

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

<p>CONFEDERATED SALISH AND KOOTENAI TRIBES,</p> <p style="text-align:center">Plaintiff/Appellee,</p> <p>vs.</p> <p>LESTER OLD HORN,</p> <p style="text-align:center">Defendant/Appellant.</p>	<p style="text-align:right">Appeals Cause No. AP-20-0277-CR</p> <p style="text-align:center"><b>OPINION</b></p>
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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

James G. Gabriels, Tribal Defenders Office, Pablo, MT, for Defendant/Appellant

Before: BELCOURT, TENENBAUM, AND DUPUIS

Opinion by Associate Justice Tenenbaum

Defendant Lester Old Horn appeals the Tribal Court's August 9, 2021 order  
granting the Confederated Salish and Kootenai Tribes' petition to revoke his  
probation. The question presented here is whether the Tribal Court may grant a

petition to revoke probation when a person is found to have violated one or more conditions of their suspended sentence. We affirm the Tribal Court's order in accordance with the following.

## BACKGROUND

On July 15, 2020, Lester Old Horn appeared in Tribal Court and plead guilty to one count of Sexual Assault. Old Horn was sentenced to 180 days in jail, with 90 days suspended on a series of conditions including a requirement to complete sex offender screening and any recommended treatment and a requirement to "complete one year of formal Tribal probation."

After his release from jail, Old Horn did not sign up for probation, nor did he complete a sex offender screening. On October 1, 2020, Tribal Probation prepared a report for the court indicating Old Horn was not in compliance with the court's sentencing order.

On April 15, 2021, the Tribes filed a Verified Petition to Revoke the Suspended Sentence and Probation in the matter. The Tribes' alleged in the petition that Old Horn "is in violation of the conditions of both his suspended sentence and his probation, as he failed to sign up for probation and has provided no evidence that he completed a sexual offender screening." A warrant was issued

four days later, and Old Horn was arrested by Tribal authorities on August 6, 2021. A hearing was held on the petition on August 9, 2021. The trial court granted the Tribes' petition in whole on August 12, 2021, and ordered Old Horn to serve the remaining 90 days on his sentence in Tribal Jail, with credit for time served.

## DISCUSSION

The facts and arguments in this case closely resemble those in *CSKT v. Butler*, AP-20-0884-CR, AP-20-0954-CR (2022). The parties agree the lower court properly revoked Old Horn's suspended sentence because his failure to sign up for probation was a violation of that suspended sentence. Old Horn argues the court erred by also granting the Tribes' petition to revoke his probation. The Tribes counter that the petition to revoke probation was properly granted.

Tribal code is unambiguous on this issue. A petition to revoke a suspended sentence "is the exclusive remedy" for a violation of a condition of that suspended sentence. CSKT Laws Codified, §2-2-1207(3). Old Horn cites this statute to argue the court erred by granting the Tribes' petition to revoke probation in addition to its petition to revoke his suspended sentence. The Tribes respond that this Court can "harmonize" the probation revocation statute and the suspended sentence

revocation statutes and permit both remedies in this case. The Tribes further note that “[t]he practice in the Tribal Court has always been to combine the two proceedings.” This Court is not a lawmaking body, however, and it cannot support its decisions solely based on reference to how things have been done in the past. *CSKT v. Worley*, AP-95-932-CR (1997). “Whatever the practice may have been, if it is not supported by law, then it cannot be used to justify retaining the practice.” *Worley* at 5. It is beyond the power of this Court to “harmonize” §2-2-1207(3) out of existence. The “exclusive remedy” for Old Horn’s violation of his suspended sentence was the prosecution’s petition to revoke that suspended sentence. In this case the court abused its discretion by granting, in addition, the Tribes petition to revoke Old Horn’s probation.

As in *Butler*, our inquiry does not end there. The Court of Appeals may not reverse a trial court’s judgment when “the same result would have been attained had the trial court not committed an error or errors.” CSKT Rules of Appellate Procedure, Rule 7. In the case before us, the Tribes’ petition to revoke Old Horn’s suspended sentence was validly granted and led the court to impose the suspended portion of his sentence. In Old Horn’s words, this is “this is the same result as revoking probation, but by different statutory means.” The lower court’s error was thus harmless under Rule 7, and its judgment is affirmed.

**Conclusion**

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

Ordered this 13<sup>th</sup> day of December, 2022.



A handwritten signature in black ink, appearing to read "DTA", written over a horizontal line.

Honorable Danny Tenenbaum  
Associate Justice

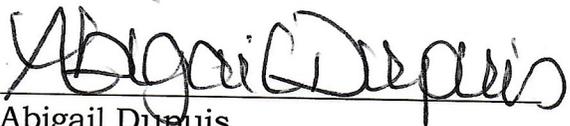
**Certificate of Mailing**

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that on this 13<sup>th</sup> day of December, 2022, I served a true and correct copy of the **Opinion** to the persons specified below, via Tribal interoffice mail, at the addresses specified below and addressed as follows:

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Appellate Court Administrator