting Arrest, in violation of Chapter III, Section 411, Simple Assault which is a violation of Title III, Section 215 and Driving Under the Influence, in violation of Title IX, Section 107 all of said offenses are Class A Misdemeanors under the Comprehensive Code of Justice of the Assiniboiné and Sioux Tribes (hereinafter CCOJ). On the aforementioned date, Appellant was alleged to have become abusive and combative with officers Roosevelt County Deputy Stevenson and BIA Officer McDonald during the booking in process at the BIA jail. Appellant was to have attempted to strike Officer McDonald in the chest area and had to be forcibly restrained and placed in a jail cell.

On December 30, 1986, a Plea Agreement and Order was entered into and signed by the Tribal Prosecutor, Appellant, and Appellant's Counsel and approved by the Judge of the Fort Peck Tribal Court, Violet E. Hamilton. In the agreement, the Appellant agreed to plead guilty to Simple Assault and Driving Under the Influence. The Tribal Prosecutor agreed to

recommend a fine of \$250.00 with Appellant to make payments of \$50.00 each payday until paid in full and probation of 90 days, conditioned upon the following:

- i) obey all federal, state and tribal laws;
- ii) abstain from the use of alcohol and non-prescription medications during the period of probation;
- iii) attend weekly AA meetings during the period of probation.

On February 13, 1987, the Tribal Prosecutor, Emmett Buckles, filed a Criminal Complaint charging Appellee with Criminal Contempt a violation of III CCOJ 410. In the Criminal Complaint, Tribal Prosecutor alleged that Defendant has failed to live up to the Agreement and has not been attending the required AA meetings.

On February 17, 1987, Lawyer-Judge Brown having found George Red Stone guilty of Criminal Contempt entered a Final Commitment which imposed a \$250.00 fine & 30 days in jail and an additional 15 days for violation of a Court Order by Fort Peck Tribal Lawyer-Judge Julian H. Brown. Appellee was to be released for work at 7:30 a.m. and returned to jail at 5 p.m. Appellee did begin serving the sentence at 6:00 p.m. on February 17, 1987.

On February 19, 1987, Appellee requested an alcoholism evaluation from Spotted Bull Treatment Center in compliance with the February 17, 1987 Order. Spotted Bull Treatment Center preferred to refer Appellee to Roosevelt County Alcoholism/ Drug Counselor Tom Konesfes. On February 19, 1987, a "Plan of George Redstone consisting of a statement by Appellee, a plan of activities which included Appellee's participation in community affairs and request to be released from the February 17, 1987 sentence was submitted to Lawyer-Judge Julian H. Brown. Judge Brown reduced the sentence of incarceration and fine to no more, on condition Appellee undergo alcoholism evaluation at 9:00 a.m. on February 20, 1987 with Tom Konefes, and that the results be provided to Judge Brown and cooperate fully in the evaluation process.

On February 20, 1987, Appellee did fully cooperate in the evaluation process and the results of the evaluation were provided to Judge Brown. On March 30, 1987 the probationary period of 90 days had expired and the \$250.00 fine had been paid in full from the December 30, 1986 sentence.

On February 23, 1987, the Tribal Prosecutor appealed the release of George Redstone. The Petition for Review based the grounds for the appeal on one (1) issue. The issue was as follows:

1. Whether Appellee violated his agreement and order signed by Judge Hamilton, Emmett Buckles, Prosecutor, George Red Stone, and Counsel Zemyan on December 30, 1986.

In Appellee's Brief, the following four (4) issues were presented.

1. Should the Fort Peck Court of Appeals allow an appeal on a criminal matter be granted under the provisions of a civil matter as specified by the Fort Peck Assiniboine/Sioux Comprehensive Code of Justice.
2. Should the Fort Peck Court of Appeals accept an improperly filed April 6, 1987 Brief, filed by the Fort Peck Tribal Prosecutor Emmett Buckles to explain the Tribes position, even

though it was filed in the wrong Court?

