

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
TACOMA , WASHINGTON

ANTHONY T. YOUCKTON, JR
(dob: [REDACTED] 1987)

Petitioner,

vs.

BRUCE STINSON,
JAIL ADMINISTRATOR,
THE CONFEDERATED TRIBES OF
THE CHEHALIS RESERVATION

Respondent.

Case No.: C10-5780BHS-JRC

RESPONDENTS' MOTION TO DISMISS
PETITIONER'S MOTION FOR RELEASE PENDING
CONSIDERATION OF PETITIONER'S
WRIT OF HABEAS CORPUS

COMES NOW BRUCE STINSON OF CONFEDERATED TRIBES OF THE
CHEHALIS RESERVATION, hereinafter referred to as the "Tribe", by and through its
Prosecutor Tim Rybka, who hereby replies to *Petitioner's Motion for Release from Custody*,
dated November 11, 2010.

ISSUES PRESENTED

1. Can the Tribe charge the Petitioner/Defendant with violating a specific crime multiple times over an extended period of time without violating the Double Jeopardy Clause?

Answer: yes.

2. Can multiple completed acts of Violating a Protection Order each be considered a "Unit of Prosecution"?

Answer: Yes.

3. Are the facts surrounding this particular case sufficient to warrant an extraordinary circumstance classification?

Answer: No.

RESPONDANT'S MOTION TO DISMISS
PETITIONER'S MOTION - 1

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CHEHALIS CONFEDERATED TRIBES
NORTHWEST INTERTRIBAL COURT SYSTEM
20818 44TH AVE. W, SUITE 120
LYNNWOOD, WA 98036
(425) 774-5808, FAX: (425) 744-7704

- 1 4. Can the Tribe file criminal charges against the Petitioner/Defendant while he is serving a
2 lawfully ordered sentence for crimes previously convicted of?

3 Answer: Yes.

- 4 5. Can the Tribal Court order a Domestic Violence Protection Order to be issued against an
5 adult male Tribal member who is having sexual contact with a juvenile female Tribal
6 member, who is also a ward of the Tribe under the Indian Child Welfare Act?

7 Answer: Yes.

8 **FACTUAL SUMMARY**

9 The Tribe objects to the Petitioner/Defendant's use of the Federal Court System to
10 re-examine and re-argue every detail of cases that have been already lawfully adjudicated in the
11 Chehalis Tribal Court, the proper forum for these matters.

12 However, without waiving such objections, in brief, Anthony YOUNGTON, Jr.,
13 hereinafter referred to as the Petitioner/Defendant is an adult male, and enrolled member of the
14 Muckleshoot Tribe, who on or about January through March 2008, at or near the Lucky Eagle
15 Casino, within the exterior boundaries of the Chehalis Tribes Reservation, did knowingly and
16 purposely on at least two hundred and five (205) separate occasions, did commit two hundred
17 and five (205) violations of a lawfully processed Domestic Violence Restraining Order issued by
18 the Chehalis Tribal Court.

19 Wherein this adult male was ordered via the Domestic Violence Restraining Order, to
20 keep away from, and have no contact whatsoever with juvenile Tribal Member, and female
21 victim Tyanna Canales, who at the time was a ward of the Tribe through the Indian Child
22 Welfare Act (ICWA).

23 This order was filed November 14, 2007 against the Petitioner/Defendant, after the Tribe
24 discovered that the Petitioner/Defendant was believed to be having unlawful sexual contact with
25 the juvenile victim. While the order was outstanding, the Tribe became aware of at least two

1 pregnancies which resulted in the termination of the two fetuses, one of which was well
 2 documented and certified to be the offspring of the Petitioner/Defendant though DNA testing,
 3 and incurred while the Domestic Violence Restraining Order was in place against the
 4 Petitioner/Defendant.

5 Wherein incident to the crimes of violating the restraining order the Petitioner/Defendant
 6 was arrested and charged with multiple violations of the order. While being represented by an
 7 attorney of his choice identified as Scott Campbell, Esq., the Petitioner/Defendant voluntarily,
 8 intelligently, and without threat or coercion, pled guilty on October 22, 2008 to one hundred and
 9 fifty (150) counts of violating the restraining order under Title 15, Domestic Violence Code,
 10 Section 03.02.

