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MAY 23 2002
CHOCTAW SUPREME COURT
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IN THE SUPREME COURT
OF THE
MISSISSIPPI BAND OF CHOCTAW INDIANS

S.D., A Minor,)	No. SC 2001-18
Respondent and Appellant,)	
)	MEMORANDUM OPINION
)	AND ORDER
v.)	
Mississippi Band of Choctaw Indians,)	
Juvenile Probation Officer,)	
Petitioners/Appellees,)	

Before Chief Justice Vaughn and Associate Justices Pommersheim and Vicenti. Associate Justice Pommersheim writing for a unanimous Court.

I. Introduction

S.D., minor Respondent/Appellant, was arrested for the simple possession of marijuana on November 11, 2000. Said offense took place in the Pearl River Community. S.D. was adjudicated a juvenile delinquent in Youth Court on June 12, 2001 and was ordered to complete a term of three months probation.

The minor, through counsel, filed a notice of appeal on June 18, 2001, though the order of disposition was not signed or filed until July 12, 2001. An appropriate briefing order then issued on July 19, 2001. Appellant filed a timely (though quite abbreviated) brief on August 17, 2001.

On September 17, 2001, the Appellees filed a motion to dismiss for lack of jurisdiction. Appellees filed no brief as required by the Court's order of July 19, 2001. Appellant filed no answer to the Appellees' motion to dismiss.

This Court ordered oral argument on the motion to dismiss, while reserving consideration of Appellant's substantive issues¹ pending disposition of the motion to dismiss.

¹ Appellant's Notice of Appeal identified three substantive issues, namely:

1. Whether the Tribe has a duty to read a person his *Miranda* rights before asking him questions.
2. Whether the Tribe's use of a crime laboratory results in court is hearsay when the forensic scientist is not present.
3. Whether the Tribe's use of a crime laboratory results in court is a violation of a defendant's rights to confront a witness when the forensic scientist is not present.

II. Issues

The sole issue raised (at the stage of appeal) is Appellees' claim that Appellant's notice of appeal was *not* timely filed and therefore it must be dismissed with prejudice.

III. Discussion

Before proceeding to a discussion of Appellees' motion, the Court finds it necessary to admonish counsel for both the Appellant and Appellees. The brief filed by Appellant's counsel is three pages in length. This is *prima facie* inadequate and unacceptable. Counsel, especially law-trained counsel, representing the Tribe's Public Defender's Office cannot possibly perform adequately and zealously in submitting a brief that deals with each of his three substantive issues in a single paragraph. In addition, Appellant filed no response to Appellees motion to dismiss. This defies explanation. At oral argument, in response to a question from the bench, Appellant's counsel merely said that his office was very busy. This is not an acceptable explanation. Failure to write an adequate brief or to respond appropriately to any motion in the future shall result in appropriate sanctions being imposed.

Appellees' counsel, representing the Tribe's Attorney General's Office, committed its own serious error. The mere filing of a motion to dismiss (on procedural grounds) and a motion to stay the briefing schedule does not relieve counsel of her duty to file a reply brief as ordered by the Court. Counsel, either inadvertently or rather boldly, apparently assumed that its motion(s) would be granted. This too is unacceptable. Unless a motion for an extension or stay has been granted, counsel is not free to not file its required brief in a timely manner. Failure to correct this practice shall lead to the imposition of appropriate sanctions in the future. Enough said.

Appellees' motion to dismiss is couched in purely formal terms. Appellant's notice of appeal is argued to be untimely because it was not filed in accordance with § 7-1-3(a) of the Choctaw Tribal Code which provides:

Within 30 days from the **entry of the order of judgment appealed from**, unless otherwise provided in this Code, the party taking the appeal must file with the clerk of the Supreme Court a written notice of appeal specifying the parties to the appeal, the order or judgment appealed from. The clerk shall file the notice and mail copies, to be provided by the appealing party, to all other parties to the appeal at their last known address. (Emphasis added).

Since the "entry of the order of judgment appealed from" was not filed until July 12, 2001, and the notice of appeal was filed on June 18, 2001, Appellees argue that the notice of appeal was not timely filed because it was filed *too early*.

While this argument is formally attractive, it must nevertheless fail on both common sense and fairness grounds. As Appellees' counsel conceded at oral argument, the Tribe is not prejudiced

in the slightest by such an 'early' appeal. In addition, the appeal is not 'early' in any common sense understanding of that term because the Youth Court's decision becomes immediately effective when rendered, regardless if it has been reduced to writing and recorded.

In such circumstances, the Appellant minor is required immediately to comply with said order when it is rendered from the bench and since he suffers its immediate consequences and limitations on his liberty, basic fairness requires that the time to appeal begin running at the same time. In these situations, such fairness is tantamount to the necessary due process.

The cases cited by Appellees do not require a different result. Both *Kerchee v. Kerchee*, 2 Okla. Trib. 132 (Comanche CIA 1990) and *Wahkinney v. Wahkinney*, 2 Okla. Trib. 11 (Comanche CIA 1990) involve non-final orders which is not the situation in the case at bar. In contrast to *Banks v. Banks*, 511 S.2d 933 (Miss. 1987), Youth Court judgments are final (and acted on) when rendered from the bench and need not be reduced to writing and filed before becoming operational and final.

IV. Conclusion

For all the foregoing reasons, Appellees' motion to dismiss is denied and the parties are ordered to submit their briefs on the substantive issues raised by Appellant in accordance with § 7-1-7 of Title VII of the Mississippi Choctaw Code.

IT IS SO ORDERED.

Dated 5/20/02

FOR THE COURT:



Frank Pommersheim
Associate Justice