

**IN THE OSAGE NATION SUPREME COURT**  
**OSAGE RESERVATION**  
**PAWHUSKA, OKLAHOMA**

**Supreme Court  
of the Osage Nation**

FILED JUL 29 2015

By \_\_\_\_\_

FRANK REDCORN,

Appellant,

Case No. SCM-2014-02

v.

OSAGE NATION,

Appellee.

**ORDER DISMISSING  
INTERLOCUTORY APPEAL AND  
REMANDING TO TRIAL COURT**

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**Interlocutory Appeal of Trial Court Order in Case No. CM-2014-10, the Honorable W. Lee Stout presiding.**

BEFORE THE COURT is Frank Redcorn's ("Redcorn") Interlocutory Appeal from the Trial Court's Order denying his *Motion to Dismiss*. After reviewing the documents and relevant law, this Court does not find good cause to proceed with Redcorn's appeal. For the reasons set forth below, this Court exercises its discretion to dismiss this interlocutory appeal and remands this matter to the Trial Court for further proceedings.

**I. BACKGROUND**

Appellant Redcorn was charged with misusing public funds in violation of Osage Nation law. On November 5, 2014, the Trial Court entered an order ("Order") overruling Redcorn's Motion to Dismiss the Osage Nation's ("Nation") Amended Complaint. Presiding Judge Stout certified his Order as an interlocutory order, giving Redcorn ten (10) days to file a Petition in Error. Redcorn then filed this Petition in Error and Preliminary Statement.<sup>1</sup>

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<sup>1</sup> While this matter was pending, Associate Justice Pierce recused himself.

## II. ANALYSIS

### A. Appeals from Criminal Decisions Are Limited under Osage Law.

#### 1. Decisions Appealable by Right

Under Osage law, a defendant in a criminal action has the right of appeal from a final judgment of conviction, the sentence imposed, and a post-judgment and sentence order that affects the defendant's substantial rights. 7 ONC § 5-101(A). An appeal of right does not require the Trial Court or Supreme Court's permission prior to taking the appeal. Here, the Trial Court issued an order denying Redcorn's Motion to Dismiss, which was filed prior to judgment and sentence. The Trial Court's order was certified as an interlocutory order for purposes of appeal. Interlocutory orders are addressed in the Rules of Appellate Procedure.

#### 2. Certified Interlocutory Appeals

In or around 2008, the Osage Nation Supreme Court adopted separate Rules of Appellate Procedure for Civil matters and Criminal matters. Rule 101(4) of the Rules of Criminal Appeals incorporate by reference the Civil Appellate Rules, including those rules governing interlocutory appeals.

Osage Court rules distinguish between interlocutory appeals of right and certified interlocutory appeals. This matter does not meet the criteria for an interlocutory appeal of right under section 33 of the Civil Appellate Rules. The Trial Court, however, certified its decision for interlocutory appeal pursuant to section 26. (See *Order Overruling Defendant's Motion to Dismiss Amended Complaint* at 2.) The issue, then, is whether this Court considers this matter appropriate for appeal.

**B. The Supreme Court Has the Discretion to Consider Interlocutory Appeals.**

Unlike an appeal by right, certified interlocutory orders may be rejected by this Court “[i]n the exercise of its discretion.” *Civil Appellate Rules* ch. 3(A) § 26. The Trial Court’s Order is not a final judgment of conviction, a sentence, or a judgment and sentence order that affects the defendant’s substantial rights. We do not, however, construe the language of 7 ONC § 5-101(A) so strictly as to prohibit the review of interlocutory orders. Instead, we examine whether this Court should exercise its discretion. Based on the record before us, we conclude that Redcorn’s claims are reviewable post-judgment and do not justify this Court’s review at this time.

**C. Appellant’s Claims are Reviewable Post-Judgment under Osage Law.**

Redcorn’s *Motion to Dismiss* alleged the Nation’s Complaint, as amended, charged him with offenses that did not exist during the period stated in the Complaint and the Nation’s evidence was insufficient and “tend[ed] to show the Defendant is immune to prosecution.” These claims can be reviewed effectively on appeal from the final judgment (if one should be filed).

There are important reasons why 7 ONC § 5-101(A) limits appeals in criminal matters to specific types of judgments. “Adherence to [a] rule of finality has been particularly stringent in criminal prosecutions because the delays and disruptions attendant upon intermediate appeal” are contrary to the “effective and fair administration of the criminal law.” *Abney v. United States*, 431 U.S. 651, 657 (1977) (internal citations omitted). Osage Nation law contemplates combining into one appeal all stages of the proceedings to review and correct (if appropriate) after final judgment and sentence.

There are instances, however, when an interlocutory appeal raises an issue separate from the merits of the case and would be effectively unreviewable after final judgment such as claims of double jeopardy, qualified immunity, and motions to reduce bail, none of which are the subject

of this appeal. Whether the Nation's complaint falls within the language of a statute is a fact-specific inquiry. Whether the Nation's evidence shows that Redcorn is immune from suit requires a fact-specific inquiry. Appellate resources should not be spent before the facts have been fully developed.

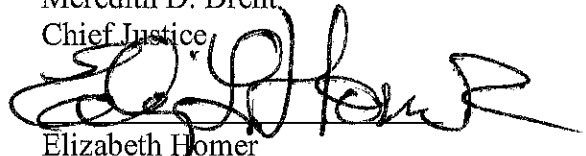
### III. ORDER

For the foregoing reasons, Redcorn's appeal is DISMISSED and REMANDED to the Trial Court for further proceedings.

SO ORDERED on this 29th day of July, 2015.



Meredith D. Drent  
Chief Justice



Elizabeth Homer  
Associate Justice