

APR 23 2019

TRIBAL COURT

SUPREME COURT
OF THE
ROSEBUD SIOUX TRIBE

ROSEBUD SIOUX TRIBE, Plaintiff/Appellee, v. ALTON BEAR HEELS, Defendant/Appellant.	CA 2017-03 MEMORANDUM OPINION AND ORDER
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Per Curiam (Charles Abourezk, Chief Justice and Associate Justices Frank Pommersheim and Pat Donovan)

I. Introduction

Alton Bear Heels appeals his conviction for Failure to Appear and Sexual Abuse. Bear Heels was convicted after a trial by a jury. Bear Heels timely filed a notice of appeal alleging several grounds for appeal.

The Appellate Clerk of the Supreme Court issued a briefing schedule. Bear Heels filed a motion with this court for an extension of time to file his brief upon the grounds that he filed a motion to amend his designation of record to include the transcripts of the jury trial and hearings on post-trial motions and that the jury trial transcript may not exist. Bear Heels' brief was due on January 8, 2018 under the new briefing schedule. Bear Heels did not file his brief on or before the new schedule and on January 12, 2018 the Rosebud Sioux Tribe ("Tribe") filed a motion for summary dismissal of the appeal for Bear Heels' failure to file an opening brief. On January 24, 2018 Bear Heels filed an objection to the Tribe's motion to dismiss and motion to reverse trial court's finding of guilty.

Oral arguments were heard by the Court. Bear Heels was represented by Public Defender, Daniel Gargan and the Tribe was represented by RST Prosecutor, Kelsey Ruby.

II. Issues

Bear Heels raises the following issues on appeal:

- A. The Tribe failed to prove the elements of the crime of sexual abuse
- B. The Court abused its discretion for failing to timely rule on Bear Heel's Motion to Sever Offenses
- C. Failure of the Tribe to turnover Exculpatory DNA evidence
- D. Failure of the Tribe to turnover other discoverable evidence
- E. Violation of Bear Heel's due process rights because revised Title 5 containing the charge of Sexual Abuse was not readily available to him because it had not been published or distributed.

The Tribe also raises an overarching issue that this appeal should be dismissed for Bear Heels' failure to file a timely brief.

III. Discussion

The Court will first take up the issue of whether the appeal should be dismissed for failure to abide by the appellate rules of procedure as it is dispositive.

The Tribe filed a motion to dismiss for failure to abide by appellate procedures after Bear Heels failed to file a brief by the extension deadline. Bear Heels then filed his motion to reverse trial court's finding of guilty.

The Tribe argues that the rules of appellate procedure and our own precedents require dismissal of Bear Heels' appeal. The Tribe points out that Bear Heels' deadline to file his opening brief had run, the Tribe filed its motion to dismiss appeal based on that failure and only then did Bear Heels file a motion to reverse the trial court's finding of guilty. It further argues that Bear Heels' motion is untimely and that he should have asked for an extension to file his

opening brief and then file a motion to reverse trial court's finding of guilty only after it is determined that no jury trial transcript exists.

Bear Heels argues that no jury trial transcript exists. He points out that there were two jury trial dates where the original first day set for trial was delayed and the trial did not commence until the following day and he filed an extension of time to file opening brief and to amend his designation of record to reflect the correct jury trial date. He also argued that when he did not receive the trial transcript after the extension, he filed a motion to reverse trial court's finding of guilty. Bear Heels finally argues that the trial court failed to issue findings of facts rendering the conviction invalid.

Rule 8 provides "failure of either party to file briefs in a timely manner, as required by this code shall be sanctioned by the Court subjecting the case to summary dismissal unless the failure to file is specifically excused by the Appellate panel."¹ This Court has held that non-compliance with appellate rules warrant dismissal.² We have routinely dismissed appeals for failure to comply with the Court's Briefing Schedule by failing to file a brief or move for an extension.³

It is common for this Court to grant multiple extensions in a case while waiting for a trial transcript to be prepared. If Bear Heels had moved for another extension before the missed deadline to file a brief this Court would have granted another extension of time to file his opening brief. If it had been determined during this extension that no transcript existed, then he could have filed his motion to reverse the trial court's finding of guilty. In his objection to the Tribe's motion to dismiss, he states that he filed a motion for extension for not having sufficient

¹ Rule 8 of the Rosebud Sioux Tribe Rules of Appellate Procedure.

