Michael RAYTON and Stephanie PALMER, Appellants,
vs.
COLVILLE CONFEDERATED TRIBES, et al., Appellee.
Case No. AP21-013/014, 8 CTCR 27
16 CCAR 01

[Mark Carroll, appeared for Appellants.
Craig Jacobson, appeared for Appellee.
Trial Court Case No. CV-OC-2021-44075/76]

Decided January 3, 2023
Before Chief Justice Anita Dupris, Justice Dennis L. Nelson, and Justice Jane M. Smith

Dupris, CJ

SUMMARY

Appellants Michael Rayton (Rayton) and Stephanie Palmer (Palmer) were each terminated from their respective jobs with the Colville Confederated Tribes (CCT). Rayton was terminated in August 2019 for alleged violations of the Tribes' Employee Procedures Manual (EPM). Palmer was terminated in September, 2019. Both employees were terminated under the 2018 EPM terms and procedures.

Rayton followed the EPM procedures current at the time to appeal his termination. He had his pre-hearing conference and had an Internal Review Board (IRB) hearing scheduled for October, 30, 2019.

On October 10, 2019, the Colville Business Council (CBC) amended the 2018 EPM through Resolution 2019-633. The Resolution specified that the amendments were to be effective immediately upon approval by the CBC.

On October 11, Palmer e-mailed her request for an IRB Hearing. Then on October 15, 2019, five days after the passage of Resolution 2019-633 (Resolution), she requested a hearing be changed to before an Administrative Law Judge (ALJ) as provided in the Resolution. Her request was denied. She had a pre-hearing to the IRB on October 29, 2019. Her IRB hearing was on November 20, 2019, at which time her termination was affirmed.

Rayton had his IRB hearing on October 30, 2019, at which time he asked that his appeal be changed to before an ALJ. His request was denied. His termination was affirmed by the IRB.

Both Rayton and Palmer filed civil cases in the Trial Court on their respective denials of having hearings before an ALJ instead of the IRB. The Trial Court affirmed the denial of the ALJ hearings in both cases. This appeal followed. Both appeals were consolidated at the Initial Hearing on February 18, 2022 because of the similar issues raised by both Appellants. Based on the reasoning below, we affirm the Trial Court's decisions.

ISSUES

1. Did the Trial Court err in finding Resolution 2019-633, in which IRB review of employment issues were to be heard by an Administrative Law Judge, not applicable to

Appellants' employment dismissals, especially in light of allegations of lack of procedural and substantive due process claims?

2. Did the Court err by not granting Appellants' requests that Appellants be given information regarding the Tribes' insurance policy?

STANDARD OF REVIEW

Both issues are issues of law. The standard of review is *de novo*. *CCT v. Naff*, 2 CCAR 50 (1995).

DISCUSSION

1. **Did the Trial Court err in finding Resolution 2019-633, in which IRB review of employment issues were to be heard by an Administrative Law Judge, not applicable to Appellants' employment dismissals, especially in light of allegations of lack of procedural and substantive due process claims?**

Resolution 2019-633, passed on October 10, 2019, states, in relevant part, "...to enact the attached amendments to the EPM **effective immediately** upon CBC approval." (Emphasis added.). The amendments changed employment termination review from the IRB to an Administrative Law Judge (ALJ), and allows appellants to be represented by an attorney.

The Trial Court first held there was no applicable tribal law regarding retrospective versus prospective application of a law. It held that absent a legislative intent by the CBC to apply the new EPM requirement to include pending cases, it was only applicable prospectively. The Court analyzed the Resolution's language in light of Resolution 2021-321, which states the amendment to the Tribes' Civil Rights Statute, CTC, Chapter 1-5, was effective immediately, and applies to all cases, including pending cases. The Court found, by this analysis, that the CBC evinced a lack of intent to apply the Resolution retrospectively to all pending cases.

