

FILED

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**FORT PECK
TRIBAL COURT OF APPEALS**

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

<p>Logan Sandau, Appellant</p> <p>v.</p> <p>Fort Peck Tribes, Appellee.</p>	<p>CAUSE NO. AP # 835</p> <p>ORDER REVERSING IN PART AND REMANDING FOR FURTHER PROCEEDINGS</p>
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Appeal from the Fort Peck Tribal Court, Lonnie Headdress, Presiding Judge.
Appellant Logan Sandau appearing through Public Defender Terry Boyd
Appellees Fort Peck Tribes, represented by Prosecutor Marvin Youpee, Jr.
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 from the Tribal Court's Order issued on March 30, 2022 denying Appellant's Motion to Suppress and Dismiss and removing the Public Defender's Office from Counsel of Record unless compliance is shown with Code of Ethics for Attorneys and Lay Counselors, Canon 7, Conflict of Interest. Appellant argued that the Tribal Court

Order denied him the right to counsel pursuant to the Indian Civil Rights Act, 25 U.S.C. § 1302(6) and the Fort Peck Comprehensive Code of Justice, Title 6, Section 501 because his Counsel was removed one day prior to his scheduled Jury Trial.

¶ 2 On December 15, 2021, Appellant was charged with a three-count complaint, which included the following crimes: 1) Illegal to Sell, Trade, Possess or Bargain in Drug paraphernalia, in violation 7 CCOJ 417; 2) Unlawful Possession of Dangerous Drugs, in violation of 7 CCOJ 413-A; and 3) Possession of a Firearm in Drug-Related Crimes, in violation of 7 CCOJ 415-B. Defendant applied for representation from the Office of the Public Defender but was denied because the Public Defender was representing his co-defendant, Antionette Simons. Subsequently, the Tribal Court granted Simon's Motion to Dismiss all charges against her, presumably with prejudice.

¶ 3 On March 1, 2022, the Public Defender agreed to represent Appellant because a conflict of interest no longer existed as his co-defendant's case was dismissed. On March 15, 2022, Appellant filed a Motion to Suppress Evidence and Dismiss all Charges. Without holding a hearing on the Matter, the Court issued an Order Denying the Motion to Suppress and Dismiss and removing the Public Defender's Office from Counsel of Record on March 30, 2022. The Tribal Court also ordered the jury trial to proceed the next day on March 31, 2022.

¶ 4 Appellant filed his Notice of Appeal on April 12, 2022. After the Tribal Court denied Appellant's Motion for Stay on April 19, 2022, Appellant requested a stay in the Fort Peck Court of Appeals. This Court granted review of the appeal and issued a Stay of the Tribal Court Order on May 13, 2022.

STATEMENT OF JURISDICTION

¶ 5 The Fort Peck Appellate Court reviews final orders from the Fort Peck Tribal Court. 2 CCOJ §202. Pursuant to the Rules of Procedure in the Court of Appeals, Rule 6, the Court may accept an interlocutory appeal when the matter being appealed involves due process issues which would adversely affect the outcome of a trial on the merits and would result in irreparable harm to the aggrieved party if the lower court action were allowed to proceed without further invention from this Court. *Kohl v. Fort Peck Tribes*, App. No. 715 (2016).

STANDARD OF REVIEW

¶ 6 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.

ISSUES

1. Whether the Tribal Court denied Appellant his constitutional right to Counsel by issuing an Order removing his Counsel of Record one day prior to his scheduled jury trial and failed to grant a continuance?
2. Whether the Tribal Court denied Appellant due process by denying his Motion to Suppress and Dismiss without providing Appellant an opportunity to be heard?

DISCUSSION

- 1. The Tribal Court denied Appellant his constitutional right to counsel by issuing an Order removing his Counsel of Record one day prior to his scheduled jury trial.**

¶ 7 The Fort Peck Public Defender's Office's representation of Appellant did not pose a conflict of interest with another client. The Code of Ethics for Attorneys and Lay Counselors, Rule 6, states that, "...An attorney should not represent a client if that representation will be **adverse** to the interests of another client, or if the attorney's own

interests conflict with those of a client...” (emphasis added). Generally, a lawyer should not represent co-defendants in a criminal case because it is impossible to zealously advocate, and maintain the lawyer’s duty of confidentiality, attorney-client privilege, and loyalty to both clients, particularly when they may implicate one another in a crime. This case is different, however. In this matter, the Public Defender’s representation of Appellant is not adverse to his former client because her case was dismissed with prejudice. Here, Ms. Simons’ charges were dismissed with prejudice precluding the Tribes from refileing her case. Therefore, Appellant would not have the ability to implicate Ms. Simons.

