

**GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS  
TRIBAL APPELLATE COURT**

2605 N. West Bay Shore Drive, Peshawbestown, MI 49682  
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<b>GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS TRIBAL COURT TRIBAL COURT OF APPEALS</b>	<b>OPINION</b>	<b>CASE NO.</b> 2022-34-AP (Lower Case # 2022-743-CR) (Lower Case # 2022-751-CR) (Lower Case # 2022-752-CR)
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<b>Appellant Name, Mailing Address and Phone</b>  Marcos McSauby Campos 3245 N. West Bay Shore Drive Peshawbestown, MI 49682	V.	<b>Appellee Name, Mailing Address and Phone</b>  The People of the Grand Traverse Band of Ottawa and Chippewa Indians 2605 N. West Bayshore Dr. Peshawbestown, MI 49682	
<b>Attorney's Mailing Address, Phone, Email</b>  Robert Mendham, (P55269) Lisa Gray, (P74841) Michigan Indian Legal Services (MILS) 814 S. Garfield Avenue, Suite A Traverse City, MI 49686 (231) 947-0122 <a href="mailto:rmendham@mils3.org">rmendham@mils3.org</a> <a href="mailto:lgray@mils3.org">lgray@mils3.org</a>		<b>Attorney's Mailing Address, Phone, Email</b>  Wilson D. Brott (P51446) Grand Traverse Band of Ottawa and Chippewa Indians – Tribal Prosecutor 2605 N. West Bayshore Dr. Peshawbestown, MI 49682 (231) 534-7630 <a href="mailto:wilson.brott@gtb-nsn.gov">wilson.brott@gtb-nsn.gov</a> <a href="mailto:prosecutor@gtb-nsn.gov">prosecutor@gtb-nsn.gov</a>	

**Opinion**

On October 5, 2022, Mr. Campos “Appellant” pled guilty per the plea agreement for three separate criminal convictions (2022-743-CR, 2022-751-CR, 2022-752-CR). On November 7, 2022, Appellant was sentenced by the Trial Court and the terms and conditions of the plea agreement were adopted, along with the Court adopting the recommendations contained within the Presentence Investigation Report previously filed.

On November 30, 2022, Mr. Campos filed an appeal in all three cases alleging ineffective assistance of counsel and a violation of the Grand Traverse Band’s sentencing guidelines. On January 17, 2023, GTB “Appellee” filed a brief. On January 25, 2023, this Court consolidated the three appeals given the subject matter of the cases is sufficiently similar. Also on January 25, 2023, this Court ordered the appointment of appellate counsel to represent Mr. Campos. On May 9, 2023, Mr. Campos filed a brief. On May 31, 2023, GTB filed a response brief.

After review of the record and the arguments of the parties, we AFFIRM Appellant’s conviction and sentence.

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**Standard of Review**

GTB Court Rule 9.401 dictates the standard of review for appeals. This court must sustain trial court findings of fact unless the finding was clearly erroneous. GTB Court Rule 9.401(A).<sup>1</sup> This court does not have to defer to trial court conclusions of law, however, and reviews those conclusions *de novo*. GTB Court Rule 9.401(E).

**Discussion**

We affirm the trial court judgment because there is nothing in the record and no argument presented to us that rises to a sustainable challenge to the judgment.

The first issue on appeal is whether Appellant has a valid claim for ineffective assistance of counsel. Appellant argued that his court appointed attorney was ineffective, bullied him into accepting a plea deal, never filed for discovery, and was responsible for his inability to attend a Zoom hearing. According to the record, Appellant was served a notice of the hearing in question. The Notice of Hearing included Zoom information as well as a phone number to call in the event of any technical difficulties. Additionally, the Notice of Hearing included in bold text that an individual should “connect through Zoom or via telephone up to 15-minutes prior to the hearing” and “failure to connect via Zoom or telephone at the date and time notices above will be considered a failure to appear at the noticed hearing”. However, Appellant did not provide sufficient evidence to support his claims for ineffective assistance of counsel. Moreover, Appellant had several opportunities to express concerns about the effectiveness of his counsel in previous motions and hearings, after a review of the record it is clear that Appellant never expressed any concerns prior to this appeal. Given the aforementioned reasons, Appellant has not made a sufficient record to show ineffective assistance of counsel.

The second issue on appeal is whether the trial court properly considered Appellant's criminal history and the circumstances of the offenses in determining the sentence. Appellant argued that incarceration should only be used when circumstances such as a violent propensity make it the only viable alternative. 9 GTBC Section 106(f) states the sentencing considerations which should be considered by the court, include:

Before imposing sentence, the Court shall take into consideration the offender's prior record, family circumstances, employment status, and any other circumstance which will aid in imposing a just and fair sentence, paying particular attention to the victim's impact statement described above. Restitution and community service

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<sup>1</sup> We note subsection (A) is labeled “Judge Finding of Fact,” but the text of the rule references findings of fact “by a jury.” Subsection (B) is labeled “Jury Finding of Fact,” with the text of that rule again referencing findings of fact “by a jury.” We assume for purposes of this appeal that subsection (A) involves judicial findings of fact.

