

1999 WL 1244146

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United States District Court, N.D. California.

Edward Michael MOORE, an individual, Petitioner,
v.

Byron NELSON, Jr, Chief Judge of the
Hoopa Valley Tribal Court, Leonard
Masten, Jr., Chief of the Hoopa Valley
Tribal Police Department, Respondents.

No.

C98-3736

MJJ.

|
Dec. 16, 1999.

ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS

JENKINS, J.

INTRODUCTION

*1 Before the Court is a motion to dismiss brought pursuant to FRCP 12(b)(1) by respondents Byron Nelson Jr., Chief Judge of the Hoopa Valley Indian Tribal Court, and Leonard Masten, Chief of the Hoopa Valley Tribal Police Department (collectively "respondents"). Respondents seek to dismiss petitioner Edward Moore's ("Moore") petition for a writ of habeas corpus. Moore filed his petition pursuant to the Indian Civil Rights Act ("ICRA"), 25 U.S.C. § 1303. Respondents argue that this Court does not have subject matter jurisdiction over the petition based on the following grounds: 1) Moore is not in "custody" as required by habeas law, 2) the decision below was civil, not criminal, and 3) Moore has not exhausted his remedies. The Court hereby GRANTS the motion because Moore does not make a sufficient showing of a restraint of his personal liberties.

BACKGROUND

On April 12, 1996, after a brief investigation, a Hoopa Valley Tribe officer interviewed Moore, a member of a nearby Tribe, at Moore's home about his possible involvement in illegal logging. The officer *Mirandized* Moore and then Moore told the officer that he had hauled several loads to a wood products company. The officer cited Moore for violations of 25 U.S.C. § 163.29 and Hoopa Law & Order Code, Title 15.3, trespassing, and Title 15.5, logging without a permit.

The Hoopa Valley Tribe brought a complaint against Moore in the Hoopa Valley Tribal Court. On September 17, 1996, after a brief trial, the Court found Moore liable pursuant to Title 15 and § 163.29. Although Title 15 authorizes penalties pursuant to the Penal Code, the Court instead imposed treble civil damages under § 163.29 in the amount of \$18,508.50. Moore did not immediately appeal the decision nor did he pay the fine. On July 14, 1997, after a hearing, the Tribal Court entered an order enforcing the judgment. Moore appealed this order, arguing that the Tribal Court violated his Due Process rights during the hearing. His Due Process claim was unrelated to his habeas claims before this Court.

He also moved the court for permission to file a late appeal of the original decision. His motion argued that the decision below was criminal not civil, and that he would consequently meet the two year deadline to present newly discovered evidence. The court denied his motion, finding that the decision below was civil, and thereby foreclosing his attempt to present the new evidence. The Tribal Court of Appeal then denied his appeal of the enforcement order.

On August 4, 1998, the Tribal Court issued an order to seize a truck and a track loader owned by Moore to satisfy the judgment. Moore filed his petition with this Court shortly thereafter. He bases his petition on two grounds: 1) the treble damages exceed the jurisdictional amount allowed under ICRA, § 1302(7), which states that "no Indian tribe ... shall ... impose for conviction of any one offense any penalty or punishment greater than ... a fine of \$5,000," and 2) the Tribal Court lacked jurisdiction to

impose damages under § 163.29 because the Tribe had not properly adopted the regulations.

*2 The Tribe never incarcerated Moore during the proceedings against him. The Tribe never arrested him, nor did it put him on any probation or threaten to incarcerate him if he did not pay the fine. Moore has not been banished from the Hoopa Valley Indian Reservation and is free to enter and leave the Reservation as he wishes. Moore's "detention" was no more than the fine levied by the Tribal Court.

ANALYSIS

I. Legal Standard

Dismissal under FCRP 12(b)(1) is appropriate if "the complaint fails to allege grounds for federal subject matter jurisdiction as required by Rule 8(a): i.e., lack of federal jurisdiction appears from the 'face of the complaint.'" WILLIAM W SCHWARZER, ET AL, FEDERAL CIVIL PROCEDURE BEFORE TRIAL at 9:80 ("Schwarzer") (citations omitted). In analyzing a Rule 12(b)(1) motion, "the Court presumes lack of jurisdiction until plaintiff proves otherwise ." Schwarzer at 9:77 (citations omitted). Plaintiff has the burden of establishing subject matter jurisdiction. *See id.* The Court analyzes the motion based solely on the allegations in the complaint and any undisputed facts in the record. *See id.* at 9:78.