The Court held, as to statutory construction and interpretation, that "'.'.. the courts have evolved a strict rule of construction against a retrospective operation, and indulge in the presumption that the legislature intended statutes or amendments thereto to operate prospectively.'" (citing *Poston v. Clinton,* 66 Wn.2d 911, 915-16, 406 P.2d 623 (1965)).

Appellants argue, citing CTC §1-1-7(b), that the phrase "effectively immediately" should be given their plain meaning, which would be on the very date the Resolution became effective, *i.e*. October 10, 2019, a date prior to either of Appellants' IRB hearings.

We review this appeal on the questions of law, and when a question of fact is raised, we give deference to the Trial Court's findings under an abuse of discretion standard. Before we assess the arguments of whether the Trial Court found sufficient evidence that due process was provided to Appellants in their IRB hearings, we assess when the jurisdiction attached to their cases. This is a question not yet answered by this Court regarding administrative cases.

In both civil and criminal cases we have held that jurisdiction attaches once a petition or complaint is filed. *See, Simmons v. CCT*, 6 CCAR 30 (2002) (accepting Washington rule, which follows majority rule, as applying in criminal cases that jurisdiction attaches when the complaint is filed), and *Carson v. Barham*, 7 CCAR 17 (2003) (the "first to file" rule grants jurisdiction to the first court where the

matter has been filed.)

We hold the same principle applies to administrative cases. Both Appellants filed first in the IRB. We review the Trial Court's decision only for alleged violations of due process and equal protection by the IRB that would support a ruling to reverse and remand. As stated before, our review is for abuse of discretion; we will not supplant our reasoning for the Trial Court's just because we would have decided differently had we been the judge. In order to reverse The Trial Court's findings on due process the findings must be unreasonable or based on untenable grounds. *See, eg., Louie v. CCT,* 7 CCAR 46 (2004); *CCT v. Condon*, 12 CCAR 12 (2015); *Randall/LaCourse v. CFS*, 11 CCAR 39 (2015).
Appellants argue the lack of due process in the IRB process, alleging the information provided them regarding their dismissal was late in coming, or not given to them at all. They did not have adequate information to prepare for their respective hearings.

In their respective Notices of Appeal both Appellants assert they were not provided due process by the Trial Court because the Judge dismissed their cases without allowing them a hearing on their motions and complaints regarding whether there were or were not irregularities in the IRB.

Appellee asserts both Appellants were provided adequate due process in their IRB hearings: they were given adequate notice and an opportunity to be heard. Appellee cites to *Wilson v. Gilliland*, 8 CCAR 64 (2006) and *CCT v. Bessette*, 12 CCAR 29 (2015) for the applicable due process standards established by this Court in cases involving employee terminations.

The Trial Court held there was no reviewable evidence presented to determine any due process problems with the IRB hearings provided Appellants. All parties were directed by the Trial Court to present a list of evidence presented at their IRB hearings. The Court found, upon a review of Appellee's lists for both Appellants, that there was evidence that both Appellants were provided adequate due process.

As to Appellant Palmer, the Court found she failed to provide the Court with a descriptive list of any documents she did receive from Appellee, whereas Appellee provided a list of the documents it provided to Appellant Palmer. As to Appellant Rayton, the Court found that the descriptive lists of both parties showed that Appellant Rayton knew why he was terminated from his job, and had the opportunity to present evidence on his behalf regarding the reasons he was terminated. The Court held this was adequate due process.

The record supports the Trial Judge's findings of adequate due process. The Trial Judge's decisions regarding the adequate due process are not based on unreasonable or untenable reasons. We so hold.

2. Did the Court err by not granting Appellants' requests that Appellants be given information regarding the Tribes' insurance policy?

The Tribes' Civil Rights Statute, CTC Chapter 1-5, provides for a limited waiver of sovereign immunity, and if available, an insurance policy to cover the Tribes' liability for wrongful actions under CTC §§ 1-5-2 through 1-5-4.[1] Appellants base their civil complaints on this Chapter, therefore arguing

they should have access to the information regarding the Tribes' insurance policy.

