

No. 17-7527

IN THE

Supreme Court of the United States
DISTRICT OF COLUMBIA

KIM WADE DILLON, Petitioner,

v.

DENNIS DAUGAARD, Respondent(s).

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR EIGHTH CIR.

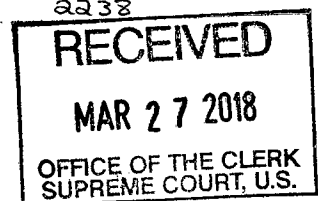
PETITION FOR REHEARING BY JUSTICES'



KIM W. DILLON

Applicant (pro se)

Mike Dunfee State Prison
1412 Wood Street
Springfield, South Dakota 57062-
2238



IN THE
Supreme Court of the United States
DISTRICT OF COLUMBIA

Kim WADE DILLON, Petitioner,

v.

DENNIS DAUGAARD, Respondent(s).

PETITION FOR REHEARING

APPELLANT KIM W. DILLON (hereinafter, Dillon), PETITIONS THIS COURT FOR REHEARING BY THE JUSTICE PANEL OR, IN THE ALTERNATIVE, SUGGESTS REVERSING FOR AMENDMENT ANTE PURSUANT TO U.S. SUPREME COURT RULE 13 AND 44, AND SUPREME COURT RULES 13.3 AND 44.1. DILLON RESPECTFULLY REQUESTS THAT THE JUSTICE PANEL RECONSIDER ITS MAR. 5, 2018, PANEL DECISION IN THIS CASE. SOUTH DAKOTA V. DILLON, NO. CR. CO9-674 (S.D. 2010).

REASONS FOR REHEARING AND REVERSING ANTE

1) THE JUSTICE PANEL(S) DECISION ERRONEOUSLY CONCLUDED THAT THE 1885 FEDERAL ENCLAVES CRIMES ACT LEGISLATIVE HISTORY DID NOT INDICATE THAT THE WORDS "OR OTHER PERSON" WERE INCORPORATED IN THE 1885 ACT TO MAKE CERTAIN THE INDIANS WERE TO BE PROSECUTED IN FEDERAL COURT. 48th Cong., 2d Sess., 116 Cong. Rec. 934 (1885), IN OTHER WORDS, FEDERAL COURTS HAVE JURISDICTION EXCLUSIVE OF THE STATES OVER ENCLAVE OFFENSES ENUMERATED IN THE SECTION WHEN COMMITTED BY A TRIBAL INDIAN. "See, e.g., United States v. Thunder Hawk, 127 F.3d 705 (8th Cir. 1997) (allowing federal prosecution of the victimless crime of driving under the influence), ALTHOUGH THE JUSTICE PANEL'S OPINION RECOGNIZES THAT THE EXPRESS LANGUAGE OF THE CONGRESS ENCLAVE LAWS WERE ENACTED TO GOVERN ACTIVITIES ON FEDERAL ENCLAVES, SUCH AS NATIONAL PARKS, FEDERAL BUILDINGS, POST OFFICES, PRISONS, MILITARY INSTALLATIONS, AND INDIAN RESERVATIONS." Id., U.S. Const. art. VI, Sec. 2.

2) THE JUSTICE PANEL'S OPINION ERRONEOUSLY CONCLUDES THAT THE ISSUE OF ENCLAVES JURISDICTION IN THIS CASE WAS DETERMINED IN REGARD TO THE PROVISIONS OF S.D.C.L. 1-1-12 Through 1-1-21. Slip Op. at 18 U.S.C. § 13, Supra. THE NON-PUBLIC LAW 280 STATE LACKS JURISDICTION TO TRY DILLON, AN ENROLLED TRIBAL MEMBER, FOR AN ENCLAVE OFFENSE COMMITTED ON FEDERAL PROPERTY, ALBEIT IN VIOLATION OF THE MAJOR CRIMES ACT, WHICH DERIVES FROM THE FEDERAL LEGISLATIVE LANGUAGE OF THE 1885 ACT ITSELF, NOT FROM ANY SUBSEQUENT STATUTORY ENACTMENTS BY THE CONGRESS IN CONFLICT WITH THE FEDERAL COURTS.

