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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>Fort Peck Tribes, Plaintiff-Appellee</p> <p>v.</p> <p>Sierra Jackson, Defendant-Appellant Raven Lane, Petitioner for Writ of Habeas Corpus</p>	<p>CASE NOS. AP # 864, 862</p> <p>ORDER DEFERRING CONSIDERATION</p>
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BEFORE CHIEF JUSTICE SHANLEY, ASSOCIATE JUSTICES JONES,
GRIJALVA

These cases have been consolidated for consideration on one limited issue- whether this Court has habeas corpus jurisdiction or appellate jurisdiction to make a determination prior to trial of whether Ms. Jackson and Ms. Lane are "Indian persons", as defined at 25 USC §1301(4), subject to the Tribal Court's criminal jurisdiction. Consistent with our ruling in App. 804, Taypayosatum v.

Tribes, we find that the issue of whether a criminal defendant is an Indian and thus subject to the Tribal Court's criminal jurisdiction is a question of fact for the Tribes to prove at trial beyond a reasonable doubt at trial, and thus is not an appropriate challenge in a pre-trial habeas corpus action, except to the extent that probable cause fails to exist to believe a Defendant is an Indian person. To the extent that the Tribal Court made a determination as to the Indian status of these Appellants, that finding is merely a finding of probable cause and not a legal determination of Indian status that is binding on the trier of fact. A probable cause finding of a factual predicate for trial is not an appropriate subject matter of a pre-conviction habeas corpus action.¹ If the ultimate trier of fact were to find the Appellants guilty of the criminal offenses charged, they may appeal that conviction on the ground that there was insufficient evidence beyond a reasonable doubt as to their Indian status.

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

¹ It should be noted that the prosecutions against these two Appellants are premised upon them being Indian persons, not non-Indians under the Violence Against Women Act, see 25 USC §1304. In the latter situation there may be a basis for an accelerated habeas corpus review.

Appeals. The Court may have some limited habeas corpus jurisdiction under the Tribal Code, but that is limited to “legal” determinations prior to trial.

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 unless such determinations are supported by substantial evidence. 2 CCOJ §202. A finding of Indian status prior to trial is merely a probable cause finding and not a legal determination as the status of being Indian is a factual, not legal determination.

¶ 3 ISSUE PRESENTED

Does this Court of Appeals have the authority to hear a challenge to the Tribal Court's finding that a criminal defendant is an Indian person under 25 USC §1301(4) prior to trial when probable cause exists to find that the person is Indian?

Does the Tribal Court have authority to make a legal determination that a person is Indian prior to trial which is binding on the ultimate trier of fact?

DISCUSSION

¶ 4 Both Ms. Jackson and Ms. Lane claim that they are being illegally detained awaiting trial because they are the subjects of criminal proceedings in the Tribal Court when they are not Indians. In both of their cases the Tribal Court made a determination that they are “Indian persons” subject to criminal jurisdiction of the Tribal Court in denying motions to dismiss. They have both appealed to this Court and filed habeas corpus challenges to that detention claiming that they are not Indian.

¶ 5 Consistent with our previous opinions, we have held that the definition of Indian for purposes of the Tribal Court's criminal jurisdiction is a federal one under the Indian Civil Rights. Unfortunately, the federal courts have not figured out the proper

definition of Indian for federal criminal jurisdiction purpose, but they have consistently ruled that the issue is ultimately a factual one and not a legal one. The United States Court of Appeals for the 9th Circuit, as well as other Circuit Courts, have held that the issue of Indian status of an offender or victim in an Indian country prosecution is an issue of fact that must be found by the fact finder beyond a reasonable doubt. United States v. Cruz, 554 F.3d 840 (9th Cir. 2009). In United States v. Stymiest, 581 F.3d 759, 762 (8th Cir. 2009) the Court held that the Indian status of an offender in a federal court prosecution is actually an element of the offense which has to be submitted to a jury for determination. It is not a legal determination according to these Courts.

¶ 6 As a factual issue the Tribal Court can only make a probable cause determination prior to trial of whether a criminal defendant is an Indian person and the ultimate determination of that will be the trier of fact- Judge or Jury- and must be established by evidence beyond a reasonable doubt. Probable cause determinations are not generally the proper subjects of interlocutory appeals or habeas actions as there has been no final determination as to a factual issue. Some pre-trial determinations, such as whether a prosecution is timely under the speedy trial provision or whether the prosecution would violate double jeopardy, may be raised by habeas corpus or interlocutory appeal because they involve the right not to be tried. This Court finds that that the denials of the motions to dismiss filed by the Appellants below were probable cause findings and not legal determinations of Indian status.

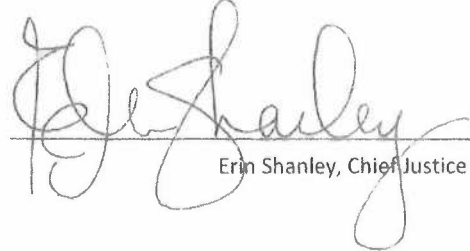
¶ 7

¶ 8 **CONCLUSION**

For the reasons stated above, this Court stays consideration of these appeals and habeas petitions until the matters are tried to the Court below.

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