



Pokagon Band of Potawatomi Indians Court of Appeals

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CASE NO: 13-002-AP

Appellant:

Corey Frank Rangel

v.

Appellee:

People of the Pokagon Band of Potawatomi
Indians

Appellant's Attorney:

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DECISION

FLETCHER, ASSOCIATE JUSTICE

There are two matters before the court in this case. First; the appeal by Mr. Corey Rangel of his probation violation conviction and sentence by the trial court, Honorable David M. Peterson presiding. Second; the People of the Pokagon Band of Potawatomi Indians' motion to dismiss the appeal for failure to comply with the Rules. For the reasons stated below, the Pokagon Band's motion to dismiss is denied, but Mr. Rangel's conviction and sentence are upheld.¹

Pokagon Band Court of Appeals
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I. Mr. Rangel's Conviction

Mr. Rangel allegedly made false claims to a tribal agency and eventually pled guilty. Because the tribe did not seek jail time, Mr. Rangel had no right under tribal law to paid defense counsel. The tribal court sentenced Mr. Rangel to probation, fines, and costs. Violation of the probation conditions imposed by the court did place Mr. Rangel in jeopardy of being sentenced to jail time. In time, the tribe accused

¹ The Band has requested oral argument, while Mr. Rangel has not. The Court is of the view that oral argument is not necessary in this case.

Mr. Rangel of violating the probation conditions. At the point, because Mr. Rangel was in jeopardy of serving time, the court appointed an attorney to defend against the allegation. While we express some reservation that the tribal court can impose probation conditions on an uncounseled defendant that could lead to jail time, that issue is not raised on appeal.

Mr. Rangel also challenges the factual basis for his conviction. This challenge is irrelevant – the court did not convict Mr. Rangel for the charge to which this argument applies.

A. Right to Counsel

The Constitution of the Pokagon Band of Potawatomi Indians provides that the tribe, “in exercising the powers of self-government, shall not ... [d]eny any person in a criminal proceeding ... at his/her own expense to have the assistance of counsel for his/her defense.” Constitution art. XVI § (f). However, if a criminal defendant faces the possibility of jail time, an indigent defendant is entitled to paid counsel under tribal statute. The Pokagon Band Code of Criminal Procedure (PBCP) provides for

[t]he right to appointed Counsel if it appears upon sworn affidavit that the Defendant is financially unable to afford Counsel and the imposition of incarceration is a possible consequence of the Offense charged, pursuant to applicable rules adopted by the Tribal Court of Appeals to determine the Defendant’s right to be represented by appointed Counsel.

PBCP § 1(B)(10). In accordance with this statute, the Pokagon Band Court Rules for Appointment of Counsel (PBCR Chapter 10) further provides, “The Tribal Court must appoint counsel for a criminal defendant who is determined by the Tribal Court to be indigent and when a potential penalty includes incarceration.” PBCR Chapter 10 § 2. If the prosecutor certifies at the arraignment that the tribe will not seek jail time, then the right to counsel at public expense is not triggered.

The tribe's criminal complaint alleged that Mr. Rangel committed theft in violation of PBCrimO § 8(F)(1)(a) and § 4(D), crimes punishable by jail time and fines.² In filing the complaint, however, the prosecutor checked the box certifying that "the Prosecuting Attorney does not intend to seek incarceration."³ Mr. Rangel did not secure counsel at his own expense in time for the arraignment. At the arraignment, the court advised Mr. Rangel that he was entitled to counsel at his own expense, but not appointed counsel because the tribe was not seeking jail time. Mr. Rangel signed a form styled "Advice of Rights" that notified him that he had "the right to an attorney appointed at public expense if you are indigent (without money to hire an attorney) and if ... the offense charged requires a minimum jail sentence...."⁴ In line with this understanding, the court did not appoint counsel at this time.

Mr. Rangel still did not retain counsel at his own expense. Later, Mr. Rangel appeared before the court for a pre-trial hearing, and again signed an "Advice of Rights" form.⁵ During this appearance, an uncounseled Mr. Rangel pled guilty to the lesser offense of making false claims to a tribal agency, PBCrimO § 9(L).⁶ He agreed to pay a \$2500 civil penalty, with \$1800 suspended if he complied with the payment schedule.⁷ The court also placed Mr. Rangel on probation, with conditions contained in a separate "Probation Order."⁸

The Probation Order restated the \$2500 penalty – although here referring to it as a "criminal penalty" – with the suspended amount dependent on compliance with the payment schedule.⁹ There is no mention in the Probation Order that violation of the conditions of probation could place Mr. Rangel in the position of facing jail time. Even the tribal code would not have put Mr. Rangel on notice that he could face jail time if his probation is revoked; the probation revocation section of the code does not mention jail time, either.¹⁰

² Appellee's Brief on Appeal, Exhibit 1.