3) THE JUSTICE PANEL'S DECISION CONFLICTS WITH THE DECISION OF THE FEDERAL CONGRESSIONAL LEGISLATION IN 116 CONG. REC. 934 (1885). THIS CONFLICT SUPPORTS APPELLANT'S REQUEST FOR ANTE REHEARING AND REVERSAL OF THE PANEL'S DECISION.

CAVEIL - ARGUMENTS AND AUTHORITIES

THE JUSTICE PANEL'S DECISION DID NOT FULLY CONSIDER UNDERLYING ISSUES PRESENTED BY DILLON ARISING FROM THE FEDERAL ENCLAVES CRIMES ACT OF MARCH 3, 1885, SOLEMNLY ENTERED INTO BY THE UNITED STATES CONGRESS WITH THE FEDERAL COURTS. DILLON NOW QUESTIONS WHETHER THE FEDERAL DISTRICT COURT AT PIERRE, SOUTH DAKOTA HAD JURISDICTION OVER THE FEDERAL BUILDING PROPERTY THAT HOUSES THE U.S. POST OFFICE AND FEDERAL COURTHOUSE INVOLVED IN THIS CASE. DILLON DEMONSTRATED THAT THE PROCESS CONGRESSIONALLY REQUIRED BY THE 1885 ACT WAS NOT FOLLOWED BY THE UNITED STATES SUPREME COURT JUSTICES' IN THIS CASE. PARTICULARLY, NO JUDICIAL NOTICE AS REQUIRED BY SECTION 1153 OF TITLE 18 WHICH GRANTS JURISDICTION TO FEDERAL COURTS, EXCLUSIVE OF THE STATES, OVER INDIANS WHO COMMIT ANY OF THE LISTED ENCLAVE OFFENSES, REGARDLESS OF WHETHER THE VICTIM IS AN INDIAN OR NON-INDIAN. INSTEAD, THE NON-PUBLIC LAW 280 STATE COURT ACTED IN SELF-HELP TO ARREST AND INDICT DILLON CONTRARY TO THE FEDERAL LEGISLATIVE HISTORY'S REQUIREMENTS. BECAUSE THE PROCESS DELINEATED BY THE 1885 ACT WAS NOT FOLLOWED, DILLON'S STATE ARREST AND PROSECUTION WERE OUTSIDE THE LAWFUL ENACTMENT OF FEBRUARY 2, 1903, 32 STAT. 793,

IN WHICH CONGRESS GRANTED JURISDICTION TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA TO HEAR AND TRY PERSONS COMMITTING ENCLAVE CRIMES. THEREFORE, DILLON'S CONVICTION, SHOULD BE VACATED AND HIS STATE CASE OVERTURNED.

I. SUMMARY OF CONTROLLING FACTS

DILLON APPEALED HIS STATE CONVICTION FOR DRIVING UNDER THE INFLUENCE ON FEDERAL PROPERTY WHICH SHOULD HAVE BEEN IN VIOLATION OF 18 U.S.C. § 13. DILLON WAS UNLAWFULLY PROSECUTED BY THE HUGHES COUNTY, SOUTH DAKOTA SIXTH JUDICIAL CIRCUIT COURT, AND TRIED BEFORE A SINGLE JUDGE. ON DIRECT APPEAL TO THE STATE SENTENCING COURT, DILLON, PRO SE, FILED A STATE HABEAS CORPUS PETITION ASSERTING THAT THE STATE COURT DID NOT HAVE FEDERAL ENCLAVES CRIME JURISDICTION TO TRY AND CONVICT HIM BECAUSE HIS ARREST AND CUSTODIAL ACQUISITION BY THE STATE VIOLATED THE UNEQUIVOCAL REQUIREMENTS OF THE 1885 FEDERAL ENCLAVES CRIMES ACT. ALSO KNOWN AS THE "BADMEN" CLAUSE, ARTICLE I, ¶ 3, SETS FORTH THE PROCEDURE WHEREBY THE UNITED STATES MAY OBTAIN JURISDICTION OVER INDIANS WHO COMMIT ENCLAVE OFFENSES TRANSGRESSING THE GENERAL CRIMINAL LAWS OF THE UNITED STATES. BY THE ACT OF FEBRUARY 2, 1903, 32 STAT. 793, 48TH CONG., 2D SESS., 16 CONG. REC. 934 (1885). See also 18 U.S.C. §§ 1152 AND 1153, SUPRA. MAJOR CRIMES INVOLVING AN INDIAN, WHETHER AS VICTIM OR ACCUSED, ARE MATTERS FOR FEDERAL PROSECUTION. Id., 16 CONG. REC. 934 (1885).

