

**IN THE APPELLATE COURT
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION, PABLO, MONTANA**

CONFEDERATED SALISH AND
KOOTENAI TRIBES,

Plaintiff/Appellee,

vs.

MICHAEL ANTOINE “TONY”
ADAMS, JR.,

Defendant/Appellant.

Appeals Cause No. AP-19-0664-CR

OPINION

Appeal from the Tribal Court of the Confederated Salish and Kootenai Tribes,
Honorable Bradley A. Pluff, presiding.

Appearances:

James Park Taylor, Tribal Prosecutors Office, Confederated Salish & Kootenai
Tribes, Pablo, MT, for Plaintiff/Appellee

Toby Cook, Snyder, Beaudry and Cook, Bigfork, MT, for Defendant/Appellant

Before: BELCOURT, TENENBAUM, AND McDONALD

Opinion by Chief Justice Belcourt

Before this Court is Defendant/Appellant’s appeal of the Tribal Court’s
denial of Plaintiffs/Appellee’s motion to dismiss. For the reasons set forth below,
we affirm, and also rule that Defendant/Appellant has not established an
ineffective assistance of counsel claim.

OPINION ON DEFENDANT/APPELLANT’S APPEAL

Background

A more complete summary of the factual background may be found in the trial court's opinion below. For purposes of resolving the issues on appeal, a condensed version of the facts is as follows:

Plaintiff/Appellee Confederated Salish and Kootenai Tribes (the Tribes or CSKT) filed a criminal complaint against Defendant/Appellant Michael Antoine "Tony" Adams, Jr., (Defendant or Adams) alleging that Defendant was guilty of violating CSKT Laws Annotated § 2-1-506 (Mistreating Prisoners).¹

The criminal charge for mistreating a prisoner stemmed from an incident at the Pablo Tribal Jail in which Defendant, who had been employed as a Tribal Officer, transported a prisoner to a solitary confinement cell. As shown in official video footage, during the course of a heated verbal exchange, Defendant pushed the prisoner into a corner of the cell and thereafter grabbed him by the arm and back of the neck and threw him face-first into a thin mat on a concrete floor. The

¹ CSKT Laws Annotated § 2-1-506 provides as follows: (1) A person commits the offense of mistreating prisoners, if, being responsible for the care or custody of a prisoner, he purposely or knowingly, (a) assaults or otherwise injures a prisoner; or (b) intimidates, threatens, endangers, or withholds reasonable necessities from the prisoner; or (c) violates any civil right of a prisoner. (2) Mistreating prisoners is a Class D offense over which the Tribes have exclusive jurisdiction.

prisoner was knocked unconscious. Defendant left the prisoner unconscious in the cell without calling for assistance.

CSKT's criminal complaint alleges that Defendant engaged in an unjustified use of force amounting to assault. At the conclusion of the criminal trial, a jury reached a unanimous guilty verdict in less than one hour. Defendant was sentenced to jail time and a monetary fine.

Prior to trial, Defendant had moved for dismissal of the complaint against him based on his argument that the CSKT police chief had agreed that if Defendant participated in the Employee Assistance Program (EAP) and followed through on unspecified recommendations for an unspecified period of time, he would not be criminally prosecuted. Defendant argued that dismissal of the criminal charge was warranted because the Tribes should be bound by the promise made not to prosecute by the prosecutor's office and/or the CSKT chief of police acting as its agent.

This "agreement" was allegedly made on June 6, 2019 during a meeting between Defendant and the CSKT police chief and CSKT police captain. A written transcript of an audio recording of the meeting reflects that Defendant was informed that the prosecuting attorney had reviewed the case and believed there was sufficient evidence for a criminal charge and also that the prisoner had not yet stated whether he wished to pursue prosecution. Also during the meeting

Defendant disclosed he was experiencing personal problems. Defendant was urged to seek treatment through the EAP. At some point in the meeting, the CSKT police chief stepped out of the meeting, explaining that he was going to have a conversation with the prosecuting attorney. When he returned, the CSKT police chief indicated he had spoken with the prosecuting attorney and that the prosecuting attorney would temporarily “hold off” on a prosecution of Defendant if Defendant enrolled in the EAP and completed all recommendations of the Program. At another point in the meeting, the CSKT police chief indicated that the prosecuting attorney would “forego” prosecution if Defendant undertook those actions.

There is evidence that Defendant enrolled in the EAP the next day and began counseling.

Approximately one week later, the prisoner notified the CSKT prosecuting attorney that he wanted Defendant criminally prosecuted for violating the Tribal law prohibiting prisoner mistreatment and that he would follow through as a witness. The prosecuting attorney continued with its investigation, and thereafter filed criminal charges against Defendant.

Tribal Court Pluff denied Defendant’s motion to dismiss, and his subsequent motion for reconsideration, rejecting that any “promise” or “agreement had been made. “Tribal Law Enforcement did not enter into a non-prosecutorial agreement

with Defendant Adams because they were not authorized to do so, and regardless, the parties did not reach an agreement to not prosecute.” Order Denying Motion to Dismiss at 5.

Noting the absence of relevant CSKT Appellate Court case law addressing non-prosecution agreement, Judge Pluff reviewed relevant case law from other jurisdictions and also considered several factors, including public policy and statutory construction of the relevant Tribal ordinances, and also examined whether any agreement in fact was made.

On the issue of public policy, Judge Pluff noted that the crime of mistreating a prisoner involves a breach of public trust, and public policy does not permit a Tribal law enforcement officer to escape the legal consequences of assaulting an inmate and failing to obtain medical care for him by admitting in an interview to some personal mental health issues and attending a few counseling sessions.

