

**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

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| Roger S. Bissonnette III,<br>Appellant,<br><br>v.<br><br>Fort Peck Tribes,<br>Appellee. | CAUSE NO. AP # 869<br><br>ORDER DENYING WRIT WITH<br>INSTRUCTIONS |
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Appeal from the Fort Peck Tribal Court, Honorable Chief Judge Stacie Four Star, Presiding Judge.  
Before E. Shanley, Chief Justice, and B.J. Jones and J. Grijalva, Associate Justices

**BACKGROUND**

¶ 1 This matter comes before the Fort Peck Court of Appeals (FPCOA) on an appeal from the Tribal Court's denial of the Appellant's application for a writ of habeas corpus issued on February 21, 2024. Appellant claims that his rights under federal law, 25 U.S.C. §1302(c)(1), to court-appointed legal counsel were violated when he was arraigned without counsel in a criminal prosecution where the Tribes certified its intent to seek an enhanced sentence under the Tribal Law and Order Act. He also claims that

his pre-trial bond was set without the assistance of legal counsel. He asserts that this violation warrants his release on a personal recognizance bond.

¶ 2 On January 31, 2024 the Tribes filed a criminal complaint charging the Appellant with murder. Simultaneous with that filing the Tribes filed a Notice of Intent to seek an enhanced sentence under the provisions of 25 U.S.C. §1302(c)(1) and (2) as incorporated into tribal law at 6 COJ §511. That notice also apprised him of his right to seek court-appointed counsel if indigent. The Appellant was then arrested and brought before a presiding Judge where he pled not guilty, and bond was set without legal counsel present to represent him. He now claims that that arraignment violated federal and tribal law and justified the issuance of a writ of habeas corpus releasing him from detention on a personal recognizance bond.

### **STATEMENT OF JURISDICTION**

¶ 3 The Fort Peck Appellate Court reviews final orders from the Fort Peck Tribal Court. 2 CCOJ §202. The Tribal Court order denying the writ of habeas corpus is a final order subject to appeal.

### **STANDARD OF REVIEW**

¶ 4 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**

¶ 5 Whether the Appellant's rights under the Tribal Law and Order Act, as incorporated into Tribal Law, to court-appointed legal counsel were violated when he was arrested and brought before a presiding Judge for arraignment and the setting of

bond prior to the appointment of legal counsel for him and whether said alleged violation entitles him a writ releasing him on a personal recognizance bond.

### **DISCUSSION**

¶ 6 The rights of defendants in criminal cases in the Fort Peck Tribal Court are defined in the Fort Peck Comprehensive Code of Justice (CCOJ), Title V, Section 501, which mirror the constitutional rights in the Indian Civil Rights Act of 1968 (ICRA), 25 U.S.C. §§ 1301-1304. One special right preserved criminal defendants is the right to court-appointed counsel for indigent defendants in criminal prosecutions where the Tribes seek an enhanced sentence under the Tribal Law and Order Act, see 25 U.S.C. §1302(c)(2). That section provides in relevant part:

At the expense of the tribal government, provide an **indigent defendant** the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

¶ 7 The Appellant argues that his right to counsel attached when the Tribe filed the murder charge and certified that it was seeking an enhanced sentence under TLOA. The arraignment, he contends, was a critical phase of the criminal proceedings where his right to counsel attached and because he did not have legal counsel at that phase his arraignment and setting of bond violated TLOA and Tribal Law. This Court agrees that an arraignment, at which time the Court below sets bond, is a critical stage of a criminal proceeding, but disagrees that the alleged denial of counsel at that stage in this case warrants the issuance of a writ of habeas corpus commanding the release of the Appellant on a personal recognizance bond. The Appellant cites to 25

U.S.C. §1302(c)(1) as the relevant section of federal law but that section only guarantees a criminal defendant competent legal counsel. The section reads:

Provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution;

¶ 8 That section has to be read in pari materia with subsection (2) that only requires the appointment of counsel when a Defendant is indigent. Nothing in this record demonstrates that this Appellant is indigent and was thus entitled to court-appointed counsel to assist him at the initial arraignment and setting of pre-trial release conditions. It also appears that he entered a plea of not guilty at his counsel-less arraignment. The appropriate remedy in this case is to deny the writ and instruct the lower court to determine whether the Appellant is indigent and if he is determined to be so to re-address the conditions and terms of his pre-trial release. Even if he is not indigent his retained counsel should be entitled to file a bond reduction motion to permit counsel to be heard on the issue.

¶ 9 In the future in cases such as this where a criminal defendant who is facing enhanced sentencing under TLOA appears for arraignment without counsel it would be appropriate to advise the Defendant of his right to court-appointed counsel if indigent and to give him the opportunity to be appointed such counsel, if indigent, or seek such counsel prior to arraignment. This Court understands that the Tribes are under a time restriction to arraign a person who is arrested and detained and also under a requirement to determine probable cause if that arrest was pursuant to an officer's observations and not a warrant and thus the continuation of the arraignment may not be feasible. However, if enhanced sentencing is being sought the Tribal Court must

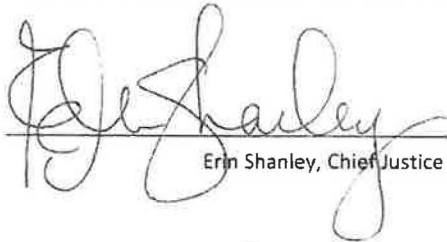
accommodate the Defendant's rights both to court-appointed counsel or retained counsel and a timely arraignment which in certain circumstances may require the continuation of the arraignment. Release conditions, however, must be addressed for any Defendant in such a circumstance. This Court, however, has never held that a person is being illegally detained merely because he was not released on a personal recognizance bond while awaiting trial, and thus denies the writ in this case.

**ORDER**

¶ 1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Court affirms the denial of the writ of habeas corpus but remands to the Tribal Court to reconsider the Appellant's bond and permit his counsel to be heard on the subject.

SO ORDERED the 4<sup>th</sup> day of March 2024.

FORT PECK COURT OF APPEALS



Erin Shanley, Chief Justice



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B.J. Jones, Associate Justice



James Grijalva, Associate Justice