11 The Tribal Court immediately accepted the Petitioner/Defendant's guilty plea on twenty
 12 (20) , and was sentenced to sixty (60) days in jail with credit for twenty one (21) days served as
 13 well as \$2,000.00 fine. In consideration of the Petitioner/Defendant's plea, the Tribe dismissed
 14 fifty (55) counts, and in regards to the remaining one hundred and thirty (130) counts, the Tribal
 15 Court deferred judgment pending the successful completion of a specific number of probationary
 16 terms and conditions, as agreed to by the Tribe, Petitioner/Defendant and his counsel.

17 On April 29, 2009, an administrative fact finding hearing was held in the Chehalis Tribal
 18 Court regarding the probation status of the Petitioner/Defendant. Upon completion of the
 19 administrative hearing, the Tribal Court determined that the Petitioner/Defendant had failed to
 20 comply with a number of the probationary terms and conditions including:
 21

- 22 1. *Failing to appear in court for a review hearing;*
- 23 2. *Failing to comply with chemical dependency treatment;*
- 24 3. *Failing to comply with domestic violence perpetrator's treatment,;*
- 25

RESPONDANT'S MOTION TO DISMISS
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- 1 4. *Failing to meet with the Tribal Probation Officer;*
- 2 5. *Being under the influence of alcohol; and that the*
- 3 6. *Petitioner/Defendant had incurred new Law and Order Code violations while on*
4 *probation.*

5 On May 27, 2009, the Tribal Court revoked the deferred judgment status of the
6 Petitioner/Defendant and accepted the previous October 22, 2008 guilty pleas made by the
7 Petitioner/Defendant, on the remaining one hundred and thirty (130) counts of violating a
8 domestic violence restraining order, and though the maximum possible penalty was one hundred
9 and thirty (130) years in jail, one year for each violation, the Tribal Court sentenced the
10 Petitioner/Defendant to only three hundred and ninety (390) days in jail along with a \$13,000.00
11 fine.

12 On June 8, 2009, the Tribe through an attorney of his choice identified as Paula Olsen,
13 Esq. , received a Notice of Appeal of the Petitioner/Defendant's guilty pleas and sentence.

14 On November 18, 2009, while being represented by an attorney of his choice identified as
15 Paula Olsen, Esq., the Petitioner/Defendant voluntarily, intelligently, and without threat or
16 coercion, pled guilty to yet another count of Violating a Domestic Violence Restraining Order
17 under Title 15, Domestic Violence Code, Section 03.02, and was sentenced to one hundred and
18 fifty (150) days in jail, with one hundred and twenty (120) days of the sentence suspended.

19 On March 3, 2010 the Petitioner/Defendant's appeal was dismissed by the Chehalis
20 Tribal Court of Appeals after a lengthy and exhaustive process.

21 On May 3, 2010, the Petitioner/Defendant escaped from lawful custody when he failed to
22 return from a scheduled clinical treatment visit within the Chehalis Reservation. Incident to his
23 escape a Tribal Bench Warrant was issued for the Petitioner/Defendant's arrest on May 4, 2010.

On May 5, 2010, the Tribe through its prosecutor filed a complaint for Escape, a violation of Title 7, Criminal Code Section 07.100, against the Petitioner/Defendant.

On August 29, 2010 the Petitioner/Defendant was discovered by Tribal Police and arrested pursuant to the previously issued arrest warrant, and incident to his lawful arrest the Tribe filed a complaint for Resisting Arrest, a violation of Title 7, Criminal Code Section 07.070.

DISCUSSION

1. Can the Tribe charge the Petitioner/Defendant with Violating a Restraining Order multiple times without violating the Double Jeopardy Clause?

Answer: Yes.

The double jeopardy clause of the United States Constitution guarantees that no person shall, "Be subject for the same offense to be twice put in jeopardy of life or limb". U.S. Const. Amend. V. Also, the double jeopardy clause of the Washington State Constitution guarantees that "No person shall . . . be twice put in jeopardy for the same offense". Const. art. I, § 9. The Fifth Amendment applies to the states through the Fourteenth Amendment. *Benton v. Maryland*, 395 U.S. 784, 794, 23 L. Ed. 2d 707, 89 S. Ct. 2056 (1969).

The double jeopardy clause of the Fifth Amendment and Paragraph 3 of the Indian Civil Rights Act, has been construed to encompass three separate constitutional protections:

1. It protects against a second prosecution for the same offense after acquittal;
2. It protects against a second prosecution for the same offense after conviction, and;
3. It protects against multiple punishments for the same offense.

