



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

<p>Annette Henderson, Appellant</p> <p>v.</p> <p>Fort Peck Tribes, Appellee.</p>	<p>CAUSE NO. AP # 822</p> <p>ORDER GRANTING APPEAL</p>
--	--

Appeal from the Fort Peck Tribal Court, Stacie Fourstar, Presiding Judge.
Appellant Annette Henderson appearing through Public Defender Terry Boyd
Appellees Fort Peck Tribes, represented by Prosecutor David Mrgudich
Before E. Shanley, Chief Justice, B.J. Jones, Associate Justice and Grant Christensen,
Associate Justice

BACKGROUND

¶ 1 This matter comes before the Fort Peck Court of Appeals (FPCOA) on an appeal by Henderson from the Tribal Court’s order declining to rule on a motion to dismiss complaints against her on the ground that her right to a speedy trial under the Indian Civil Rights Act, 25 USC §1302, has been denied. The Tribes did not oppose the motion below but the trial court never addressed the matter, thus resulting in an implicit denial

of the motion. For the reasons stated herein this Court grants the appeal and directs that the complaints below be dismissed.¹

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 the failure of the lower court to rule on a motion to dismiss on speedy trial grounds is immediately reviewable in this Court has never been addressed. Because the speedy trial right under the ICRA is designed to prevent a Defendant from being subject to a criminal proceeding for an inordinately long period of time, thus impacting his liberty and other rights, the Court finds that an implicit denial of a motion to dismiss on that ground is immediately appealable and a Defendant need not await trial and conviction to raise the issue on appeal in a case such as this where the prosecution does not oppose the dismissal and the Tribal Court's failure to rule on the matter seems to have been an oversight by the Court below.

STANDARD OF REVIEW

¶ 3 This Court reviews de novo all determinations of the lower 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. 2 CCOJ §202.

ISSUE

Whether the lower court's implicit denial of a motion to dismiss on speedy trial grounds is immediately appealable?

¹ The Court notes that the Tribes have not taken a position on the appeal but that Henderson asserts that the Tribes did not oppose the motion below. Should that not be the case the Tribes may reserve the right to ask for reconsideration of this order.

DISCUSSION

¶ 4 The Court grants the appeal and directs the lower court to dismiss the criminal complaints on speedy trial grounds. The right to a speedy trial is designed to ensure that a criminal matter be heard in an expeditious manner to ensure that a criminal defendant is not subject to the infamy of a criminal prosecution against him for an inordinate amount of time. Although most Courts have held that the alleged violation of the right to a speedy trial is generally not an appropriate subject of an interlocutory appeal, see *United States v. MacDonald*, 435 U.S. 850, 863, 98 S. Ct. 1547, 56 L. Ed. 2d 18 (1978) (“[W]e decline to exacerbate pretrial delay by intruding upon accepted principles of finality to allow a defendant whose speedy trial motion has been denied before trial to obtain interlocutory appellate review”), this case is unique in that the Tribes did not oppose the motion to dismiss below. In addition, the Fort Peck Code of Justice does provide for an interlocutory appeal of a procedural issue under 6 CCOJ §203 when it impacts a right preserved under the Indian Civil Rights Act. We thus believe that under the unique circumstances of this case that the appeal should be granted and the complaints below be dismissed.

ORDER

¶ 5 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Court grants the appeal in this matter and remands to the lower court with directions to dismiss the criminal complaints against the Appellant.

SO ORDERED the 16th day of February 2022.

FORT PECK COURT OF APPEALS


Erin Shanley, Chief Justice



Associate Justice

