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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANDRE PICARD,

Petitioner,

vs.

COLVILLE TRIBAL CORRECTION
FACILITY, COLVILLE TRIBAL JAIL,
COLVILLE TRIBAL COURT, and
CONFEDERATED TRIBES OF THE
COLVILLE RESERVATION,

Respondents.

No. 2:20-CV-0427-TOR

**ANSWER TO § 2254 PETITION FOR
WRIT OF HABEAS CORPUS AND
MOTION TO DISMISS**

The Confederated Tribes of the Colville Reservation, by and through Marty M. Raap, the undersigned attorney, hereby answers and responds to the *pro se* Petition for Writ of Habeas Corpus under 25 U.S.C. § 1303 filed by Andre Picard. (ECF 1, hereinafter "Petition.") The Petition should be dismissed and denied without a hearing.

I. PROCEDURAL AND FACTUAL BACKGROUND

A "Judgment and Sentence" (filed concurrently herewith as Exhibit A) was entered against the Petitioner in the Court of the Confederated Tribes of the Colville Reservation (hereinafter referred to as "CTC," for Colville Tribal Court) on August 29, 2018. This document and the other exhibits will also be filed in compliance with Rule 5, Rules Governing Section 2254 Cases in the United States District Courts. Petitioner was convicted of three violations of Colville Tribal Code pertaining to disobedience of, or attempting to disobey,

ANSWER TO § 2254 PETITION Page | 1

lawful court orders.

Petitioner filed a prior petition for *habeas corpus* relief, related to the same underlying Judgment and Sentence, in case no. 2:19-CV-00244-TOR. He argued that he was improperly sentenced in excess of one year and wished to be released from incarceration.

A copy of this Court's "Order Dismissing Petition" in that case, dated December 9, 2019, is filed concurrently herewith as Exhibit B. The Court found it lacked jurisdiction to proceed as Petitioner was not in custody and had not exhausted his tribal remedies. The Court also found no basis upon which to issue a certificate of appealability.

Petitioner filed the current Petition on November 19, 2020. The Court's "Order Directing Service" was issued on December 21, 2020, and was received by the undersigned counsel for Respondents on January 5, 2021, following closure of tribal government buildings for the holidays from December 22, 2020 through January 4, 2021. Counsel for Respondents learned of the Petition as an attachment to the Court's order; the Petitioner has submitted nothing else to Counsel's knowledge

II. PETITIONER'S ALLEGATIONS

Petitioner summarizes his claims for relief by stating that he has been incarcerated in excess of one year. ECF 1 at 3. Petitioner also asserts that the Colville Tribal jail is not approved for commitments in excess of a year. Id.

III. STANDARDS OF LAW

Title 28 U.S.C. § 2254(a) provides that an application for writ of habeas corpus shall only be entertained "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." Further, 28 U.S.C. § 2254(b) provides that an application for writ of habeas corpus shall not be granted unless the applicant has exhausted the remedies available in the

ANSWER TO § 2254 PETITION P a g e | 2

courts of the State, or there is an absence of available or effective corrective processes at the State level.

25 U.S.C. § 1303 provides the privilege of the writ of habeas corpus to any person to test the legality of his or her detention by order of an Indian tribe in a court of the United States. Rule 1(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides that “[t]he district court may apply any or all of these rules to a habeas corpus petition” to a person in custody other than under a state court judgment. Federal Rule of Civil Procedure 81(a)(4) and Rule 12 of the Rules Governing Section 2254 Cases in the United States District Courts also extend the Federal Rules of Civil Procedure to apply broadly to proceedings for habeas corpus. Accordingly, the provisions of 28 U.S.C. § 2254 may apply to petitions for a writ of habeas corpus when the petitioner is in custody pursuant to a judgment entered in tribal court.

IV. ANSWER TO PETITIONER'S CLAIMS AND MOTION TO DISMISS

The Petition fails to establish a basis for habeas corpus. The Petition is premised on the fact that Petitioner has “been incarcerated over one year.” ECF 1 at 3. He has not.

While Petitioner mentions that he “was sentenced to serve 720 days in jail” (ECF 1 at 4), he has not served 720 days of consecutive incarceration. The Colville Tribal Correctional Facility’s computation of inmate time served is filed concurrently as Exhibit C. It reveals that Petitioner has been released for many reasons in recent years as he serves multiple sentences, including multiple furloughs. Exhibit D filed concurrently herewith is a letter from the Chief of Corrections at the Colville Tribal Correctional Facility and it addresses Petitioner’s current period of incarceration. He was booked back in on July 3, 2020 and is projected to be released on April 23, 2021. His current stint of confinement has been, and will end up being, less than a year.

Also, the Petitioner’s jail sentence is not imposed in violation of any law. A copy of Picard v. Colville Confederated Tribes, 16 Am. Tribal Law 81, 15 CCAR 01, 8 CTCR 01 (2020) is filed

ANSWER TO § 2254 PETITION P a g e | 3

concurrently herewith as Exhibit E. The Colville Tribes Court of Appeals reviewed and upheld Petitioner's sentence, including the "stacked" nature of the sentence that resulted in a total sentence in excess of one year.

Petitioner's argument that the Colville Tribal Correctional Facility is not approved for commitment in excess of one year was also addressed in Picard. The Colville Tribes Court of Appeals found his argument to be a factual issue raised for the first time on appeal which they could not resolve. Colville Tribal Court has indicated to undersigned counsel that Petitioner has never raised this issue at the tribal trial court level. Thus, Petitioner has failed to exhaust his remedies in tribal court.

V. CONCLUSION

Respondent respectfully requests that the Court deny and dismiss Petitioner's petition for habeas corpus.

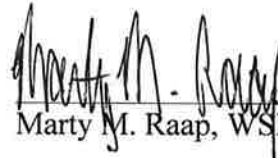
Respectfully submitted this 4th day of February, 2021.


MARTY M. RAAP, WSBA #27962

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 4, 2021, the foregoing **ANSWER TO § 2254 PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS** was electronically filed with the Clerk of the Court using the CM/ECF system, and that a copy was served on the following parties via e-mail to staff at the Colville Tribal Correctional facility with staff to personally serve this party where he is currently incarcerated in the Okanogan County jail:

Andre Picard Incarcerated Okanogan County, WA jail	
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