

2:30  
FILED  
NOV 12 2021

Handwritten initials

Appellate Court  
Fort Peck Indian Reservation  
P.O. Box 1027  
Poplar, Montana, 59255  
PHONE 1-406-768-2400  
FAX 1-406-768-3710

FORT PECK  
TRIBAL COURT OF APPEALS

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

|   |  |
|---|--|
| Fort Peck Tribes,<br>Appellant<br><br>v.<br><br>Marion Runs Through Jr.,<br>Appellee. | CAUSE NO. AP # 821<br><br>ORDER DENYING REVIEW |
|---|--|

Appeal from the Fort Peck Tribal Court, Michael Headdress, Presiding Judge.  
Appellee Marion Runs Through Jr appearing through Advocate Kris Fourstar Appellees  
Fort Peck Tribes, represented by Prosecutor James Bighorn  
Before E. Shanley, Chief Justice and B.J. Jones, Associate Justice.

**BACKGROUND**

¶ 1 This matter comes before the Fort Peck Court of Appeals (FPCOA) on a request by the Tribal Prosecutor to “clarify” whether there is such a criminal offense as “walk off” or whether the failure to appear is an “escape” under the law of the Tribes. This issue came about apparently as the result of the Defendant asking the Court to accept a plea agreement which purported to change an “Escape” charge to a Criminal Contempt charge that considered the alleged escape a “walk-off.” There is no notice of appeal

filed with this Court or any final judgment of conviction from the lower court and it appears that the Prosecutor is asking for an advisory opinion from this Court to inform the lower court on whether such a charge is possible under a plea agreement. This Court declines to issue such an opinion because there is no appeal before the Court.

### **STATEMENT OF JURISDICTION**

¶ 2 The Fort Peck Appellate Court reviews final orders from the Fort Peck Tribal Court. 2 CCOJ §202. The consideration of whether a complaint charging a person with an “escape” could be pled down to a “Criminal Contempt” charge should be ultimately addressed by the lower court before this Court can offer its opinion. There is no final order on this matter from the Tribal Court which would be reviewable by this Court.

### **DISCUSSION**

¶ 3 For the reasons stated above this Court declines to intervene into this issue until fully resolved by the lower court. It appears that the Prosecutor is asking this Court to certify a question of law to aid the lower court in determining whether to accept a plea agreement. Although some Tribes have a process where another jurisdiction’s courts could ask this Court to clarify a question of law, no such process exists under the law for this Court to certify a question of law. The Prosecutor can make his argument to the lower court on the issue and if the lower court overrules him then the matter may be brought to this Court.<sup>1</sup>

---

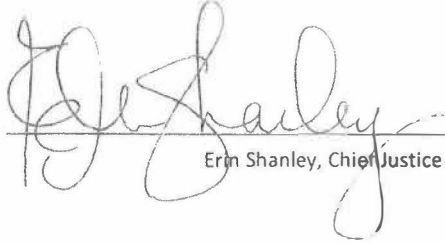
<sup>1</sup> Of course if the Tribes agree to lower the offense to a Criminal Contempt and the Court accepts the plea double jeopardy may bar the Tribes from appealing that issue. This Court cannot advise the Tribes on how to proceed in the Tribal Court however.


**ORDER**

¶ 4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Court declines the request for the Court to “clarify” the legal issue below.

SO ORDERED the 12th day of November 2021.

FORT PECK COURT OF APPEALS

  
Erin Shanley, Chief Justice

  
Associate Justice