

**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. CHIMECO MARTINEZ, Defendant/Appellant.	Appeals Cause No. AP-CV-JV-021-2021 OPINION
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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

Adeleene Rockwell, Tribal Defenders Office, Pablo, MT, for Defendant/Appellant

Before: BELCOURT, TENENBAUM, AND DUPUIS

Opinion by Chief Justice Belcourt

Before this Court is Defendant/Appellant Chimeco Martinez's appeal of the
Tribal Youth Court's orders 1) granting motion to transfer to State Youth District
Court and 2) denying stay pending appeal. For the reasons set forth below, we
affirm.

OPINION ON DEFENDANT/APPELLANT'S APPEAL

Background

This case involves a Tribal youth who, by all accounts, was failed by the system. A brief snapshot of the life history of Chimeco Martinez¹ leaves little doubt of this:² As of November 2021, Mr. Martinez had been under the supervision of Tribal Social Services since 2015, had been in 16 different placements, had a significant history of trauma, and was homeless. During this time, Mr. Martinez did not receive the therapy or mental health assistance he needed. Both of his parents are deceased, and his highest level of education is the 8th grade.

The seriousness of the crimes Mr. Martinez is alleged to have committed is also fairly beyond dispute, which allegations include breaking into the apartment of an aging, disabled, deaf man, cutting him multiple times with a knife, robbing him, kidnapping him and stealing his car. Following this random attack, Mr. Martinez was found passed out in the victim's car under the influence of alcohol and drugs and wearing clothes covered in the victim's blood. These most recent allegations were not isolated but formed part of Mr. Martinez's extensive criminal history.

¹ Chimeco Martinez was a minor when these proceedings began in November, 2021, but turned 18 on January 5, 2022.

² The Youth Court's order below draws from the hearing testimony of the Juvenile Probation Officer and Tribal Social Services Foster Care Manager.

As a result, the hearing testimony and parties' briefing around the request to transfer to the State Youth District Court was consistent in concluding that the appropriate placement for Mr. Martinez was in a secure detention facility and that he would likely need long-term treatment in a secure facility, potentially lasting for years.

Our limited role in this appeal is to decide the narrow question of whether the Tribal Youth Court satisfied Tribal law and related procedural requirements in the Tribal Youth Code in making its decision to transfer the matter to the State Youth District Court and to deny a stay pending appeal. Under the circumstances, we answer that question in the affirmative, and thus affirm.

Issues on Appeal

1. Whether the Tribal Court erred in granting the Confederated Salish and Kootenai Tribes' motion to transfer; and
2. Whether the Tribal Court erred in denying Chimeco Martinez's request for a stay pending appeal.

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 affirm.

1. Tribal Youth Court's Order Approving Transfer to State Youth District Court.

In reaching its decision to approve transfer to State Youth District Court, the Tribal Youth Court determined that, contrary to the construction urged by Mr. Martinez, it is not necessary that both conditions of CSKT Laws Codified § 3-3-202(1)(a) and (1)(b) be satisfied for a case to be transferred as the plain language requires only one or the other. We believe this conclusion is correct.

CSKT Laws Codified § 3-3-202 provides as follows:

3-3-202. Transfer of Jurisdiction to State District Youth Court.

The Youth presenter shall have discretionary authority to transfer a juvenile offender to State Youth District Court based on input provided by the Juvenile Probation Office and consistent with the factors set forth in subsection 2 below.

(1) A juvenile offender may be transferred to State Youth District Court only if:

(a) the offender is alleged to have committed a serious crime: **and/or**

(b) transfer will access services or funding for the youth not available through the Tribe.

(2) The Youth presenter shall consider the following factors to determine transfer:

(a) the nature and seriousness of the alleged offense,

(b) the youth's nature and condition as evidenced by his/her age, mental and/or physical condition,

(c) the youth's past record of offenses,

(d) availability of funding for treatment, and

(e) services that are available through state youth district court that are not available through Tribal Youth Court.

(3) Transfer report. The juvenile officer shall prepare a transfer report for the Youth Court Presenter to consider that addresses the issues described in subsections 1 and 2 above. This report shall be attached to the notice of transfer for review and approval of the Court. The notice shall identify transfer of the allegations as well as transfer of supervisory responsibilities of Tribal juvenile probation office to the State juvenile probation services to ensure continued compliance with the Court's prior dispositions.