² *Waln v. Waln*, CA 96-04 (1998). *Rosebud Sioux Tribe v. Gregg*, CA 97-06 (1998). *Left Hand Bull v Rosebud Sioux Tribe*, CA 99-02 (2000). *Wright v. Sanchez*, CA 2000-01 (2000). *Cloudman v. Rosebud Sioux Tribe*, CA 2001-01 (2001).

³ *Ed Charging Elk v. Marshall and Wilson*, CA 98-01 (1998). *Frederick v. Frederick*, CA 93-02 (1994). *McClellan v. Shaw*, CA 93-01 (1993). *Rosebud Sioux Tribe v. Walsh, et al.*, CA 91-05, Order (1992).

time to produce the transcript and as a result he did not have transcript available to draft his opening brief and a transcript has not yet been produced and may not exist. Again, Bear Heels could have moved for another extension to determine if the transcript truly exists.

Bear Heels' argument that he filed his motion to reverse the trial court's finding of guilty after not receiving the transcript after the first extension ignores the fact that his motion was filed 16 days after the extension deadline had passed. His argument also ignores the fact he filed his motion of reverse 12 days after the Tribe had filed its motion of dismissal for failure to comply with appellate rules.

At oral arguments it was not adequately explained why Bear Heels did not file for another extension and investigate whether a transcript exists and if none exist then file a motion to reverse. There is no evidence that a transcript does or does not exist other than Bear Heels claim.

Bear Heels further argues that his motion to reverse should be granted because the trial court failed to issue findings of facts. He cites *The People of the Rosebud Sioux Tribe in the Interest of J.E.*⁴, a children's court case, for the proposition that the absence of findings of facts and conclusions of law requires the decision of the trial court be dismissed. This argument is flawed for several reasons. The case cited by Bear Heels involved a hearing before the court without a jury where the court was the trier of fact and the court was required by code to issue findings of facts and conclusions of law.⁵ Bear Heels' case was a criminal trial tried to the jury where the jury was the trier of fact and not the court. The court is not required to issue or prepare findings of facts and conclusions of law when a jury makes that determination outside the presence of the court while deliberating a verdict. Bear Heels cites no authority for the proposition that a court must file findings of fact and conclusions of law after a jury determination. The Rosebud Sioux

⁴ CA 91-06 (1992).

⁵ Title 4 Rule 52 RST Rules of Civil Procedure.

Tribe Rules of Criminal Procedure do not require findings be made after a jury verdict.⁶

Bear Heels also argues that his motion to reverse should be granted based on our ruling in *Shortbull v. Stove*.⁷ In that case the trial court issued findings of facts and conclusions of law after a trial to the court, but no decipherable transcript of the trial was available. This Court held this constituted reversible error as there was no way to determine if the court's findings were in error without a transcript. *Shortbull v. Stove*⁸ is distinguishable from the case at bar. Here, there was never a determination of whether a trial transcript exists or any proof if one did not exist and no findings of fact or conclusions of law were required or even possible because the verdict was made by a jury not the court.


IV. Conclusion

For the above stated reasons, Bear Heels' appeal is dismissed as untimely filing of a brief and without adequate justification. This procedural error effectively moots the substantive issues upon which Bear Heels seeks review.

IT IS SO ORDERED.

Dated this 23rd day of April 2019.

FOR THE COURT:



Pat Donovan, Associate Justice

⁶ Title 7 RST Rules of Criminal Procedure.

⁷ CA10-04 (2010).

⁸ Id.