Reviewing relevant Tribal ordinances, Judge Pluff concluded that under the Tribal Code, the CSKT prosecution attorney, and not the chief of police, has the authority to make an agreement not to prosecute. Nor does Tribal law allow for the delegation of this authority to Tribal law enforcement personnel since, according to the Tribal Court, the Tribal Council has given this authority to the Tribal prosecutor and it is only that office that can make decisions about prosecution.

In addition, Judge Pluff rejected that there was any “meeting of the minds” establishing that Defendant could avoid criminal liability by relying on law enforcement personnel’s ambiguous, vague, and arguably contradictory statements concerning the prosecuting attorney’s prosecution plans. Judge Pluff concluded that it was not reasonable for Defendant to rely on these ambiguous and vague statements, which did not in any way constitute a promise.

Defendant appeals the Tribal Court’s denial of his motion to dismiss and, for the first time, makes an ineffective assistance of counsel claim. We conclude that the decisions below were correct and rule that Defendant has failed to make an ineffective assistance of counsel claim.

Issues on Appeal

1. Whether the Tribal Court erred in denying Defendant/Appellant Adams’ motion to dismiss; and
2. Whether Defendant/Appellant Adams has established a claim of ineffective assistance of counsel based on the record.

Discussion

Based on our careful consideration of the record and the parties’ briefs, and having heard from the parties’ legal representatives during oral arguments, we rule that no non-prosecution agreement was made and that Defendant has failed to

make an ineffective assistance of counsel claim. The Tribal Court's decision is affirmed and Defendant's appeal is dismissed.

A. Non-Prosecution Agreement.

In general, non-prosecution agreements allow individuals to avoid criminal prosecution by reaching an agreement with the prosecutor to acknowledge responsibility, make appropriate amends or restitution, perform specified obligations and/or sometimes cooperate in any ongoing investigation in exchange for charges being dropped or not brought at all. In the usual scenario involving non-prosecution agreements, it is the individual's successful completion of agreed upon duties that results in criminal charges being dropped or not brought. The terms of non-prosecution agreements are typically carefully negotiated and reviewed and contain mechanisms to measure and monitor compliance with the agreed upon terms. A non-prosecution agreement is essentially a contract between the prosecutor and an individual in which the prosecutor agrees not to bring charges if the individual satisfies all agreed-upon obligations.

In our view, the undisputed facts of this case leave no doubt that there was never an agreement not to prosecute Defendant. Even if the CSKT chief of police had the authority to negotiate and execute an agreement not to prosecute Defendant – which authority he did not possess – there simply was no agreement and, ultimately no appropriate basis to dismiss CSKT's complaint against Defendant.

We first note that during the June 6, 2019 conversation between Defendant and CSKT law enforcement personnel, the prosecution options discussed ranged from delaying prosecution to foregoing prosecution. This lack of consistency certainly shows that if any agreement was being considered it wasn't clear what the result would be – delaying prosecution or foregoing prosecution – and in any event no agreement was ultimately reached on this pivotal issue.

It is also not at all clear what Defendant's obligations would be, beyond signing up to participate in the EAP and attending some counseling sessions. How many counseling sessions? For how long? What does it mean to successfully complete the Employee Assistance Program? What recommendations would Defendant need to follow? The lack of certainty concerning what Defendant's obligations would be is compounded by the complete lack of any mechanisms or procedures to monitor Defendant's compliance and thus gauge his successful completion of agreed-upon terms.

The lack of essential terms evidencing the existence of an agreement not to prosecute Defendant is fatal to his argument. Defendant has not and cannot show that there was a valid agreement not to prosecute him. We also note that nothing pertaining to the ambiguous June 6, 2019 conversation was presented during Defendant's criminal trial. In other words, none of Defendants' statements made during that meeting were used against him at trial.

B. Ineffective Assistance of Counsel Claim.

Defendant has likewise failed to establish an ineffective assistance of counsel claim. Defendant argues that he was prejudiced by the failure of his trial counsel to secure and present expert witness testimony concerning appropriate police policies and tactics.² According to Defendant, without expert testimony he was forced to either forego a challenge to the Tribe's witness testimony that the force was excessive or testify himself. This, Defendant maintains, prejudiced his conviction.

Nothing before us satisfies the standards of *Strickland v. Washington*, 466 U.S. 668 (1994), and its ilk, to justify setting aside Defendant's conviction and sentence. The record is devoid of any information supporting the ineffective assistance of counsel claim.

With respect to the potential expert witnesses that Defendant claims did not testify at trial due to his trial counsel's alleged deficient performance and incompetence, there is nothing in the record to establish the areas of expertise of these potential witnesses or what their opinions would have been or even whether they would have agreed to testify. We thus do not know whether there may have

² We note that Defendant did not at the conclusion of his trial allege ineffective assistance of counsel, request a new attorney and/or file a motion for a new trial under established Tribal law and procedures, but rather raised the issue for the first time in his brief after the record was transmitted to the Court of Appeals.

been a tactical reason not to have these expert witnesses take the stand. We also cannot discern whether and how the outcome may have changed had these witnesses testified, and whether Defendant's defense was prejudiced by his trial counsel's actions.

Conclusion

IT IS THE ORDER OF THIS COURT that the Tribal Court's decision is AFFIRMED.

Ordered this 8th day of October, 2022.



Daniel Belcourt

Honorable Daniel D. Belcourt
Chief Justice

Certificate of Mailing

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed a true and correct copy of the Opinion to the parties first named therein at the addresses shown below by depositing same in the U.S. mail or through interoffice mail at Pablo, Montana, this 11th day of October, 2022.

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**Abigail Dupuis
Appellate Court Administrator**