

**GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS
TRIBAL APPELLATE COURT**

2605 N. West Bay Shore Drive, Peshawbestown, MI 49682
(231)-534-7050, Main ** (231)-534-7051, Fax ** tribalcourt@gtb-nsn.gov

GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS TRIBAL COURT TRIBAL COURT OF APPEALS	OPINION AFTER ORAL ARGUMENT	CASE NO. 2023-37-AP (Lower Case # 2022-753-CR)
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Court Address 2605 N. West Bay Shore Dr., Peshawbestown, MI 49682		Email tribalcourt@gtb-nsn.gov		Telephone No. (231) 534-7050		Fax No. (231) 534-7051	
Appellant Name, Mailing Address and Phone The People of the Grand Traverse Band of Ottawa and Chippewa Indians	v.	Appellee Name, Mailing Address and Phone Cheyenne Crystal Lee Gipson 3515 N. Peshawbestown Road Peshawbestown, MI 49682					
Attorney's Mailing Address, Phone, Email Wilson D. Brott (P51446) Grand Traverse Band of Ottawa and Chippewa Indians - Tribal Prosecutor 2605 N. West Bay Shore Drive Peshawbestown, MI 49682 (231) 534-7630 prosecutor@gtb-nsn.gov		Attorney's Mailing Address, Phone, Email Robert W. Mendham (P55269) Michigan Indian Legal Services 814 S. Garfield Ave, Ste. A Traverse City, MI 49686 (231) 947-0122 rmendham@mils3.org					

Opinion after Oral Argument

Factual and Procedural Background

On October 26, 2023, Appellee pled guilty to a domestic violence charge pursuant to a plea agreement. The Pre-Sentence Investigation Report recommended 46 days in jail with credit for four days served and the remaining 42 days held in abeyance.

On December 12, 2022, a sentencing hearing was held before the Honorable Michael J. Long. Judge Long adopted the recommendations, sentencing Appellee to 46 days in jail with credit for four days served and the remaining 42 days held in abeyance, consistent with 9 GTBC § 311(6). On January 4, 2023, the Honorable Kenneth W.K. Akini, scheduled and held a *second* sentencing review hearing where the sentence and order for Appellee was revised. Judge Akini ruled that Judge Long has misinterpreted 9 GTBC § 311(6). Judge Akini also ruled that Judge Long failed to impose the statutory minimum sentence under 9 GTBC Section 311(4) resulting in an invalid sentence.

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On February 14, 2023, Appellant filed an appeal. On July 16, 2023, provided a Response to Plaintiff's Appeal. On August 22, 2023, Appellant filed a reply brief.

This court held an oral argument on December 13, 2023. After review of the record and the arguments of the parties, we VACATE Judge Akini's sentencing order, REINSTATE Judge Long's sentencing order, and REMAND to the Trial Court for further proceedings consistent with this Opinion and Order.

Standard of Review

GTB Court Rule 9.401 dictates the standard of review for appeals. This court must sustain trial court findings of fact unless the finding was clearly erroneous. GTB Court Rule 9.401(A).¹ This court does not have to defer to trial court conclusions of law, however, and reviews those conclusions *de novo*. GTB Court Rule 9.401(E).

Discussion

We conclude the court order dated December 12, 2022, is a valid court order.

The trial court, through Judge Akini, ruled the sentence imposed by Judge Long on December 12, 2022 was invalid holding that Judge Long had misinterpreted 9 GTBC § 311(6) and failed to impose the statutory minimum sentence under 9 GTBC § 311(4) which resulted in an invalid sentence, and therefore pursuant to GTBCR 6.429 (A), the court had authority to modify the sentence and did so at a hearing on January 4, 2023.

The issue is whether there is an ambiguity between 9 GTBC § 311(6) and GTBC § 311(4). When interpreting statutes, the Tribal Court "will not interpret a Tribal Law unless it has a conflict or ambiguity on its face." *Williams et al v. Martel, No. 1997-01-001 (Grand Traverse Band Appellate Court, July 19, 1999)*.