Appellee assert that Appellant's would only have access to the information if they have established a valid claim under CTC § 1-5-2. The Trial Court held that some of the bases of the Complaints are tort actions, and the Court is without jurisdiction over torts. We have held so in *Dick/ Marconi v. CCT* 15 CCAR 52 (2022).

As discussed *supra*, the Trial Court has found no violations of Appellants' due process rights, and we have upheld this ruling. There is an insurance policy, but Appellants have not established a right to review it in that is not applicable to their cases. We so hold.

CONCLUSION

We find (1) jurisdiction over the two grievance appeals was in the IRB, and not under the new EPM section that allows for an ALJ; (2) the record supports the Trial Court's findings that each Appellant received adequate due process in their IRB hearings, and Resolution 2019-633 only applies prospectively; and (3) the record supports the Trial Judge's finding that Appellants have not met their burden to establish the applicability of CTC Chapter 1-5 to their causes of actions, and there is no right to be given information on the Tribes' liability insurance.
We so hold.

Based on the foregoing, now, therefore,

It is ORDERED that the Trial Court's decisions in these matters are AFFIRMED and the Appeal is DISMISSED. The matter is REMANDED to the Trial Court for actions consistent with this Opinion.

David PRIEST, Appellant,
vs.
COLVILLE CONFEDERATED TRIBES, Appellee.
Case No. AP23-001, 8 CTCR 28
16 CCAR 05

[Appellant appeared pro se.
Taima Carden appeared for Appellee.
Trial Court case no. CR-2022-45091]

Decided March 7, 2023.
Before Chief Justice Anita Dupris, Justice Mark W. Pouley, and Justice Mary Finkbonner

Dupris, CJ

This matter came before this Court for an Initial Hearing on February 17, 2023. Appellant, David Priest, appeared in person and *pro se*. Appellee, CCT, appeared through its spokesperson, Taima Carden. The Court, after reviewing the record and applicable law, finds cause to deny the appeal and remand the matter to the Trial Court. The decision is based on the reasoning set out below.

ISSUE

Appellant appeals the Trial Court Order Denying his Motion to Reconsider his 720 day jail

sentence, alleging the extended jail sentence violates his rights under the ICRA's amendments regarding the Tribal Law and Order Act (TLOA). He raises two issues under these arguments:

1. Does his extended jail sentence violate TLOA because, he alleges, the presiding Judge for his arraignment was not an attorney? And
2. Does his extended jail sentence violate TLOA because, he alleges, the jail facility doesn't meet the standards required by TLOA?

FACTS

Appellant was charged with two drug charges (Possession of Heroin, and Manufacture, Cultivate, Deliver fentanyl) on July 5, 2022.

On July 5, 2022 Appellant was arraigned before Judge Sophie Nomee, a lay judge, and a member of the Colville Tribal Court bar. He entered guilty pleas to the two charges and then was appointed a spokesperson from the CCT Public Defender's Office for the sentencing.

At the Initial Hearing Appellee, Colville Confederated Tribes (CCT), through its spokesperson, stated that the Public Defender was available at the hearing and advised Appellant that he should not enter guilty pleas to the two charges, but Appellant made the decision to do so anyway.

On August 23, 2022 Appellant was sentenced by Judge Dana Kelley, a member of the WA State Bar. He was sentenced to consecutive sentences of 360 days for each offense, for a total of 720 days. He was given credit for 55 days served. There were no other conditions of his sentence; the case was to be closed at the completion of his jail sentence.

Including the 55 days he was credited with, Appellant had completed 167 days of his 720 sentence by the date he filed his appeal, i.e. December 13, 2022. This left 553 days of his original sentence still due.

On November 14, 2022, Appellant filed a Motion to Vacate, Set Aside Judgment/ Sentence with the Trial Court. His brief Motion stated he was proceeding *pro se*, and that the basis for his motion was for violations of 25 U.S.C. 1302(c)(3) and (5). He states there are violations of the procedural protections therein (TLOA and ICRA). He states a sentence of 720 days was illegal.