(4) Nothing in this section shall prohibit the juvenile officer from participating in the State court proceeding or youth placement committee as provided for in state law.

(Emphasis supplied.)

Based on the information presented, the Tribal Youth Court found sufficient evidence to support transfer based on CSKT Laws Codified § 3-3-202(1)(a), to wit, the seriousness of the crimes alleged to have been committed. Mr. Martinez argues that CSKT Laws Codified § 3-3-202(1) is impermissibly ambiguous and thus violates his due process rights, but the argument that the use of “and/or” is ambiguous is not supported.

First, it is for the CSKT governing body to determine that transfers are only permitted if the offender is alleged to have committed a serious crime AND transfer will access services or funding for the youth not available through the Tribe. But that is not what the statute says. If the Tribal Council had intended that both subparts (a) and (b) must be present for transfer to be permitted, it would have only used the conjunction “and.” But instead it used “and/or,” which under

ordinary grammar rules means that transfer could be supported by either or both of the first and second conditions.

The Tribal Council uses the term “and/or” at least forty-five times in the CSKT Laws Codified, and we must presume it did so for a reason. Here, the seriousness of the offense on its own is sufficient to support transfer.

Likewise, the Tribal Youth Court determined that the Youth Court Presenter properly considered the factors set forth in CSKT Laws Codified § 3-3-202(2). CSKT Laws Codified § 3-3-202(2) sets forth the factors the Youth Court Presenter must consider but does not direct any particular manner of weighing them. The record is replete with documentation showing the numerous factors evaluated by the Youth Court Presenter, including Mr. Martinez’s age (i.e., that he was 17 years and 10 months old at the time of the attack in November 2021), the seriousness of the alleged offenses, Mr. Martinez’s history of past offenses, the need for long-term supervision, services and funding available, and mental health and chemical dependency assessments. Among other things, the Youth Court Presenter made the determination that the risk to the public was too great to allow Mr. Martinez to remain in the Tribal system where secure detention was not available on a long-term basis. This is discretion that Tribal Council has committed to the Youth Court Presenter and this Court find no abuse of discretion in the exercise of this discretion.

Defendant's argument that he was denied equal protection also fail. The Tribal Youth Court held several hearings and heard evidence and testimony from a variety of experts.

We also take notice of the fact that the State of Montana already has concurrent jurisdiction over this matter pursuant to Ordinance 40-A, Section 1(e).

2. Tribal Youth Court's Order Denying Stay Pending Appeal.

Regarding the Court's Order Denying Stay, the Tribal Youth Court correctly observed that CSKT Laws Codified § 3-3-1002 allows, but does not mandate, a stay of a decision of the Tribal Youth Court. In exercising its discretion to grant the stay, the Youth Court noted: "Given that the Youth turns 18 in two and a half weeks, that he can no longer be held in Missoula County Detention at that point, that both parties testified at the transfer hearing for the need on ongoing secure detention for the Youth, and given the extreme seriousness of the charges, the Court believes that it is appropriate to deny the stay." In denying a stay, the Tribal Youth Court appropriately exercised the discretion that Tribal law affords.

Based on the Tribal Youth Court's determination of "an uncontested showing of a compelling need for the Youth's continued detention for the safety of the public," the Court denied the stay. CSKT law explicitly affords discretion in whether to grant a stay pending appeal or not, and Mr. Martinez has not offered any authority to the effect that a stay of transfer jurisdiction pending appeal is

required to satisfy the due process requirements of the Indian Civil Rights Act and the CSKT Youth Code.

Mr. Martinez also contends that the decision to deny the stay deprived him of adjudication for the alleged offenses in his own Tribal Court, and thus his ability as a Tribal citizen to be ruled by the laws of his own Tribal nation, but it is the Tribal law of the CSKT that allows for transfer of jurisdiction and provides discretion on whether or not to grant a stay.

Conclusion

IT IS THE ORDER OF THIS COURT that the Tribal Youth Court's decisions to approve transfer and deny stay pending appeal are 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 persons first named therein at the addresses shown below by depositing same in the interoffice mail this 11th day of October, 2022.

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**Abigail Dupuis
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