DILLON CLEARLY POINTED OUT THAT THE CONGRESSIONAL LEGISLATIVE HISTORY REQUIRES THAT UNLESS CONGRESS HAS EXPRESSLY AUTHORIZED THE STATE TO PROSECUTE INDIANS WHO COMMIT ENCLAVE OFFENSES, ONLY THEN DOES THE CONGRESS ALLOW PROSECUTION OF AN INDIAN OFFENDER PURSUANT TO THE "BAD MAN" CLAUSE. IT IS UNCONTESTED THAT THIS PROCESS WAS NOT FOLLOWED IN DILLON'S CASE.

INTERPRETING THE "BAD MAN" CLAUSE THE JUSTICE PANEL FAILED TO PROPERLY INQUIRE INTO FEDERAL LEGISLATIVE HISTORY THAT INDIANS WERE TO BE PROSECUTED IN FEDERAL COURT, NOT THE STATE COURT ACTING IN SELF-HELP TO ARREST AND INDICT DILLON CONTRARY TO THE GENERAL FEDERAL CRIMES ACT." (slip op. 327 U.S. at 711). THE PANEL OF JUSTICES' REJECTED THE CONGRESS' LAW THAT FEDERAL COURTS HAVE JURISDICTION EXCLUSIVE OF THE STATES, CITING SOUTH DAKOTA'S - STATUS AS A NON-PUBLIC LAW 83-280 STATE SUBJECT TO GENERAL FEDERAL LAWS.

II. ISSUES SUPPORTING REHEARING

JURISDICTION IN THIS CASE WAS NEVER PROPERLY INQUIRED. THE PROCESS SET FORTH IN THE 1885 ACT WAS NOT FOLLOWED. THE JUSTICE PANEL'S OPINION ERRED IN CONCLUDING THAT THE 1885 ACT IMPOSED "AN OBLIGATION ON THE STATE" AND NOT ON THE FEDERAL GOVERNMENT. THE PLAIN LANGUAGE OF THE FEDERAL LEGISLATION, SUPRA, ESTABLISHED A PROCESS BY WHICH THE ASSIMILATIVE CRIMES ACT (ACA), TRANSFORMS ALL STATE CRIMES INTO FEDERAL CRIMES IF THEY ARE NOT FEDERAL CRIMES ALREADY. U.S. v. Sharpnack, 355 U.S. 286 (1958) (the ACA is to make Indians subject to all

federal enclave crimes); See Ross v. Neff, 905 F.2d 1349, 1353 (10th Cir. 1990) ("There is no question but that 18 U.S.C. § 13 would allow federal enforcement of the local ordinance against public intoxication involved in this case").

FAR FROM ONLY IMPOSING "AN OBLIGATION ON THE FEDERAL," THE MAJOR CRIMES ACT ACTUALLY SETS UP A FRAMEWORK BY WHICH TWO GENERAL BRANCHES OF THE FEDERAL GOVERNMENT, THE FEDERAL LEGISLATURE AND THE FEDERAL JUDICIAL SYSTEMS, HAVE A TREATY TRUST RESPONSIBILITY OVER ALL TRIBAL MEMBERS, BOTH ON AND OFF THE RESERVATION. NOWHERE IN THE MAJOR CRIMES ACT IS A NON-PUBLIC LAW 280 STATE GOVERNMENT PERMITTED TO ARREST, PROSECUTE, CONVICT, AND PUNISH TRIBAL MEMBERS WHO VIOLATE FEDERAL ENCLAVE LAWS WITHOUT FIRST NOTIFYING THE FEDERAL GOVERNMENT AND ALLOWING THEM TO EXERCISE THE RIGHTS SECURED TO THEM BY THE MAJOR CRIMES ACT. SUCH AN ARREST BY THE STATE CONSTITUTES AN UNLAWFUL VIOLATION OF THE "DISCLAIMER" AGREEMENT BETWEEN STATE OF SOUTH DAKOTA WITH THE UNITED STATES. IN 1901, THE STATE OF SOUTH DAKOTA RELINQUISHED TO THE UNITED STATES - EXCLUSIVE JURISDICTION AND AUTHORITY TO ARREST, PROSECUTE, CONVICT AND PUNISH ALL PERSONS IN VIOLATION OF FEDERAL LAWS WHEN COMMITTED UPON FEDERAL ENCLAVES.

