

No. 19-231

IN THE
Supreme Court of The United States

ROBERT R. REYNOLDS,

Petitioner,

v.

WILLIAM SMITH, CHIEF PROBATION OFFICER, Amantonka
Nation Probation Services;

JOHN MITCHELL, President, Amantonka Nation,

ELIZABETH NELSON, Chief Judge, Amantonka Nation
District Court,

Respondents.

**On Writ of Certiorari to the United States
Court of Appeals for the Thirteenth Circuit**

BRIEF FOR RESPONDENT

ii

TEAM #967
COUNSEL FOR
REONDENTS
ADDRESS
TELEPHONE
EMAIL

Counsel for Petitioner

QUESTIONS PRESENTED

- 1) Is Petitioner a Non-Indian for purposes of Special Domestic Violence Criminal Jurisdiction?
- 2) Did Petitioner's court-appointed attorney satisfy the relevant legal requirements?

TABLE OF CONTENTS

QUESTIONS PRESENTED..... i

TABLE OF AUTHORTIES iii

INTRODUCTION 1

STATEMENT OF THE CASE..... 1

OPINION BELOW 2

SUMMARY OF ARGUMENT 5

ARGUMENT 6

 I. Petitioner was tried and sentenced as a member of the Amantonka Nation for criminal offenses against another member of the Amantonka Nation..... 6

 A. Petitioner is a member of the Amantonka Nation. 7

 II. Petitioner was provided with sufficient appointed counsel under the Special Domestic Violence Jurisdiction subject to §1304 Tribal Jurisdiction over Crimes of domestic violence..... 9

 A. The Non-Native Petitioner and his appointed counsel meet the standards established in the Violence Against Women’s Act..... 10

 B. If Petitioner is an Indian the fact that he is entitled to a less qualified attorney to which a non-native is entitled to is not a violation of Equal Protection. 12

CONCLUSION..... 13

TABLE OF AUTHORTIES**CASES**

<i>Montana v. U.S.</i> , 101 S.Ct.1245, 1257-1258 (1981)	7
<i>Morton v. Mancari</i> , 427 U.S. 535, 554 (1974)	12
<i>Oliphant v. Suquamish</i> , 435 US 191 (1978).....	2, 6, 9
<i>People v. Boots</i> , 106 Misc. 2d 522, 523, (Co. Ct. 1980)	7
<i>Pueblo v. Martinez</i> , 436 US 49 (1978).....	3
<i>Reynolds v. Amantonka Nation</i> , No. 17-198, ¶ 1 (Nov. 27, 2017)	7, 9, 10, 11
<i>Santa Clare Pueblo v. Martinez</i> , 436 U.S. 49, 55 (1978).....	6
sovereignty <i>Clara Pueblo v. Martinez</i> , 436 U.S. 49, 55 (1978).....	7
<i>Talton v. Mayes</i> , 163 U.S. 376, 384 (1896).....	11
<i>U.S. v. Bryant</i> , 136 S.Ct. 1954,1959 (2016)	7, 10
<i>U.S. v. Lara</i> , 541 U.S. 193, 209, 124 S.Ct. 1628,1638 (2004)	12
<i>U.S. v. Rogers</i> , 45 U.S. 567, 572-573 (1846)	8
<i>U.S. v. Shavanux</i> , 647 F.3d 993, 998 (10th Cir. 2011).....	11
<i>U.S. v. Wheeler</i> , 435 U.S. 313, 322 (2004).....	11

STATUTES

25 U.S.C.A. § 1304(d) (West 2013)	10
---	----

OTHER AUTHORITIES

Violence Against Women Reauthorization (VAWA 2013) Act of 2013, 25 U.S.C. § 1304 (2013).....	10, 13
---	--------

INTRODUCTION

This case arises out of an incidence of domestic violence that occurred on the Amantonka Reservation. The Petitioner (Reynolds), was the accused in the incident. His wife was the alleged victim. The Petitioner's wife is an enrolled member of the Amantonka Tribe by birth. The Petitioner is an enrolled member of the Amantonka Tribe by naturalization. The Petitioner was charged, convicted, and sentenced under, and pursuant to tribal statute, in accordance with his status as a tribal member. The Petitioner was represented by a court-appointed counsel in this matter. The Petitioner argues that he is not an Indian and, therefore, his case should have been disposed of in the manner prescribed by Special Domestic Violence Criminal Jurisdiction. In the alternative, the Petitioner challenges that if he is classified as an Indian, the fact that the attorney he is entitled to is less qualified than the attorney to which a non-Indian is entitled to is in and itself a violation of Equal Protection.

