

IN THE JUDICIAL APPEALS TRIBUNAL
OF THE CHEROKEE NATION

CHEROKEE NATION
JUDICIAL APPEALS TRIBUNAL
FILED

JUL 24 1995

ROBIN MAYES,
Plaintiff,

vs.

CHEROKEE NATION and
GEORGE BEARPAW,
Defendants,

AND

JEFF MUSKRAT,
Plaintiff,

vs.

TRIBAL ELECTION
COMMISSION, Defendant

No. JAT 95-07
JAT 95-08
(Consolidated)

ARGUED JULY 23, 1995

ROBIN MAYES, *pro se*
JOSEPH C. MUSKRAT AND ROBERT GREEN for JEFF MUSKRAT
CLARK O. BREWSTER for GEORGE BEARPAW
JAMES G. WILCOXEN for TRIBAL ELECTION COMMISSION
DAVID MULLON, JR. for CHEROKEE NATION

BEFORE DWIGHT W. BIRDWELL, CHIEF JUSTICE

RALPH F. KEEN AND PHILIP H. VILES, JR., JUSTICES
EXCEPT AS TO REMEDY ALL CONCUR

OPINION BY RALPH F. KEEN, JUSTICE

JUDGMENT

The Court finds that jurisdiction of the Judicial Appeals Tribunal to hear this case is based upon Article VII of the Constitution of the Cherokee Nation. It provides that the Tribunal shall have original jurisdiction to hear and resolve any disagreements arising under any provision of the Constitution, or any enactment of the Tribal Council. We find that this case involves issues arising out of Article IX, Sec. 2 of the Cherokee Nation constitution and an enactment of the Tribal Council, specifically, Title 26, Section 32-F, Qualifications of Candidates for the office of Principal Chief (L.A. 9-85, effective July 13, 1985.)

These are two cases, JAT 95-08, Jeff Muskrat v. Tribal Election Commission and Robin Mayes v. George Bearpaw, JAT 95-07. The Cherokee Nation was joined as a defendant. Both cases were consolidated.

Robin Mayes has petitioned this Court to

- (1) Declare George Bearpaw to be ineligible to be a candidate or to hold office within the Cherokee Nation pursuant to Article IX, Section 2 of the Constitution; and to
- (2) Order the Election Commission to strike the name of George Bearpaw from the ballot on the run-off election now set for July 29, 1995; and to
- (3) Hold that any ballots returned to the Cherokee Nation Election Commission through the absentee balloting process and which are marked in favor of George Bearpaw shall be held for naught.

Jeff Muskrat has filed an action styled as a Petition for Writ of Mandamus and/or Prohibition and For Expedited Hearing. He is seeking an Order declaring George Bearpaw ineligible to stand for election as Principal Chief of the Cherokee Nation; and for an order directing the Respondent to strike the name of George Bearpaw from the ballots for Principal Chief of the Cherokee Nation, and to reschedule the run-off election.

The facts of these cases are as follows. On June 24, 1975, George Bearpaw shot Lloyd Cordell in the stomach. Charges of assault with a dangerous weapon were filed in the District Court of Cherokee County against George Bearpaw pursuant to Title 21 O.S.A. Section 645. The charge carries with it punishment in the state penitentiary not to exceed ten (10) years, or by imprisonment in the county jail not to exceed one (1) year.

Thereafter on or about November 6, 1975, George Bearpaw entered a plea of guilty, and upon recommendation of the District Attorney, was placed upon a two year deferred sentence. Under this procedure, Oklahoma law allows expungement of the record if the defendant follows the rules and conditions of probation and the orders of the court for a period of two years. If he does not do so, then he is sentenced under the Oklahoma Statutes.

On or about the 6th day of November, 1977, George Bearpaw applied for and received an order from the District Court expunging the record in his case.

On April 13, 1995, George Bearpaw filed his Declaration of Candidacy with the Tribal Election Commission. As a routine part of the Declaration of Candidacy process, George Bearpaw signed a paper certifying under oath that he had never pled guilty to any felony charges.

The Cherokee Constitution, Article IX, Section 2 provides as follows:

. . . No person who shall have been convicted of or has pled guilty, or has pled no defense to a felony charge under the laws of the United States of America, or any State, Territory, or Possession thereof, shall be eligible to hold any office or appointment of honor, profit or trust within this Nation unless such person has received a pardon. . .

Title 26 CNCA Section 32 provides as follows:

F. The Candidate shall not have been convicted of or have pled guilty or no defense to a felony under the laws of the United States of America, or of any federally-recognized Indian tribe, or of any state, territory or possession thereof, unless such person has received a pardon.

