DA 19-0156

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 235

TRAVIS CURTIS LOZEAU, SR.,

Plaintiff and Appellant,

v.

BENJAMIN ANCIAUX,

Defendant and Appellee.

APPEAL FROM: District Court of the Twentieth Judicial District,
In and For the County of Lake, Cause No. DV-19-6
Honorable James A. Manley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Travis Curtis Lozeau, Sr., Self-Represented, Ronan, Montana

For Appellee:

Walter E. Congdon, Civil Deputy Lake County Attorney, Polson, Montana

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Submitted on Briefs: September 11, 2019

Decided: October 1, 2019

Filed:

Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Pro se Appellant Travis Curtis Lozeau, Sr. ("Lozeau") appeals from a February 15, 2019 Twentieth Judicial District Court order dismissing his complaint for failure to state a claim. We affirm.

¶2 We address the following issues on appeal:

> *1. Whether the State of Montana properly adopted Public Law 280 and the Confederated Salish and Kootenai Tribes consented to its application on the Flathead Indian Reservation.*
>
> *2. Whether Public Law 280 and Montana's enabling act as applied to the Confederated Salish and Kootenai Tribes violates the 1855 Hellgate Treaty.*

PROCEDURAL AND FACTUAL BACKGROUND

¶3 On January 7, 2019, while detained in the Lake County Jail in Polson, Montana, Lozeau filed a pro se petition for habeas corpus requesting the District Court drop all felony criminal convictions against him, alleging the State of Montana has no jurisdiction as he is an enrolled member of the Confederated Salish and Kootenai Tribes ("CSKT") who committed a crime within the boundaries of the Flathead Indian Reservation. On January 16, 2019, Appellee Benjamin R. Anciaux ("Anciaux"), the Deputy Lake County Attorney, filed a motion to dismiss the petition as Lozeau failed to state a claim pursuant to M. R. Civ. P. 12(b)(6) and raising a res judicata issue. On February 15, 2019, after Lozeau failed to respond to Anciaux's motion and brief, the District Court adopted the authority and argument set forth in Anciaux's brief as the basis for its decision and granted Anciaux's motion to dismiss. On March 13, 2019, Lozeau was released from jail and on March 19, 2019, Lozeau filed a notice of appeal.

¶4 Lozeau contends that his state criminal convictions for felony offenses committed within the boundaries of the Flathead Indian Reservation are not subject to state jurisdiction because the application of Public Law 83-280, 18 U.S.C. § 1162, 25 U.S.C. § 1321 ("PL-280") by the State was improper and has never been consented to by the CSKT. Lozeau also argues that PL-280 and subsequent Montana enabling statutes violate the 1855 Hellgate Treaty, 12 Stat. 975.

STANDARD OF REVIEW

¶5 This Court reviews a district court's ruling on a motion to dismiss for failure to state a claim de novo. *White v. State*, 2013 MT 187, ¶ 15, 371 Mont. 1, 305 P.3d 795. In evaluating the motion, we consider the complaint in the light most favorable to the plaintiff and will not affirm the district court's decision "unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *White*, ¶ 15. The district court's determination that a complaint failed to state a claim presents a conclusion of law, which is reviewed for correctness. *White*, ¶ 15. In reviewing a habeas corpus petition, the appellant has the burden to "prove the facts or establish grounds entitling him to relief; to overcome the presumption of validity and regularity of the proceedings, and to show the invalidity of the judgment or sentence which he attacks." *In re Hart*, 178 Mont. 235, 250, 583 P.2d 411, 419 (1978).

DISCUSSION

¶6 *1. Whether the State of Montana properly adopted Public Law 280 and the Confederated Salish and Kootenai Tribes consented to its application on the Flathead Indian Reservation.*

¶7 It appears the thrust of Lozeau's first argument is that he should not have been charged or incarcerated in Lake County because the State lacked jurisdiction over his felonious criminal actions on the Flathead Indian Reservation. Lozeau argues PL-280 and subsequent Montana and CSKT laws related to granting the State concurrent criminal jurisdiction over CSKT tribal members within the Flathead Indian Reservation were never properly ratified by the CSKT and its members.