STATEMENT OF THE CASE

On June 16, 2017, the Chief Prosecutor, acting on behalf of the Amantonka Nation, filed criminal charges in this court against Petitioner, accusing him of domestic violence against his wife, Lorinda Reynolds. The charges arose out of an incident that occurred on June 15,

2017, at the Reynolds' apartment. The apartment is part of tribal housing and is located on the Amantonka reservation. The case came before the District Court for the Amantonka Nation.

OPINION BELOW

The Petitioner filed three pre-trial motions with the District Court for the Amantonka Nation. First, he alleged that he was not an Indian and was therefore, per *Oliphant v. Suquamish*, 435 US 191 (1978), not subject to the authority of the tribal court. The District Court denied that motion, noting that the Petitioner was naturalized member of the Amantonka Nation, having married an enrolled member and completed the voluntary process of naturalization, as specified in Title Three, Chapter Two of the Amantonka Nation Code.

The Petitioner's second motion argued that, as a non-Indian accused of domestic violence in Indian country, he should have been subject to Special Domestic Violence Criminal Jurisdiction, as provided for in 25 USC §1302 et seq. The Court denied this motion as well, ruling as was the case in the first motion, that the Petitioner was an enrolled member of the tribe and therefore, an Indian. As such, the Petitioner was not eligible for the considerations and process of the Special Domestic Violence Criminal Jurisdiction.

The Petitioner's third motion alleged that his court-appointed counsel was insufficiently qualified and, as such, the appointment of same violates his Equal Protection guarantee to competent counsel. He bases this motion on the text of the Amantonka Nation Code which,

at Title Two, Chapter 5, Sec 501 (b), allows for representation by “Lay Counselor” who are not required to possess a Juris Doctorate from an American Bar Association accredited law school or to have passed a state bar exam. The District Court denied the motion, stating that without regard for whether the Petitioner was tried as a non-Indian under the Special Domestic Violence Criminal Jurisdiction, or as an Indian by strictly tribal law, his court appointed counsel was qualified.

The Petitioner was tried and convicted by a jury at the District Court for the Amantonka Nation. He moved to set aside the verdict citing the same arguments as posed by the pre-trial motions. The Court denied the motion and sentenced to the Petitioner to seven (7) months incarceration, \$5300 restitution, batterer rehabilitation and alcohol treatment through tribal social services and a fine of \$1500.00.

The Petitioner appealed the decision render by the District Court of the Amantonka Nation to the Supreme Court of the Amantonka Nation. He based his appeal on the same three arguments that were advanced in the pretrial motions and his motion to set aside the verdict.

As to the first point, that of Indian status, the Court recognized that in accordance with *Santa Clara Pueblo v. Martinez*, 436 US 49 (1978), a tribe has the right to define the standards of membership. The Amantonka Nation established citizenship standards which included a rigorous process for naturalization, which the Petitioner voluntarily undertook for the

purpose of gaining citizenship. The Court ruled that for the purposes of this application of tribal law, the Petitioner was a member Indian.

The Petitioner again founded his second argument on the Court's acceptance of his first assertion. He argues that as a non-Indian, he should have been tried in accordance with the Special Domestic Violence Criminal Jurisdiction standard and that his attorney must also meet the standard set by the Violence Against Women Act reauthorization of 2013 from whence arises the Special Domestic Violence Criminal Justice. The Court was unmoved by this argument as it had ruled previously that the Petitioner was a member Indian.

