

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

AMIDOOOLI PACHECO,

Petitioner,

v

No. 1:10-cv-00923-RB-WDS

BILLY MASSENGILL, WARDEN
Regional Correctional Center,

Respondent.

**ORDER GRANTING PETITION FOR WRIT OF
HABEAS CORPUS AND FOR RELEASE OF PRISONER**

THIS MATTER comes before the Court on Petitioner Amidooli Pacheco's petition for habeas corpus pursuant to 25 U.S.C. § 1302-1303. Petitioner alleges that he is an enrolled member of the Pueblo of Kewa, a federally recognized Indian Tribe in New Mexico. Petitioner alleges that tribal officials entered and searched his residence without a warrant, illegally arrested and detained him, and prosecuted him without due process. On September 9, 2009 Petitioner was sentenced to two years of incarceration, which sentence Petitioner has been serving at Regional Correctional Center. ("RCC")

Through counsel, Petitioner has attempted to obtain documents relating to Petitioner's prosecution and detention. No documents have been provided to counsel for Petitioner by the Kewa Tribal Court. All attempts by Petitioner's counsel to meet and confer with officials of the Kewa Tribal Court have been denied by tribal officials. Accordingly, it appears to the Court that Petitioner has exhausted all appropriate tribal remedies and that this petition is properly before this Court.

Defendant alleges that the Tribal Court imposed a sentence in excess of the statutory maximum under the Indian Civil Rights Act, 25 U.S.C. §1302(7). Petitioner filed a motion for expedited review of this matter. (Document #7) This is an allegation which, if true, would entitle

him to immediate relief, and which caused the Court to schedule an evidentiary hearing for November 3, 2010.

Respondent Massengill has now filed a response to Petitioner's motion for an expedited hearing. (Document #9) Respondent states that Petitioner was remanded to his custody on September 4, 2009. Respondent was instructed to keep Petitioner incarcerated until September 1, 2011. Respondent acknowledges that Petitioner was prosecuted and convicted in the Kewa Pueblo Tribal Court, with no involvement on the part of Respondent. Respondent has no documentation relating to the prosecution beyond the order of incarceration.

Respondent's pleadings indicate that he filed a response to the habeas petition to avoid entry of default, and brought the petition to the attention of the prosecuting authorities at the Kewa Pueblo. Subsequently, officials from the Kewa Pueblo informed Respondent that they have no intention of responding to the petition for habeas corpus. Accordingly, Respondent has advised the Court that he has no further interest in opposing the petition, and he awaits an order which directs him to either release or to retain custody over Petitioner.

The Court finds that Petitioner has made a prima facie showing that the Tribal Court imposed a sentence in excess of the statutory maximum under the Indian Civil Rights Act, 25 U.S.C. §1302(7). Furthermore, the Court finds that Petitioner's Petition for Writ of Habeas Corpus is unopposed.

IT IS THEREFORE ORDERED that Petitioner's Petition for Writ of Habeas Corpus is GRANTED as to his ongoing incarceration and Respondent Massengill is directed to release Petitioner from custody immediately upon receipt of this order.



ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE