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

**Fort Peck Tribes,
Plaintiff/Appellant**

vs.

Appeal No. 379

**Sophie Keiser,
Defendant/Appellee**

ORDER

Oral argument in the above-entitled matter was heard on April 19, 2002. **Lonnie Headdress**, Fort Peck Tribal Prosecutor, appeared on behalf of the Fort Peck Tribes; no appearance on behalf of the defendant/appellee. The appellant claims that the Tribal Court erred in its *sua sponte* **Order** issued from the bench dismissing the complaint against the defendant/appellee.

On at least two (2) separate occasions the defendant had failed to appear to answer charges that she had violated **Title XVII CCOJ 2000 §§101 (Driving without a license) & 130 (Child restraint system) and Title VII CCOJ §324 (Issuing bad checks)** and the Tribal Court, the Honorable Barry Bighorn, presiding, issued a bench warrant for defendant's arrest. On the evening of June 28, 2001, the defendant was arrested pursuant to the bench warrant and was arraigned the following morning. At the arraignment, the Tribal Court, the Honorable Marvin Youpee, dismissed all charges, reasoning that the bench warrant had been issued without a written criminal complaint filed prior to the arrest and further, that the defendant's incarceration the night before was illegal in that the underlying charges were all Class B misdemeanors .

The prosecutor argued that Judge Youpee erred in dismissing the underlying misdemeanor offenses for two (2) reasons: 1) Even if the criminal contempt warrant was invalid, the alleged defect in such a warrant would not taint the underlying charges; and 2) The defendant was not incarcerated for the Class B misdemeanors, but rather, she was incarcerated for her repeated failure to appear, which is a Class A misdemeanor. The prosecutor further argued that the contempt warrant was valid in that the Tribal Court has the authority to punish for direct contempt. **Title VII CCOJ 2000 §426; Tribes v. Dale, FPCOA#303a (2000)**. Following the oral argument and after careful review of the file, this Court issued its unanimous decision from the bench vacating the Tribal Court's sua sponte order of dismissal.

IT IS NOW THEREFOR THE ORDER OF THIS COURT:

The Tribal Court order issued sua sponte from the bench on June 29, 2001, dismissing the Class B misdemeanors (**Title XVII CCOJ 2000 §§101 {Driving without a license} & 130 {Child restraint system} and Title VII CCOJ §324 {Issuing bad checks}**) against the defendant/appellee herein, is vacated. These Class B misdemeanor charges shall be granted status quo ante as of June 28, 2001.

Due to the passage of time and the erroneous dismissal of the criminal contempt matter, the defendant may not understand the seriousness of the charge citing her failures to appear. Therefore, if the Tribal Prosecutor elects to go forward with a criminal contempt charge for defendant's alleged failures to appear, a written complaint setting forth those allegations shall be filed with the Tribal Court and the defendant shall be personally served therewith and afforded all rights attendant thereto.

Dated this 22nd day of April 2002.

FOR THE FORT PECK COURT OF APPEALS

PER CURIAM:

BY _____

Gary P. Sullivan
Chief Justice

Gerard M. Schuster
Associate Justice

Carroll J. DeCoteau
Associate Justice