In his Motion to the Trial Court he made the identical arguments he has asserted in this Appeal. Judge Kelley denied the Motion on December 13, 2022, finding "...there is no basis in law or fact to support it". He made no other findings regarding Appellant's arguments.

Appellant filed an appeal of this last Trial Court order denying his motion on December 13, 2022.

DISCUSSION

We have addressed TLOA 5 other times in this Court. Four of the cases involved the lack of Rules of Evidence. In *Frank v. CCT*, 13 CCAR 10 (2016),and *Martinez v. CCT*, 13 CCAR 12 (2016) we found that sentences over 360 violated TLOA because there were no Rules of Evidence as required by TLOA.

In *Desautel/Randall v. CCT*, 13 CCAR 03 (2016) we found that TLOA was violated in extended

sentences for lack of Rules of Evidence, then we adopted the FRE's as guidance until such time as the Tribes established its own Rules of Evidence.[2]

In *Carson v. CCT*, 13 CCAR 25 (2017) we found no TLOA violation for lack of Rules of Evidence because of our ruling in *Desautel/Randall*.

In *Martinez* the question was raised regarding the qualification of the Judge under TLOA, but we found the question moot because we had ruled the extended sentence violated TLOA because of the lack of Rules of Evidence.

The last, and most recent case dealing with TLOA was *Picard v. CCT,* 15 CCAR 01 (2020). *Picard* recognized that sentences over 1 year may be entered by the Trial Court if the defendant is provided (1) the right to effective assistance of counsel; (2) indigent defense by a bar licensed attorney; (3) a presiding judge to be licensed by any jurisdiction and to have sufficient training in presiding over criminal proceedings; (4) publically available criminal laws, rules of evidence, rules of criminal procedure, and rules governing the recusal of judges; and (5) the court maintains a record of proceedings.

Picard found compliance with all of the requirements set out above that were raised by Appellant. Regarding the two issues raised herein, i.e. unlicensed judge and inadequate jail, *Picard* found (1) the issue of the judge's qualifications was not raised as an issue; and (2) the issue of the adequacy of the jail was raised for the first time on appeal, and there were insufficient facts to determine the nature of his objections to the jail. We did not address either issue as not properly before the Court.

Although Appellant had a spokesperson at his sentencing, he has filed this case *pro se*. He is appealing the latest Court order in his case in which the judge, (a licensed WA state attorney), denied his Motion to Vacate, Set Aside Judgment and Sentence. He raises issues about his Judgment and Sentence for the first time at the Trial Court level. He states Judge Nomee was not qualified to hear his case initially in that she was not a licensed attorney. Judge Nomee, a lay judge, took Appellant's guilty plea at a telephonic hearing. On August 23, 2022 he was sentenced to the 720 days on a consecutive sentence by Judge Kelley.

We do not rule on alleged facts for the first time in our Court. Fact-finding is initially addressed at the Trial Court. Appellant made his arguments that are before us in this appeal through a motion to the Trial Court through mere statements of the alleged violations with no other facts. He alleged Judge Nomee "is not licensed to practice law by a Jurisdiction of the United States..." and she "...made a ruling, telephonically, without Attorney present...." He did not offer any alleged proof of this statement in his motion.

Further, he alleged in his motion that "CTCF (tribal Jail) is not in compliance with four types of facilities required" by TLOA. There are no further allegations of proof of this assertion.

We recognized in *Picard*, *supra*, that TLOA requires "a presiding judge to be licensed by *any jurisdiction* and to have sufficient training in presiding over criminal proceedings" (my emphasis) . In *Martinez*, *supra*, Judge Nomee's qualifications were challenged. We found, as to Judge Nomee, that she had passed the Colville Tribal Bar Examination, and had attended several judicial education classes at the

National Judicial College (NJC) in Reno, Nevada. We found she holds a Tribal Judicial Skills Certificate from the NJC. We did not decide regarding the sufficiency of these qualifications, however, since the judgment and sentence were reversed for other reason.