³ Id.

⁴ Appellee's Brief on Appeal, Exhibit 4.

⁵ Appellee's Brief on Appeal, Exhibit 6.

⁶ Appellee's Brief on Appeal, Exhibit 8.

⁷ Id.

⁸ Id.

⁹ Appellee's Brief on Appeal, Exhibit 9.

¹⁰ PBCP § 10(E):

The tribe eventually accused Mr. Rangel of violating the conditions of his probation.¹¹ Though the notice to Mr. Rangel did not state that he might be subject to incarceration, the court appointed counsel for Mr. Rangel at that point.¹² After a hearing in which Mr. Rangel was represented by counsel, the court found that he had violated the conditions of his probation and sentenced him to 10 days in jail.¹³

On appeal, Mr. Rangel alleges that, during the pre-trial phase of this matter, “he requested a court appointed defense attorney for the reason that [he] was indigent.”¹⁴ Mr. Rangel further alleges that, during the pre-trial phase of this matter, “he was informed by the prosecutor that the only way to avoid jail ... was to plead guilty.”¹⁵ Neither of these claims is persuasive, nor is any of it supported by the record on appeal. As is well established by the paper record, the tribe never intended to seek jail time for Mr. Rangel’s crime. Moreover, the court repeatedly informed Mr. Rangel that he had a right to counsel at his own expense. Perhaps if he were represented, the matter below might have come out differently. But this is merely speculation. We can only review the record before us, and that record leaves no doubt that the prosecutor and the court acted in a manner that protected Mr. Rangel’s constitutional right to counsel.

We pause at this point to highlight an issue not raised by Mr. Rangel and therefore waived, but which concerns us nonetheless. We are unable to detect from the record before us where Mr. Rangel was provided notice by the court or anyone else that he could be sentenced to jail time for violation of his probation conditions. There is nothing in the plea agreement, the probation conditions, or the tribal code that alerts this panel to that possibility. We can assume that the court informed Mr. Rangel at some point that he could face jail time for violating the terms of his probation; if not, then Mr. Rangel perhaps would have had no notice prior to the court appointing counsel to defend him at his probation revocation hearing.

The tribal code and the tribal court rules both state that the right to counsel at public expense is activated when incarceration as a consequence of a particular crime is possible. The code states, “The

If a request for revocation of Probation has been filed and a revocation hearing held, the Tribal Court may revoke a Defendant’s Probation or may suspend or defer Sentence if a preponderance of the evidence shows the imposed conditions of the Probation, or suspension, or deferral of Sentence have been violated.

¹¹ Appellee’s Brief on Appeal, Exhibit 11.

¹² Appellee’s Brief on Appeal, Exhibit 12.

¹³ Appellee’s Brief on Appeal, Exhibit 14.

¹⁴ Defendant’s Brief on Appeal at 5.

¹⁵ Id.

right to appointed Counsel if ... *the imposition of incarceration is a possible consequence of the Offense charged....*" PBCP § 1(B)(10) (emphasis added). The court rules state, "The Tribal Court must appoint counsel for a criminal defendant ... *when a potential penalty includes incarceration.*" PBCR Chapter 10 § 2 (emphasis added). Neither of these codes mentions probation revocation proceedings. We might assume that the prosecutor and the court understood that the right to paid counsel is not triggered by the imposition of probation conditions, the violation of which could lead to jail time. This is a reasonable assumption, perhaps, but we think this ambiguity, combined with the lack of notice expressed in a court order or tribal statute to criminal defendants that a violation of the conditions of probation could lead to jail time, could violate an indigent defendant's right to counsel at public expense.

