

**IN THE CROW TRIBAL COURT
IN AND FOR THE CROW INDIAN RESERVATION
P.O. Box 489
CROW AGENCY, Montana 59022
(406) 638 4050**

<p>Crow Tribe</p> <p>v.</p> <p>Dennis Gonzales</p>	<p>Criminal Cases Nos. 10-2330, 10-2331 and 10-2332</p> <p>Order Denying Defendant's Motion to Dismiss for Incapacity of the Tribal Prosecutor and Requiring Response of Tribal Prosecutor on Discovery Issues</p>
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On October 27, 2011, advocate for Defendant Dennis Gonzales filed a motion to dismiss charges against defendant based on (1) alleged failure of the Tribal Prosecutor to provide discovery and (2) alleged incapacity of the Tribal Prosecutor. On November 14, 2011, advocate for Defendant Dennis Gonzales filed a "Writ of Supervisory Control" seeking review of these two issues by the Crow Court of Appeals.

Defendant's motion to dismiss based on the alleged failure of the Prosecutor to provide discovery is RESERVED for future decision by this Court. The Tribal Prosecutor shall have thirty (30) days from the date of this Order to file a response to Defendant's motion on the allegation of failure to provide discovery.

Defendant's motion to dismiss based on the alleged incapacity of the Tribal Prosecutor is DENIED for the reasons set forth below. This Court will treat the "Writ of Supervisory Control" filed on behalf of Defendant as a restatement of Defendant's motion to dismiss. Crow law does not provide a right to seek interlocutory intervention by the Crow Court of Appeals in a criminal case. Title 8A of the Crow Law and Order Code sets forth the procedure to be followed

in all criminal cases. A defendant has the right to appeal from a “final judgment” of guilty. In 8A-1-103, the rights of defendants are listed and include the right to appeal:

In all criminal proceedings, the defendant shall have the right, subject to the provisions of this Title, to: * * * appeal from any final decision of the Crow Tribal Court to the Crow Court of Appeals....

In 8A-9-101, the Code guarantees the right of appeal to defendants: “In cases of a guilty verdict following trial, the Crow Tribal Court shall inform the defendant that he/she has a right to appeal.”

This is the only remedy provided to a criminal defendant by Crow law. Title 7, Rules of Appellate Procedure, states that “[A]ny party to an action in the Crow Tribal Court shall have the right to appeal **any criminal conviction** or any judgment or order in a civil case before the court, except as provided in part (b) of this rule and Title 5, Rule 22.” (Emphasis added.)

Authority of the Tribal Prosecutor. Defendant’s allegations concerning the incapacity of the Tribal Prosecutor are based on a statutory enactment which was invalidated by the Crow Legislature. In 2005, the Legislature adopted CLB 05-01 which would have required legislative confirmation of persons selected by the Executive Branch to serve as the Tribal Prosecutor. CLB 05-01 was vetoed by Chairman Venne. The Legislature then voted to override the veto.

In 2006, the Legislature adopted CLB 06-08 which sets out procedures to implement Article V, Section 8, of the 2001 Constitution of the Crow Tribe:

Section 8. Approval and Veto of Legislation. All legislation passed by the Legislature must be approved by the Chairman of the Executive Branch to become effective. The Chairman has a right to veto any legislation passed by the Legislature. Upon a veto of any proposed legislation by the Chairman, the Legislature has the power to override the veto if the proposed legislation is approved by two-thirds (2/3) of the members of the Legislature. Upon an override of the Chairman’s veto, the Chairman may submit the subject legislation to the Crow Tribal General Council for a referendum vote in accordance with Article IX, Section 1 of this Constitution.

CLB 06-08 contains the following provision:

Section 2. Effective Date. Upon approval of this Bill by the Legislature and by the Chairman of the Executive Branch, the Act shall become effective immediately. Legislation vetoed or not acted on by the Chairman of the Executive Branch which has been the subject of an override vote by the Legislature *prior to the effective date of this Act shall be deemed ineffective without the need for a referendum.* (Emphasis added.)

