

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

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FORT PECK
TRIBAL COURT OF APPEALS

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

<p>Fort Peck Tribes, Plaintiff-Appellant</p> <p>v.</p> <p>Donald Romero. Defendant-Appellee</p>	<p>CAUSE NO. AP # 846</p> <p>ORDER DISMISSING APPEAL</p>
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BEFORE CHIEF JUSTICE SHANLEY AND ASSOCIATE JUSTICES JONES

¶ 1 The Tribes appeal to this Court from the December 2, 2022 order of the Tribal Court suppressing evidence of alleged drug activity by the Defendant obtained as the result of the execution of a search warrant on a home not listed in the warrant issued by the Tribal Court. As a result of the defective search, the Court also dismissed the charge of Unlawful Possession of Dangerous Drugs against the Defendant. In so ruling, the Court also discussed an independent ground for dismissal stating that the drugs discovered in the alleged possession of the Defendant were merely “residue” and not of

sufficient quantity to constitute “possession” of a drug, even though the residue was sufficient to be tested by the Montana State lab and produce a toxicology report.

¶ 2 In their appeal the Tribes only address the alleged error of the Tribal Court Judge in its analysis of whether “residue” constitutes a substance that can be possessed under the possession ordinance and not the actual ground for the dismissal of the criminal charge—that the evidence was obtained as the result of an illegal search of the residence where the substance was found. A close examination of the dismissal order of the Court reveals that the Court was clearly dismissing the charge based on the defective search based on a warrant with a different address and the impact of that defective search on a subsequent warrant issued after discovery of illicit substances in the home. The discussion regarding whether residue constitutes an illicit substance if not amenable to being weighed is merely mentioned by the presiding Judge as an alternative ground for dismissal and although the Judge seems to hold that the substance must be amenable to being weighed, he does that only as dicta. The Tribes have not appealed the dismissal based upon the defective search.

¶ 3 Although this Court can certainly understand the Tribes’ concern that the discussion of the residue issue may portend rulings in the future adverse to them when prosecuting possession cases based upon small amounts of drugs discovered, this Court can only address actual controversies on appeal and not issue advisory opinions that may impact future cases. When there are two independent bases for the dismissal of a criminal proceeding and the Tribes only appeal one of those grounds for dismissal such does not present a case or controversy on appeal because whatever decision this Court renders will not change the ultimate disposition below—dismissal. The error

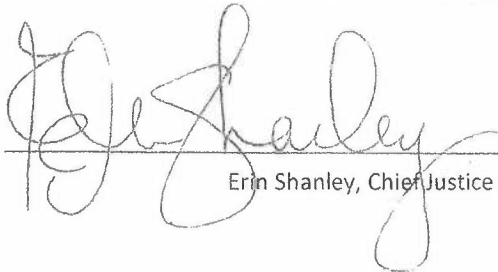
asserted is thus harmless and cannot serve as a basis for vacating the lower court decision. Under the independent grounds rule, a party appealing a decision of a lower court must address all the independent grounds for the decision below in order for this Court to have jurisdiction to vacate the lower court order. Otherwise, the alleged error is harmless. The reasoning is that, if an independent ground fully supports the complained-of ruling or judgment, but the appellant assigns no error to that independent ground, then (1) we must accept the validity of that unchallenged independent ground, and thus (2) any error in the grounds challenged on appeal is harmless because the unchallenged independent ground fully supports the complained-of ruling or judgment. See Britton v. Texas Dept of Criminal Justice, 95 SW 3d 676 (Tx Ct. Appeal 2002)

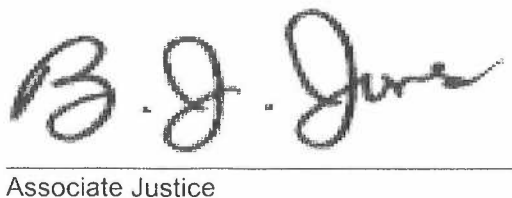
WHEREFORE IT IS HEREBY

ORDERED, ADJUDGED AND DECREED that the appeal in this matter be and hereby is DENIED.

SO ORDERED the 17th day of August 2023.

FORT PECK COURT OF APPEALS


Erin Shanley, Chief Justice


Associate Justice