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

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FORT PECK ASSINIBOINE AND SIOUX TRIBES,  
Plaintiff/Appellee,

vs.

**Appeal No. 049**

ANNA PIPE,  
Defendant/Appellant.

THIS APPEAL is from the Fort Peck Tribal Court, Assiniboiné and Sioux Tribes, Fort Peck Indian Reservation, Poplar, Montana. Judge Violet E. Hamilton presided.

FOR APPELLANT: Clayton Reum, Lay Counselor, 321 6th Ave. So., Wolf Point, MT 59201.

FOR APPELLEE: Emmett Buckles, Tribal Prosecutor, P. O. Box 1027, Poplar, MT 59255

OPINION by Arnie A. Hove, Chief Justice, joined by Gary James Melbourne, Associate Justice, and David Red Fox, Associate Justice.

IT IS THE UNANIMOUS DECISION OF THIS COURT TO AFFIRM THE HONORABLE VIOLET E. HAMILTON'S TEN DAY SENTENCE FOR CONTEMPT OF COURT, HOWEVER, THE SENTENCE IS MODIFIED TO THE EXTENT THAT FIVE DAYS ARE SUSPENDED. APPELLANT IS TO SERVE FIVE DAYS WITH CREDIT FOR THE ONE DAY PREVIOUSLY SERVED AFTER WHICH SHE IS TO BE BROUGHT BEFORE THE TRIBAL COURT TO APOLOGIZE TO THE TRIBAL COURT JUDGE AND FOR A DETERMINATION ON WHETHER SHE WILL SERVE THE REMAINING FIVE DAYS. APPELLANT IS TO BEGIN SERVING HER SENTENCE WITHIN FIVE DAYS OF THE FILING OF THIS OPINION.

On or about March 17, 1988, John Christian filed an affidavit in the Fort Peck Tribal Court for the issuance of a restraining order against Appellant, restraining and enjoining Appellant in harassing and bothering him. Appellant was ordered to appear before the Fort Peck Tribal Court on the 28th day of March, 1988 at the hour of 2:30 p.m. to show cause why the restraining order should not be issued.

On the 28th day of March, 1988, the Honorable Violet E. Hamilton found Appellant in contempt of court for acts committed during the civil proceeding and in her presence. After Appellant had demonstrated a clear disrespect for the court, Appellant was found in Criminal Contempt of court and ordered to serve ten days in the Tribal jail.

On March 29, 1988, Appellant filed a Notice of Appeal and Motion for Court to Release on Recognizance or to Set Bail Pending Appeal. The issues set forth in the Notice of Appeal were as follows:

1. WHETHER APPELLANT WAS SUBJECT TO AN UNFAIR AND BIASED COURT.
2. WHETHER APPELLANT WAS NOT INFORMED OF HER RIGHT TO APPEAL FROM THE FINAL JUDGMENT.
3. WHETHER APPELLANT WAS UNLAWFULLY IMPRISONED.

The Tribal Court Prosecutor filed a Motion for Declaratory Judgment on June 27, 1988 contending that Judges in the Fort Peck Tribal Court system have inherent power to punish immediately contemptuous acts committed in the Court's presence. The Tribal Prosecutor also contended that punishment for contemptuous acts are not subject to review by another Tribal Court. This Court will address Appellee's contentions and Appellant's issues in the following.

WHETHER JUDGES IN THE FORT PECK TRIBAL COURT SYSTEM HAVE INHERENT POWER TO PUNISH FOR CONTEMPT FOR ACTS COMMITTED IN THE COURT'S PRESENCE.

It would appear from the transcript that Appellant did commit a violation of III CCOJ 410(a) which reads as follows:

"All courts of the Assiniboine and Sioux Tribes have power to punish for contempt of their authority the following offenses:

"(a) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; or

...."

The penalties for offenses committed under the CCOJ are set forth in III CCOJ 501. Punishment for a Class A misdemeanor is as follows:

"(2) Class A misdemeanor, for which a maximum penalty of three months' imprisonment, a fine or \$500.00, or both may be imposed."

The Tribal Prosecutor contends that the Judges in the Fort Peck Tribal Court system have inherent power to punish immediately contemptuous acts committed in the Court's presence. The Tribal Prosecutor further contends that a judgment for contemptuous acts is not subject to review by another Tribal Court.

This Court would agree that Judges in the Fort Peck Tribal Court system have inherent power to punish immediately contemptuous acts committed in their presence (Coke vs. United States, 267 U.S. 517, 544. S.Ct. 390, 69 L.Ed. 767 (1925) Ex Parte Terry, 128 U.S. 289, 98 S.Ct. 77, 32 L.Ed. 485 (1888) or proceed with the same as violations of III CCOJ 410(a). This Court would also agree that a judgment for contemptuous acts is not subject to review by another Tribal Court Judge in

that this would be circumventing the procedures set out in the CCOJ for appeals from final orders and judgments and would be forum shopping which is unethical, unprofessional and prohibited. However, the Fort Peck Tribal Court of Appeals disagrees with Tribal Prosecutor's contention that a judgment for contempt is nonreviewable by this Court.

