

FILED

APR 17 2023

**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>Fort Peck Tribes, Appellee</p> <p>v.</p> <p>Rhiannon Ahneman, Appellant.</p>	<p>CAUSE NO. AP # 840</p> <p>ORDER REVERSING AND REMANDING</p>
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Appeal from the Fort Peck Tribal Court, Lonnie Headdress, Presiding Judge.
Appellant Fort Peck Tribes, represented by Prosecutor David Mrgudich.
Appellee Rhiannon Ahneman, appearing through Advocate Terry Boyd.
Before Justices E. Shanley and B.J. Jones.

BACKGROUND

¶ 1 This matter comes before the Fort Peck Court of Appeals (FPCOA) on an appeal filed by the Fort Peck Tribes on September 27, 2022 from a Tribal Court Order dismissing a criminal case with prejudice due to the unavailability of the results from the Montana State Crime Lab. This Court accepted review on October 13, 2022. Appellants filed their brief in support on September 27, 2022 and the Appellee filed a response on December 8, 2022.

FACTS

¶ 2 On February 9, 2022, the Fort Peck Tribes charged Appellee with five violations of Tribal Law: 1) Unlawful Possession of Dangerous Drugs, in violation of 7 CCOJ 413-A; 2) Unlawful Possession of Dangerous Drugs with Intent to Sell, in violation of 7 CCOJ 413-B; 3) Unlawful Sale, Use, Abuse, Possession of Prescription Medication, in violation of 7 CCOJ 418-A; 4) Illegal to Sell, Trade, or Bargain in Drug Paraphernalia, in violation of Title 7 CCOJ 417; and 5) Endangering Welfare of Children in violation of 7 CCOJ 240-B. Appellee pled not guilty to the charges.

¶ 3 On April 20, 2022, Appellee filed a Motion in Limine requesting that the evidence collected be suppressed due to the Tribes' failure to obtain laboratory testing and provide to Appellee during Discovery. Appellant responded on May 3, 2022. The Tribal Court issued an Order scheduling the Appellee's jury trial for August 4, 2022 and requiring the Appellant to comply with the requirements of 6 CCOJ 508 by July 4, 2022 "in order to move the case forward." Tribal Court Order, Case 0156-22-02, May 24, 2022.

¶ 4 On July 21, 2022, Appellee filed a Motion to Dismiss with Prejudice requesting the Tribal Court dismiss all charges with prejudice because the Appellants did not receive the results from the state crime lab and alleged that such delay was infringing on Appellee's rights pursuant to 6 CCOJ 501.¹ On July 29, 2022, the Appellants filed a Motion to Continue for the reason that the Tribes had not received the laboratory results from the Montana State Crime Lab. The Tribal Court did not address Appellant's Motion to Continue and issued an Order to Dismiss all charges with prejudice on August 3, 2022.

¹ Although it is not clear which of rights Appellee was asserting the delay was infringing upon, we assume Appellee was referring to her right to a speedy trial.

STATEMENT OF JURISDICTION

¶ 5 The Fort Peck Appellate Court reviews final orders from the Fort Peck Tribal Court. 2 CCOJ §202. The Tribal Court Order dismissing the criminal charges with prejudice is a final order subject to appeal.

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.

ISSUE

¶ 7 Whether the Tribal Court erred when it failed to issue an order on Appellant's Motion to Continue and instead dismissed the criminal charges with prejudice due to the delay receiving laboratory results from the Montana State Crime Lab?

DISCUSSION

I. THE COURT ERRED WHEN IT FAILED TO ISSUE AN ORDER ON THE APPELLANTS MOTION TO CONTINUE AND INSTEAD DISMISSED THE CRIMINAL CHARGES WITH PREJUDICE BECAUSE OF A DELAY RECEIVING LABORATORY RESULTS FROM THE MONTANA STATE CRIME LAB.

A. The Tribal Court failed to issue an Order on the Appellants' Motion to Continue.

¶ 8 The decision to grant or deny a Motion to Continue is within the Court's discretion. The factors the Tribal Court should evaluate in its consideration to grant or deny a continuance in a criminal matter include, but are not limited to: 1) Will the defendant's fundamental rights be abridged or violated?; 2) Will any prejudice ensue to the opposing party?; 3) Is the motion calculated to delay the trial?; 4) Will granting the motion cause unreasonable delay?; 5) Will denial of the motion prevent a fair trial on the

merits?; 6) Did either party contribute to, or cause the necessity of the motion?; and 7) Did the moving party exercise good faith and due diligence in attempting to avoid the situation that prompts the motion? *Fort Peck Tribes v. Stafne*, Appeal no. 351 (February 14, 2002). After evaluating these factors and balancing the respective interests of the parties, the Tribal Court should provide an order either granting or denying the motion.