II. Discussion

Courts have developed three jurisdictional requirements for habeas relief under 25 U.S.C. § 1303. The proceeding below must be civil and not criminal in nature, the petitioner must be 'detained' by the tribe, and the petitioner must have exhausted all remedies. The broader question in viewing these three requirements, however, is whether the claimed restraints on the petitioner's liberty are severe or immediate enough to justify the invocation of habeas relief. *See Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874, 880 (2d Cir.1996). The Court's analysis of the first two factors, the decision below and the manner in which the Tribe detained Moore, reveals that the claimed restraints on his personal liberty are not enough to invoke section 1303.

A. The Proceedings Below

A Petitioner under section 1303 must show that the decision below was criminal, and not civil, in nature. *See Alire v. Jackson*, 1999 WL 701695, at 4, (1999 D.Or.). In stating this rule, the *Alire* court found persuasive the reasoning in both *Poodry* and *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 98 S.Ct. 1670, 56 L.Ed.2d 106 (1978). *See id.* at 3-4. Each of these courts strongly suggested, without concluding, that § 1303 allows jurisdiction only for criminal actions. *See Poodry*, 85 F.3d at 888 and *Santa Clara Pueblo*, 436 U.S. at 69; see also *Shenandoah v. U.S. Dept. of Interior*, 159 F.3d 708, 713 (2d Cir.1998) (ICRA does not establish or imply a federal civil cause of action to remedy a violation of § 1302).

In *Alire*, the plaintiff was a member of a different tribe who worked on the Reservation of the prosecuting Tribe as a child care-giver. *See Alire*, 1999 WL 701695, at 1. The Tribal Court convicted the plaintiff of child neglect and sentenced her to 180 days in jail in a criminal proceeding. *See id.* Plaintiff's continued presence on the Reservation after her sentence was controversial, and approximately seven months later the Tribal Council banished her from the Reservation. *See id.* In reviewing her petition, the court reasoned that the banishment order was civil in nature and was too far removed from her conviction to be considered part of that decision. *See id.* The court therefore held that it did not have jurisdiction over plaintiff's habeas writ in part because the 'decision below,' the banishment, was civil. *See id.* at 5.

*3 The court in *Alire* explained that " "the inquiry into whether a sanction is 'criminal' or 'civil' is neither simple nor mechanical." " *Id.* at 4, citing *Poodry*, 85 F.3d at 888. *Poodry* counsels this Court to look at how the tribe and the courts below refer to the legal proceedings, and at whether the court's decision was one that is traditionally either criminal or civil. *See Poodry*, 85 F.3d at 888-89. Here, the Court did not 'convict' Moore, but instead found 'liability.' In so doing the court used a 'preponderance of evidence' burden of proof, rather than 'beyond a reasonable doubt.' In addition, his liability was in the form of damages, not incarceration or a penalty. Admittedly, the tribal police originally 'cited' Moore and read him his Miranda rights, and the tribe served as plaintiff in the trial,

much like the state does in criminal prosecutions. These facts, however, are a consequence of the unique nature of tribal self-policing and sovereignty.

Also persuasive is the fact that in ruling on one of Moore's appeals, the trial judge accepted briefing on this issue and decided anew that the proceeding below was civil in nature. Further, aside from the Tribal Court's mere characterization of the proceeding, there is more than ample support in the record for the Tribal Court's conclusion that the proceeding was civil. Finally, and perhaps the most convincing factor before the court, according to *Poodry*, is how the law traditionally views the claim. In contrast to the banishment in *Poodry* and *Alire*, which is traditionally a criminal remedy, this is a trespass claim resulting in damages liability.

Finally, in *Alire* the court found the banishment decision to be civil even though the original court proceeding was criminal. *Alire*, 1999 WL 701695 at 5. It stretched to distinguish its facts from the *Poodry* conclusion that a banishment is inherently criminal. *See id.* Here, the facts evidence a decision and proceeding below more civil in nature than *Alire*. If the *Alire* court could find as it did in consideration of *Poodry* and under such close facts, this Court's conclusion is that much easier.

Moore cites the Court to *Allen v. Illinois*, in which the Supreme Court stated that “the question whether a particular proceeding is criminal for the purposes of the Self-Incrimination Clause is first of all a question of statutory construction.” *Allen v. Illinois*, 478 U.S. 364, 368, 106 S.Ct. 2988, 92 L.Ed.2d 296 (1986). He argues that the decision was criminal because the court found him liable for violations of Title 15 of the Tribal Code. Title 15 has language that allows the tribe to criminally prosecute violators of that statute and to impose penalties as enumerated in the Penal Code. Assuming for the sake of argument that *Allen*, a Self-Incrimination Clause case, is applicable to our circumstances, the case still does not help petitioner. Moore is correct that the Code is replete with criminal law and procedure. The Tribal Court, however, ignored these parts of the Code. The Tribal Court instead relied on civil language in Title 15 and in 25 C.F.R. § 163.29.¹ Section 163.29 specifically states that “civil penalties for trespass include, but are not limited to:

i. treble damages, whenever any person without lawful authority ... carries off from a reservation any forest product” 25 C.F.R. § 163.29(3). Thus, the court finds that the proceeding below was a civil proceeding.

