

District, Del Norte County, No. 38-61, William W. Speer, J., dismissed case for lack of jurisdiction, and People appealed. The Superior Court, Del Norte County, Appellate Department, Petersen, P. J., held that where purported sale took place in Crescent City, it was within jurisdiction of state of California.

Reversed.

1. States ⇌ 4.10

In order to determine whether federal government has preempted state law, court should determine whether scheme of federal regulations is so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it, whether federal statutes touch a field in which federal interest is so dominant that federal system must be assumed to preclude enforcement of state laws on the same subject, and whether enforcement of state law presents a serious danger of conflict with administration of federal program.

2. States ⇌ 4.10

In prosecution of defendant for violating state law prohibiting sale of sturgeon caught in state, burden was upon defendant to show that Congress had given Secretary of Interior authority to preempt state laws by clear and manifest purpose to displace state law in order to establish that government, by its regulations, had preempted state law prohibiting sale of domestic sturgeon. West's Ann.Fish & Game Code, § 8373.

3. Indians ⇌ 27(2), 32, 38(2)

Indian affairs on Indian reservations remain under federal jurisdiction unless Congress clearly intends to transfer jurisdiction to the state, but outside Indian reservations, jurisdiction lies with the state, unless there is expressed federal law to the contrary.

4. Indians ⇌ 38(2)

Despite fact that sturgeon was caught on Hoopa Valley Reservation, where sale of



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PEOPLE, Plaintiff and Appellant,

v.

Kenneth FRANK, Jr., Defendant
and Respondent.

Cr. A. No. 79-004-C.

Appellate Department, Superior Court,
Del Norte County.

Aug. 16, 1979.

Defendant was charged with sale of sturgeon in violation of California Fish and Game Code and he claimed that state law was preempted by federal law applicable to Indian fishing on Hoopa Valley Reservation. The Justice Court, Del Norte Judicial

* Judge of the Superior Court of San Diego County sitting under assignment by the Chairperson of the Judicial Council.

sturgeon was in Crescent City, and where state prohibited sale of domestic sturgeon by all persons and was thus nondiscriminatory, absent express federal law to contrary, Indian going beyond reservation boundaries was subject to state law prohibiting sale. West's Ann.Fish & Game Code, § 8373.

Robert W. Weir, Dist. Atty., for plaintiff and appellant.

Carol Strickman, Oakland, for defendant and respondent.

110 1PETERSEN, Presiding Judge.

This is an appeal by the People from the judgment of the justice court dismissing the above-captioned case for lack of jurisdiction based upon a finding that the federal government by Public Law No. 280, and its regulations, had pre-empted control of eligible Indians fishing on the Hoopa Valley Reservation.

It is conceded by the People that defendant, Kenneth Frank, Jr., was at all relevant times, an Indian of the Hoopa Valley Reservation and that the sturgeon in question was caught on the Hoopa Valley Reservation.

Defendant stands charged with a sale of sturgeon in violation of California Fish and Game Code section 8373, which allegedly occurred on June 2, 1978, at a location in Del Norte County *outside* of the Hoopa Valley Indian Reservation.

Defendant concedes that the State of California law prohibits the sale of sturgeon caught in this state, and only permits the sale of imported sturgeon under most strict regulations.

In this case, we are not dealing with a tribal treaty, nor with a sale of sturgeon by an Indian on the reservation.

111 1The lower court found that the Government, by its regulations, had pre-empted the state law prohibiting the sale of domestic sturgeons.

[1] There are three tests to be applied in order to reach such a decision, they are:

(1) Whether the scheme of federal regulations is so persuasive as to make reasonable the inference that Congress left no room for the states to supplement it.

(2) Whether the federal statutes touch a field in which the federal interest is so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject.

(3) Whether enforcement of state law presents a serious danger of conflict with the administration of the federal program.

[2] In this matter, the burden is upon the defendant to show that the Congress has given the Secretary of the Interior authority to pre-empt state laws by a "*clear and manifest purpose*" to displace state law.

This court is unable to find such a stated purpose in this situation.

The regulations read they are to apply to all Indians entitled to fish on the Klamath River, *within the Hoopa Valley Reservation*. Neither Congress nor the Secretary of Interior have stated by act or regulation that an Indian may sell sturgeon off the reservation. The State of California has stated that it is against the law for *any*, and all, persons to sell domestic sturgeon within its jurisdiction.

[3] We concur in the premise that Indian affairs on Indian reservations remain under federal jurisdiction unless Congress clearly intends to transfer jurisdiction to the state; but that outside Indian reservations, jurisdiction lies with the state, unless there is expressed federal law to the contrary.

We find the language in *Kake Village v. Egan* (1962) 369 U.S. 60, 82 S.Ct. 562, 7 L.Ed.2d 573, and the subsequent case of *Mescalero Apache Tribe v. Jones* (1973) 411 U.S. 145, 93 S.Ct. 1267, 36 L.Ed.2d 114, very persuasive in deciding the issue presented.

[4] In the *Mescalero Apache* case, the Supreme Court of the United States stated:

"Absent express Federal Law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory State Law." The state prohibits sale of domestic sturgeon by all persons and is thus nondiscriminatory.

In the *Kake Village* case, the same court emphasized that "It has never been doubted that states may punish crimes committed by Indians, even reservation Indians, outside of Indian Country."

This purported sale allegedly took place in Crescent City, and thus was clearly within the jurisdiction of the State of California.

The judgment of dismissal is reversed and the matter is referred to the justice court for further proceedings.

TRUITT and THOMAS, JJ., concur.

