

APR 28 2017Fort Peck Tribal Court
of Appeals

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

Jerrid Mudgett Sr., Appellant	CAUSE NO. AP #738
vs	ORDER REVERSING LOWER COURT
FORT PECK TRIBES, Appellee.	

Appeal from the Fort Peck Tribal Court, Marvin Youpee Jr., Presiding Judge.
Appellant appeared through Counsel, Robert Welch.
Before Smith, Chief Justice, and Shanley and Knudsen, Associate Justices.

¶1 This matter comes before this Court on a Notice of Appeal filed by Appellant, Jerrid Mudgett Sr., on February 8, 2017 challenging the Lower Court's Order denying his Motion to Dismiss for violation of the Statute of Limitations issued on January 18, 2017.

Background

¶2 On January 15, 2016, Appellant Mudgett was stopped for a traffic violation on the Fort Peck Indian Reservation by Montana State Highway Patrol Officer Derek Werner. Officer Werner cited Appellant Mudgett and released him to his daughter,

summonsing him to appear before the Fort Peck Tribal Court on January 27, 2016 at 1:00 p.m. to answer to the traffic violation.

¶3 On January 27, 2016, Appellant Mudgett appeared in Tribal Court for his traffic matter, with Legal Counsel Terry Boyd, but was advised there was no paperwork and the Court personnel stated that he would be re-summonsed to appear for arraignment at a later date.

¶4 On March 22, 2016, the Tribes signed two criminal complaints charging Appellant Mudgett with the charges of Driving under the Influence, a Class A Misdemeanor, in violation of 17 CCOJ 107 and Mandatory Financial Responsibility, a Class B Misdemeanor, in violation of 17 CCOJ 132. The complaints were not sworn to and signed by a Judge until April 28, 2016.

¶5 On August 7, 2016, Appellant Mudgett was served with a summons to appear for his arraignment on September 8, 2016. On September 8, 2016, Appellant Mudgett appeared and pled Not Guilty to both Driving under the Influence and Mandatory Financial Responsibility. The Court set a pre-trial conference for October 12, 2016.

¶6 On December 14, 2016, Counsel Robert Welch appeared on behalf of Appellant Mudgett and filed a Motion to Dismiss with a Brief in Support, alleging a violation of the Statute of Limitations pursuant to 17 CCOJ 129. Appellant Mudgett argues in his Motion that the criminal matter was not officially commenced until it was signed by the Prosecutor *and* the Judge, which occurred after the 90 day limitation. On January 3, 2017, the Tribes filed a response. The Tribes argue that the case commenced on March 22, 2016 when the Prosecutor signed the complaint. On January 18, 2017, the Lower Court issued an Order denying Appellant Mudgett's Motion to Dismiss,

concluding that the criminal case was officially commenced on the date the Tribes signed the Complaint. Appellant Mudgett appeals the Lower Court's Order denying his Motion to Dismiss.

Statement of Jurisdiction

¶7 The Appellate Court's jurisdiction is generally limited to review of a final decision from the lower court. CCOJ Title II, chapter 2, sec. 202. *In the Matter of B.R.M., FPCOA Appeal No. 670 (2015) citing Independence Bank v. Bell and McGeschick, FPCOA Appeal No. 470, (2007)*. The only exception to this limitation is found in Rules 6 of Procedure in the Court of Appeals. CCOJ Appendix 3. Interlocutory Appeals are granted for procedural matters that do not touch upon or concern the merits of the case pending. *Id.* Under this rule, interlocutory appeals are allowed when the matter being appealed involves due process issues which would adversely affect the outcome of a trial on the merits and would result in irreparable harm to the aggrieved party if the lower court action were allowed to proceed without intervention from the appellate court. The Lower Court's denial of the Motion to Dismiss for a violation of the Statute of Limitations meets the standard for an interlocutory appeal.

Standard of Review

¶8 Interlocutory appeals are permissive in nature. In reviewing Lower Court's Order Denying the Motion to Dismiss, the Tribal Appellate Court will consider legal issues *de novo*, but review finding of fact using the clearly erroneous standard given this Court's limited scope of review when lower court proceedings have not yet resulted in a final order.

Issue

¶9 The following issue has been raised for review by Appellant Mudgett:

1. Did the lower court err when it denied Mudgett's Motion to Dismiss his complaint based on a violation of the Highway Code's Statute of Limitations pursuant to 17 CCOJ 129?

Discussion

¶8 A statute of limitations restricts the time in which a proceeding may be commenced in order to facilitate resolution of judicial matters in a timely fashion. The purpose behind statutes of limitations are to promote judicial efficiency, protect a defendant's rights, ensure claims are not lost due to stale cases and inability to preserve evidence, and avoid the anxiety and stress on all parties involved due to a lengthy delay to pursue a claim. Statutes of limitations generally vary according to the type and severity of the case. In this case, because Appellant Mudgett's charges stemmed from a traffic violation of the Highway Code, the Statute of Limitations in that code must apply. That Statute states:

Sec. 129 Statute of Limitations

No prosecution shall be maintained under this Chapter unless the action shall have been commenced within three (3) months after the commission of the offense.

17 COJ 129

¶9 In order to determine whether the prosecution was commenced within three months it is necessary to determine what is required for the commencement of a criminal action. The CCOJ Criminal Procedures state that, "All criminal prosecutions shall be initiated by a complaint filed with the Court signed by the prosecutor and sworn to before a judge. 6 CCOJ 101(a). The language is explicit and conjunctive. By use of

the word "and," the statute shall be interpreted conjunctively. Therefore, the commencement of prosecution requires a complaint to be filed and signed by the prosecutor *and* sworn to before a judge. The commencement is not complete until all three requirements are met.

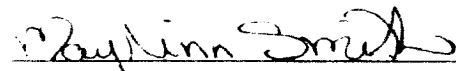
¶10 In the case at hand, the although the Prosecutor signed the Criminal Complaint on March 22, 2015⁶ meeting the 3 month statute of limitations for traffic offenses under the Highway Code, it was not sworn to and approved by the Judge until April 28, 2016, which was after the 3 month statute of limitations had expired. Because all three requirements were not met within the statute deadline, the case was not officially commenced within the time frame allowed by the Tribal Code.

¶11 Therefore, the Order of the Tribal Court is reversed and Defendant's case shall be dismissed for a violation of the Statute of Limitations 17 CCOJ 129.

SO ORDERED this 26th day of April 2017.

FORT PECK COURT OF APPEALS

BY


Maylinn Smith, Chief Justice


Erin Shanley, Associate Justice


DANIEL P. KNUDSEN
Associate Justice