

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

IN RE THE MATTER OF V.R.E., JR.,
A minor.

Appeal No. 103

THIS APPEAL is a petition for HABEAS CORPUS relief filed with this Court by the minor's parents on February 28, 1990. The Honorable Terry L. Boyd, Associate Judge presided.

FOR MINOR: VERNON RED EAGLE and ARLENE RED EAGLE, natural parents, P.O. Box 1425, Poplar, Montana 59255.

FOR TRIBES: THE HONORABLE TERRY L. BOYD, Juvenile Division of the Tribal Court, Poplar, Montana 59255, no appearance.

CIVIL: WHERE A DELINQUENT CHILD IS NOT AN IMMINENT THREAT TO HIMSELF OR OTHERS, PURSUANT TO V CCOJ 102(i), HE SHALL NOT BE DETAINED IN A FACILITY WHERE THERE IS SIGHT OR SOUND CONTACT WITH INCARCERATED ADULT OFFENDERS.

Argued: March 2, 1990; Decided: March 2, 1990

OPINION by Arnie A. Hove, Chief Justice, joined by Gary James Melbourne and Floyd G. Azure, Associate Justices.

HELD: THE HONORABLE TERRY L. BOYD, ASSOCIATE JUDGE WAS DETAINING VRE IN A FACILITY WHICH VIOLATES THE EXPRESS PROVISIONS OF THE CCOJ, THEREFORE, IT IS HEREBY ORDERED VRE BE IMMEDIATELY RELEASED TO HIS PARENTS' CUSTODY PENDING FURTHER PROCEEDINGS ON THE FEBRUARY 23, 1990 PETITION.

FACTS:

On February 23, 1990, John Gray Hawk, Sr. did sign a petition in the Juvenile Division of the Fort Peck Tribal Court petitioning the Court to adjudge VRE, a minor, a delinquent child. The petition incorrectly states the mother is the petitioner.

The petition alleges that on February 4, 1990, the minor had violated V CCOJ 1026 and the underlying criminal offense of Disorderly conduct in violation of III CCOJ 413. On February 4, 1990, petitioner alleges he received a report from a concerned citizen that the minor was highly intoxicated and trying to fight with everyone in the east end housing. Petitioner alleges the minor smelled strongly of alcohol, was intoxicated and tried to hit him but was too intoxicated to do any harm. Petitioner then claims minor needs help and states, "This is becomming (sic) a problem, every week end (sic) subject is intoxicated and always trying to fight. Subject needs alcoholic help or sent to a boarding school."

On February 23, 1990, the minor was served with the petition and made to appear at 10:00 a.m. At the hearing, a document entitled Final Commitment was issued by Judge Boyd. In the Final Commitment, the minor was remanded to

the custody of the BIA/LES pending a fact finding hearing and evaluation on March 5, 1990 at 10:00 a.m.

On February 28, 1990, the parents of the minor filed a petition entitled Habeas Corpus. The parents' petition set forth the following reasons:

1. VRE is 16 years of age.
2. VRE is an enrolled member of the Fort Peck Tribes and resides on the Fort Peck Reservation.
3. VRE was charged with Disorderly Conduct.
4. A hearing was held, prosecutor did not prove he was a danger to our society therefore, we believe he should have been given a bond.
5. VRE attends school in Poplar and has missed four days because of his incarceration.
6. We, as parents were denied full due process because we did not have an attorney.
7. We believe that our son is being held unlawfully and in violation of his rights, at the B.I. A. Jail.
8. We, as parents of VRE believe Judge Terry Boyd is prejudiced against us because of a previous Habeas Corpus we filed against him. This prejudice was shown us in the court proceedings.

On March 2, 1990, this Court issued an Order to Show Cause on Petition Requesting Habeas Corpus Relief and caused the same to be served upon the parents and Judge Boyd one (1) hour before the hearing. VRE, his parents and Judge Boyd were to be present in the courtroom at 10:30 a.m., however, the Court held a phone conference with the three (3) judges initiated by Judge Boyd. Judge Boyd challenged the jurisdiction of this Court and said he would not (or was unable to) attend.

The son was brought to the hearing by BIA jailer George McClammy. During the hearing, the parents and VRE made brief statements and/or answered questions presented by the justices.

