

IN THE HUALAPAI TRIBAL COURT OF APPEALS
HUALAPAI RESERVATION, ARIZONA

HUALAPAI TRIBE,)	App. Div. Case No.: 2011-AP-017
)	Tribal Court Case No.: 2011-CR-220
Plaintiff/Petitioner,)	(A,B,C)
v.)	
)	
HUALAPAI TRIBAL COURT,)	
)	DECISION AND OPINION
Respondent;)	
)	
LOREN BRAVO, SR.,)	
)	
Defendant/Real Party in Interest)	

Before Justice Carole Goldberg (Presiding), Chief Justice Wes Williams Jr., and Justice Robert N. Clinton

OPINION AND ORDER

The Hualapai Tribe (Tribe or Petitioner) seeks a writ of mandamus to vacate the Tribal Court opinion and order of July 21, 2011, dismissing with prejudice the case of Hualapai Tribe v. Loren Bravo, Sr., HTC No. 2011-CR-220 (A, B, C). Due to the untimely filing of the Tribe’s petition for the writ of mandamus, this Court lacks jurisdiction to consider the petition. Nonetheless, this Court takes notice that the Tribal Court dismissed the above-mentioned case against defendant Loren Bravo, Sr. (Bravo) with prejudice, even though at the time of the dismissal Bravo had not yet been placed in jeopardy in the prosecution against him. This Court has the inherent power, on its own initiative, to supervise lower courts by prescribing procedure in the course of adjudication. In the exercise of that power, we determine that the proper order for the Tribal Court to enter when it finds error in the conduct of a prosecution, before jeopardy attaches, is a dismissal “without prejudice.” For that reason, we order the dismissal of HTC 2011-CR-220, dated July 21, 2011, amended to “without prejudice.”

Background

In April of 2011, the Hualapai Tribe charged Bravo with indecent exposure, unlawful touching, and false imprisonment. A jury trial, with Judge J. Marshall presiding, was set for these charges for trial on June 29, 2011. On the June 29 trial date,

the Tribal Court was unable to seat a jury. The prosecutor and the defense then both moved to dismiss without prejudice. The Tribal Court granted this order, stating: “Dismissal is without prejudice, allowing Prosecution to re-file. Defendant has no other obligations to the court.”

In its petition, the Tribe alleges that when Bravo was informed that new charges would be filed, Bravo threatened to leave the reservation to avoid arrest. Tribal police then arrested Bravo for the same charges that had been dismissed earlier that day, and brought him again before the Tribal Court. The Tribe moved to have Bravo detained for 72 hours pending filing of criminal charges. The Tribal Court granted the motion for 24 hours only, conditioned on the Tribe filing a criminal complaint within that period, and the Tribe filed criminal charges later the same day.

On the next day, June 30, 2011, Bravo was arraigned on these charges. At arraignment, Bravo moved to dismiss the arrest as without cause and without a warrant. The Tribal Court denied this motion, instead directing Bravo to file a written motion. Bravo filed the written motion to dismiss on July 5, 2011, arguing that his 24 hour detention without a warrant was illegal. The Tribal Court held a probable cause hearing on July 12, 2011, and on July 21, 2011, the Tribal Court granted Bravo’s motion and dismissed the case with prejudice. The Tribal Court ruled that this arrest violated Hualapai Law and Order Code §5.8(1), (2), and (3), the Indian Civil Rights Act of (1968), and the due process protections in the Hualapai Tribe’s Constitution, Article IX, sections (b) and (d) because the crimes for which defendant was arrested -- indecent exposure, unlawful touching, and false imprisonment – did not occur in the presence of the arresting officer at the time of the arrest, and the Tribe had not secured a warrant before rearresting him on June 29, 2011. The Tribal Court rejected the Tribe’s argument that the Tribe had probable cause to believe that the crimes had been committed based on the charges that had just been dismissed without prejudice. It is the second dismissal, *with* prejudice, that the Tribe challenges in its petition for a writ of mandamus.

Issues

- 1) Was the Tribe’s petition for a writ of mandamus timely filed?
- 2) How may this Court ensure that the Tribal Court orders the proper form of dismissal when an error occurs in a criminal case before jeopardy attaches?

Discussion

1) The Tribe’s Petition for a Writ of Mandamus Was Not Timely Filed.

Only a defendant may appeal a final order or decision in a criminal case. *See* Hualapai Constitution, Art. VI, § 12 and Hualapai Law and Order Code § 10.3; *Hualapai Tribe v. Elwynn Havatone*, 2010-AP-008 (Hualapai Ct. App. 2011). This necessarily means that the Tribe may not appeal a decision in a criminal case. To avoid this restriction, the Tribe has elected to petition for a writ of mandamus from this Court. The Hualapai Constitution authorizes the Hualapai judiciary to issue such writs. Hualapai Constitution, Art. VI, § 3(c). The Hualapai Rules of Appellate Procedure state that this Court may issue a writ of mandamus “to compel a judge or judges of the Tribal Court to perform an act which Hualapai law or applicable federal law recognizes as a duty.” Hualapai Rules of Appellate Procedure 16(a)(ii). This Court previously explained that remedies such as mandamus “are necessary when lower courts exceed their jurisdiction,

make fundamental legal errors, or when there is no other avenue for redress available to the petitioner. The power to hear these types of cases is consistent with this Court's power to decide issues of law and procedure." *Hualapai Tribe v. Gonzales*, 2010-AP-002 (Hualapai Ct. App. 2010). Also this Court recognized that the Tribe could potentially use a writ of mandamus under circumstances where an appeal would not be permissible. *Hualapai Tribe v. Elwynn Havatone*, 2010-AP-008 (Hualapai Ct. App. 2011) at 6.

