

**FILED**

MAY 23 2002  
CHOCTAW SUPREME COURT  
BY: [Signature]  
COURT CLERK

IN THE SUPREME COURT  
OF THE  
MISSISSIPPI BAND OF CHOCTAW INDIANS

|                             |   |                    |
|-----------------------------|---|--------------------|
| M. W., a minor              | ) | SC 2001-21         |
| Petitioner/Appellant        | ) |                    |
|                             | ) |                    |
| vs.                         | ) |                    |
|                             | ) |                    |
| Mississippi Band of Choctaw | ) | MEMORANDUM OPINION |
| of Choctaw Indians          | ) | AND ORDER          |
| Juvenile Probation Officer  | ) |                    |
| Respondent/Appellee         | ) |                    |

*Per Curiam* (Before Chief Justice Vaughn and Justices Pommersheim and Vicenti; Associate Justice Pommersheim writing for a unanimous Court)

I. Introduction

On March 9, 2001, M. W., a tribal minor, was arrested and charged with burglary in violation of Choctaw Tribal Code Sec. 3-3-3, a Class A offense. At a dispositional hearing held on May 25, 2001 the Court found the minor to be delinquent and ordered the minor to complete a term of six months probation and pay restitution in the amount of one thousand nine hundred forty three dollars and eighty-three cents (\$1,943.83). The order in this matter was not signed by Youth Court Judge Hilda Nicky until July 12, 2001. It was filed the same day with the Youth Court Clerk.

The Appellant/Minor filed his Notice of Appeal with the Supreme Court on June 25, 2001. The Court issued its briefing order on July 23, 2001. The Appellant/Minor filed his brief with the Supreme Court on August 20, 2001. Appellee filed a motion to dismiss and a motion to stay the briefing schedule on September 19, 2001. Appellant/Minor did not file any response to these motions and Appellee filed no responsive brief to the substantive issues raised by the Appellant.

This Court ordered oral argument on the motion to dismiss, while reserving consideration of Appellant's substantive issues<sup>1</sup> pending disposition of the motion to dismiss.

II. Issue

<sup>1</sup> The Appellant/Minor Notice identified two issues, namely:

1. Whether the trial court erred in failing to schedule the adjudicatory/dispositional hearing within ten days after the Youth Court received the petition for said hearing from the presenting officer as required by Choctaw Tribal Code 11-3-19 and thereby violated Appellant's right to a speedy trial and right to counsel.

2. Whether the trial court's decision was supported by adequate and sufficient evidence.

The sole issue raised (at this stage of appeal) is Appellee's claim that Appellant's Notice of Appeal was not timely filed and therefore it must be dismissed with prejudice.

### III. Discussion

In its procedural position before this Court, this case is identical to the case of *S.D., a minor v. Mississippi Band of Choctaw Indians*.<sup>2</sup> Therefore (and not surprisingly) the result here is the same as in the *S.D.* case.

Before proceeding to a discussion of Appellee's motion, the Court finds it necessary to admonish counsel for both the Appellant and the Appellee. Appellant filed no response to Appellee's 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 respond appropriately to any motion in the future shall result in appropriate sanctions being imposed.

Appellee's 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.

Appellee's 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, Appellee argues 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 Appellee's counsel conceded at oral argument, the Tribe is not prejudiced in the

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<sup>2</sup> In fact the Appellee's motion to dismiss for lack of jurisdiction and a motion for stay of the court's briefing order are verbatim to those in the *S.D.* case.

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 Appellee 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.

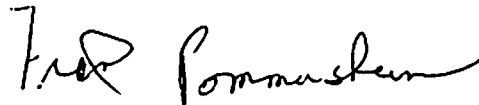
#### IV. Conclusion

For all the foregoing reasons, Appellee's 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 5/22/00

FOR THE COURT:



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Frank Pommersheim  
Associate Justice