

IN THE DISTRICT COURT OF THE NAVAJO NATION

JUDICIAL DISTRICT OF CROWNPOINT

THE NAVAJO NATION,

Plaintiff, No. CP-CR-2750-96

-vs- No. CP-CR-2751-96

ETHELYN BEGAY, a/k/a/ Ethelyn Peterson,

Defendant.

OPINION

On December 12, 1996, the defendant was charged with the offenses of threatening, contrary to 17 NNC Sec. 310 (1995), and unlawful use of a weapon, contrary to 17 NNC Sec. 321. The charges arose out of an August 26, 1996 incident near Iyanbito, Navajo Nation where the defendant told Mike Murphy she would put a bullet in him and shot at dogs in the yard of the residence. Begay was found guilty following a bench trial.

Following the conviction and before sentencing, Begay sought to address the incident through peacemaking. Following a peacemaking session conducted by Peacemaker Cecilia J. Nez, on September 8, 1997 the participants entered into a peacemaking agreement in Cause No. CP-PM-42-97. The agreement concluded in peacemaking was signed by fifteen individuals, including defendant Begay and Mike Murphy. It recites the fact that the defendant and Mike Murphy, as the victim, "resolved the disagreement, forgave each other and agreed to live in peace and harmony." The agreement went on to provide that the parties to it will not harass, "hurt one another, [or] threaten one another, verbally or by any type of weapon." The families also agreed to respect each other's animals, house and material things (e.g. automobile and fence), "start communicating in a polite manner, visit one another and use *k'e* (clanship) to restore the family relationship." The agreement set a 90-day review period and the final provision was "That Ethelene<sup>(1)</sup> Peterson and Mike John Murphy request and agree that the criminal complaints in Case Nos. CP-CR-2750-96 and CP-CR-2751-96 be dismissed without prejudice (in place of a sentence pending before the Court)." This court wishes to enforce the agreement reached in peacemaking. The immediate problem is that there is a 90-day review period for the peacemaking agreement, and the court cannot dismiss the criminal charges without prejudice, given the fact the defendant was found guilty after trial. However, there is another way to reach the same result.

First, the court has the authority, pursuant to 17 NNC Sec. 220B, to suspend imposition of sentence for the 90-day period. 17 NNC Sec. 221 requires the court to consider the offender's family circumstances and "any other circumstances which will aid in imposing a just and fair sentence." Here, those considerations include the fact that the defendant and victim are related as aunt and nephew and the important additional fact that the family members of both parties met to talk out the situation at the root of the criminal charges and reached an agreement which was signed by all participating family members. The "just and fair sentence" language of 17 NNC Sec. 221, coupled with the purposes of peacemaking, give this court the implied power to dismiss the criminal complaints at the conclusion of the period of the suspended imposition of sentence.

While the Navajo Nation adopted a western model of criminal justice, taken from the Model Penal Code, that criminal code must be interpreted in light of principles of Navajo common law. Navajo Nation v. Platero, N.L.R. Supp. 278 (Navajo Nation Supreme Court, 1991). The applicable principle is that if an offender is otherwise a good person, and the needs of a victim are addressed, one should "just let him go." In this case, the victim and the relatives of the aunt and nephew applied that principle in peacemaking and this court should honor that decision.

Accordingly, it is hereby ORDERED that the imposition of sentence upon the defendant is suspended for a period of 90 days from the date of this opinion. At the conclusion of that period, the defendant must report the status of the peacemaking to the court. If the defendant is in compliance with her peacemaking agreement, then the two criminal complaints will be dismissed, with prejudice

DATED this 23 day of September, 1997.

/s/ The Hon. Loretta A. Morris

The Hon. Loretta A. Morris

District Judge

1. The defendant's first name is spelled differently in the criminal complaints and the peacemaking agreement, and she is charged as "Begay" in the criminal cases. The same person is involved in all three cases here.