We do not have this question before us, but we recommend that the Pokagon Band judiciary, which of course includes this panel, review this question in light of the broad tribal constitutional right to counsel and the principles of Mno-Bmadzewen and the Seven Grandfather Teachings.¹⁶

¹⁶ Seven Grandfather Teachings, or Niizhwaaswi Mishomis Kinooaagewinawaan. They may also be referred to as the Seven Grandmother Teachings, or Niizhwaaswi Nokomis Kinooaagewinawaan. The Seven are:

Nbwaakaawin – Wisdom
Zaagidwin – Love
Mnaadendimowin – Respect
Aakwade'ewin – Bravery
Gwekwaadiziwin – Honesty
Dbaadendizwin – Humility
Debwewin – Truth

The Seven Grandfathers are general principles of Anishinaabe traditional common law that derive from the even more general principle of Mno Bmadzewen, or Mino-Bimaadziwin, a way of life akin to what legal scholars and practitioners might think of as natural law. We borrow from Eva Petoskey, a former Grand Traverse Band of Ottawa and Chippewa Indians elected official, who described Mino-Bimaadziwin in these terms:

There is a concept that expresses the egalitarian views of our culture. In our language we have a concept, mino-bimaadziwin, which essentially means to live a good life and to live in balance. But what you're really saying is much different, much larger than that; it's an articulation of a worldview. Simply said, if you were to be standing in your own center, then out from that, of course, are the circles of your immediate family. And then out from that your extended family, and out from that your clan. And then out from that other people within your tribe. And out from that people, other human beings within the world, other races of people, all of us here in the room. And out from that, the other living beings ... the animals, the plants, the water, the stars, the moon and the sun, and out from that, the spirits, or the manitous, the various spiritual forces within the world. So when you say that, mino-bimaadziwin, you're saying that a person lives a life that has really dependently arisen within the web of life. If you're saying that a person is a good person, that means that they are holding that connection, that connectedness within their family, and within their extended family, within their community.

Eva Petoskey, 40 Years of the Indian Civil Rights Act: Indigenous Women's Reflections, in *The Indian Civil Rights Act at Forty* at 39, 47-48 (2012).

B. Absence of Intent

Mr. Rangel also challenges the factual basis for his conviction for “fraud” under Count 1 of the original complaint.¹⁷ The record is clear that the court dismissed Count 1 as part of the plea agreement, and Mr. Rangel did not plead guilty to Count 1.¹⁸ We reject this claim.

II. Tribe’s Motion to Dismiss

The tribe also moved for dismissal of the appeal. We deny the tribe’s motion.

Mr. Rangel, apparently unrepresented at that time, filed with the court a notice of appeal. After a scheduling conference, the appellate court through Chief Justice Anderson, ordered Mr. Rangel to file an amended notice of appeal specifying the reasons for the appeal. Though Mr. Rangel did not comply with the order, he did eventually secure appellate counsel and filed a motion to reinstate his appeal. The appellate court granted that motion.

But this is not the tribe’s complaint. After Mr. Rangel filed his opening brief, the tribe moved to dismiss the appeal because counsel filed the brief electronically, via email.¹⁹ The tribe’s reasoning is that the appellate court has not expressly approved the filing of appellate pleadings electronically; that in the absence of that authorization the court will look to Michigan law for guidance; while the Michigan Court of Appeals has adopted rules for electronic filing, the tribal court has not; and therefore the electronic filing of the appellant’s brief is in violation of the court rules. The tribe further argues that dismissal is appropriate because this is the second time Mr. Rangel has violated an order of the appellate court.

We disagree. We are of the view that principles of Mno-Bmadzewen and the Seven Grandfather Teachings support the notion that we should interpret court rules with an eye toward enhancing an individual’s access to Justice and to the courts. This notion is not a blank check for litigants to flout the rules. But the tribe does not argue that it suffered any prejudice from the electronic filing. Moreover, this

¹⁷ Defendant’s Brief on Appeal at 5-6.

¹⁸ Appellee’s Brief on Appeal, Exhibit 8.

¹⁹ Pokagon Band of Potawatomi Indians’ Motion to Dismiss Appellant Corey Rangel’s Appeal for Failure to Comply with May 28, 2014 Briefing Schedule (July 8, 2014).

is only the second appeal that has reached the merits before the appellate judiciary, and the first criminal appeal, in the short history of this judiciary.

We hold that electronic filing of the appellant brief substantially complies with PBCR Chapter 5 § 13(A). Still, the judiciary will review the court rules to consider how and whether to address this ambiguity.

ANDERSON, C.J., AND TOMPKINS, J., CONCUR

CERTIFICATE OF MAILING

I certify that on this date I served a True Copy of this **DECISION** on the Appellant's Attorney and the Prosecuting Attorney for the Pokagon Band of Potawatomi Indians by ordinary first-class mail addressed as stated above.

10-14-2014
Date

Stephen H. Ranberry
For the Court of Appeals