

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

BOBBI DARNELL,)
Petitioner,)
)
v.)
)
JOHN MERCHANT, SHERIFF)
Brown County, Kansas)
)
and)
)
KICKAPOO TRIBE IN KANSAS,)
KICKAPOO RESERVATION,)
HORTON, KANSAS)
Respondents.)
_____)

CIVIL ACTION

No. 17-3063-EFM-TJJ

REPLY TO
RESPONSE TO PETITIONER’S REQUEST FOR IMMEDIATE RELEASE

Petitioner Bobbi Darnell, by her attorney Napoleon S. Crews, hereby replies to respondents’ response, and in support thereof states as follows:

INTRODUCTORY OBSERVATIONS

It is paramount that this reply begins by reviewing the statement of the court as written in the Memorandum And Order of May 5, 2017, concerning the petitioner’s immediate release:

While such relief is appropriate only upon a showing of exceptional circumstances and the existence of a substantial constitutional issue . . . petitioner’s allegations of error appear adequate, at this state, to warrant consideration of her request.

Respondents’ response is described by their counsel as initial responses to petitioner’s habeas corpus petition and supplement thereto. Very little of the response deals directly with

petitioner's request for immediate release from the Brown County Jail, or in the alternative, release on her own recognizance pending this Court's consideration of the matter. Petitioner's Counsel will not attempt to reply to each controverted fact alleged by the respondents because many don't relate to the issue of immediate release, and counsel will reserve a more complete submission for petitioner's traverse.

PERTINENT UNCONTROVERTED FACTS

Respondents agree that petitioner is a lifelong resident of the Kickapoo Reservation in Kansas, residing with her husband and two children in a home they own, and that she has no criminal history (See Response Section III Line 2 and Section IV Line 13). Respondents apparently also agree that petitioner has no plans to leave the area and that 5 witnesses testified that she is a good candidate for probation, as stated in the habeas corpus petition and supplement thereto, as respondents did not controvert or even mention these facts.

Although respondents controverted that petitioner was a trusted Kickapoo Tribal Council member for more than 20 years, the only events put forth to support their position are the recent criminal convictions that are the subject of the habeas corpus petition.

EXCEPTIONAL CIRCUMSTANCES AND A SUBSTANTIAL CONSTITUTIONAL ISSUE

In many respects respondents' response to petitioner's request for immediate release follows the pattern of justice, or lack thereof, with which she has been saddled throughout the prosecution of the Kickapoo Tribe's criminal cases against her.

Transcripts

Respondents place significant emphasis and reliance on what the jury voir dire and sentencing transcripts will prove to this Court. The problem with that assertion is that

Respondent has not requested the sentencing transcript from the tribal court. Petitioner requested the sentencing transcript from the tribal court on May 2, 2017 and that request was denied by the sentencing judge. It is also telling that the jury selection portion of the trial transcript was not included in the trial transcript exhibit filed by respondents.

Bond Conditions

Respondents' response does not address the fact that the court did not advise petitioner of her bond conditions as required by the tribal ordinance (See Petitioner's Exhibit E, Section (c) – Attached to Petition). Nor does Respondent's Counsel speak to the fact that petitioner did not get a due process hearing prior to being incarcerated for violating her bond conditions. Respondents' Counsel was present as Special Prosecutor in the courtroom when the advisement should have been given, and he knows for a fact that he did not participate in a due process hearing that would have tested the validity of the claims being made in the motion to revoke and forfeit bond that he filed against petitioner on behalf of the Kickapoo Tribe.

Kickapoo Supreme Court

The habeas corpus petition takes the position that there has been no active Kickapoo Supreme Court for the last three or four years, that the recently formed court is biased in favor of Chairman Lester Randall, and that the court suffers from official inaction (except when it comes to decisions made in favor of the Kickapoo Tribal Council).

