

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **No. 99-10,977; 99-11,413**

vs.

DENNIS HALL II,
Defendant

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CRIMINAL DIVISION

: Jurisdiction to Sentence

ORDER

AND NOW, this 3rd day of March 2000, the defendant's Petition for Dismissal of Charges for Lack of Jurisdiction is hereby DENIED. The Court rejects the defendant's assertion that this Court lacks jurisdiction to sentence him for the simple assault to which he pled guilty on October 27, 1999, or to proceed with the driving under the influence and related charges filed against him on August 10, 1999, because he is an Indian who enjoys protection under the Canandaigua Treaty ratified in 1794. Assuming the defendant is an Indian entitled to benefit from this Treaty, the Court does not believe that Treaty bars a State from criminally prosecuting an Indian who commits an offense beyond reservation boundaries. Rather the Treaty prohibits private individuals from seeking revenge or retaliation, not a government entity, such as the Commonwealth of Pennsylvania from pursuing criminal charges. In fact, the general rule is that Indians beyond reservation boundaries are subject to non-discriminatory State laws. Mescalero v. Jones, 411 U.S. 145, 148-149, 93 S.Ct. 1267, 1270 (1973); see also 42 C.J.S. §158 (states generally have jurisdiction over crimes not committed in Indian country). The Court also notes that Article 7 of the Treaty only applies until "the legislature (or great council) of the United States shall make other equitable provision for the purpose." The legislature of the United States has made such other provisions.

See, for example, 25 U.S.C. §229 (relating to injuries to property by Indians); 18 U.S.C. §1160 (relating to property damaged by a non-Indian committing an offense within Indian country). Moreover, it does not make sense that this Court would not have jurisdiction over a criminal offense committed beyond the Indian reservation when there is legislation giving jurisdiction to the State of New York over offenses committed by Indians on Indian reservations within the State of New York.¹ 25 U.S.C. §232. Finally, the Court notes that the defendant has been subject to the jurisdiction of this Court regarding criminal offenses in the past. See Lycoming County Nos. 87-11,161 (driving under the influence) and 89-11,357 (driving under the influence).

In light of the Court's decision that, as a matter of law, the Treaty of Canandaigua of 1794 does not divest this Court of jurisdiction, the hearing scheduled for March 15, 2000 at 9:00 a.m. is canceled. The defendant shall appear for

¹The Treaty of Canandaigua of 1794 is between the United States and The Tribes of Indians called the Six Nations. The lands reserved to the Six Nations are or were generally located within the State of New York. See Treaty of Canandaigua, Article 2.

sentencing on March 21, 2000 at 3:30 p.m. in Courtroom 2 of the Lycoming County Courthouse.

By The Court,

Kenneth D. Brown, J.

cc: District Attorney(DH)
John Smay, Esquire
Dennis C. Hall, II
Eileen Grimes, CST
Honorable Nancy L. Butts
President Judge Brendan J. Vanston
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