

**SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS**

**COURT OF APPEALS**

Paul Lafrenier v. Sault Ste. Marie Tribe of Chippewa Indians

APP-08-08

Decided January 9, 2009

BEFORE: HARPER, KRONK, JUSTIN, NOLAN, and WEISS, Appellate Judges.

Monica Lubiarez-Quigley, Prosecuting Attorney, for the Tribe.  
Paul Lafrenier, *In Pro Per* for purposes of the appeal.

**ORDER AND OPINION**

Weiss, Appellate Judge, who is joined by Appellate Judges Harper, Justin and Kronk.

Appellant, Paul Lafrenier, appeals from the Tribal Court's order finding him in violation of his probation and sentencing him to serve 185 days in jail. This Court affirms the Tribal Court's order.

**DISCUSSION**

In October 2006, Paul Lafrenier (Appellant) was arrested and charged with possession or furnishing narcotics. *See* Tribal Code Section 71.1602. Appellant, with the assistance of counsel, subsequently entered a plea of guilty and was sentenced by the Tribal Court to 365 days in jail, 275 days held in abeyance pending successful completion of 12 months probation. In addition, Appellant was assessed \$910 of fines and costs. *See* Sentencing Order of the Tribal Court (January 26, 2007).

In January 2008, Appellant remained obligated to the court for \$200 in unpaid fines and costs, and 30 hours of community service. After the issuance of a motion to show cause, at least four hearings, failure of drug tests, and failure to complete a court mandated in-patient substance abuse program, Appellant was found to have violated probation and sentenced to serve 185 days in jail of the total of 275 days held in abeyance at the initial sentencing.

Appellant appeals by right after his sentence for probation violation. We affirm.

Appellant argues that the Tribal Court abused its discretion by imposing on him a disproportionately harsh sentence. Specifically, Appellant claims that because unusual circumstances existed in terms of his aboriginal heritage, the severity of addictions, and his needs

for more culturally-based treatments, his sentence should have been substantially lower and should have included a referral to an American Indian treatment center located out of state.

Although this Court, in reviewing a matter on appeal, may increase or decrease any sentence in a criminal case, Tribal Code Section 82.112(1), we are bound to review cases such as this for abuse of discretion. Tribal Code Section 82.124(8)-(9). Accordingly, we would only grant Appellant's request if we were to determine that the Tribal Court abused its discretion in setting his sentence.

Criminal sentences must be proportionate to the seriousness of the circumstances surrounding the offense and the offender. A sentencing court abuses its discretion if it fails to adhere to the principle of proportionality. We hold that a sentence that is equal to, or less than, the maximum terms contained within the United States Code, 18 U.S.C.A. Section 1152 and Chapter 71 of the Tribal Code (the "guidelines") is presumptively valid and proportionate. However, a sentence that is within the guidelines may constitute an abuse of discretion where unusual circumstances exist. Looking to Black's Law Dictionary, this Court construes the terms "unusual circumstances" to mean "uncommon" or "rare" circumstances. Additionally, this Court may take into consideration culturally-relevant circumstances in reviewing the Tribal Court's sentencing determinations.

Here, Appellant's guilty plea to possession or furnishing of narcotics under Tribal Code Section 71.1602 was entered with the knowledge that the crime carries a maximum sentence of one year and/or a fine not to exceed \$5,000. This maximum sentence is therefore presumptively proportionate, as previously explained. However, Appellant contends that his sentence is disproportionate to the probation violation and to the offender.

Sentences imposed on probation violators are reviewed on appeal only for abuse of sentencing discretion. Given the gravity of the underlying offense, which was possession or furnishing narcotics, any commitment to jail for less than one year does not represent an abuse of sentencing discretion. Accordingly, this Court finds that to the extent that any mitigating or unusual circumstances existed, or whether the Appellant would benefit from other immediate treatment alternatives, the record reveals that the sentencing court considered them. As a result, there was ample justification for the sentence imposed and the sentencing court did not abuse its discretion.

Therefore, this Court rejects Appellant's appeal and affirms the Tribal Court's sentence.