¶ 8 The Fort Peck Comprehensive Code of Justice, Chapter 5, Section 501, provides a defendant in a criminal case the right to assistance of counsel at his/her own expense, in accordance with the Indian Civil Rights Act, 25 U.S.C. §1302 (a)(6). Here, although Appellant’s charges may have been subject to enhanced punishment under the Tribal Law and Order Act and 6 CCOJ 511, it does not appear that the Tribe sought enhanced punishment. Appellant did, however, apply for and qualify for services from the Fort Peck Public Defender’s Office. The Public Defender’s Office filed a Notice of Appearance on behalf of Appellant on Mar 1, 2022 and a subsequent Motion to Suppress and Dismiss on March 15, 2022.

¶ 9 The Fort Peck Tribes Code of Ethics for Attorneys and Lay Counselors, Canon 10, requires that when representation of a client is terminated, an attorney [or advocate] “shall take reasonable steps to protect the client’s interests... includ[ing] giving the client reasonable notice and time to appoint new counsel, and surrendering all papers and property to which the client is entitled.” See *Cantrell v. Fort Peck Tribes*, App. No. 707 (Nov. 14, 2016). Under the circumstances presented, because the Tribal Court, not the

Public Defender's Office, terminated the representation, the Tribal Court must protect Appellant's constitutional rights by ensuring that he had an opportunity to seek new counsel and that all discovery was properly transferred to new Counsel. This was not possible because Appellant's jury trial was scheduled for the next day. Accordingly, based on the Tribal Court's decisions terminate the Public Defender's representation of Appellant one day prior to his scheduled jury trial, the Court should have continued the jury trial to allow Appellant to seek new Counsel. There is nothing in the record that reflects that Appellant waived his right to Counsel.

¶ 10 This Court finds that a Conflict of Interest did not exist under the circumstances presented. This Court further finds that removing Counsel of Record one day prior to Appellant's Jury Trial without granting a continuance effectively denied Appellant his constitutional right to Counsel. Therefore, this matter is remanded for further proceedings consistent with this opinion.

2. The Tribal Court did not deny Appellant due process by denying his Motion to Suppress and Dismiss without providing Appellant an opportunity to be heard.

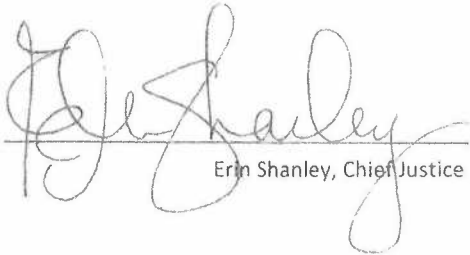
¶ 11 The Tribal Court has the discretion to issue an Order on a Motion to Dismiss without holding a hearing on the matter, however the Order should provide specific findings consistent with Tribal Law supporting the reason for its decision. The Tribal Court did not provide its findings or conclusions in the written March 30, 2022 Order denying Appellant's Motion to Suppress and Dismiss, therefore, this Court remands this matter to the Tribal Court to issue an Order providing findings and conclusions of Tribal law to support its decision.

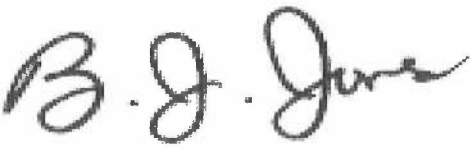
ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Court reverses the Tribal Court Order removing the Public Defender as Counsel of Record for a conflict of interest and remands to the lower court for further proceedings consistent with this Opinion.

SO ORDERED the 6th day of November 2022.

FORT PECK COURT OF APPEALS


Erin Shanley, Chief Justice


Associate Justice