The issues to be addressed by this Court are as follows:

1. WHETHER THIS COURT HAS JURISDICTION TO HEAR A PETITION FOR HABEAS CORPUS RELIEF.
2. WHETHER THE JUVENILE DIVISION OF THE TRIBAL COURT ERRED IN DETAINING VRE IN THE BIA FACILITY.

I.

On August 30, 1989, this Court established its jurisdiction to hear petitions for habeas corpus relief in another matter involving VRE. VRE had been taken into protective custody by a Roosevelt County law enforcement officer. On August 31, 1989, the father and mother of VRE had requested assistance from Cheryl Culbertson, a clerk with the Juvenile Division of the tribal court, to get their son into the Chemical Dependency Center in Glasgow, Montana. The parents were directed to and met with Judge Boyd.

On August 31, 1989 and September 5, 1989, proceedings may have been held, however, there is no record of either proceeding. On August 31, 1989, the parents advised this Court they had agreed with Judge Boyd to voluntarily commit their son to treatment and placement in the Chemical Dependency Center in Glasgow, Montana. The parents transported their son to the center.

In September or October, the parents attempted to remove their son from the Chemical Dependency Center and were not permitted to do so because their son was being held for forty-five (45) days under the Commitment Order for Alcohol and Chemically Dependant dated September 5, 1989 and signed by Judge Boyd.

On October 3, 1989, parents of VRE filed a petition requesting Habeas Corpus relief with the Fort Peck Court of Appeals against Judge Boyd who was off the Reservation and out of the State of Montana. Therefore, the order to show cause was issued against and served upon Chief Judge Howard Bemer on October 5, 1989.

On October 6, 1989, a show cause hearing was held. At this hearing, it was determined there was no hearings on August 31, 1989 or September 5, 1989 from which a recording or transcripts were available.

In assuming jurisdiction over the first VRE matter, this Court discussed the applicable sections of the CCOJ. This Court determined it had jurisdiction pursuant to I CCOJ 202. This section reads in applicable part as follows:

The jurisdiction of the Court of Appeal shall extend to all appeals from final orders and judgments of the Tribal Court. (Emphasis Added). 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 Court of Appeals, or the Chief Justice alone, shall have jurisdiction:

....

The Commitment Order for Alcohol and Chemically Dependant reflected a final order from which there was an appeal. Therefore, this Court had jurisdiction over a petition for habeas corpus relief as set forth in IV CCOJ 404 directed against a tribal court judge who issued a final order of commitment. Title IV CCOJ 404 states:

Relief by habeas corpus proceedings shall be granted whenever it appears to the Court that any person is unjustly imprisoned or other wise unlawfully deprived of his/her liberty. Upon the filing of the complaint the Court shall issue a writ directed to the defendant commanding him/her to bring the person alleged to be restrained before the Court at a time and place therein specified, at which time the Court shall proceed to hear the matter and render judgment accordingly.

The record before this Court did not meet the requirements of I CCOJ 103 and contain a transcript or recording of the August 31, 1989 or September 5, 1989 proceedings. Title I CCOJ 103 states:

The Court shall keep a record of all proceedings of the Court, showing the title of the case, the names and addresses of the parties, attorneys and witnesses; the substance of the complaint; the dates of all hearings or trials; the name of the judge; the findings of the Court or verdict of the jury and judgment; the preservation of testimony for perpetual memory by electronic recording or otherwise; together with any other facts or circumstances deemed of importance to the case....

Because of the lack of a complete record as required by I CCOJ 103, this Court had to give the benefit of the doubt to the parents' contentions in their petition when applying the CCOJ.

Title V, Chapter 3 of the CCOJ sets forth tribal court procedures for the handling of juveniles. Title V CCOJ 302(c) (1) permits an informal resolution of a petition filed with the tribal court by a juvenile officer. This section reads in full as follows:

The juvenile officer may recommend counseling, treatment, or such other disposition of an abandoned, neglected, or abused child or status offender which in the officer's opinion is in the best interest of the child. Such recommendation shall be implemented. without Court action, only upon the consent of the parent, guardian or custodian with the knowledge that consent is voluntary. Upon receiving consent, the juvenile officer shall inform the Court that the case has been resolved informally. Informal resolution shall not include any disposition which separated the child from parent, guardian or custodian. Upon successful completion of the recommended program, the case shall be dismissed. No diversion program shall exceed six (6) months. (Emphasis added.)

