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

IN RE THE MATTER OF
VRE, a Minor

APPEAL No. 086

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER DENYING PETITION FOR REVIEW**

BACKGROUND

On October 3, 1989, a petition requesting habeas corpus relief against Associate Judge Terry L. Boyd was filed with this Court by the father and mother, of the above-named minor. In the petition, the parents allege they were denied full due process because they did not receive notice, an attorney, or an opportunity to be heard with regard to their child's incarceration. In the petition the parents also claim their son was being held unlawfully and in violation of his rights, at the Chemical Dependency Center in Glasgow, Montana.

On September 5, 1989, Associate Judge Terry L. Boyd issued an order entitled Commitment Order for Alcohol and Chemically Dependant which committed VRE, a Minor to Chemical Dependency Center in Glasgow, Montana for a period of forty-five (45) days. This Court determined it had jurisdiction over final orders and judgments of the Tribal Court pursuant to I CCOJ 202. A n Order to Show Cause was issued on October 5, 1989, commanding Chief Judge Howard Bemer to bring the minor along with the court file and transcript of the September 5, 1989 hearing before this Court and show cause, if any, why VRE should not be released from incarceration at the Chemical Dependency Center in Glasgow, Montana. The order to show cause was not directed to Associate Judge Boyd since he was off the Reservation and out of the State of Montana and was to be served on the parties twenty-four (24) hours before the hearing.

On October 6, 1989, a hearing was held. Present were Chief Judge Howard Bemer, Ron Arneson, Special Prosecutor, VRE and his father and mother. Before the presentation of

testimony Melvin Eagleman requested his appointment to represent the minor and Chief Judge Bemmer agreed to the same. Testimony from the Tribes 7 witnesses and evidence was received by this Court.

FROM THE FOREGOING, THE COURT HEREBY ENTERS THE FOLLOWING,

FINDINGS OF FACT

I.

On or about August 30, 1989, VRE, a minor, was taken into protective custody by a Roosevelt County law enforcement officer.

II.

On August 31, 1989, the father and mother of VRE, requested assistance from Cheryl L. Culbertson, a clerk with the tribal court, to get their son into the Chemical Dependency Center in Glasgow, Montana and were directed to Associate Judge Terry L. Boyd.

III.

On August 31, 1989, the parents met with Associate Judge Terry L. Boyd of which there is no record. At this meeting, the parents agreed with Judge Terry L. Boyd to an informal resolution of the matter involving their child and to voluntarily commit him to treatment and placement in the Chemical Dependency Center in Glasgow, Montana. The parents transported their son to the center. (See attached Affidavit of Cheryl L. Culbertson.)

IV.

Sometime in September and/or October, the parents attempted to remove their son from the Chemical dependency Center and were not permitted to do so because their son was being held for forty-five (45) days under the Commitment Order for Alcohol and Chemically Dependant dated September 5, 1989 and signed by Associate Judge Terry L. Boyd.

V.

On October 3, 1989, parents of the minor filed a petition requesting Habeas Corpus relief with the Fort Peck Court of Appeals against Associate Judge Terry L. Boyd who was off the Reservation and out of the State of Montana. Therefore, an order to show cause was appropriately issued against and on October 5, 1989 served upon Chief Judge Howard Bemmer.

VI.

On October 6, 1989, a show cause hearing was held. At this hearing, it was determined there was no hearings on August 31, 1989 or on September 5, 1989 from which transcripts are available.

VII.

VRE is an enrolled member of the Fort Peck and Assiniboine Sioux Tribes.

**FROM THE FOREGOING FINDINGS OF FACT, THE COURT HEREBY
ENTERS THE FOLLOWING,**

CONCLUSIONS OF LAW

I.

This Court has jurisdiction of this matter pursuant to I CCOJ 202 in which is stated:

"The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court...."

The Commitment Order for Alcohol and Chemically Dependant reflects a final order from which their is an appeal. Therefore, this Court has jurisdiction over a habeas corpus proceeding as set forth in IV CCOJ 404 directed against a tribal court judge who has issued a final order of commitment. Title IV CCOJ 404 states:

"Relief by habeas corpus proceedings shall be granted whenever it appears to the Court that any person is unjustly imprisoned or otherwise unlawfully deprived of his/her liberty. Upon the filing of the complaint the Court shall issue a writ directed to the defendant commanding him/hr to bring the person alleged to be restrained before the Court at a time and place therein specified, at which time the Court shall proceed to hear the matter and render judgment accordingly."

II.

The record before this Court on the August 31, 1989 or September 5, 1989 meetings or hearings do not include transcripts or meet the requirements of I CCOJ 103. Title I CCOJ 103 states the following:

"The Court shall keep a record of all proceedings of the Court, showing the title

of the case, the names and addresses of the parties, attorneys and witnesses; the substance of the complaint; the dates of all hearings or trials; the name of the judge; the findings of the Court or verdict of the jury and judgment; the preservation of testimony for perpetual memory by electronic recording or otherwise; together with any other facts or circumstances deemed of importance to the case...."

III.

Title V, Chapter 3 of the CCOJ sets forth tribal court procedures for the handling of juveniles.

IV.

Title V CCOJ 302(c)(l) permits an informal resolution of a petition filed with the tribal court by a juvenile officer. This section reads in full as follows:

The juvenile officer may recommend counseling, treatment, or such other disposition of an abandoned, neglected, or abused child or status offender which in the officer's opinion is in the best interest of the child. Such recommendation shall be implemented, without Court action, only upon the consent of the parent, guardian or custodian with the knowledge that consent is voluntary. Upon receiving consent, the juvenile officer shall inform the Court that the case has been resolved informally. Informal resolution shall not include any disposition which separates the child from parent, guardian or custodian . Upon successful completion of the recommended program, the case shall be dismissed. No diversion program shall exceed six (6) months. (Emphasis Added.)

V.

The tribal court judge violated V CCOJ 302(c)(l) when he issued a Commitment Order for Alcohol and Chemically Dependant on September 5, 1989 in an informal resolution of a juvenile matter when there was no juvenile officer's recommendation for such treatment; there was Court action by virtue of the order of commitment; the parents did not voluntarily consent to the order of commitment and this informal resolution did include a disposition which separates the child from his parents.

VI.

This Court has jurisdiction over this matter and VRE, a minor and an enrolled member of the Fort Peck Assiniboine and Sioux Tribes.

VII.

This Court finds VRE is being unjustly imprisoned or otherwise unlawfully deprived of his/her liberty and has not been afforded equal protection of the law and procedural due process under V CCOJ 302(c)(l), the Juvenile Code at V CCOJ 301 through 311 and as required by the Indian Civil Rights Act.

**FROM THE FOREGOING CONCLUSIONS OF LAW THE COURT HEREBY
ENTERS THE FOLLOWING,**

ORDER

1. VRE, a minor, is to be immediately released from Chemical Dependency Center in Glasgow, Montana to the custody of his father and mother.
2. The Tribal Court's Commitment Order for Alcohol and Chemically Dependant dated September 5, 1989 is hereby vacated and the petition, if a petition was filed pursuant to V CCOJ 301, dismissed without prejudice.

RECOMMENDATION

If is determined to be necessary to proceed against VRE, it is recommended that the proper tribal authorities become involved and proceed as according to and as provided for in the Juvenile Code at V CCOJ 301 through 311.,

DATED this 20th day of October, 1989.

BY THE COURT OF APPEALS:

Arnie A. Hove, Chief Justice

Gary J. Melbourne, Associate Justice

Floyd Azure, Associate Justice