Alternatively, the Petitioner proposed that, if he was classified as an Indian, then the attorney that he was guaranteed under tribal law is less qualified than that contemplated by the United States Constitution, and that to which a non-Indian would be entitled. The Court denied this assertion as well, pointing out that the attorney that had been appointed to represent the Petitioner did possess a JD degree from an ABA accredited school and was a member in good standing of the Amantonka Nation Bar association. The Court went on to state that the Petitioner's argument was based on minimum standards, which his counsel surpassed, that the Petitioner failed to cite any instance of his attorney acting less than competently, and that he presents no evidence to support a difference between the state bar exam and that of the Amantonka Nation.

On November 27, 2017, for the reasons summarized above, the Supreme Court of the Amantonka Nation affirmed the conviction of the Petitioner.

On March 7, 2018, the Petitioner petitioned the United States District Court for the District of Rogers, for a Writ of Habeas Corpus. The Petitioner argues that he is not an Indian and was wrongly tried and convicted under a strictly tribal standard. He argues that the process delineated in the Violence Against Women Act, specifically as it relates to appointed counsel, should have been applied. The U.S. District Court granted the petition.

On August 20, 2018, the United States Court of Appeals for the Thirteenth Circuit, writing Per Curium, reversed the decision of the U.S. District Court and remanded with instructions to deny the petition for habeas corpus. The U.S. Court of Appeals cited the reasoning set forth by the Amantonka Nation Supreme Court.

On October 15, 2018, a Writ of Certiorari was granted bringing the case before the Supreme Court of the United States.

SUMMARY OF ARGUMENT

The Petitioner argues that he is not an Indian and as a non-Indian is subject to the provisions of the Special Domestic Violence Criminal Justice stipulations set forth by the Violence Against Women Act. Alternatively, he argues that if he is an Indian then subjecting him to a less qualified court appointed counsel violates the Equal Protection provided by the United States Constitution. The Amantonka Nation counters that the Petitioner is an Indian in that he voluntarily undertook the measures required to be naturalized as an enrolled member of the tribe, thus subjecting himself to the Nation's authority. Further, the court appointed counsel

provided the Petitioner held a Juris Doctorate from an ABA accredited law school and was a member of the Amantonka Nation Bar.

ARGUMENT

I. Petitioner was tried and sentenced as a member of the Amantonka Nation for criminal offenses against another member of the Amantonka Nation.

Indian Tribes are considered independent, distinct political communities, retaining their original natural rights in matters of local self-government, and although no longer possessed of full attributes of sovereignty, remain a separate people with power of regulating their relations. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978)).

The Petitioner is considered a member of the Amantonka Nation for the purposes of criminal jurisdiction. Absent prohibition arising from congressional statute or treaty. Tribes retain criminal jurisdiction over Indians in Indian country. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 197 (1978). In this case, for the purpose of criminal jurisdiction, the petitioner is a naturalized member of the Amantonka Nation under The Amantonka Nation Code, Title 3, Chapter 2, Sec. 201. The Amantonka Nation has a historical practice of adopting into the community those people who marry a citizen of the Amantonka Nation. In this case, two years after the Petitioner was married to a member of the Amantonka Nation the Petitioner applied to become a naturalized citizen of the Amantonka Nation. The Petitioner successfully completed the process, took the oath of citizenship, and received a tribal ID card.

Furthermore, the Petitioner and spouse lived in tribal housing on the Amantonka Nation Reservation. *Reynolds v. Amantonka Nation*, No. 17-198, ¶ 1 (Nov. 27, 2017).

Tribes retain their inherent power to determine tribal membership to regulate domestic regulations among members and to prescribe rules of inheritance for members. *Montana v. U.S.*, 101 S.Ct.1245, 1257-1258 (1981). In furtherance of tribal self-determination, the customs and practices of the tribe determine tribal membership or lack thereof. *People v. Boots*, 106 Misc. 2d 522, 523, (Co. Ct. 1980). In accordance with the inherent power to determine tribal membership the Amantonka Nation adopted a naturalization process that is consistent with the Nations' customs and practices. Amantonka Nation Code, Title 3, Chapter 2, Sec. 201-203. Specifically, the Amantonka Nation has a longstanding custom and practice of naturalizing members who marry citizens of the Amantonka Nation. In this case, the Petitioner is a member of the Amantonka Nation and therefore subjects himself to the jurisdiction of the Amantonka Nation.