G. The candidate must certify that if elected Principal Chief, said candidate shall resolve all conflicting interests and that said candidate will automatically be disqualified in the event that any false or misleading information or statements are made in filing for this office. [Emphasis added]

The controlling issue in this cause is whether or not George Bearpaw is eligible to run for and to hold the office of Principal Chief of the Cherokee Nation.

Petitioners Mayes and Muskrat argue that Mr. Bearpaw is ineligible to be a candidate.

Petitioner Mayes would have the Court disqualify Mr. Bearpaw and allow the run-off election scheduled for July 29, 1995 to continue as scheduled.

Petitioner Muskrat would have this Court disqualify Mr. Bearpaw, but would have us cancel the July 29th run-off and order a new run-off election between the candidates who finished 2nd and 3rd in the June 17 general election. He would also have us set a new run-off far enough in the future to allow the candidates time to campaign.

The Cherokee Nation, the Tribal Election Commission and Mr. Bearpaw would have us dismiss the complaints and allow Mr. Bearpaw to remain on the ballot, and to continue with the July 29th run-off.

They cite a United States Supreme Court case, Kercheval v. United States, 274 U.S. 220,

47 S. Ct. 582, 71 L.Ed. 1009 (1927) as the landmark case in support of their position. They then cite numerous state court opinions that follow Kercheval. These cases basically stand for the proposition that once a defendant is allowed to withdraw a guilty plea in a criminal action, the guilty plea can never again be used against him in a subsequent criminal trial.

We reject the arguments of Mr. Bearpaw and the other respondents, and hold that Mr. Bearpaw's plea of guilty in the 1975 Cherokee County felony case renders him ineligible to be a candidate for any office or appointment of honor within the Cherokee Nation pursuant to Article IX, Section 2 of the Constitution of the Cherokee Nation, and 26 CNCA Section 32(F).

We further hold that Mr. Bearpaw was likewise in violation of 26 CNCA Section 32(G) when he filed his Declaration of Candidacy with the Tribal Election Commission when he certified under oath that he had never pled guilty to any felony charges.

Our decision is based upon the clear reading of Article IX, Section 2 and of 26 CNCA Section 32(G). Neither law makes an exception for a deferred sentence, no matter how the deferred sentence is handled.

The Cherokee Nation, as a quasi sovereign, has the authority to determine the qualifications for those who would hold office within the nation. By adopting a Constitutional provision that bars convicted felons, and anyone else who has pled guilty or no defense to a felony in any State, tribal or Federal court means that they wanted only those with the highest moral character to hold elected office within the tribe.

The sole issue that is important in deciding this question is Mr. Bearpaw's original guilty plea. It is of no consequence how the Court in question handled the guilty plea. The only exception that is allowed by our Constitution is if Mr. Bearpaw received a pardon, and he has not.

The Tribal Election Commission is hereby ordered to strike Mr. Bearpaw's name from the ballot, and if that is not possible, they are ordered to collect all the ballots after the election that were cast for him, without counting them and hold them for naught.

They are further ordered to continue with the run-off election on July 29, 1995 and to declare those with the highest number of votes as a winner, without consideration for the votes cast for Mr. Bearpaw.

This Court has considered other remedies, but has rejected them as being not in the best interest of the Cherokee Nation. It is of critical important that the tribe continue without interruption following the expiration of the terms of the current Principal Chief and Deputy Principal Chief. To delay the run-off beyond August 14, 1995, which is the date set by the Constitution for the swearing-in of new officers, would do irreparable harm to the Tribe.

We have likewise considered holding a new run-off election between now and August 14, 1995 and have rejected that for the reason that it is impossible to carry out such a schedule when

absentee ballots must go through the mails to the voters and back to the Election Commission.

Therefore, to allow the current run-off to continue, without counting the votes cast for Mr. Bearpaw is in the best interest of the Cherokee Nation.

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Ralph F. Keen". The signature is written in dark ink and is positioned above the printed name.

Ralph F. Keen, Associate Justice of the Cherokee Nation

VILES, J. (Concurring in all but the remedy provided by Justices Birdwell and Keen.)

I agree with the other two justices on all points except the remedy. I believe that those voters who cast their votes for George Bearpaw have been disenfranchised through no fault of their own. I believe they should be able to vote again.

However, it is not obvious to me what form that election should take. I do not believe that a run-off between the 2nd and 3rd place finishers in the Principal Chief general election is the answer. Rather, I would favor a new general election with all the previous candidates for Principal Chief except George Bearpaw (and then a run-off, if necessary.) I readily admit, however, that such a process would be expensive, time-consuming, and perhaps confusing to the voting public. It is unlikely that a Principal Chief would be elected in time for the August 14th swearing-in and that fact would pose still more problems in terms of leadership, authority, succession, etc.

Smiley, J.
7-23-95