B. The Tribe's ‘Detention’ of Moore

*4 ICRA § 1303 authorizes this Court to issue a writ of habeas corpus “to test the legality of [a] detention by order of an Indian tribe.” 25 U.S.C. § 1303. There is some dispute in the Ninth Circuit whether a fine alone is sufficient to meet the detention requirement of section 1303. In *Settler v. Lameer*, the court held that habeas corpus under § 1303 is available where the tribe only fines the defendant and does not place him under custody. *See Settler v. Lameer*, 419 F.2d 1311, 1312 (9th Cir.1969), see also *Settler v. Yakima Tribal Court*, 419 F.2d 486 (9th Cir.1969). Respondents argue that this holding came before the effective date of ICRA and thus has been superseded by the statute and subsequent case law. The *Lameer* case, however, was a companion case to *Yakima* in which the Ninth Circuit explicitly endorsed the earlier holding in light of the enactment of ICRA.

In *Edmunds v. Won Bae Chang*, however, the Ninth Circuit held that a fine alone did not meet the custody requirement of the federal habeas statute, 28 U.S.C. §§ 2241, 2254. *Edmunds v. Won Bae Chang*, 509 F.2d 39, 40 (9th Cir.1975), cert. denied, 423 U.S. 825, 96 S.Ct. 39, 46 L.Ed.2d 41. In *Edmunds*, the court addressed the holding in *Settler* in a footnote. *Id.* at 42, n6. The court distinguished the facts in *Edmunds* from *Settler*, explaining that the overall circumstances in *Edmunds* did not suggest a significant restraint on the petitioner's liberty. *Id.* In *Edmunds*, the court also found dispositive the fact that the petitioner did not face any “imminent” threat of incarceration. *Id.* at 41. Here, the possibility of incarceration is less than imminent—in fact, it doesn't exist. When Moore did not pay the fine, the court seized his property rather than impose a jail sentence.

In *Poodry v. Tonawanda Band of Seneca Indians*, the Second Circuit concluded that the meaning of ‘detention’ under § 1303 is no broader than the meaning of ‘custody’ in federal habeas law. *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874, 890 (2d Cir.1996), cert. denied, 519 U.S. 1041, 117 S.Ct. 610, 136 L.Ed.2d 535. In federal

habeas law, a fine alone is not enough to meet the custody requirement. See *Edmunds*, 509 F.2d at 40; see also *U.S. v. Mett*, 65 F.3d 1531, 1533 (9th Cir.1995). Under the rule in *Poodry*, therefore, the conclusion naturally follows that a fine in the tribal context is not detention and does not implicate § 1303. The court in *Poodry* exhaustively surveyed the development of habeas law in both the federal and tribal contexts since *Settler* and the passage of ICRA, the legislative history of ICRA, and the historical relationship between federal law and tribal sovereignty. No other court has considered fully the scope of § 1303, much less the possibility that § 1303 might provide a broader basis for relief than federal habeas law. See *id.* at 893. This Court finds the analysis and reasoning of *Poodry* and *Edmunds* persuasive.

*5 In sum, viewing the general circumstances here as the Ninth Circuit did in *Edmunds*, this Court does not find the predicate ‘severe restraint’ on Moore's personal liberty. As the Court has shown, the decision below was civil in nature. Moreover, the Court finds in this case that a fine alone is not enough to satisfy the detention requirement. The Court therefore concludes that Moore has not made a sufficient showing to invoke jurisdiction under section 1303, and hereby GRANTS the motion to dismiss.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 1999 WL 1244146

Footnotes

- 1 The parties dispute whether the Tribe had properly adopted section 163.29 at the time of trial, and this allegation is one of the grounds for Moore's writ. They also dispute the admissibility of each other's supporting evidence on this question. When analyzing a Rule 12(b)(1) motion, the Court is instructed not to consider disputed facts. The parties' dispute, however, goes to the merits of the petition, and whether the Tribe could invoke section 163.29. The parties do not dispute the fact that the Tribe did invoke section 163.29 in the decision below. This is a fact the Court therefore may consider within the meaning of 12(b)(1).