This Court is given jurisdiction to hear Appellant's appeal under I CCOJ 202. This section reads in part as follows:

"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....

In addition to the above, the Appellant has the right of appeal from a final order of judgment under I CCOJ 202 when the Court exercised its inherent power or as provided in I CCOJ 205(a) when convicted of Criminal Contempt. Therefore, this Court will review whether the Tribal Court acted properly when exercising its inherent power when finding Appellant guilty of contempt and imposing a ten day sentence of imprisonment.

In the instant case, the transcript reveals that there was misbehavior by the Appellant in the presence of Judge Hamilton or so near thereto as to obstruct the administration of justice. Appellant showed clear disrespect for the Judge and contempt for the entire Tribal Court system when she made it clear she was going to Poplar (forum shopping) to circumvent Judge Hamilton's order. Judge Hamilton's finding that Appellant was guilty of contempt is supported by substantial evidence. As for a sentence of ten days in the Tribal Court jail, this sentence was appropriate for a Class A misdemeanor in that there is a misdemeanor penalty of three month's imprisonment, a fine of \$500.00, or both, which could have been imposed and would also be an appropriate sentence when the Tribal Court exercises its inherent power.

Appellant raised several issues which will now be addressed. Appellant alleges that the Court was unfair and biased. Based on the record before this Court, there is no evidence that she was subject to an unfair and biased court.

Another issue raised by Appellant was that she was not informed of her right to appeal from the judgment of conviction. The Court would agree that the transcript was silent on whether Appellant had been advised of her right to appeal, however, the issue is moot in that this Court granted her appeal.

The final issue raised by the Appellant was that she was unlawfully imprisoned. The record is clear that there was substantial evidence of misbehavior by Appellant in Judge Violet E. Hamilton's Court, therefore a finding of contempt and judgment entered for the same was supported by substantial evidence. Furthermore, imposition of a ten day jail sentence was appropriate. However, this Court feels that five of those ten days should be suspended with the Appellant given an opportunity to apologize to the Court or serve the remainder of the ten days.

It is the opinion of this Court that Tribal Judges and Justices have not only inherent power to immediately punish for contempt in their presence but can direct the Tribal Prosecutor to prosecute under III CCOJ 410(a). Furthermore, any judgment of conviction for contempt in the presence of a Tribal Judge by either the exercise of the Court's inherent power or a verdict or finding of guilty by judge or jury is only reviewable by the Fort Peck Court of Appeals under IL CCOJ 202 or I CCOJ 205(a) and not other Tribal Judges by individuals attempting to shop for a favorable forum within the Tribal Court system.

Therefore, it is the unanimous decision of this Court that Appellant's judgment of conviction for contempt by way of the

exercise of the Tribal Court's inherent power is upheld and she is to receive a ten day sentence with five of those days suspended. After serving five days with credit for any time previously served, Appellant is to be brought before the Court and given an opportunity to apologize to the Court or serve the remainder of her five day sentence.

II.

WHETHER PUNISHMENT FOR CONTEMPTUOUS ACTS ARE REVIEWABLE BY  
ANOTHER TRIBAL COURT.

As stated above, any judgment of conviction for contempt by way of the exercise of the Tribal Court's inherent power for misbehavior in the presence of a Tribal Judge is only reviewable by the Fort Peck Court of Appeals under I CCOJ 202. A judgment of conviction for Criminal Contempt under III CCOJ 410(a) is only reviewable by the Fort Peck Court of Appeals and an absolute right to Appellant and other defendants, if exercised under I CCOJ 205(a) and properly taken under I CCOJ 206. Appellant's appeal was properly taken as provided in I CCOJ 206.

Any attempt by an attorney, lay counselor, or party to an action to obtain a review of one Tribal Judge's order or judgment by another Tribal Judge is circumventing the CCOJ and is clearly forum shopping. In all such cases, forum shopping is unethical, unprofessional and prohibited. This type of activity would also be Criminal Contempt, a violation of III CCOJ 410(b), in that the same would be, "disobedience or resistance to any process, order, subpoena, warrant or command of the court." Therefore, a punishment for contemptuous acts in the presence of one Tribal Court Judge is not reviewable under the CCOJ by another Tribal Court Judge and forum shopping rather than filing an appeal after a Tribal Judge has issued an order or judgment for contempt or any other violation of the CCOJ is a violation of III CCOJ 410(b)

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DONE this 4th day of August, 1988.

**BY THE COURT OF APPEALS:**

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Arnie A. Hove, Chief Justice

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Gary James Melbourne, Associate Justice

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David Red Fox, Associate Justice