

SUPREME COURT
OF THE
ROSEBUD SIOUX TRIBE

Crystal Red Hawk
Plaintiff/Appellant

SC 2001-03

MOTION TO WITHDRAW APPEAL

vs.

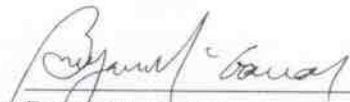
Rosebud Sioux Tribe
Defendant/Appellee


NOW COMES the appellant, Crystal Red Hawk, through her counsel, Dana Hanna, Public Defender, and respectfully moves to withdraw her appeal before this Court of trial docket CC-98-103. In support of the motion, counsel for Ms. Red Hawk states the following:


1. The Supreme Court of the Rosebud Sioux Tribe is scheduled to hear oral argument in this matter on January 18, 2002.
2. Counsel for the Appellant is advised that Ms. Red Hawk's present, personal circumstances have made the remedy sought through appeal unobtainable.

WHEREFORE, the appellant requests that the court dismiss the appeal now pending.

Dated: January 17, 2002


Bryan McGowan
Assistant Public Defender

No Objection 1-17-02


1-18-02
Dismissal approved

Chief Judge

SUPREME COURT
OF THE
ROSEBUD SIOUX TRIBE

ROSEBUD SIOUX TRIBE,
Plaintiff/Appellant,

SC 2001-03/SC 2001-04

vs.

NOTICE OF ENTRY

ALVIN COVEY (SC 2002-04)
Defendant/Appellee

IN THE COURT OF APPEALS
FOR THE
ROSEBUD SIOUX TRIBE

vs.

HARVEY COVEY (SC 2002-05)
Defendant/Appellee.

I hereby certify that I have carefully examined the within document and compared the same with the original now on file and of record in this office and that it is a true and correct copy of the same and that the above is a correct copy of the filing thereon.

Dated this 3 day of April 2002


Clerk of Courts

TO: ALL INTERESTED PARTIES

PLEASE TAKE NOTICE that an MEMORANDUM OPINION AND ORDER was duly entered by the Supreme Court of the Rosebud Sioux Tribe, Todd County, State of South Dakota, the Honorable Frank Pommersheim, Honorable Leroy Greaves, and Honorable Patrick Lee, Associate Justices presiding in the above-entitled matter on the 27th day of February, 2002.


Supreme Court Clerk

CERTIFICATE OF MAILING

I, Carla A. Brave, Supreme Court Clerk of the Rosebud Sioux Tribe, hereby certifies that I mailed a certified copy of the ORDER in the above-entitled matter to the following:

John Duffy
Dakota Plains Legal Services
P.O. Box 727
Mission, SD 57555

Douglas Thesenvitz
Thesenvitz & Mickelson, LLP
300 N. Dakota, Suite 603
Sioux Falls, SD 57104-6040

by first-class mail, postage prepaid on the 3rd day of April, 2002.

FILED
In the
ROSEBUD SIOUX TRIBAL COURT OF APPEALS
The undersigned Clerk of the Rosebud Sioux Tribal Court of Appeals hereby certifies that this document was received and entered on the docket in the above-entitled action on the _____ day of _____, 2002.


Supreme Court Clerk

SUPREME COURT
ROSEBUD SIOUX TRIBAL COURT
ROSEBUD INDIAN RESERVATION
ROSEBUD, SOUTH DAKOTA

ROSEBUD SIOUX TRIBE,
Plaintiff/Appellant

SC 2001-03

SC 2001-04

vs.

ALVIN COVEY (#04),
Defendant/Appellee

MEMORANDUM OPINION
AND ORDER

vs.

HARVEY COVEY (#03),
Defendant/Appellee

Per Curiam (Before Associate Justices Leroy Greaves, Pat Lee, and Frank Pommersheim)

I. Introduction

Alvin Covey¹ was arraigned on a disorderly conduct charge, which is classified as a class C crime in the Rosebud Sioux Tribe's Law and Order Code,² on June 22, 2001. At his arraignment, Mr. Covey requested a jury trial which was opposed by the Tribe. After considering the arguments of both sides, the Honorable Jane Colhoff ruled in favor of the Defendant granted his request for a jury trial.

Prior to trial, the Tribe filed this timely intermediate appeal³ and oral argument was heard by the Court on December 7, 2001.

II. Issue

¹ This case was consolidated on appeal with the case of *Rosebud Sioux Tribe v. Harvey Covey* as it raises the identical issue.

² Title 5-2-1 of the Law and Order Code provides that "a Class C crime carries a maximum penalty of a fine not to exceed one hundred dollars (\$100.00) and court costs."

³ Title 7, Sec 8 (c) (4) Law and Order Code.

The sole issue presented by this appeal is whether a criminal Defendant has a (tribal) constitutional right to a jury trial even when the offense charged expressly provides for no jail time upon conviction.