BY THE ACT OF FEBRUARY 2, 1903, 32 STAT. 793, CONGRESS GRANTED JURISDICTION TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA TO HEAR AND TRY PERSONS

COMMITTING CERTAIN CRIMES ON FEDERAL ENCLAVES . THIS IS THE PROCESS SET FORTH AND AGREED TO IN THE DISCLAIMER MANDATE . IT IS NOT, HOWEVER, THE PROCESS THAT WAS FOLLOWED IN DILLON'S CASE . SINCE THE PROCESS TO WHICH DILLON WAS SUBJECTED CLEARLY CONTRAVENED THE CONGRESS'S ACT OF FEBRUARY 2, 1903, 32 STAT. 793, THE STATE COURT OF SOUTH DAKOTA COULD NOT LEGALLY ESTABLISH THE NECESSARY JURISDICTION OVER THE FEDERAL BUILDING PROPERTY AT 225 SOUTH PIERRE STREET, PIERRE, SOUTH DAKOTA, IN THIS CASE .

THE JUSTICE PANEL'S DECISION WHICH RELIED ON Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148-49 (1973), WHERE 18 U.S.C. § 1162 WAS HELD TO "NOT EXTEND OVER TRIBAL MEMBERS OR RESTRICT THE APPLICATION OF GENERAL FEDERAL CRIMINAL STATUTES OVER RESERVATION INDIANS ." JONES DOES NOT APPLY TO DILLON'S CASE , HOWEVER, BECAUSE JONES IS A NON-PUBLIC LAW 280 RESPONDENT TO WHOM THE TERMS OF THE 1885 MAJOR CRIMES ACT DOES NOT APPLY . JONES, NOT HAVING ACQUIRED P.L. 280 JURISDICTION IN LIGHT OF THE 1885 ACT, NON-PUBLIC LAW 280 STATE CANNOT CONTROL RESOLUTION OF DILLON'S CASE .

EVEN DILLON, HOWEVER, RECOGNIZED THAT "IF A PARTICULAR INDIAN RIGHT OR POLICY IS INFRINGED BY A NON-PUBLIC LAW 280 STATE CRIMINAL LAW, THAT LAW WILL BE HELD NOT TO APPLY TO INDIANS ON OR OFF THE RESERVATION UNLESS SPECIFICALLY SO PROVIDED." 327 U.S. at 711. THIS IS, OF COURSE, DILLON'S CIRCUMSTANCE . HIS PARTICULAR RIGHTS UNDER THE 48th Cong., 2d Sess., 16 Cong. Rec. 934 (1885),

WAS INFRINGED BY THE STATE COURT PROSECUTION OF HIM UNDER ITS NON-PUBLIC LAW 280 LAWS FOR AN OFFENSE COMMITTED ON FEDERAL BUILDING PROPERTY WITHOUT NOTIFYING FEDERAL AUTHORITIES .

S.D.C.L. 1-1-12 THROUGH 1-1-21 STATUTES DO NOT APPLY TO INDIANS, LIKE DILLON, IN CONTRAVENTION OF HIS TREATY RIGHTS. TO PROSECUTE INDIANS THE NON-P.L. 280 STATE MUST FIRST COMPLY WITH THE CONGRESS' ENCLAVE LAWS PREDICATES . IN DILLON'S CASE THIS MEANS GIVING NOTICE TO THE FEDERAL BUILDING OFFICIALS , AND AVAILING THEM THE OPPORTUNITY TO EXERCISE INVESTIGATIVE POWERS RATHER THAN THE STATE IN THE FIRST INSTANCE EXERCISING SELF-HELP JURISDICTION .