We find we have not been presented with sufficient bases to grant an appeal in this case. The challenges to Judge Nomee and the tribal jail rest on mere suppositions and not on any substantive discussion from the Trial Court. Appellant waited about 5 months before raising his issues at the Trial Court. His appeal is a collateral attack on his Judgment and Sentence, which was not timely appealed when it was entered on August 23, 2022, and should be denied.

Based on the foregoing, now, therefore

It is ORDERED the Appeal herein is DENIED and this matter is REMANDED to the Trial Court for actions consistent with this decision.

COLVILLE CONFEDERATED TRIBES, Appellant

vs.

Justine JAKE, Appellee

Case No. AP23-002, 8 CTCR 29

16 CCAR 08

[Taima Carden, Office of Prosecuting Attorney, for the Appellant.
Michael Humiston, Attorney, for the Appellee.
Trial Court No. CR-2022-45058; CR2022-45059; and CR-2023-46001]

PROCEDURAL SUMMARY

Appellee, Justine Jake, was charged with two drug charges on January 3, 2023, and was arraigned on the same day. A bail hearing was also held on that date for two other outstanding cases. The Court granted Appellant, Colville Tribes, request for bail setting it at $250.00 each for the three charges, *i.e.* $750.00 total.

On February 3, 2023 Appellee filed a Writ of Habeas Corpus alleging she needed immediate medical care for broken, infected teeth. The Judge granted the Writ and released Appellee on personal recognizance without providing notice to Appellant of the Writ, and without a hearing on the request. Appellant filed a timely appeal on February 9, 2023 and this Court held an Initial Hearing on February 17, 2023, at which we found the parties were to file briefs on the issue.

ISSUE

Is it appropriate for the Tribal Court to use CTC § 2-2-211 to address bail modification when bail has already been allowed?

STANDARD OF REVIEW

The issue is a question of law. The standard of review is *de novo*. *CCT v. Naff*, 2 CCAR 50 (1995).

DISCUSSION

We addressed the issue of using a Writ of Habeas Corpus for bail issues in *Parisien v. CCT*, 11 CCAR 51 (2014). It was the fourth case in which this Court reviewed CTC §2-2-211 in light of interlocutory appeals alleging excessive bail. *See*, *Matt v. CCT*, 11 CCAR 50 (2013), *Vargas v. CCT*, AP13-016IA (unpublished opinion); and *Friedlander v. CCT*, AP13-017IA (unpublished opinion).

In *Parisien* we held "...the statutory law of the Tribes first directs the appellants to file a Writ of Habeas Corpus on the issue of bail (CTC §2-2-211) before bringing the matter before the Court of Appeals." We now hold this is the wrong interpretation of CTC §2-2-211, and we overturn this ruling based on the reasoning below.

CTC § 2-2-211, Writ for Purpose of Bail, states: "When a person is imprisoned or detained in custody on any criminal charge, ***for want of bail***, such person is entitled to a Writ of Habeas Corpus for the purpose of giving bail, upon averring that fact in his petition, without alleging that she is illegally confined." (Emphasis added). In our previous cases, culminating in *Parisien*, *supra*, we did not consider the part of the statute that referred to "for want of bail."

Further, in *Parisien* we held that the Trial Court's finding that a motion to reduce or reconsider bail reduction was more appropriate was not supported by the law. This was in error. Upon a careful reading of the statute, a Writ of Habeas Corpus for bail purposes is limited to those who have not been granted any bail. The defendant does not have to allege she is being illegally confined if she is filing under this statute.

In this case Appellee was granted bail; bail was set at $250.00 for each case, for a total of $750.00. Based on our caselaw at the time of Appellee filing the Writ of Habeas Corpus to address her request to be released on bail, Appellee was not in error. The Trial Court, however, did not follow the statute. It did not give notice to Appellant nor hold a hearing on the Writ. *See* CTC §§ 2-1-213 to 2-1-215. There is nothing in the record to show why the Trial Court did not follow the statute.