A corollary issue is whether GTBCR 6.429(A) applies in this case, this depends on whether there is an ambiguity between 9 GTBC § 311(6) and 9 GTBC § 311(4). GTBCR 6.429(A) states, "The court may correct an invalid sentence, but it may not modify a valid sentence after it has been imposed except as provided by law."

9 GTBC § 311(4) provides that a person convicted of a third or subsequent offense can be sentenced to serve from 93 days and not more than one year in jail as well as a fine of not less than

¹ We note subsection (A) is labeled "Judge Finding of Fact," but the text of the rule references findings of fact "by a jury." Subsection (B) is labeled "Jury Finding of Fact," with the text of that rule again referencing findings of fact "by a jury." We assume for purposes of this appeal that subsection (A) involves judicial findings of fact.

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one thousand dollars or more than five thousand dollars. Mandatory counseling is also a requirement of 9 GTBC § 311(4). In this case, Appellee was originally charged with domestic violence according to 9 GTBC § 311(5), a sentencing enhancement and Third Offense Notice was added pursuant to 9 GTBC § 311(4). The Appellee pled guilty to Domestic Violence, Third Offense, 9 GTBC § 311(5). Under the plea agreement, the People would not object to the suspension of half of the fines and term of imprisonment as provided by 9 GTBC § 311(6), at the discretion of the court. The Court held the sentencing hearing at which time Judge Long adopted the recommendations. Judge Akini held a sentencing review hearing on January 4, 2023, and ruled that Judge Long had misinterpreted 9 GTBC § 311(6) and failed to impose the statutory minimum sentence.

We must look to 9 GTBC § 311(6) to determine if the statute is ambiguous. 9 GTBC § 311(6) states, “The court may suspend up to half of the imposition of fines and imprisonment for domestic violence offense(s) on the condition the perpetrator is placed on probation for not less than one year and completes domestic violence counseling or treatment as ordered. Failure to comply with the terms of probation shall result in the completion of the original sentence.” When you read 9 GTBC § 311(6), it clearly states the court may suspend up to half of the fines and imprisonment for domestic violence offenses. This section of the law does not include any additional requirements and is independent of 9 GTBC § 311(4). Therefore, the sentencing judge would have the discretion to reduce the time of imprisonment and fine as long as the perpetrator is placed on probation for a period of not less than one year. There is no additional requirement for suspending half of the fines. In this case, Appellee was placed on probation for a period of 547 days which follows 9 GTBC § 311(6).

Upon review of 9 GTBC § 311(6) and 9 GTB § 311(4), the statutes are not in conflict with each other and clearly state the expectation in how domestic violence cases are to be handled. There is no ambiguity in the statutes which require the provisions to be interpreted and enforced independently. Therefore, the Judgment of Sentence and Order of Probation that was ordered on December 12, 2022, is a valid Order of the Court.

Date: 1/17/2024



Hon. JoAnne Cook

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PROOF OF SERVICE

I, Lauren Parzych, being duly sworn, deposes and states that on the date below I sent by:

- first class mail inter-office mail email fax personal service/hand delivered
 log book other:

the documents listed below to the individuals identified below by placing a copy of the same with the United States Postal Service in Suttons Bay Michigan and/or as indicated below (see Method of Service).

Documents enclosed: **Opinion after Oral Argument**

Served To:	Method of Service:
Court File	Original
Prosecutor	prosecutor@gtb-nsn.gov
Matthew Fletcher	Address on File
Matthew Massey	Address on File
JoAnne Cook	Address on File
Cheyenne Crystal Lee Gipson	3515 N. Peshawbestown Rd., 3515 N. Peshawbestown Rd., MI 49682
Robert Mendham (MILS)	814S. Garfield Avenue #A, Traverse City, MI 49686
Victim Advocate – Jackelyn Barnowski	Email & Inter-Office Mail

I declare the statements above are true to the best of my information, knowledge, and belief.

Date: 1/18/2024



Lauren Parzych, Clerk of the Court