Chairman Venne signed CLB 06-08 on December 15, 2006. On that date, CLB 05-01 had no further force or effect. Defendant's reliance on an invalidated statute defeats his argument that the Tribal Prosecutor is acting without authority. The Crow Law and Order Code contains no provision requiring legislative confirmation of the person selected by the Executive Branch to serve as the Tribal Prosecutor.

Defendant also relies on an argument that the Crow Legislature has adopted a Legislative Resolution refusing to confirm Diane Cabrera as the Tribal Prosecutor and directing her to "cease and desist from taking any and all actions associated with the office of the tribal prosecutor." Legislative Resolutions have no power to require action by either the Executive Branch or the Judicial Branch of the Crow government. *See*, CLB 06-08, 1-3-106 (a) defining the term "Legislation" as "all bills, acts, resolutions and joint action resolutions within the meaning of Article V, Section 8 of the Constitution, but *does not include Legislative Resolutions which only govern the conduct of the Legislature.*" (Emphasis added.)

To hold otherwise would be a fundamental violation of the doctrine of separation of powers. Article 1 of the Crow Constitution provides that "[t]he Crow Tribal General Council as governing body of the Crow Tribe of Indians hereby establishes three branches of government, the Executive, Legislative and Judicial Branches, *which shall exercise a separation of powers.*" (Emphasis added.) The powers assigned to the Crow Legislative Branch in Article V, Section 2 (b) of the Crow Constitution include the power "to adopt legislation, not inconsistent with this Constitution which is necessary in exercising the duties conferred upon the three branches of government." Article IV, Section 3 lists the "Enumerated Powers" of the Executive Branch

including, in subsection (a) the power and duty to “administer and oversee all functions of the Executive Branch of the Crow Tribal Government including the hiring, firing, and staffing of all agencies, departments, and instrumentalities of the Executive Branch in accordance with established written policy”. Further, in subsection (e), the Executive Branch has the power and duty to “employ legal counsel for the protection and advancement of the rights of the Crow Tribe and its members”. Nothing in the Crow Constitution empowers the Legislative Branch to require its assent to hiring or staffing decisions of the Executive Branch.

For the reasons stated herein, this Court finds that the Tribal Prosecutor has the necessary authority, as directed and delegated by the Executive Branch, to proceed with prosecutions of criminal violations of the Crow Law and Order Code.

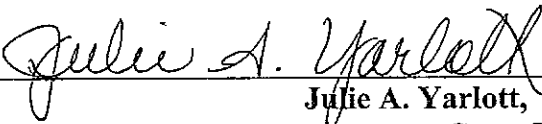
IT IS HEREBY ORDERED:

1. the Tribal Prosecutor will, within thirty (30) days of the date of this Order respond to Defendant’s contention that lawfully required discovery as requested by Defendant has not been provided and the time expended in responding to the Defendant’s contention shall not be included in calculating compliance with 8A-6-104 unless the Court finds that the Prosecutor has breached the duty of disclosure set forth in 8A-6-106 ;
2. Defendant’s motion to dismiss based on allegations of incapacity of the Tribal Prosecutor is DENIED; and
3. this Order is hereby made effective in the additional cases in which Defendant’s advocate has made the same motions and arguments regarding the capacity of the Tribal Prosecutor which include Crow Tribe v. Jeffrey Robinson, Criminal Case No. 11-3198; Crow Tribe v. Laramie Holds, Criminal Case No. 11-1514; and Crow Tribe

v. Tammi Pretty on Top, Criminal Case No. 11-3656; and any other unidentified case in which the capacity of the Tribal Prosecutor has been similarly challenged.

The Clerk will serve this Order on the legal representative for the parties immediately upon issuance by personal service on the Office of the Tribal Prosecutor and by mail on counsel for the Defendant. In addition, the Clerk will docket a copy of this Order in the criminal case files identified above.

ORDERED, DONE AND DATED THIS 21 DAY OF November, 2011.



Julie A. Yarlott, Chief Judge
Crow Tribal Court