[*North Carolina v. Pearce*, 395 U.S. 711, 717, 726, 23 L. Ed. 2d 656, 89 S. Ct. 2072, 2089 (1969), overruled on other grounds by *Alabama v. Smith*, 490 U.S. 794, 104 L. Ed. 2d 865, 109 S. Ct. 2201 (1989).]

RESPONDANT'S MOTION TO DISMISS
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1 In both the multiple punishment and successive prosecution contexts, the Supreme Court
 2 of the United States has ruled double jeopardy applies if the two offenses for which the
 3 defendant is punished or tried cannot survive the "same elements" test. *United States v. Dixon*,
 4 509 U.S. 688, 125 L. Ed. 2d 556, 568, 113 S. Ct. 2849 (1993).

5 The "same elements" test, commonly referred to as the Blockburger test, examines
 6 whether each offense contains an element not contained in the other. The applicable rule is that
 7 where the same act or transaction constitutes a violation of two distinct statutory provisions, the
 8 test to be applied to determine whether there are two offenses or only one, is whether each
 9 provision requires proof of a fact which the other does not. *Blockburger v. United States*, 284
 10 U.S. 299, 304, 76 L. Ed. 306, 52 S. Ct. 180 (1932); *Dixon*, 125 L. Ed. 2d at 568.

12 The Blockburger test had been the standard for federal double jeopardy analysis for
 13 almost 60 years, until the Supreme Court decided *Grady v. Corbin*, 495 U.S. 508, 109 L. Ed. 2d
 14 548, 110 S. Ct. 2084 (1990). In *Grady*, the Supreme Court ruled that a subsequent prosecution
 15 must satisfy a two-part test that included the Blockburger test and a "same conduct" test to avoid
 16 double jeopardy. The *Grady* Court outlined the second part of the "same conduct" test when it
 17 wrote, "The Double Jeopardy Clause bars any subsequent prosecution in which the government,
 18 to establish an essential element of an offense charged in that prosecution, will prove conduct
 19 that constitutes an offense for which the defendant has already been prosecuted. *Grady*, 495 U.S.
 20 at 521.

22 The "same conduct" test announced in *Grady* was overruled three years later in *Dixon*.
 23 Unlike the Blockburger analysis, whose definition of what prevents two crimes from being the
 24 "same offence," US Const, Amend 5, has deep historical roots and has been accepted in

1 numerous Courts, Grady lacked constitutional roots. The "same-conduct" rule it announced is
2 wholly inconsistent with earlier Supreme Court precedent and with the clear common-law
3 understanding of double jeopardy. Dixon, 125 L. Ed. 2d at 573.

4 Thus the Blockburger test appears now to be the exclusive standard for reviewing
5 whether successive prosecutions violate the double jeopardy clause of the Fifth Amendment.

6 Double Jeopardy in tribal and federal law, the appellate courts, and the Supreme Court of
7 the United States have adopted the test of Blockburger vs. United States, 284 U.S. 299 (1932),
8 later re-affirmed by Brown vs. Ohio, 432 U.S. 161 (1977) Again the test looks to the substantive
9 elements of the two offenses charged and asks the question-does each statutory offense require
10 proof of an additional fact that the other does not?
11

12 However in the Petitioner/Defendant's set of facts, the same elements test cannot be
13 applied to determine if the Petitioner/Defendant was placed in double jeopardy, when he had
14 been charged with violating one statute multiple times, and without any successive prosecutions
15 being present.
16

17 Title 15, Chehalis Domestic Violence Code, Section 03.02 (Violation of a Domestic
18 Violence Restraining Order) required that the Petitioner/Defendant did with knowledge that an
19 order was in place against him, in fact violate a provision contained in an order entered under the
20 code and that violating a domestic violence restraining order shall be considered a crime of
21 domestic violence.

22 The Tribe contends that the record is extremely clear, in that the Petitioner/Defendant,
23 when confronted with the overwhelming evidence presented by the Tribe, did voluntarily,
24 intelligently and without threat or coercion, plead guilty commit the crime of Violating a
25

Domestic Violence Restraining Order on at least two hundred (200) separate occasions, against at the ICWA protected juvenile female victim.

