

Appellate Court
Fort Peck Indian Reservation
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FILED

JUN 06 2017

Fort Peck Tribal Court
of Appeals

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

FORT PECK TRIBES, Appellant	CAUSE NO. AP #745
vs	ORDER OF CLARIFICATION
MARSHA MARTELL, Appellee.	

Joint Petition for Advisory Opinion on behalf of Fort Peck Tribes and the Defendant.
Before Smith, Chief Justice, and Shanley and Knudsen, Associate Justices.

¶1 This matter comes before this Court on a Joint Petition for an Advisory Opinion filed by the Fort Peck Tribes and Defendant. Although nothing in the tribal code authorizes the issuances of advisory opinions, the Petition states that the parties are in need of clarification of the Order issued in *Fort Peck Tribes vs. Mattie Big Leggings*, APP 732. This Court will attempt to clarify its order within the confines of the applicable statutory language, but recognizes that only the tribal legislative body can alter the

requirements established by the plain meaning of the trial in absentia statute. 6 CCOJ §509.

¶2 In *Fort Peck Tribes vs. Mattie Big Leggins*, this Court issued an Order concluding that it was improper for the Tribal Court to hold a trial *in absentia* on a felony offense. In that case, the Defendant was charged with three counts of Neglect of a Child, in violation of 7 CCOJ 241. The first count of Neglect of a Child is a Class A Misdemeanor and all subsequent counts are felonies. When the Defendant failed to appear for her trial, the Tribal Court held a trial *in absentia* on all three counts, which was contrary to the laws of the Tribe, the Federal Criminal Rules of Procedure, and case law interpreting those procedural rules.

¶3 When the Defendant failed to appear, the Tribal Court had various other remedies at its disposal including: 1) order a continuance; 2) forfeit bail; 3) issue an arrest warrant; or 4) proceed with the trial on the one misdemeanor count after finding that the Defendant had knowledge of the trial date and is voluntarily absent and reschedule trial on the two other counts. Although the Tribal Court *could have* proceeded on the first count, based on the record it appears the facts underlying all three offenses were the same and it would have been a waste of resources to hold two separate trials on the same matter.

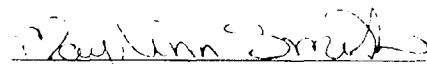
¶4 Therefore in a case involving stacking offenses, the Tribal Court may only hold a trial *in absentia* on the charges which are considered misdemeanors. For subsequent counts of the same offense that rise to the level of a felony, the Defendant must be present in order to proceed to trial *unless* the Defendant was initially present at the beginning of the trial and leaves or is removed from the courtroom. 6 CCOJ 509(d).


Given the fact that the lower court has not issued an Order in the above-captioned Matter, this Court does not have the ability to Stay the Proceedings. Additionally there are no legal issues raised by this request for clarification that can be ruled upon by this Court. This Court is bound by the expressed language of the tribal code when determining procedural requirements for trials in *absentia*. Any need for additional clarification of the trial in *absentia* limitations imposed by the current statutory language of 6 CCOJ §509, should be directed to the Tribes' legislative body.

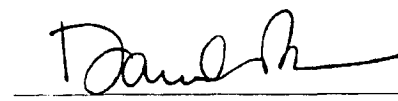
SO ORDERED this 5thth day of June 2017.

FORT PECK COURT OF APPEALS

BY


Maylinn Smith, Chief Justice


Erin Shanley, Associate Justice


DANIEL P. KNUDSEN
Associate Justice