WITH SPECIFIC REGARD TO WHETHER THE UNITED STATES HAS AN TRUST OBLIGATION TO ENGAGE IN AN MAJOR CRIMES PROCESS IN COMPLIANCE WITH THE 1885 ACT, THE JUSTICE PANEL DID NOT INQUIRE ON THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT OPINION IN United States v. Thunder Hawk, 127 F.3d 705 (8th Cir. 1997), AND TWO DECISIONS OF THIS COURT APPROVING THAT DECISION, U.S. v. Sharpnack, 355 U.S. 286 (1958) AND Williams v. U.S., 327 U.S. 711 (1946). FEDERAL ENCLAVE CRIMES CASES HELD THAT UNDER 18 U.S.C. § 13, THE STATUTE WHICH WITHOUT QUESTION WOULD ALLOW FEDERAL ENFORCEMENT AND PROSECUTION OF THE LOCAL ORDINANCE AGAINST PUBLIC INTOXICATION INVOLVED IN THIS CASE . SECTION 13 SPECIFICALLY STATES, HOWEVER, THAT THE ASSIMILATIVE CRIMES ACT (ACA), MAKES IT A FEDERAL CRIME TO ENGAGE IN ANY CONDUCT ON A FEDERAL ENCLAVE.

THE THUNDERHAWK DECISION USED THIS LANGUAGE TO JUSTIFY THE FACT THAT THIS CASE ALLOWS FEDERAL PROSECUTION OF INDIANS FOR VICTIMLESS CRIME OF DRIVING UNDER THE INFLUENCE. State v. Spotted Horse, 462 N.W.2d 463, 467 (S.D. 1990) (until recently, the prevailing view was that unless Congress had expressly authorized the state to exercise criminal jurisdiction on federal Enclaves, state officials had no right to enter an federal enclave to arrest an Indian, even for a crime committed off the reservation in state territory).

FEDERAL ENCLAVES, HOWEVER, ARE NOT ON THEIR FACE "STATE OR OTHER STATE LOCAL GOVERNMENT PROPERTY" ANY DIFFERENT THAN ANY OTHER ENCLAVE MIGHT BE RECOGNIZED AS FEDERAL PROPERTY. IN ENFORCEMENT OF ENCLAVE LAWS UNDER THE 1885 ACT, THUNDERHAWK AND SHARPNACK MUST SIMILARLY BE VIEWED AS RECOGNIZING THE ENCLAVE LAW PROPERTY STATUS AS OTHER RIGHTS GRANTED TO THE TRIBE BY THE 1868 TREATY, INCLUDING EXTRADITION RIGHTS AND JURISDICTIONAL PREREQUISITES LIKE THE RIGHT TO NOTICE OF TRIBAL MEMBERS COMMITTING ENCLAVE OFFENSES AS GUARANTEED BY THE TREATY.

DILLON DID ARGUE THAT NON-PUBLIC LAW 280 STATE CRIMINAL STATUTES, LIKE SOUTH DAKOTA'S PUBLIC INTOXICATIONS LAWS, MAY NOT BE APPLIED TO HIM IN AN AREA BELONGING TO FEDERAL PROPERTY. HE CONTESTS ONLY THE CONCLUSION THAT THE 1885 MAJOR CRIMES ACT NEEDS TO BE FOLLOWED IN A NON-PUBLIC LAW 280 STATE WHEN THE STATE OFFICIALS WISH TO OBTAIN CRIMINAL JURISDICTION OVER FEDERAL

ENCLAVES, LIKE FEDERAL BUILDING ENCLAVE LAWS VIOLATIONS, THOSE OFFENSES ARE COVERED BY THE "BAD MEN" CLAUSE OF THE 1885 MAJOR CRIMES ACT.

