



ENTERED  
10-30-20 AB  
SSM Chippewa Tribal Court

SAULT STE. MARIE CHIPPEWA TRIBAL COURT

---

DUSTIN MACLEOD,  
**Plaintiff,**

v.

Case No. GCV-20-02

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS,  
**Defendant.**

---

**ORDER GRANTING DEFENDANT’S MOTION TO DISMISS**

Defendant comes before the Court requesting the Court dismiss *Plaintiff’s Complaint and Motion for Expungement of Convictions under Sault Tribe Code 71.1617*. The Court held a hearing on the motion on October 20, 2020. Plaintiff did not appear. Counsel for Defendant did appear. The Court granted Defendant’s motion on the record and this opinion follows.

Plaintiff filed a Complaint on October 1, 2020, requesting that the Court “clear his records” of criminal convictions entered by the 53<sup>rd</sup> Circuit Court of Michigan for manufacture with intent to deliver 5-45 grams of marijuana, MCL § 333.7401(2)(d)(ii), possession with intent to deliver marijuana, MCL § 333.7401(2)(d)(iii); felon in possession of a firearm, MCL § 750.224f and harboring a felon, MCL § 750.199(3).<sup>1</sup> Plaintiff contends that the newly passed Tribal Code § 71.1617, Vacating Offenses, provides authority for this Court to expunge those convictions.

---

<sup>1</sup> Upheld on appeal, *People v. MacLeod*, No. 326950, 2016 WL 3767496 (Mich. Ct. App. July 14, 2016), *lv den.* 500 Mich. 946 (2017). Plaintiff also sought federal review of his convictions. The U.S. District Court for the Eastern District of Michigan denied plaintiff’s petition for a writ of habeas corpus and denied a leave to appeal. *MacLeod v. Braman*, 2:19-cv-12153 (Sept. 4, 2020)

On October 9, 2020, Defendant's counsel filed *Defendant's Rule 12(b)(1) and 12(b)(6) Motion to Dismiss*. Defendant first argues that Plaintiff's claims should be dismissed because this Court does not have subject matter jurisdiction to resolve Plaintiff's claims. Fed. R. Civ. P. 12(b)(1). Indian country criminal jurisdiction is complicated, with law school courses spending entire semesters educating on the rationale and intricacies' behind the jurisdictional maze. However, despite its intricacies, it is abundantly clear that Tribes' jurisdiction regarding their members' criminal actions very much ends at the border of Indian country. 18 U.S.C. § 1151. Likewise, the Tribal Court's ability to expunge convictions is limited by its ability to enter those convictions in the first place. In other words, the Tribal Court can only expunge or set aside convictions it has entered, and has no authority to expunge convictions entered by a separate sovereign, such as the State of Michigan.

The Tribal Code provision enacted by the Board of Directors, our Tribe's legislative body, is clear and explicit. "All past marijuana convictions authorized by these Sections shall be set aside and expunged." §71.1617. Accordingly, this court lacks subject matter jurisdiction to address the Plaintiff's claims and grants the Defendant's motion to dismiss the claims pursuant to Fed. R. Civ. P. 12(b)(1).

Although granting the motion on the Defendant's initial grounds, the Court takes this opportunity to address the alternative basis for dismissal pled by the Plaintiff, to wit: Fed. R. Civ. P. 12(b)(6), Failure to State a Claim. Rule 12(b)(6) tests the legal sufficiency of a Plaintiff's claims. When a defendant challenges a complaint's sufficiency under Fed. R. Civ. P. 12(b)(6), the court must determine whether the complaint bears "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Within his Complaint, Plaintiff attempts to assert that Tribal Code § 71.1617 is akin to a federal habeas corpus statute, somehow granting the defendant recourse in Tribal Court for his state court convictions. Plaintiff goes on to argue that this Court's order so expunging his state court convictions, would then have to be recognized by the State of Michigan pursuant to Michigan Court Rule 2.615(C). Plaintiff's legal reasoning is without basis and his claim is without merit.

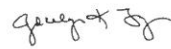
A habeas corpus statute affords federal courts some limited review of state and tribal court actions of detention, when explicitly permitted by statute. *See, e.g.*, 28 U.S.C. § 2254, 25 U.S.C. § 1303. However, nothing in T.C. § 71.1617 provides for legal recourse in Tribal Court to a state

prisoner, nor affords any review of a state action of any kind. It is not “essentially the same” as a habeas statute and provides no basis for Plaintiff’s claim of relief.

Therefore, for the reasons stated above, this matter is dismissed without prejudice for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) and failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6).

IT IS SO ORDERED.

Dated: October 30, 2020



Jocelyn Fabry  
2020.10.30 12:24:19  
-04'00'

---

Hon. Jocelyn K. Fabry, Chief Judge



**SAULT STE. MARIE CHIPPEWA TRIBAL COURT**

---

**DUSTIN MACLEOD,**

Plaintiff,

-v-

**Case No. GCV-20-02**

**SAULT STE. MARIE TRIBE OF  
CHIPPEWA INDIANS,**

Defendant.

---

Dustin MacLeod  
5759 S. Ridge Rd.  
Sault Ste. Marie, MI 49783

Mark A. Esqueda  
Attorney for Defendant  
2175 Shunk Rd.  
Sault Ste. Marie, MI 49783

---

**PROOF OF SERVICE**

The undersigned certifies that a copy of each of the following documents were served upon the above listed parties to the above case by U.S. Mail, Inter-Office delivery and/or facsimile to their last known respective address on 10.30.20: Order Granting Defendant's Motion to Dismiss.

I declare under penalty of perjury that the statement above is true to the best of my knowledge, information and belief.

10-30-2020  
Date

Alicia J. Roy  
Court Staff