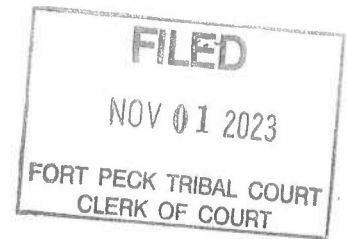


Appellate Court
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FORT PECK COURT OF APPEALS
ASSINIBOINE AND SIOUX TRIBES
FORT PECK INDIAN RESERVATION
POPLAR, MONTANA

<p>Fort Peck Tribes, Plaintiff-Appellee</p> <p>v.</p> <p>Caleb J. Gourneau Defendant-Appellant</p>	<p>CAUSE NO. AP # 856</p> <p>ORDER</p>
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BEFORE CHIEF JUSTICE SHANLEY, ASSOCIATE JUSTICES JONES,
GRIJALVA

The Defendant has appealed to this Court from a July 25, 2023, judgment of conviction entered by jury finding him guilty of Protection of Government Officials, Employees and Law Enforcement Officers, CCOJ, Title 7, Section 422-A, and a sentence entered by the Chief Judge of 365 days incarceration¹. The Appellant represented himself at the trial. Simultaneous with

¹ This Court notes that the Tribal Code refers to this charge, as well as well as the Sexual Assault charge the Appellant was acquitted of as “felonies” although the maximum sentence is only one

the filing of the appeal the Appellant, through his newly-retained advocate, Roxanne Gourneau, filed a “Motion to set aside the verdict and for Competency Evaluation” alleging that the Defendant was not competent to represent himself at hearing and that there was insufficient evidence presented at trial to sustain the verdict. This Court has no record of a ruling on that motion.

STATEMENT OF JURISDICTION

¶ 1 According to CCOJ Title II, Chapter 2, §202,

The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court, appeals of administrative decision where a provision of this Code expressly vests such jurisdiction in the Court of Appeals

STANDARD OF REVIEW

¶ 2 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. This Court cannot address legal issues raised after appeal, however, that were not properly raised before the Tribal Court. The competency issue was raised post-verdict and must first be assessed by the Tribal Court.

ISSUES

- **Does this Court of Appeals have the authority to address the issue of the Appellant’s competency to defend himself at trial when that was not raised prior to verdict and is the subject of a post-verdict motion to vacate**

year of incarceration. The use of the term “felony” in the context of a criminal charge raises some issues under the Tribal al Law and Order Ac, which involves a Defendant’s right to court-appointed counsel for any charge where he could be incarcerated for more than one year. The Appellant does not raise that issue in this appeal.

DISCUSSION

¶ 3 On July 25, 2023 the Appellant was found guilty by jury of the charge of Protection of Government Officials, Employees and Law Enforcement Officers in violation of CCOJ, Title 7, Section 422-A, and a sentence entered by the Chief Judge of 365 days incarceration. He represented himself at hearing and there is nothing in the record before trial demonstrating that he raised the issue of his competency to defend himself at trial. He was acquitted of Sexual Assault at that same trial.

¶ 4 After trial he apparently retained an advocate who filed a motion to set aside the verdict and to assess the Defendant's competency, not to stand trial but to defend himself. His advocate filed a motion and also sought to stay the execution of the sentence. This Court has no record of the motion to set aside the verdict being ruled on by the Tribal Court.

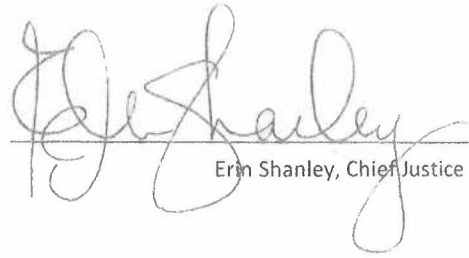
¶ 5 Consistent with our previous opinions, when an issue is raised for the first time on appeal we stay our hand to permit the Tribal Court to develop a record on the issue if it is being properly presented to the Tribal Court. In this appeal we find that the Tribal Court should be permitted to address the issue raised on appeal- whether the Appellant was competent to defend himself- before we address it.

¶ 6 CONCLUSION

For the reasons stated above, this Court stays consideration of this appeal until the motion to set aside the verdict is resolved by the Tribal Court.

SO ORDERED this 1 day of NOV, 2023.

FORT PECK COURT OF APPEALS



Erin Shanley, Chief Justice



B.J. Jones, Associate Justice

James Grijalva, Associate Justice