DILLON DOES NOT CONTEST THAT CONGRESS HAS ORIGINAL JURISDICTION AND AUTHORITY UNDER THE COMMERCE CLAUSE TO ARREST ILLEGAL STATE CRIMINAL PROSECUTION, LIKE 18 U.S.C. § 13. DILLON ALSO ARGUES THAT STATE TRAFFIC STATUTES DO NOT PER SE APPLY TO FEDERAL BUILDING PROPERTY. HOWEVER, IN THE CASES OF INDIANS PROTECTED UNDER THE 1885 MAJOR CRIMES ACT, THEIR PROSECUTIONS FOR VIOLATING THE ENCLAVE LAWS OF THE UNITED STATES MAY BE COMMENCED ONLY AS SPECIFIED BY FEDERAL LEGISLATIVE HISTORY ITSELF, THAT IS "UPON PROOF MADE TO THEIR AGENT, AND NOTICE BY HIM," ACCORDING WHICH MAJOR CRIMES INDIANS THE STATE SHALL THEN BE REQUIRED TO DELIVER UP THE NAMED INDIAN WRONGDOER TO THE UNITED STATES "TO BE TRIED AND PUNISHED ACCORDING TO THE ACT OF FEBRUARY 2, 1903, 32 STAT. 793, REQUIRES THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA TO HEAR AND TRY ALL PERSONS IN VIOLATION OF FEDERAL ENCLAVE LAWS.

THE SUPREME COURT OF THE UNITED STATES HAS RECOGNIZED THAT THE ASSIMILATIVE CRIMES ACT TRANSFORMS ALL STATE CRIMES INTO FEDERAL CRIMES IF THEY ARE NOT FEDERAL CRIMES ALREADY. UNITED STATES V. SHARPNECK, 355 U.S. 286 (1958) (IN OTHER WORDS, THE ACA IS TO MAKE INDIANS SUBJECT TO ALL FEDERAL ENCLAVE CRIMES). MOST IF NOT ALL MCA CRIMES ARE ALSO CRIMES UNDER FEDERAL ENCLAVE LAW, UNITED STATES V. JOHN, 587 F.2d 683 (5th Cir.), cert. denied, 441

U.S. 925 (1979), INDIANS MUST BE TREATED AS EXPLICITLY REQUIRED BY FEDERAL LEGISLATIVE HISTORICAL LANGUAGE. Morton, 417 U.S. at 535 (Federal regulation of Indian tribes, therefore, is governance of once-Sovereign Political Communities; it is not to be viewed as legislation of a 'racial' group consisting of Indians). FOR EXAMPLES ARE TRAFFIC VIOLATIONS, PROSTITUTION OR GAMBLING. FEDERAL PROSECUTIONS IN THESE CASES CAN BE BASED ON 18 U.S.C. § 1152 AND THE ASSIMILATIVE CRIMES ACT (18 U.S.C. § 13).

ALTHOUGH THE FEDERAL LEGISLATIVE HISTORY REQUIREMENT OF THE 1885 MAJOR CRIMES ACT HAS NOT PERHAPS BEEN WIDELY RECOGNIZED OR DILIGENTLY ENFORCED SINCE KAGAMA, A PERIOD OF PROLONGED NON-ENFORCEMENT OF ENCLAVE LAWS DOES NOT FOR THAT REASON ALONE, EXTINGUISH THOSE ACTS. U.S. v. Johnson, 967 F.2d 1431 (10th Cir. 1992).

THE ENACTMENT OF THE GENERAL FEDERAL ENCLAVE LAWS OF THE UNITED STATES, ABSENT THEIR EXPLICIT EXPRESSION, DID NOT BY VIRTUE OF THEIR MERE ENACTMENT ALONE ABROGATE THE PROVISIONS OF 18 U.S.C. § 13 OF THE MAJOR CRIMES ACT OF 1885. ALTHOUGH THE MCA PROVISION MAY BE DORMANT AND INFREQUENTLY INVOKED IT HAS NOT BEEN RENDERED OBSOLETE NOR HAS IT BEEN ABANDONED. IT REMAINS IN EFFECT, A CONSTITUTIONAL OBLIGATION ON THE FEDERAL GOVERNMENT AND MUST BE HONORED.