Rule 16(c)(i) of the Hualapai Rules of Appellate Procedure states that a petitioner for a writ of mandamus "must file a written statement of the facts and issues relevant to granting the petition with the Clerk of the Court within fifteen (15) days after the ruling on the unsuccessful motion has been filed by the Trial Court." The Tribal Court order for dismissal of charges was entered on July 21, 2011. The Tribe filed its petition on August 22, 2011, considerably after the fifteen-day deadline.

The Tribe argues that the time limit in Rule 16(c)(i) should not be considered a limitation on this Court's jurisdiction -- that it was intended to ensure timely filing of writs, not to create a jurisdictional rule. However, Rule 16(c)(i) is binding law. According to Hualapai Law and Order Code §10.10, "Rules promulgated by the Tribal Court of Appeals shall govern all additional matters of appellate procedure and substance not specifically addressed in this Chapter." Moreover, unlike some other provisions of the Hualapai Law and Order Code, Rule 16(c)(i) includes no provisions allowing this Court to extend the time period. *Compare, e.g.*, Hualapai Law and Order Code § 4.13 (allowing Tribal Court to extend time for a civil defendant to appear in a pre-trial proceeding if the defendant was absent for good cause). Rule 16(c)(i) sets a shorter time period for filing a writ than for filing an appeal in order to provide for prompt enforcement of the duties of the Tribal Court. We find the time limit to be jurisdictional, and the Tribe's petition to be untimely in this case. Therefore, this Court lacks jurisdiction to consider the Tribe's petition.

2) This Court, exercising its supervisory power, may correct the Tribal Court when the wrong form of dismissal was entered in a criminal case.

Like other appellate courts,¹ this Court possesses supervisory power over its lower or trial courts, enabling it to devise procedures for them in the course of adjudication, whether or not required by the Constitution or a statute. Under Hualapai law, this supervisory power can be located in language of the Constitution that lodges "the judicial power of the Hualapai Tribe" in the Court of Appeals and "lower courts" (Art. VI, § 1). *Cf.* Amy Coney Barrett, *The Supervisory Power of the Supreme Court*, 106 Colum. L. Rev. 324 (2006) (arguing that appellate courts' supervisory powers can be derived from constitutional language establishing a hierarchy of courts within the judiciary). This supervisory power exists at the sole discretion of the Court, and this Court will not consider any petition by any party in any matter requesting that the Court invoke such power.

¹ *See, e.g.*, *Thiel v. Southern Pacific C.*, 328 U.S. 217 (1946) (upholding supervisory power of United States Supreme Court); *Chuska Energy Co. v. Navajo Tax Comm'n*, 5 Nav. R. 98 (1986) (upholding supervisory power of Navajo Nation Supreme Court).

In the present case, the Tribal Court entered a dismissal with prejudice after determining that Bravo had been subject to an unlawful arrest. This Court will not address whether the Tribal Court was correct in concluding that the arrest was unlawful. Rather, we focus on the type of dismissal that the Tribal Court entered.

This Court's opinion in *Hualapai Tribe v. Grover*, 2011-AP-10 (Hualapai Ct. App. 2011) held that a dismissal with prejudice is proper in a criminal case where an error occurs after jeopardy has attached through the impaneling of a jury, and a retrial on the same charges would constitute double jeopardy. In that case, jeopardy had in fact attached as of the time the error occurred. However, if a jury has not yet been impaneled, and therefore jeopardy has not attached, any error that may have occurred in the course of the criminal proceeding should be rectified through a dismissal without prejudice, enabling the Tribe to refile its charges if it sees fit. In some circumstances, the criminal defendant may also be able to bring a separate civil action seeking redress for the unlawful actions that produced the error.

Assuming, for sake of argument, that there was an error in the second arrest of Bravo and that such error affects in some way the validity of the criminal proceedings against Bravo (two legal conclusions on which this Court expresses no view), the Tribal Court should have dismissed the action without prejudice, leaving the Tribe the option to refile charges and Bravo the option to pursue a civil remedy. At the time the Tribal Court entered its dismissal order based on the second arrest, a jury had not been impaneled and jeopardy had not yet attached. Accordingly, this Court finds that the Tribal Court erred as a matter of law in dismissing "with prejudice" case number HTC No. 2011-CR-220 (A, B, C) on July 21, 2011, and orders, in the exercise of its supervisory powers, that the dismissal be amended to state that it is "without prejudice."

Notwithstanding this correction of the dismissal order, this Court lacks jurisdiction to consider the untimely filing by the Tribe of the petition for writ of mandamus. For this reason, the petition is dismissed.

IT IS SO ORDERED.

Entered this 29th day of December, 2011



BY:

Justice Carole Goldberg