On April 7, 2017, petitioner filed an Emergency Request For Release Or For Further Hearing with the Kickapoo Supreme Court, regarding petitioner's arrest without a hearing for violation of her bond conditions (Petitioner's Exhibit K – Attached to Petition). Through the

filing of the habeas corpus petition on April 14, 2017 and the supplement thereto on May 2, 2017, the Kickapoo Supreme Court took no action to address the emergency request.

This Court in its Memorandum and Order of May 5, 2017 directed the respondents to respond to petitioner's request for immediate release on or before May 8, 2017. In typical fashion, on Sunday May 7, 2017, the Kickapoo Supreme Court conveniently met and entered an order denying petitioner's emergency request, and just in time for respondents to include the order in their response due May 8, 2017 (See Respondents' Exhibit H).

Illegal Sentence Recommendations of Special Prosecutor and Kickapoo Probation Department

Respondents' take the position that the recommendations for illegal prison sentences of 18 years, 10 years and 6 years made by the Special Prosecutor and the Probation Director are irrelevant and should be ignored because the tribal judge disregarded them and sentenced petitioner to a legal sentence.

It is troubling when a Special Prosecutor in tribal court, or any court for that matter, believes that it is okay and has no impact on the sentencing judge to make a recommendation for a prison sentence of 216 months, when he knows in advance that it should only be 18 months. It is equally troubling when the probation director makes a similar recommendation to the same sentencing judge (See Petitioner's Exhibits M and N – Attached to Petition).

No one can say that the recommendations did not influence the sentencing judge to give petitioner the maximum sentence and deny her probation, as happened in this case. Not to mention the fact that the judge did not advise either party regarding their illegal recommendations.

As a small aside, respondents state that the 216-month sentence was mistakenly listed on the complaints filed against petitioner, and that Petitioner's Counsel never objected to the mistake until sentencing. The reason that no objection was made is that we all knew early on that the ordinance had a typo that was carried over into the complaint. But I never dreamed that the special prosecutor would ignore this knowledge and recommend the 216-month sentence at sentencing, when he knew at the time he did it that it was wrong.

No credit given for time served

The sentencing order does not give petitioner credit for time served as required by the Kickapoo sentencing ordinance (See Petitioner's Exhibits K-2 and L – Attached to Petition). Although respondents take the position that petitioner is entitled to credit for time served, the tribal court has not taken any steps to correct this apparent oversight.

CONCLUSION

The petition for habeas corpus, the supplement thereto, and this reply to the respondents' response detail a host of circumstances that occurred throughout the criminal matters the petitioner faced in the Kickapoo tribal court, resulting in her illegal detention in the Brown County Jail. When viewed together, these events show exceptional circumstances and a substantial constitutional issue.

The record presented to this Court shows that petitioner has significant ties to this community and that she has no prior criminal history. Ms. Darnell's family needs her at home, and under the circumstances of the travesty of justice and the already 50-days of incarceration that she has had to endure at the hands of the Kickapoo tribal court, she should be allowed to go home, pending this Court's consideration of this matter.

WHEREFORE, Ms. Darnell respectfully requests that she be immediately released from the Brown County Jail, or in the alternative, be released on her own recognizance, pending the Courts consideration of this matter.

Respectfully submitted Friday, May 19, 2017,

CREWS LAW FIRM

/s/ Napoleon S. Crews

Napoleon S. Crews, Esq.

Kansas Supreme Court Number 23989

3300 Clinton Parkway Court, Suite 010

Lawrence, Kansas 66047

Phone: 785.856.5562 / Fax: 785.856.5563

ncrews@crewslawfirm.net

CERTIFICATE OF SERVICE

I hereby certify that on Friday, May 19, 2017, a true and correct copy of the foregoing **DOCUMENT** was electronically sent to the following recipient:

Wendall F. Cowan
9225 Indian Creek Parkway
Suite 600
Overland Park, Kansas 66210

Vincent Cox
Tom Lemon
Cavanaugh, Biggs & Lemon
2942A S.W. Wanamaker Drive, Suite 100
Topeka, Kansas 66614

CREWS LAW FIRM

/s/ Napoleon S. Crews
Napoleon S. Crews, Esq.