THE JOHNSON DECISION IS INSTRUCTIVE. AT ISSUE IS THE MAJOR CRIMES ACT OF MARCH 3, 1885, § 8, 23 STAT. 385. THE MCA CONTAINS NEARLY THE SAME ENFORCEMENT OF PUBLIC INTOXICATION INVOLVED IN

THIS CASE, AS DOES 18 U.S.C. § 1152 AND THE ASSIMILATIVE CRIMES ACT (18 U.S.C. § 13). ROSS, 905 F.2d at 1353. THE FEDERAL COURT IN "ROSS" HELD, "THERE IS NO QUESTION BUT THAT SECTION 13 WOULD ALLOW FEDERAL ENFORCEMENT OF THE LOCAL ORDINANCE AGAINST PUBLIC INTOXICATION INVOLVED IN THIS CASE. Id. at 1349. THIS INCLUDES THE "BAD MEN" CLAUSE, DEALING WITH WRONGS BY THE INDIANS.

THOUGH JOHNSON DEALS WITH CRIMINAL RATHER THAN CIVIL WRONGS, ITS UNDERLYING REASONING IS EQUALLY APPLICABLE TO ASSIMILATION OF THE FEDERAL CIVIL LAWS. SECTION 13 OF THE 1885 ACT OF THE MCA HAS NEITHER BEEN ABROGATED BY EXPLICIT CONGRESSIONAL ACTION, NOR ABANDONED. IT REQUIRES THAT BEFORE THE NON-PUBLIC LAW 280 STATE ACHIEVES JURISDICTION TO PROSECUTE AN INDIAN FOR CRIMINAL ACTS COMMITTED ON AN FEDERAL ENCLAVE UNDER THE GENERAL LAWS OF THE UNITED STATES THE STATE ITSELF MUST FIRST GIVE THE FEDERAL GOVERNMENT THE OPPORTUNITY TO DECIDE WHICH GOVERNMENT HAS AUTHORITY FOR PUNISHMENT ACCORDING TO ITS LAWS. SINCE THIS DID NOT OCCUR IN DILLON'S CASE, THE UNITED STATES SUPREME COURT NEVER THOROUGHLY INQUIRED INTO WHO HAS PROSECUTION AUTHORITY OVER AN OFFENSE COMMITTED ON THE GROUNDS OF A FEDERAL BUILDING. THE STATE COURT'S PROSECUTION OF DILLON IN THESE CIRCUMSTANCES VIOLATED DILLON'S TREATY RIGHTS.

BECAUSE THE ENACTMENT OF 18 U.S.C. § 549 DID NOT CONTAIN AN EXPLICIT ABROGATION OF 18 U.S.C. § 13 OF THE MAJOR CRIMES ACT OF 1885, AND STATE TRAFFIC OFFENSES ON FEDERAL ENCLAVES ARE NOT

ONE OF THE ENUMERATED OFFENSES CONTAINED IN 18 U.S.C. § 1152, DILLON'S STATE PROSECUTION CONTRARY TO THE (MCA) REQUIREMENT THAT THE FEDERAL GOVERNMENT FIRST BE GIVEN THE OPPORTUNITY TO INQUIRE UPON AN INDIAN OFFENDER FOR AN FEDERAL ENCLAVE OFFENSE, THE STATE DID NOT FOLLOW FEDERAL LAW, THEREFORE, THEIR PROSECUTION OF DILLON WAS UNLAWFUL. THE JUSTICE PANEL'S OPINION TO THE CONTRARY IS INCORRECT. THE SUPREME COURT FAILED TO PROPERLY INQUIRE JURISDICTION IN DILLON'S CASE. DILLON'S STATE CONVICTION, THEREFORE, SHOULD BE VACATED.

CONCLUSION

FOR THESE REASONS, AND UPON THE ABOVE AND FOREGOING ARGUMENTS AND AUTHORITIES, DILLON RESPECTFULLY REQUESTS THAT THIS PETITION FOR, FOR REHEARING AND REVERSING ANTE BE GRANTED, AND UPON REHEARING, THAT THIS COURT VACATE THE JUSTICE PANEL'S DENIAL AND REVERSE DILLON'S CONVICTION TO THE FEDERAL DISTRICT COURT FOR ARRESTING THE STATE COURT JUDGMENT.