A. Petitioner is a member of the Amantonka Nation.

In the complex patchwork of federal, state, and tribal law governing Indian Country. *U.S. v. Bryant*, 136 S.Ct. 1954,1959 (2016). The promotion of tribal self-determination requires that tribes retain the right to local self-government, and, full attributes of sovereignty *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978)). In this case, the Amantonka Nation is a federally recognized Indian Tribe that expresses self-governance, and full sovereignty by

adopting the Amantonka Nation Code and enforcing the Tribal Code through the Amantonka Nation Tribal Court System.

A person who married into a tribe with no intention of leaving has become a member of the tribe and offers no objection to jurisdiction of the courts. In, *U.S. v. Rogers*, 45 U.S. 567, 572-573 (1846). Rogers became a member of the tribe making himself subject to the laws and usages of the tribe. Tribes are governed by the specific customs and usages of the tribe. *ID* at 573 In this case, the Petitioner is a member of a the Amantonka Nation because through the process of tribal naturalization pursuant to Amantonka Nation Code, Title 3, Chapter 2, Sec. 201-203. The Petitioner was entitled to the privileges afforded to all Amanatonka citizens this includes consenting to criminal jurisdiction.

In this case, Reynolds became a naturalized citizen by marrying a member of the Amantonka Nation. Additionally, Reynolds enjoyed many of the benefits and services allowed by citizenship. Reynolds had tribal employment and, lived in a tribal housing complex. Through the naturalization process under Amantonka Nation Code, Title 3, Chapter 2, Sec. 201-203, Reynolds completed the Naturalization process that including: completing a course in Amantonka Nation cultural, completing a course in Amantonka Nation laws and governments, passing a Amantonka Nation citizen test, and performing 100 hours of community service. Amantonka Nation Code, Title 3, Chapter 2, Sec. 202. Completion of the

naturalization process entitles Reynolds to all the privileges afforded all citizens of the Amantonka Nation. *Reynolds v. Amantonka Nation*, No. 17-198, ¶ 1 (Nov. 27, 2017).

Therefore, Reynolds is a member of the Amantonka Nation and subjects himself to the Criminal Jurisdiction practices and policies therein.

II. Petitioner was provided with sufficient appointed counsel under the Special Domestic Violence Jurisdiction subject to §1304 Tribal Jurisdiction over Crimes of domestic violence.

Under, *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191,197, 98 S.Ct. 1011, 1015 (1978). Tribes were ruled to not have criminal jurisdiction over non-members. Traditionally, this established jurisdictional holes for prosecuting non-Indians in domestic violence cases. Disparaging amounts of domestic violence cases simply could not be prosecuted. As a result, in 2013 Congress authorized the Violence Against Women Act, this established a partial Oliphant fix affirming the inherent sovereign authority of a tribe to exercise domestic violence criminal jurisdiction over non-Indians who commit domestic violence in Indian Country. Angela R. Riley, Crime and Governance In Indian Country, 63 UCLALR. 1564, 1590-1592.

In this case, under the Violence Against Woman Act defendants in criminal proceedings facing a term of imprisonment of any length shall have the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution. 25 U.S.C.A. §

1304(d) (West 2013). The Sixth Amendment provides the right to appointed counsel. U.S. Const. amend. VI. Traditionally, the Sixth Amendment right to appointed counsel does not apply in tribal court proceedings. *U.S. v. Bryant*, 136 S. Ct. 1954,1964 (2016). However, for the purposes non-Indian Special Domestic Criminal Jurisdiction. The defendant conviction does not violate the Sixth Amendment despite having the aid of appointed counsel. *ID*. The right to the Sixth Amendment does not apply to tribal-court proceedings that are in compliance with ICRA. *ID* at 1965.

In this case, the Petitioner's counsel was sufficient under the Special Domestic Violence Jurisdiction because the attorney who represented Reynolds possessed a JD degree from an ABA accredited law school and was a member of the Amantonka Nation Bar Association. *Reynolds v. Amantonka Nation*, No. 17-198, ¶ 8 (Nov. 27, 2017).