3. The February 19, 1987 Final Order or Judgment was a reduction of a sentence issued on February 17, 1987 as a result of the Appellee violating the conditions of the December 30, 1986 sentence. Should the Fort Peck Court of Appeals allow the Fort Peck Tribal Prosecutor to co-mingle sentences to win an appeal while suppressing the facts of the February 17, 1987 sentence from the Fort Peck Court of Appeals.

4. Should the Fort Peck Court of Appeals allow the Fort Peck Tribal Prosecutor to utilize discrediting the Appellee's participation in traditional Indian Religion, misrepresentation of the Spotted Bull Treatment Center letter of February 19, 1987 and the Appellee's previous concerns as to the extent of the Fort Peck Tribal Prosecutor's prosecution of individuals for not attending weekly AA meetings as the basis to alter the Final Order of Judgment of Fort Peck Tribal Acting Lawyer-Judge Julian H. Brown.

The only issue that will be addressed by this Court will be whether this Court has jurisdiction over this appeal.

I.

In criminal cases, the Tribes are given the right to appeal in certain circumstances. Title I, Section 205 of the Comprehensive Code of Justice of the Assiniboine and Sioux Tribes (hereinafter CCOJ) reads in part as follows:

"Right of Appeal.

(1) Criminal Cases. The defendant in a criminal case shall have an appeal as of right from a judgment of conviction. The Tribe shall have no right of appeal from a jury verdict of "not guilty" in criminal cases, but shall have a right of appeal from a judgment of "not guilty" rendered by the Tribal Court without a jury. Appeals in criminal cases shall be taken as provided in Section 206."

The Tribes filed a written notice of appeal which basically meets the requirements of I CCOJ 206. This court has jurisdiction of appeals as granted in I CCOJ 202. I CCOJ 202 reads in part as follows:

"Jurisdiction of Court of Appeals.

The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments 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...."

The Petition for Review gave the reason for the appeal as Appellee having violated his Plea Agreement and Order and Judge Brown releasing him from the terms of the agreement. Because of the above, this Court would have had jurisdiction since the Petition for Review indicated that the Appellee was released from the terms of the agreement by Judge Brown and in effect would have been a judgment of "not guilty" rendered by the tribal court without a jury.

After reviewing the pleadings, orders, and other documents filed in the case, it is clear that Appellee was not released from the terms of the December 30, 1986, Plea Agreement and Order but that the same had expired March 30, 1987. Furthermore, Appellee had complied with the terms of Judge Brown's sentence on the Criminal Contempt charge and fully cooperated in the evaluation process.

If the Tribal Prosecutor did not agree with the Judge Brown's February 19, 1987 Order and Appellee's release from the December 30, 1986 Plea Agreement and Order, he should have petitioned the Tribal Court for an order to show cause why the Appellee should not be made to serve the 90 days of the original Plea Agreement and Order or a clarification of the February 19, 1987 Order to Release if there was some misunderstanding between the Tribal Prosecutor and Judge Brown.

Upon reviewing the transcript, pleadings and other documents filed in the case, it was clearly erroneous and inappropriate to request an appeal to this Court and it was also clearly erroneous and inappropriate to grant an appeal. The Petition for Review was misleading. Appellants are hereby directed to make sure they have appropriate grounds for appeal and that those grounds are clearly set forth in their petition for review.

THEREFORE IT IS THE UNANIMOUS DECISION OF THIS COURT TO REMAND THIS MATTER TO TRIBAL COURT FOR ANY FURTHER PROCEEDINGS BROUGHT IN REGARD TO ALLEGED VIOLATIONS BY APPELLEE OF A PLEA AGREEMENT AND ORDER DATED DECEMBER 30, 1986.

DONE this ____ day of June, 1987.

BY THE COURT OF APPEALS:

Arnie A. Hove, Chief Justice

Gary James Melbourne, Justice

Daniel R. Schauer, Justice