Dated this 19th day of MARCH, 2018.

Respectfully Submitted,

Kim W. Dillon

KIM W. DILLON
petitioner-Appellant(pro se).

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V.

DENNIS DALGAARD, et al., Respondent(s).

ON PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

THIS COURT IS WELL AWARE OF THE FEDERAL ENCLAVES CRIMES ACT AND THE CASE WHEREIN WHICH ARISES FROM SUCH ENCLAVE. See, e.g., United States v. Sharpnack, 355 U.S. 286 (1958); Williams v. United States, 327 U.S. 711 (1946); 48th Cong., 2d Sess., 16 Cong. Rec. 934 (1885). THIS LATEST APPEAL INVOLVES AN ISSUE THAT TOOK PLACE ON AN FEDERAL BUILDING PROPERTY. SPECIFICALLY, PETITIONER WAS FOUND INTOXICATED IN HIS VEHICLE AT THE REAR LOADING DOCK OF THE FEDERAL BUILDING AND UNITED STATES POST OFFICE.

PETITIONER FILES THIS REHEARING OF APPEAL WITH RESPECT TO THE REQUIREMENTS OF SUPREME COURT RULE 44, HOWEVER, PETITIONER BEING INEXPERIENCED IN THE FIELD OF LAW DID HIS BEST TO UNDERSTAND THE SUPREME COURT RULE BOOK. HE BELIEVES THAT HIS PETITION WAS TIMELY FOR REHEARING BECAUSE HE FILED WITHIN THE TWENTY FIVE (25) DAY REQUIREMENT. THIS COURT SHOULD CONSIDER APPOINTING AN AMICUS CURIAE UNDER THE CRIMINAL JUSTICE ACT OF 1964, SEE 18 U.S.C. § 3006A(d)(6).

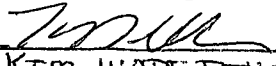
THE ONLY REHEARING OF APPEAL FILED IN THIS CASE LIST THAT THE PETITION FOR REHEARING IS PRESENTED IN GOOD FAITH AND NOT FOR DELAY. THEREFORE, THE FEDERAL JURISDICTION ISSUE REGARDING THE FEDERAL BUILDING INVOLVED SHOULD BE REMANDED TO THE FEDERAL DISTRICT COURT. SEE Boumediene AND 28 U.S.C. § 2241(e), THE SUPREME COURT STATED EXPLICITLY THAT "[T]HESE AND THE OTHER REMAINING QUESTIONS ARE WITHIN THE EXPERTISE AND COMPETENCE OF THE DISTRICT COURT TO ADDRESS IN THE FIRST INSTANCE." Boumediene AT 2.

WHEREFORE, BECAUSE THE GROUNDS ARE LIMITED TO INTERVENING CIRCUMSTANCES OF SUBSTANTIAL OR CONTROLLING EFFECT OR TO OTHER SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED. St. Cyr, 533 U.S., AT 302 (THE SUPREME COURT HELD "WE DO CONSIDER IT UNCONTROVERSIAL, HOWEVER, THAT THE PRIVILEGE OF HABEAS CORPUS ENTITLES THE PRISONER TO A MEANINGFUL OPPORTUNITY TO DEMONSTRATE THAT HE IS BEING HELD PURSUANT TO "THE ERRONEOUS APPLICATION OR INTERPRETATION" OF RELEVANT LAW).

ACCORDINGLY, DILLON'S PETITION SHOULD BE GRANTED.

Dated this 11th day of April, 2018.

Respectfully Submitted,


KIM WADE DILLON
petitioner (pro se).

CERTIFICATE OF SERVICE

I hereby certify that on April 11th, 2018, a true and correct
copy was also sent by United States mail, first-class postage prepaid,
to:

MARTY J. JACKLEY
Attorney General, South Dakota
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Dated: April 11th, 2018.


KIM WADE DILLON
petitioner (pro se).