At the October 6, 1989 hearing, from the record this Court determined the tribal court judge violated several requirements of V CCOJ 302(c)(1). First, Judge Boyd issued a Commitment Order for Alcohol and Chemically Dependant on September 5, 1989 in an informal resolution of a juvenile matter where there was no juvenile officer's involvement or recommendation for such treatment. Second, there was Court action by virtue of Judge Boyd's order of commitment. Third, the parents contend they did not voluntarily consent to the order of commitment. Finally, this informal resolution included a disposition which separated the child from his parents.

At the October 6, 1989 hearing, this Court also determined that it had jurisdiction over this matter and VRE, a minor and enrolled member of the Fort Peck Assiniboine and Sioux Tribes. This Court also determined VRE was being unjustly imprisoned or otherwise unlawfully deprived of his/her liberty and had not been afforded equal protection of the law and procedural due process under V CCOJ (c) (1), the Juvenile Code at V CCOJ 301 through 311 and as required by the Indian Civil Rights Act.

At the conclusion of the October 6, 1989 hearing, this Court ordered VRE be immediately released from the Chemical Dependency Center in Glasgow, Montana to the custody of his father and mother. In addition, the Tribal Court's Commitment Order for Alcohol and Chemically Dependant dated September 5, 1989 was vacated and the petition, if a petition was filed pursuant to V CCOJ 301, dismissed without prejudice. Finally, this Court recommended that if it was determined necessary to proceed against VRE, the tribal authorities become involved and proceed according to and as provided for in the Juvenile Code at V CCOJ 301 through 311.

In the instant case, this Court issued an Order to Show Cause to Judge Boyd commanding him to bring VRE along with his court file and transcript of the hearing at which the minor was incarcerated before this Court at the Tribal Court Building in Poplar, Montana at 10:30 a.m. Judge Boyd called this Court from Wolf Point at about 10:30 a.m. and requested a conference call with this Court in which the three (3) tribal judges participated. During the phone conference, Judge Boyd challenged the jurisdiction of this Court and indicated he would not be appearing at the proceedings to respond to the order.

In conclusion, this Court, having previously determined it had jurisdiction to hear petitions for Habeas Corpus relief from tribal court orders and judgments, this Court has jurisdiction in the instant case. Therefore, this Court proceeded accordingly and heard the parents' petition.

II.

The undisputed facts are that VRE is 16 years old, an enrolled member of the Fort Peck Tribes and resides on the reservation. On February 23, 1990, VRE was charged in the Juvenile Division of the tribal court with a violation of V CCOJ 1026 with an underlying criminal offense of Disorderly Conduct, a violation of III CCOJ 413. The Disorderly Conduct incident allegedly occurred on February 4, 1990 and Judge Boyd placed VRE in the BIA jail.

At the hearing, there was no evidence before this Court there was any violation by VRE on February 23, 1990 and VRE was an imminent threat to himself or others which warranted the drastic measure of the juvenile's incarceration. VRE was asked several questions regarding the conditions of his incarceration in front of the BIA jailer George McClammy.

The undisputed statements of the minor were that he was in a cell were he could see and hear the prisoners who were trustees. Placement of a minor within the sight and sound of incarcerated adult offenders is in direct violation of Title V CCOJ 102(i). This section reads:

The temporary, secure custody of a child in facilities designated by the Court, pending a final disposition of a petition, provided that detention shall not be in a facility where the juvenile has sight or sound contact with incarcerated adult offenders.

In conclusion, the Juvenile Division of the tribal court erred in its temporary placement of VRE in the BIA facility where he had sight or sound contact with incarcerated adult offenders. Therefore, VRE was being unlawfully incarcerated.

THE HONORABLE TERRY L. BOYD, ASSOCIATE JUDGE IS DETAINING VRE IN A FACILITY WHICH VIOLATES THE EXPRESS PROVISIONS OF THE CCOJ, THEREFORE, IT IS HEREBY ORDERED VRE BE IMMEDIATELY RELEASED TO HIS PARENTS' CUSTODY PENDING FURTHER PROCEEDINGS ON THE FEBRUARY 23, 1990 PETITION.

DATED this _____ day of March, 1990.

BY THE COURT OF APPEALS:

Arnie A. Hove, Chief Justice

Gary James Melbourne, Associate Justice

Floyd G. Azure, Associate Justice