Whether a Writ would be appropriate in cases in which excessive bail is set is an issue not currently before us; however, it could raise a concern that the excessive bail is illegal, and, therefore, subject to a review under this statute causing the defendant to be illegally confined. We will save that issue for a more appropriate case.

Based on the foregoing we now hold that the part of *Parisien v. CCT*, 11 CCAR 51 (2014), which requires a defendant to file a Writ of Habeas Corpus pursuant to CTC § 2-2-211 before seeking a bail reduction or change is OVERTURNED, and it is appropriate to request bail changes by motions before the Trial Court. This does not affect the use of CTC § 2-2-211 when a defendant is being held without bail. We further hold that the Order of the Trial Court herein dated February 7, 2023 is REVERSED and this matter is REMANDED for further action consistent with our opinion.

It is so ORDERED.

COLVILLE CONFEDERATED TRIBES, Appellant,

vs.

Melissa LOUIS-WILLIAMS, Appellee.

Case No. AP23-003, 8 CTCR 30

16 CCAR 10

[Tim Rybka, Attorney, for Appellant.
Mark Carroll, Attorney, for Appellee.
Trial Court Case No. CR-2018-41032]

Decided June 1, 2023
Before Hon. Anita Dupris, Hon. Theresa M. Pouley, and Hon. R. John Sloan Jr.

Dupris, CJ

PROCEDURAL HISTORY

On March 2, 2018 Appellant filed a criminal complaint against Appellee alleging one count of Misuse of Public funds, CTC § 3-1-132, one count of Fraudulent Use of a Credit Card, CTC § 1-3-49, and three counts of Obstructing Justice, CTC § 3-1-134. Appellant hired an outside spokesperson to prosecute the case. On April 26, 2018, Appellant filed an Amended Complaint on the same charges. On January 17, 2018 then Chief Judge Steckel admitted Mr. Rybka to practice in the Colville Tribal Court.

Appellee brought her issues before the Trial Court through several motions to dismiss the charges against her and appealed the rulings of the Trial Court denying the motions to dismiss. We entered an Opinion Order on November 16, 2018 dismissing the Appeal, affirming the Trial Court, and remanding the case to the Trial Court.

Appellee/defendant filed a motion to dismiss the case on April 29, 2019, alleging Appellant's Special Prosecutor, Tim Rybka, was not a member of the Colville Tribal Court Bar and, therefore, could not represent Appellant. On May 22, 2019 Chief Judge Steckel held that Mr. Rybka had met the minimum requirements of being a member of the bar set out in CTC § 1-1-181, the Tribes specifically hired him to represent the Tribes in this case as a special prosecutor, and the Chief Judge had the authority, when necessary, to waive the requirement that Mr. Rybka take a bar exam. Mr. Rybka signed a Spokesman's Oath on May 9, 2019 and Chief Judge Jordan admitted him to practice before the Colville Tribal Court by Order dated May 22, 2019.

Appellee filed an Interlocutory Appeal on the May 22, 2019. The Interlocutory Appeal was denied by Order dated June 13, 2019; we found that the issue did not rise to the high standards of interlocutory review of an order as set out in COACR 12-A and CTC § 1-2-117. We found the "Code provides for

admission of bar members by the Court. There is nothing to restrict (or define)the procedures for doing so, leaving it to the discretion of the Court."

Appellee has continued to challenge Mr. Rybka's representation of the Tribes/Appellant, asking that the criminal charges be dismissed because Mr. Rybka was not qualified to represent litigants in the Tribal Court. She relies on CTC § 1-1-180. On August 16, 2022 Associate Judge Kelley granted Appellee's Motion to Dismiss the Complaint against her holding that on March 2, 2018 and April 26, 2018, the operatives dates of the filing of the Complaint and the Amended Complaint respectively, Mr. Rybka was not a member of the Colville Tribal Court Bar.