¶ 9 Here, the Court did not issue an Order denying the Motion to Continue, but rather granted the Appellee's Motion to Dismiss with Prejudice. Given that this Court did not issue an order on the Motion to Continue, we are not able to review the Court's evaluation or analysis of the factors cited above, therefore we turn to the Court's dismissal of this matter with prejudice.

B. The Tribal Court erred in dismissing the criminal charges with prejudice as Appellee's fundamental rights would not have been impacted by a dismissal without prejudice.

¶ 10 A Court may either dismiss a criminal matter "with prejudice," barring the prosecution from refileing the charges, or "without prejudice," allowing the defendant to be re-charged. The decision to dismiss with prejudice is generally made when there exists a fundamental violation of a defendant's constitutional rights that cannot be corrected, such as an arrest without probable cause, an illegal search, a violation of double jeopardy, or a violation of a defendant's right to a speedy trial. The Court in dismissing without prejudice must determine that the fatal flaw that has occurred cannot be remedied. Here, the only fundamental right at issue is that a delay may potentially infringe upon Appellee's right to a speedy trial.

¶ 11 "The right to a speedy trial provides three important safeguards: 1) to prevent undue and oppressive incarceration prior to trial; 2) to minimize anxiety and concern accompanying public accusation; and 3) to limit the possibilities that long delay

will impair the ability of an accused to defend himself.” *Fort Peck Tribes v. Hawk*, Appeal No. 331 (March 28, 2001) (citing *U.S. v. Ewell*, 383 U.S. 116, 120, 86 S. Ct. 773, 776 (1966)). This Court first addressed the right to a speedy trial in *Fort Peck Tribes v. Keiser*, Appeal No. 038 (August 4, 1988). A criminal defendant facing charges in the Fort Peck Tribal Court has a right to a speedy and public trial under the Indian Civil Rights Act, 25 U.S.C. 1302(6) and the Comprehensive Code of Justice, 6 CCOJ 501. This Court subsequently clarified the determination of whether a defendant’s right to a speedy trial has been violated requires the court to apply a balancing test, weighing and considering the specific facts of the case. *Fort Peck Tribes v. Keiser*, Appeal No. 093 (February 23, 1990). The factors the Tribal Court must consider include: 1) the length of delay; 2) the excuses or justifications for the delay; 3) the burden and extent of pretrial confinement; and 4) the existence of prejudice to the accused’s opportunity to defend himself. *Id.*

¶ 12 Weighing those factors here, the Appellee’s right to a speedy trial was not at issue at the time of dismissal in this matter. Appellee was charged with four felony drug offenses. Her trial was scheduled for six months after she was arraigned. This would not constitute a violation of the right to a speedy trial.² While the statute of limitations to initiate charges could have a bearing on the decision to dismiss with prejudice, the Tribal Code provides that the statute of limitations to commence prosecution for felony offenses is two years. 6 CCOJ 102(a). Therefore, that would not be a justification for the Court to dismiss this matter with prejudice. Also, the Appellants had a justifiable reason for any potential delay; they did not receive the evidence back

² In *Kaiser*, this Court found that a five (5) month delay between arraignment and trial did not implicate the right to a speedy trial and previously indicated that a trial within one (1) year of filing a complaint would comply with speedy trial requirements. In *Hawk*, this Court found that a ten (10) month delay did not violate the right to a speedy trial, in consideration of the other relevant factors required by the balancing test.

from the State crime lab. Therefore, the potential delay, which actually didn't exist under this case, would not have been intentionally made or caused by the bad faith of Appellants. Furthermore, the Appellee did not present any evidence that the delay of the trial would impact her ability to defend herself (i.e. cause witnesses or evidence to be unavailable at the time of trial due to the delay). Therefore, while Appellee moved the Tribal Court for dismissal with prejudice due to the infringement of her rights pursuant to 6 CCOJ 501, she failed to provide support that any of her constitutional rights would be impacted by either a continuance or dismissal without prejudice.

¶ 13 This Court previously recognized, "in certain cases the right of the Defendant to a speedy trial may be denied if the Tribes has to wait on the results from the state lab," however that does not appear to be the case here. *Fort Peck Tribes v. Longhair*, Appeal No. 815 (September 9, 2021). Since this matter did not implicate the constitutional rights of the Defendant nor create an issue in which the Tribes would be barred from refiling charges due to the statute of limitations, the Court erred when it dismissed the matter with prejudice.

ORDER

¶ 14 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Tribal Court Order dismissing the criminal charges with prejudice is reversed and this matter is remanded to the Tribal Court for a determination consistent with this opinion.

SO ORDERED the 17th day of April 2023.

FORT PECK COURT OF APPEALS


Erin Shanley, Chief Justice

B. J. Jones

Associate Justice