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

IN THE MATTER OF

JESSE MARTELL
Appellant,

Appeal No. 129

vs.

FORT PECK TRIBES,
Appellee.

ORDER DENYING MOTION TO DISMISS

Appellant herein having filed a **MOTION TO DISMISS** and **MOTION TO STAY** sentence; and

The said matter having come before the Court on hearing on May 1, 1991, the Appellant being represented by Clayton Reum, Lay Advocate, and the Port Peck Tribes, Appellee, being represented by Ron Arneson, Esquire, and the Court having considered the briefs and arguments of counsel hereby makes the following findings on the issues presented as follows:

1. Whether the Court has subject matter over Appellant?

This matter has been heard by the Appellate Court on a previous occasion. REF. APPEAL NO. 090 dated March 26, 1990. We consider that opinion as res judicata for the present action. This Court finds that it has subject matter jurisdiction over this matter APPEAL NO. 090, supra.

2. Whether the Court has personal jurisdiction over Appellant?

The Appellant has been prosecuted in both State and Tribal Courts. It also appears that the Appellant is recognized in this community as an Indian. His

father is an enrolled Indian. Appellant received medical services from Indian Health Services. Appellant has resided on the Fort Peck: Indian Reservation the majority of his life.

We find that Appellant also waived his right to assert the personal Jurisdiction defense and should not be allowed to do so now. STATE OF MONTANA vs. LAPIER as cited by Appellant is distinguishable from the present case on its facts. Additionally, LAPIER holds that the test cited in UNITED STATES vs. ROGERS 45 U.S. 567 and ST. CLOUD vs. UNITED STATES 702 F. Supp. 1456 includes "social recognition as an Indian through living on a reservation and participating in Indian social life". We find those elements to be met in the present case.

BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT APPELLANT'S MOTION TO DISMISS AND MOTION TO STAY EXECUTION OF SENTENCE ARE HEREBY DENIED.

DATED this 13th day of May, 1991.

BY THE COURT OF APPEALS:

GERARD M. SCHUSTER, Chief Justice

GARY JAMES MELBOURNE, Associate Justice

DEBRA JOHNSON, Associate Justice