In addition, the Defendant has not been acquitted of these crimes; nor has the Defendant been subjected to a multiple prosecutions for the same crime after his conviction and; the Defendant has received no punishments beyond his original sentence for any of these separate crimes, therefore the double jeopardy clause is not applicable.

2. Can each of multiple completed acts of Violating a Domestic Violence Restraining Order each be considered a "Unit of Prosecution"?

Answer: Yes.

In a multiple count case, the Unit of Prosecution is per completed crime, per victim, per incident. A Defendant may be charged with multiple counts of the same offense if each crime was in fact completed, and/or multiple victims are involved in the same incident, or if the same victim is involved in multiple separate incidents. Whether an incident is separate may be determined by examining whether the victim was engaged in different activities in each incident, or by looking at the circumstances of each unit of prosecution. It is possible to have more than one incident on the same day and during a short period of time. The question to be answered here is what act or course of conduct has the Tribe defined as the punishable act for Violating a Restraining Order?

The first step in a Unit of Prosecution inquiry is to analyze the applicable criminal statute. Based on the language of the Tribe's Title 15, Section 03.02, the elements of a unit of prosecution are well defined, "...violates a restraint provision contained in an order...has committed the crime of violating a domestic violence restraining order..". The Unit of Prosecution is clearly per act/incident. The statutes basically consist of two elements: (1) intentional conduct by the Petitioner/Defendant, and (2) knowing that the conduct will be against another person via the order. The Unit of Prosecution begins and ends when the Petitioner/Defendant takes some sort of active role in violating the order.

RESPONDANT'S MOTION TO DISMISS
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CHEHALIS CONFEDERATED TRIBES
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1 The Tribe contends that when considering the scope of a criminal act/Unit of Prosecution,
 2 double jeopardy only protects the Petitioner/Defendant from being convicted twice under the
 3 same statute for committing just one Unit of the crime. (As noted in Bell v. United States, 349
 4 U.S. 81, 83-84, 75 S. Ct. 620, 99 L. Ed. 905 (1955); In re Snow, 120 U.S. 274, 7 S. Ct. 556, 30
 5 L. Ed. 658 (1887)).

6 As the same evidence test does not apply when the Petitioner/Defendant is charged with,
 7 or even convicted for violating one statute multiple times, so may the Petitioner/Defendant be
 8 charged for each completion of the same crime during one criminal incident/session, because he
 9 violated one unit of crime for each completed crime, and as against each other order/person
 10 involved in the incident/session.

11 **3. Are the facts surrounding this particular case sufficient to warrant an extraordinary**
 12 **circumstance classification?**

13 **Answer: No.**

14 The Tribe contends that as evidenced by the aforementioned facts the
 15 Petitioner/Defendant's claim that his case is extraordinary is bogus and without merit, and that
 16 the Petitioner/Defendant's motion fails on its face to make the requisite demonstration that this is
 17 an "extraordinary case involving special circumstances or a high probability of success" and that
 18 the remedy of mandamus is a drastic one, to be involved only in extraordinary situations."
 19 Bauman v. United States District Court, 557 F.2d 650, 654 (9th Cir. 1977) (quoting Will v.
 20 United States , 389 U.S. 90, 95 (1967)). The classification of extraordinary is reserved for
 21 "exceptional circumstances amounting to a judicial usurpation of power." Id. (quoting Will, 389
 22 U.S. at 95). The remedy of mandamus is a drastic one, to be involved only in extraordinary
 23 situations." Bauman v. United States District Court, 557 F.2d 650, 654 (9th Cir. 1977) (quoting
 24

1 Will v. United States , 389 U.S. 90, 95 (1967)). Its use is reserved for "exceptional circumstances
2 amounting to a judicial usurpation of power." Id. (quoting Will, 389 U.S. at 95).