¶8 A review of precedent from this Court and the history of PL-280's application in Montana and the Flathead Indian Reservation indicates that the CSKT and the State did properly adopt PL-280 as it relates to felony criminal prosecutions. This Court has outlined the history of PL-280 and its valid application to the CSKT and the State in several cases. *See State ex rel. McDonald v. Dist. Ct.*, 159 Mont. 156, 496 P.2d 78 (1972); *State v. Spotted Blanket*, 1998 MT 59, 288 Mont. 126, 955 P.2d 1347; *Balyeat Law, P.C. v. Pettit*, 1998 MT 252, 291 Mont. 196, 967 P.2d 398 *overruled in part on other grounds by Big Spring v. Conway (In re Estate of Big Spring)*, 2011 MT 109, 360 Mont. 370, 355 P.3d 121; *see also Campbell v. Crist*, 491 F. Supp. 586 (D. Mont. 1980). While the above cases discuss PL-280's valid application on the Flathead Indian Reservation, we nevertheless provide a brief overview.

¶9 On August 15, 1953, Congress enacted PL-280 which, under § 7, granted to the states power to unilaterally assume criminal jurisdiction on reservations "in such manner

as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof."[1] Pub. L. No. 280, § 7, 67 Stat. 590; *Washington v. Confederated Bands & Tribes of Yakima Indian Nation*, 439 U.S. 463, 499 (1979). In 1963, acting under the authority of PL-280 § 7, the State by legislative act (House Bill No. 55) provided a procedure for the assumption of jurisdiction in Indian country. 1963 Mont. Laws ch. 81, § 1, now codified at § 2-1-301, MCA (2017). While the State could have unilaterally assumed jurisdiction, as consent of the CSKT was not required by PL-280 prior to the enactment of the 1968 Indian Civil Rights Act, in 1963 the State voluntarily established a consent procedure with the CSKT. *Pettit*, ¶ 23 (citing §§ 2-1-301 through -306, MCA). The Montana statutory consent procedure requires that the governor of Montana first "receive[] from the tribal council or other governing body of the Confederated Salish and Kootenai Indian tribes . . . a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction, or both, of the state." After the CSKT acts, the governor shall "issue within 60 days a proclamation" to implement the agreement. 1963 Mont. Laws ch. 81, § 2, now codified at § 2-1-302(1), MCA. The governor's proclamation may not be issued "until the resolution has been approved in the manner provided for by the charter, constitution, or other fundamental law of the tribe. . . ." 1963 Mont. Laws ch. 81, § 2, now codified at § 2-1-302(2), MCA.

[1] While § 7 of PL-280 was repealed in 1968 by the Indian Civil Rights Act, the repeal provides that "such repeal shall not affect any cession of jurisdiction made pursuant to such section prior to its appeal." 25 U.S.C. § 1323. Since the agreement for assumption of criminal jurisdiction between the CSKT and the State occurred in 1964, the CSKT and the State agreement was unaffected by the amendment.

¶10 On May 16, 1964, the CSKT consented to Montana's assumption of concurrent criminal jurisdiction through the enactment of Tribal Ordinance 40-A, an ordinance that was approved in accordance with the CSKT Constitution under Article VI, § 1(l). *State ex rel. McDonald*, 159 Mont. at 160, 496 P.2d at 80. On June 30, 1964, within the 60-day timeframe, Governor Babcock issued a proclamation to give effect to Tribal Ordinance 40-A allowing concurrent jurisdiction over criminal matters between the State of Montana and the CSKT. *State ex rel. McDonald*, 159 Mont. at 160-61, 496 P.2d at 80. On May 5, 1965, Tribal Ordinance 40-A (Revised), now codified at § 1-2-105, CSKT Code,[2] was enacted to clarify language in the original ordinance that wrongfully limited its scope to criminal laws and repealed the original Tribal Ordinance 40-A. On October 8, 1965, Governor Babcock issued another proclamation giving effect to the CSKT's Tribal Ordinance 40-A (Revised).[3] *State ex rel. McDonald*, 159 Mont. at 161, 496 P.2d at 80.

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[2] Tribal Ordinance 40-A (Revised), now codified at § 1-2-105(3)(i), CSKT Code, indicates the CSKT's continued consent to concurrent jurisdiction over felony criminal offenses:

> the laws and jurisdiction of the State of Montana, including the judicial system of the State, are hereby extended pursuant to and subject to the conditions in, [§§ 2-1-301 through -306, MCA], to Indians within the Flathead Reservation to the extent such laws and jurisdiction relate to the subjects following: (i) All Criminal Laws of the State of Montana pertaining to felony offenses (Class E offenses in this Code).