A. The Non-Native Petitioner and his appointed counsel meet the standards established in the Violence Against Women's Act.

The Violence Against Women Act was established to give tribal courts criminal jurisdiction over non-Indians who committed domestic or dating violence offences in Indian Country. *U.S. v. Bryant*, 136 S. Ct. 1954,1960 (2016). The Violence Against Woman's act provide an Oliphant fix to Criminal Jurisdiction over non-Indians. The intent was to prosecute non-Indian domestic violence offenses on Indian land that fell into a jurisdictional hole. Violence Against Women Reauthorization (VAWA 2013) Act of 2013, 25 U.S.C. § 1304 (2013).

In Tribal Court the Sixth Amendment right to counsel does not extend to defendants. Tribes enjoy the powers of local self-government, they do not operate under the bill of rights. *Talton v. Mayes*, 163 U.S. 376, 384 (1896). Tribal convictions in a subsequent VAWA prosecution cannot violate the Sixth Amendment because the Sixth Amendment was never violated in the first instance. *U.S. v. Shavanux*, 647 F.3d 993, 998 (10th Cir. 2011). Over time, Tribal Nations are semi-sovereign entities shaped by a unique relationship with the United States and the Centuries of history, tradition, and culture have supported the legitimacy of tribal proceedings. *U.S. v. Wheeler*, 435 U.S. 313, 322 (2004).

In this case, the Sixth Amendment right to counsel is satisfied under VAWA because the attorney representing Petitioner possessed a J.D. degree from an ABA accredited law school and was a member in good standing with the Amantonka Nation Bar Association. *Reynolds v. Amantonka Nation*, No. 17-198, ¶ 8 (Nov. 27, 2017) Therefore, Reynolds' attorney met the qualifications set forth in Amantonka Nation Code, Title 2, Chapter 6, Sec. 607.

Even though tribal courts do not utilize exactly the same procedure as federal courts, they are guided by the same principles of justice and fairness. *U.S. v. Wheeler*, 435 U.S. 313, 322 (2004). Non-Indian convictions under VAWA cannot violate the Sixth Amendment when the appointed counsel meet the qualifications in the Amantonka Nation Code, Title 2, Chapter 6, Sec. 607.

In this case, tribal court have different qualifications for effective assistance of counsel under the Nation's Special Domestic Violence Criminal Jurisdiction (VAWA). Consistent with non-tribal courts the Amantonka Nation utilizes the same principles of justices and fairness. Therefore, Reynolds' appointed counsel met the standards establish in the Violence Against Woman Act.

B. If Petitioner is an Indian the fact that he is entitled to a less qualified attorney to which a non-native is entitled to is not a violation of Equal Protection.

"Indian" is a political classification rather than racial and does not raise equal protection challenges. *Morton v. Mancari*, 427 U.S. 535, 554 (1974). Equal Protection challenges are not valid between tribal, state, and federal courts because offenses committed in tribal court and state court are considered offenses against separate sovereigns. *U.S. v. Lara*, 541 U.S. 193, 209, 124 S.Ct. 1628,1638 (2004).

In this case, if the Petitioner is an Indian, the fact that he is entitled to a less qualified attorney than a non-Indian might be is not a valid equal protection challenge because the Petitioner committed offenses against a sovereign separate from the United States, Therefore, that the Petitioner may be assigned less qualified counsel than would be permissible in a United States court is irrelevant and does not violate the Equal Protection guarantees of the United States Constitution.

CONCLUSION

For the foregoing reasons, this Court should deny the Writ of Habeas Corpus. Because the Petitioner was tried and sentenced as a member of the Amantonka Nation for criminal offenses against another member of the Amantonka Nation. In the alternative, the Petitioner was provided with sufficient appointed counsel under the Special Domestic Violence Jurisdiction subject to §1304 Tribal Jurisdiction over Crimes of domestic violence.

Respectfully submitted,

TEAM #967
COUNSEL FOR
RESPONDENTS
ADDRESS
TELEPHONE
EMAIL