3 Federal Courts have formulated a number of guidelines to govern the mandamus inquiry.
4 These guidelines include the following: "if the [Tribal Court's] order raises new and important
5 problems, or issues of law of first impression"; "whether the [Tribal Court's] orders were clearly
6 erroneous as a matter of law"; "whether the party seeking the writ has no other adequate means,
7 such as a direct appeal, to attain the relief he or she desires"; and " the petitioner will be damaged
8 or prejudiced in a way not correctable on appeal." Bauman, 557 F.2d at 654-55.
9

10 The Petitioner/Defendant with the assistance of counsel, pled guilty to Violating a
11 Domestic Violence Restraining Order at least two hundred (200) times, over three months on
12 separate occasions. The order was in place to protect a juvenile female ICWA ward of the Tribe
13 from the influence of an adult male who had already fathered one, and possibly two children
14 while the juvenile female was under the protection of the Tribal Court. Incident to a plea
15 agreement with the Tribe, the Petitioner/Defendant was sentenced to a reasonable amount of jail
16 time, and agreed to certain and specific terms of probation which were mutually approved upon
17 by both the Tribe, the Petitioner/Defendant and his counsel.
18

19 The Tribal Court was very clear that the Petitioner/Defendant held to key to his own jail
20 cell, and that any further violations of the restraining order, and any violations of the terms of
21 his probation would not be tolerated.
22

23 The Petitioner/Defendant violated both the terms of his probation as well as the protection
24 order and was sentenced appropriately.
25

On November 17, 2010 the Petitioner/Defendant submitted an administrative request through the Chehalis Tribal Jail System, for a furlough so that he could assist in, witness and provide some post birth care for his first child. On this day the Tribal Court held an administrative hearing regarding this matter, and granted a three day furlough from jail so that the Petitioner/Defendant could experience the miracle of birth, under the conditions that he agree to return to custody immediately after the third day, and submit to drug and alcohol testing prior to his re-incarceration.

In summary, the aforementioned facts are not extraordinary, taken together, these factors simply do not render this case so unusual and extraordinary as to warrant the Petitioner/Defendant's release on bail pending completion of the habeas proceedings.

4. Can the Tribe file criminal charges against the Petitioner/Defendant while he is serving a lawfully ordered sentence for crimes previous convicted of ?

Answer: Yes.

As previously referenced, the Petitioner/Defendant was never arrested for any new charges and is currently serving the remainder of his original sentences. Though since his unlawful flight from justice and re-incarceration, the Tribe has indeed charged the Petitioner/Defendant with the crimes of Escape and Resisting Arrest, however no arraignments have been held because the Petitioner/Defendant was not issued a summons, nor was he taken into custody on these charges, thus Title 5, Criminal Procedures Code, Section 03.010(b) Non- custody or Non-arrest Arraignment is enacted wherein, *"If there has been no arrest or the person is not still in custody, arraignment shall be held as scheduled."*

The Tribe contends that the "still not in custody" section of this code has been interpreted to mean not in custody for any specific new charges pending against a particular defendant who needs to be immediately arraigned per Title 5, Criminal Procedure Code, Section 03.010, Arraignment – Time, wherein, "Arraignment shall be held in open court without unnecessary delay after the accused receives a summons, or is taken into custody upon the execution of a warrant." The code is clear,

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1 because the Petitioner/Defendant was not arrested on a warrant for new criminal charges, and that the
2 arrest warrant issued against the Petitioner/Defendants was for the purpose of causing the
3 Petitioner/Defendant to complete his sentences on charges already adjudicated, the arraignments shall
4 be held as scheduled.

5
6 **5. Can the Tribal Court order a Domestic Violence Protection Order to be issued against
7 an adult male Tribal member who is having sexual contact with an juvenile female
8 Tribal member, who is also a ward of the Tribe under the Indian Child Welfare Act?**

9 **Answer: Yes**

10 The adult male Petitioner/Defendant was ordered via a lawful Domestic Violence Restraining
11 Order, to keep away from, and have no contact whatsoever with juvenile Tribal Member, and female
12 victim Tyanna Canales, who at the time was a ward of the Tribe through the Indian Child Welfare Act
13 (ICWA).

14 Title 15, Domestic Violence Code, Section 01.010 clearly states that Rape, Indecent Liberties,
15 Assault, Endangering the Welfare of a Child, and other crimes can and will be considered Domestic
16 Violence. Also Section 03.070 of the same Title is clear that the Tribal Court may order such
17 conditions as that of those the Petitioner/Defendant was ordered to cease and desist.

18 **CONCLUSION**

19 Based upon the foregoing, the Tribe contends that the Petitioner/Defendant's Motion for
20 Release is irrelevant, without merit, and should be summarily dismissed.

21 Dated: November 24, 2010.

22 Tim Rybka

23 TIM RYBKA, Tribal Prosecutor
24 RESPONDENT

25 RESPONDANT'S MOTION TO DISMISS
PETITIONER'S MOTION - 12

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