Appellant filed a timely Appeal on the issue. The Initial Hearing was held on April 21, 2023, at which time we reversed and remanded the case to the Trial Court. The reasoning of the decision is set out below.

ISSUE AND STANDARD OF REVIEW

The issue before us is a question of law, that is, is Mr. Rybka a legal member of the Colville Tribal Court Bar? The standard of review is *de novo*. *CCT v. Naff*, 2 CCAR 50 (1995).

DISCUSSION

We are asked to overturn the Trial Court's latest finding regarding Mr. Rybka's status as a Spokesperson eligible to practice in the Coville Tribal Court. It appears Appellee had filed at least nine Motion to Dismiss at the Trial Court for various reasons, and the case had been before at least five Judges throughout the pendency of the case.

According to Appellant's Motion to Reconsider Judgement [*sic*] of the Order of August 8, 2022 Associate Judge Kelley dismissed the complaint because he found Mr. Rybka was not allowed to practice in the Trial Court in that he had not met the statutory requirements at the time the first complaint was filed, *i.e*. March 2, 2018. It appears the Judge relied on some language in our November 16, 2018 Opinion Order regarding *pro hac vice* practices. In that Order we specifically found that the issue was not first raised at the trial level, so we would not consider it. We went on with some dicta regarding the nature of *pro hac vice* practice in other Courts and stated it was the first an issue to consider at the Trial Court.

We do not know why the fact that Mr. Rybka was admitted to practice first by Chief Judge Steckel in 2017, and again by Chief Judge Jordan in 2019 was not considered by the Court in the latest ruling of January 13, 2023, the basis of this current appeal. Secondly, we do not know why such a procedural question would invalidate serious criminal charges which have not yet, it appears, to have been brought to a hearing on the merits. The issue of Mr. Rybka's ability to practice before the Court is being used to collaterally attack the criminal complaints against Appellee, and do not to go the merits of the underlying charges herein.

The Tribes have the right to choose who it wants to represent it in this case. The Tribes hired Mr. Rybka. Two Chief Judges recognized the Tribes' right to seek counsel of its own choosing, and recognized it chose someone from the Northwest Intertribal Court System (NICS). Two Chief Judges, in

exercising their discretion, admitted Mr. Rybka into practice with the Colville Tribal Courts. There has been a ruling by this Court already that such a decision by the Chief Judge did not abuse its discretion. The Trial Court has committed an error in law by its ruling in the January 13, 2023 Order. We so hold.

Base on the foregoing, now, therefore

It is ORDERED that the Order of the Trial Court dated January, 13, 2023 is REVERSED and this matter is REMANDED to the Trial Court for actions consistent with this Opinion.

David PRIEST and Gary LESSOR, Appellants,

vs.

COLVILLE CONFEDERATED TRIBES, Appellee.

Case No. AP23-005 and AP23-006, 8 CTCR 31

16 CCAR 12

[Appellant Priest appeared pro se. Appellant Lessor appeared through spokesperson M. Humiston.
Appellee appeared through spokesperson T. Carden.
Trial Court Case No. CR-2022-45091 and CR-2019-42030/CR-2022-45051]

Decided September 18, 2023.
Before Chief Justice Anita Dupris, Justice David C. Bonga, and Justice R. John Sloan Jr.

Dupris, CJ

FACTS

Appellant Lesser was sentenced on twelve (12) various counts under Trial Court case numbers CR-2019-42030 (42030) and CR-2022-45051 (45051) to a total of 2,345 days in jail with 1,962 days suspended on conditions, leaving a total of 1,255 days to be served.[3] In 42030 the Trial Judge granted day-for-day credit to jail time for Appellant's time at an in-patient treatment facility, with "[e]arly release for inpatient treatment (day for day credit and suspend remaining time upon graduation.)" In 45051 Appellant was given credit for 18 days served. The jail sentences in 42030 and 45051 were to run consecutively.