III. Discussion

A. Constitutional Text

Art. X of the Rosebud Sioux Tribe's Constitution provides:

Any Indian on the reservation accused of any offense shall have the right to a speedy and public trial and to be informed of the nature and cause of the accusation, and to be confronted with witnesses against him. Any Indian accused of any offense shall have the right to the assistance of counsel and *to demand a trial by jury*. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.⁴

Defendant/Appellee argues that the constitutional language speaks for itself and reflects a Tribal constitutional commitment to an absolute constitutional right to a jury trial regardless of any Tribal ordinance to the contrary. The Tribe counters with the textual contention that the constitutional language does not guarantee the right to a jury trial, but only the right "to demand" a jury trial. The right to demand, according to the Tribe, is not synonymous with the right to receive.

Not surprisingly the term "demand" is not defined in the Constitution. The most common dictionary meaning for the word "demand" is to "ask for urgently"⁵ which clearly characterizes the term as one of discretion rather than of right. In accordance with the ordinary canon of interpretation that every statutory (or in this case constitutional) term must have meaning, this Court is bound to conclude that the constitutional language does not confer an absolute right to a jury trial in all circumstances. The Court readily admits that it remains something of a drafting puzzle why such equivocal language would appear in the Tribe's constitution. Yet the Court cannot substitute its judgment and disregard plain language, however inartful the drafter's choice might appear.

Despite the problem of word choice and its meaning, this Court is confident that even if the dubious choice of the word 'demand' had not been made the result would be the same. The Defendant/Appellee did not cite a single case - federal, state, or tribal - that has held (even with unambiguous language) that a 'right' to a jury trial is available when the offense charged does not provide for any jail time. See e.g. *Duncan v. Louisiana*, 391 U.S. 145 (1968), *Baldwin v. New York*, 399 U.S. 66 (1970), *Lewis v. United States*, 518 U.S. 322 (1996). *State v. Bowers*, 498 N.W.2d 202

⁴ Rosebud Sioux Tribe Constitution, Art. X (1966) (emphasis added).

⁵ See e.g. THE AMERICAN HERITAGE COLLEGE DICTIONARY (3rd Ed. 1993).

(1993). In fact in the case of *Scott v. Illinois*, 440 U.S. 367 (1979), the Supreme Court held that there was no right to counsel (despite unambiguous language in the U.S. Constitution) if the charged offense did not involve jail time. See also *Pueblo of Pojoaque Tribal Court v. Jagles*, 24 I.L.R. 6137 (1987) (no right to a jury trial where guarantee of no jail time). *Flandreau Santee Sioux Tribe v. Rederth*, _____ I.L.R. _____ (1998) (Flandreau Santee Sioux Tribal Court of Appeals).

B. Statutory Argument⁶


Title 7 Sec 5 (A) (1) of the Law and Order Code states that "all criminal trials shall be by the Court without a jury unless the defendant requests a jury trial at the time of arraignment ... There will be no jury trials for class B and class C crimes." While this language appears clear that there is no right to a jury trial for a class C offense, Appellant nevertheless argues that the language is in conflict with the tribal criminal procedure code at Title 7, Sec. 4 (C) (f) where it states "the defendant shall have the right to have a speedy trial by an impartial judge *or* jury." (Emphasis added) This is manifestly incorrect. The use of the disjunctive word *or* rather than the conjunctive word *and* makes it clear that the guarantee to a speedy trial may be satisfied by an "impartial judge *or* jury".


In addition, without the potential of jail time, there is no risk of the loss of liberty or the forfeiture of any other civil rights and therefore the essential (constitutional) value of liberty or deprivation of civil rights is not at risk in such circumstances.

IV. Conclusion

For all of the above reasons, the decision of the trial court is reversed and the Court holds that there is no tribal constitutional or statutory right to a jury trial in criminal case where the offense charged expressly provides for no jail time.

IT IS SO ORDERED.


Leroy Greaves
Associate Justice


Patrick Lee
Associate Justice


Frank Pommersheim
Associate Justice


Dated February 27, 2002

FILED

In the

ROSEBUD SIOUX TRIBAL COURT OF APPEALS

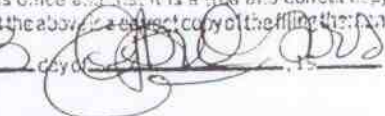
The undersigned Clerk of the Rosebud Sioux Tribal Court of Appeals hereby certifies that this document was received and entered on the docket in the above entitled action by this Court on the 27 day of February, 2002.


Clerk of Courts

⁶ The Defendant/Appellee has not raised the issue of the right to a jury trial under the federal Indian Civil Rights Act, 25 U.S.C. § 1302 (10), and therefore that issue is not before the Court.

IN THE COURT OF APPEALS
ROSEBUD SIOUX TRIBE
I hereby certify that I have carefully examined this within document and compared the same with the original now on file and of record in this office and that it is a true and correct copy of the same and that the above is a correct copy of the filing this: n.a.

Dated this _____ day of _____



Clerk of Courts