

**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>TY BUTLER,</p> <p style="text-align:center">Defendant/Appellant.</p>	<p>Appeals Cause Nos. AP-20-0884-CR AP-20-0954-CR</p> <p style="text-align:center">OPINION</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 Ty Butler appeals the Tribal Court's August 16, 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

OPINION ON DEFENDANT/APPELLANT'S APPEAL

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 October 21, 2020, Ty Butler appeared in open court and plead guilty to two counts of Domestic Abuse on two separate cause numbers. On Cause Number 20-0995, the Tribal Court sentenced Butler to 90 days in jail, with 75 days suspended for one year on several conditions. On Cause Number 20-0884 CR, the Tribal Court sentenced Butler to 60 days in jail, with 44 days suspended for one year on several conditions. Both sentences included a condition requiring Butler to "complete one year of formal Tribal probation."

After his release from jail, Butler went to Tribal Probation. Butler was unable to sign a probation agreement as Tribal Probation had not yet received a signed sentencing order from the court. Butler filled out an admission form and provided Tribal Probation with a phone number where he could be reached.

The signed sentencing order arrived at Tribal Probation on November 10th, 2020. Tribal Probation tried but could not reach Butler at the number he provided. Butler never returned to Tribal Probation. On January 14, 2021, the Tribes filed a

“Verified Petition To Revoke Probation & Suspended Sentence.” The Tribes allege in the petition that Butler “[f]ailed to sign up for one year of formal Tribal Probation or complete any of the other requirements set forth in the sentencing order.” A hearing was held on the petition on August 12, 2021. The trial court granted the Tribes’ petition in whole on August 16, 2021, and ordered Butler to serve the remainder of his two sentences consecutively, totaling 118 days in jail minus time already served.

DISCUSSION

The parties argue at length over whether a failure to sign up for probation is itself a violation of a condition of probation. The lack of a statutory definition of a “condition of probation” seems to fuel the dispute. We need not resolve this question, however, because the parties agree, as do we, that Butler’s failure to sign up for probation was a violation of his suspended sentence. A petition to revoke a suspended sentence “is the exclusive remedy” for violation of a condition of that suspended sentence. CSKT Laws Codified, §2-2-1207(3).

Butler 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 notes 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 Butler’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 Butler’s probation.¹

Our inquiry does not end there, however. Our Court 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

¹ The lower court suggests this outcome puts a probationer who does not sign up for probation “in a superior position to someone who signed up for additional conditions of probation but did not meet those conditions.” We disagree. A person who signs up for their court-ordered probation and later violates one of the conditions of probation is in an objectively better position than a person found to violate a condition of their suspended sentence. In the latter scenario, the court must revoke and impose all or part of the suspended sentence. In the former scenario, by contrast, the court has discretion to impose a less-punitive disposition that “by balancing the probationer’s interest in liberty, employment, family ties, responsibilities, health, or community ties against the Tribes’ interest in rehabilitation, public safety, victim(s’) rights, and the probationer’s duty to comply with each condition of probation.” CSKT Laws Codified, §2-3-204(7).

7. Even if the lower court had not erroneously granted the Tribes' petition to revoke probation, the Tribes' petition to revoke Butler's suspended sentence was validly granted, leading the court to impose the suspended portion of Butler's sentence. Butler himself concedes "this is the same result as revoking probation, but by different statutory means." The lower court's error was thus harmless, and its judgment is affirmed.

Conclusion

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

Ordered this 30th day of November, 2022.




Honorable Danny Tenenbaum
Associate 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 at Pablo, Montana, this 5th day of December, 2022.

**Tribal Prosecutors Office
PO Box 278
Pablo, MT 59855**

**Jim Gabriels
Tribal Defenders Office
PO Box 278
Pablo, MT 59855**

**Clerk of the Tribal Court
PO Box 278
Pablo, MT 59855**

A handwritten signature in blue ink that reads "Abigail Dupuis". The signature is written in a cursive style and is positioned above the printed name and title.

**Abigail Dupuis
Appellate Court Administrator**