Appellant Priest pleaded guilty to two (2) counts of drug violations and was sentenced to two (2) consecutive terms of 360 days in jail, with none suspended. No fines were imposed. In September, 2022, Appellant Priest was remanded to federal custody to serve a jail term under a federal charge. At that time Appellant Priest had completed 55 days of his tribal sentence.

On April 25, 2023 the Trial Court denied Appellant Lesser's motion to correct the time he had

served on both sentences to reflect the time he had already served, and the time he spent in inpatient treatment. On the same date the Trial Court denied Appellant Priest's motion to clarify his jail term sentence to reflect granting credit for the time he had already served.

The Trial Court found that both Appellants' jail sentences were to start over from the initial incarceration without credit for any time served away from the tribal jail facility. The Tribal Judge deemed this policy to be "TLOA time." The Trial Court stated "TLOA time restarts when there is a break in custody and the individual returns to [tribal custody] so long as the break in incarceration was not caused by the [tribal] Correction Facility." The Trial Court used this reasoning in both Appellant Lesser and Appellant Priest's cases. Neither orders of the Trial Court for these Appellants give any authority or reasoning for the creation of "TLOA time."

Both Appellants filed timely appeals. Appellant Priest is *pro se*. Appellant Lesser is represented by Michael Humiston, Spokesperson. At the Initial Hearing on June 16, 2023 this Court joined the cases of both Appellants in that the issue was the same.

ISSUE

Does the imposition of "TLOA time" in excess of 360 days deprive defendants of due process and equal protections of the law?[4]

STANDARD OF REVIEW

The facts of these cases are not disputed. The question is one of law. We review *de novo*. *CCT v. Naff*, 2 CCAR 50, (1995).

DISCUSSION

Appellant Priest did not file a brief. He is *pro se*, so this does not impact our rulings herein. Appellee Colville Tribes, did not file a brief, with no reason given to this Court for why one was not filed. We will take this into account in our ruling. Appellant Lesser's brief, albeit timely filed, does not specifically address the "TLOA time" issue. It addresses an issue we have addressed in past TLOA cases regarding whether a defendant can be sentenced longer than 360 days in a jail facility that does not comply with TLOA. In this sense it is non-responsive to the issue.

We are left with whether the Trial Court's orders denying Appellants credit for time served under an artifice called "TLOA time" violates due process and equal protection rights of Appellants. Appellee's lack of brief means we don't have any arguments to support the Trial Court's "TLOA time" reasoning for denying credit for time served.

We have already addressed whether a denial of credit for time served violates a defendant's due process and equal protection rights. *Circle v. CCT*, 10 CCAR 47 (2011). In *Circle* the Trial Court denied credit for time served based on a finding that it was not allowed in domestic violence cases. We found that Circle was denied the equal protection of the law in that anyone else incarcerated on a charge not related to domestic violence was granted credit for time served. We instructed the Trial Court in *Circle* to use the State guidelines regarding credit for time served as found in R.C.W. 9.94A.505(6). The time to be credited has to be directly related to the charge for which the defendant is being held.

In this case Appellant Lesser was denied credit for time he spent in in-patient treatment, which was specifically granted in his Judgment and Sentence in case 42030, as well as credit for 18 days served in case 45051. Appellant Priest was denied credit for 55 days he had already served in his case. The days to be credited to both Appellants were directly related to their sentences.[5]

There is no need to reinvent the wheel; we have already addressed the issue of credit for time served. The creation of "TLOA time" to deny credit for time served is not supported by our law. The Tribes/Appellee has not given us any reason to recognize "TLOA time" as a method to ignore the time the Appellants have served towards their sentences.

Based on the foregoing, we hold the Trial Court erred as a matter of law in denying Appellants credit for the time they each served on their sentences, and hold the artifice of "TLOA time" created by the Trial Court is in violation fo Appellants due process and equal protection rights. We REVERSE and REMAND to the Trial Court for actions consistent with this Order.