

FILED

OCT 03 2011

IN THE SUPREME COURT
OF THE
MISSISSIPPI BAND OF CHOCTAW INDIANS

CHOCTAW SUPREME COURT
BY: [Signature]
COURT CLERK

MISSISSIPPI BAND OF CHOCTAW INDIANS

APPELLEE

Vs.

SC 2011-02

ERIC DAN

APPELLANT

JUDGMENT

This Court, by appeal, has been presented with the validity of and the constitutionality of the Order of June 13, 2011, which invokes a judicial review of Choctaw Tribal Code §3-8-2. The Appellant argues that a defendant is in effect punished twice when code §3-8-2 is applied to a criminal revocation hearing violation where an additional sentence is added to the previous probation sentence.

In the case under review, the Appellant was ordered to serve ninety (90) days in jail for violating the terms of his probation and sentenced to serve an additional ninety (90) days for the Code of §3-8-2 violation. Thus, instead of a ninety (90) day sentence the Appellant was ordered incarcerated 180 days.

The Tribe through its counsel argues that the code is applicable under said circumstances combined and total sentence is appropriate.

Due process requires that Rule 3 of C.P.CrP be in strict compliance in each aspect of a defendant's trial and sentence process. Rule 3(h) and (I) are applicable to this opinion.

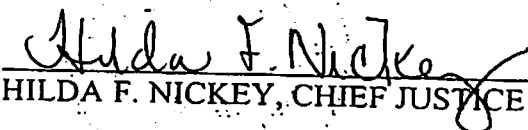
Code §3-8-2 clearly does give a Court the authority to hear evidence and punish a defendant who fails to comply with a proper and lawful Court Order. However, it was never intended to be a separate punishment to enhance a probation violation sentence.

This Court has the obligation to make an ultimate decision, on this appeal, when and if a statute is being wrongfully applied. It is this Court's opinion that Code is being wrongfully applied under a probation revocation violation; thereby, instituting a greater sentence and/or fine to a Defendant.

Therefore, the Order of June 13, 2011 is not valid wherein it adjudicates the appellant with a violation of Code §3-8-2 and any additional days of jail accompanying same. Thus, that portion of the Order is unconstitutional and is not valid. The remaining portions of the Order are valid. The release date of the defendant/appellant is revised to September 30, 2011.

This Court recognizes that a Request to File an Interlocutory Appeal might not be the perfect vehicle to raise this constitutional question, i.e. Motion to Dismiss, Habeas Corpus. However, constitutional questions may be raised at any stage of litigation or appeal and considering the time constraints, this issue is deemed properly before the Court.

SO ORDERED this the 3rd day of October 2011, nunc pro tunc, as of September 30, 2011.


HILDA F. NICKEY, CHIEF JUSTICE

CERTIFICATE OF SERVICE

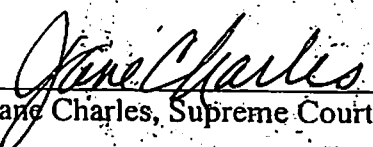
I do hereby Certify that I have this, the 5th day of October 2011 caused to be Forwarded by the United States Mail, a true and correct copy of the above and foregoing document to the below listed counsel of record.

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