[3] While Governor Babcock's 1965 proclamation was issued beyond the 60-day timeframe, it did not invalidate the application of PL-280. The State's continued agreement to concurrent jurisdiction over criminal matters could be implied based on Governor Babcock's previous 1964 proclamation and Montana's enabling legislation under § 2-1-301, MCA, that bound the State to the assumption of jurisdiction within the Flathead Indian Reservation upon the consent of the CSKT. Further, it is incorrect to assert that the CSKT has not consented to concurrent jurisdiction based on a minor procedural error given the fact that the CSKT and the State have

¶11 In 1993, the Montana Legislature adopted a statute allowing the CSKT to withdraw their consent to the exercise of State criminal misdemeanor and civil jurisdiction. 1993 Mont. Laws ch. 542, § 1, now codified at § 2-1-306, MCA. In September 1994, the CSKT successfully withdrew State concurrent jurisdiction over most forms of criminal misdemeanor jurisdiction in Resolution 94-123. *Spotted Blanket*, ¶ 24. Governor Racicot then issued a proclamation on September 30, 1994, to give effect to Tribal Resolution 94-123. *Spotted Blanket*, ¶ 24. Tribal Resolution 94-123 did not affect the State's jurisdiction over felonies and civil matters within the scope of Tribal Ordinance 40-A (Revised). *Spotted Blanket*, ¶ 24. Recently, during the Montana 2017 legislative session, § 2-1-306, MCA, was amended to allow the CSKT to completely withdraw their consent to be subject to criminal jurisdiction of the State, including felonies. 2017 Mont. Laws ch. 406, § 1, now codified at § 2-1-306(1), MCA. However, the CSKT has not exercised that authority. Lozeau's argument that PL-280 was never properly consented to by the CSKT is incorrect.

¶12 Lozeau further argues that since § 2-1-302, MCA, uses the word "resolution," Tribal Ordinance 40-A (Revised) was insufficient to meet the statutory requirements for CSKT's consent to criminal jurisdiction. However, a resolution is defined as: "A main motion that formally expresses the sense, will, or action of a deliberative assembly (esp. a legislative body)." *Resolution*, *Black's Law Dictionary* (Tenth ed. 2009). Since Tribal

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operated under an agreement of concurrent jurisdiction for the last fifty-five years and continue to do so.

Ordinance 40-A (Revised) formally expressed an action taken by the CSKT Tribal Council to consent to state criminal jurisdiction, Lozeau's argument fails.

¶13 Related to this first issue, Lozeau also argues that the application of PL-280 on the Flathead Indian Reservation was meant to be on a two-year trial basis rendering its continued application invalid. This contention is incorrect, as 1963 Mont. Laws ch. 81, § 6 did not specify that concurrent jurisdiction was to be on a trial basis. Rather, it provided for the CSKT to withdraw their consent within two years from the date of the governor's proclamation giving effect to concurrent jurisdiction. Though the CSKT passed Tribal Resolution 1973 on June 22, 1966, that would have rescinded its consent, Resolution 1973 was not transmitted to or received by the governor as required by 1963 Mont. Laws ch. 81, § 6, and just eight days later it was rescinded by Tribal Resolution 1997. *State ex rel. McDonald*, 159 Mont. at 161, 496 P.2d at 80. Even with being granted an additional year to make its decision by Governor Babcock, via an October 8, 1967 proclamation, the CSKT did not take action to rescind its consent by October 8, 1968. Therefore, Lozeau's argument on this point also fails.

¶14 *2. Whether Public Law 280 and Montana's enabling act as applied to the Confederated Salish and Kootenai Tribes violates the 1855 Hellgate Treaty.*

¶15 Regarding Lozeau's second argument, PL-280 and the State's application of PL-280 to the CSKT does not violate the 1855 Hellgate Treaty, 12 Stat. 975. First, the United States Supreme Court has held that PL-280 is a valid abrogation of a tribe's jurisdictional treaty rights. *Conf. Bands & Tribes of Yakima Indian Nation*, 439 U.S. at 478 n. 22; *see also Anderson v. Gladden*, 293 F.2d 463, 468 (9th Cir. 1961) (holding the

federal government has the power to relinquish jurisdiction to the states through PL-280). Second, as discussed above, this Court has already held that the State properly enacted its enabling legislation under PL-280. *State ex rel. McDonald*, 159 Mont. at 162-65, 496 P.2d at 81-83 (discussing the constitutionality of the State's PL-280 enabling legislation); *Spotted Blanket*, ¶¶ 22-23 (holding the State's PL-280 enabling statute as valid).

CONCLUSION

¶16 Even when viewing Lozeau's complaint in the most favorable light, it appears beyond a doubt that Lozeau has failed to prove a set of facts in support of his claim. We conclude that the District Court did not err in dismissing Lozeau's complaint for failure to state a claim.

¶17 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR
/S/ JIM RICE