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work should generally be preferred over incarceration. A judge should only order incarceration when the Court determines that it is necessary for the safety of the community, or when the Court determines that the offender is unlikely to cooperate in providing restitution or performing community service work, or when the offense committed is such that incarceration is the only viable punishment.

Upon review of the record, the trial court properly leveraged the considerations noted above in levying an appropriate sentence. Furthermore, it appears that Appellant is referencing the comment to GTBC section 106, which states:

The Tribal Court Judge has considerable discretion in fashioning an appropriate sentence for a person convicted of an offense. However, as was noted above, the maximum jail term and fine that a Tribal Judge may sentence a criminal to is one year or \$5,000, or both.

Keeping someone in jail is very expensive, and thus drains Tribal resources. Incarceration has not been proven to have significant rehabilitative value. Therefore, it is recommended that other forms of punishment, such as community service work, which will benefit the Tribe, or restitution to help the victim recover from his/her injuries, be preferred over incarceration. It is suggested that incarceration be utilized when the circumstances, such as the violent propensity of the offender, make it the only viable alternative.

The ICRA gives the accused a right to a jury trial any time imprisonment is a possibility. Section 106(g) allows the Court, prior to trial, to rule that imprisonment will be considered in the case. In all other cases, imprisonment will not be a potential punishment and thus the accused will not have the right to a jury trial.

The above passage is commentary for the referenced section, and as such, is not binding on the Court and ultimately suggestive in nature. That said, considering Appellants offenses and permissible considerations in determining an appropriate sentence, the Court did not abuse its discretion in sentencing. GTBCR 6.425(D) states the sentencing procedure the Court must use<sup>2</sup>, which the Appellant does not challenge.

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<sup>2</sup> Rule 6.425 Sentencing

(D) Imposition of Sentence.

(1) Sentencing Procedure. The court must sentence the defendant within a reasonably prompt time after the plea or verdict unless the court delays sentencing as provided by law. At sentencing the court, complying on the record, must:

(a) determine that the defendant, the defendant's lawyer, and the prosecutor have had an opportunity to read and discuss the pre-sentence report,

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Appellant has failed to demonstrate a legal basis to justify his request for resentencing, therefore this Court denies Appellant's request for resentencing and affirm the Trial Court's sentencing.

Date: 1/18/2024

*Matthew Massey*

Hon. Matthew S. Massey  
Appellate Judge

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- (b) give each party an opportunity to explain, or challenge the accuracy or relevancy of, any information in the pre-sentence report, and resolve any challenges in accordance with the procedure set forth in subrule (D)(2),
- (c) give the defendant, the defendant's lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in imposing sentence,
- (d) determine that any request for incarceration or detention has been procedurally and substantively adequate,
- (e) state the sentence being imposed, together with any credit for time served to which the defendant is entitled,
- (f) articulate its reasons for imposing the sentence given, and
- (g) if a victim of the crime has suffered harm and the court does not order restitution as provided by law or orders only partial restitution, state the reasons for its action.
- (h) state the time period in which all fees, costs and fines and restitution must be paid and any terms and conditions for accessing per capita funds or minor trust accounts in order to satisfy fines, fees, costs, and restitution due. Minor trust funds may only be attached to pay the fees, fines and costs owed by a minor sentenced pursuant to the requirements of the Revenue Allocation Ordinance by court order for payment of any court fees, fines and costs which remain due 365 days after sentencing.
- (2) Resolution of Challenges. If any information in the pre-sentence report is challenged, the court must make a finding with respect to the challenge or determine that a finding is unnecessary because it will not take the challenged information into account in sentencing. If the court finds merit in the challenge or determines that it will not take the challenged information into account in sentencing, it must direct the probation officer to:
- (a) correct or delete the challenged information in the report, whichever is appropriate, and
- (b) provide defendant's lawyer with an opportunity to review the corrected report.

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I, Lauren Parzych, being duly sworn, deposes and states that on the date below I sent by:

- first class mail   
 inter-office mail   
 email   
 fax   
 personal service/hand delivered  
 log book   
 other:

the documents listed below to the individuals identified below by placing a copy of the same with the United States Postal Service in Suttons Bay Michigan and/or as indicated below (see Method of Service).

Documents enclosed:        **Opinion after Oral Argument**


Served To:  
Court File  
Matthew Fletcher  
Matthew Massey  
JoAnne Cook  
Marcos Campos

Robert Mendham (MILS)  
Prosecutor  
Victim Advocate – Jackelyn Barnowski

Method of Service:  
Original  
Address on File  
Address on File  
Address on File  
C/O Leelanau County Jail, 8525 E. Government Center Drive, Suttons Bay, MI 49682 & 3245 N. West Bay Shore Drive, Peshawbestown, MI 49682  
814 S. Garfield Avenue #A, Traverse City, MI 49686  
[prosecutor@gtb-nsn.gov](mailto:prosecutor@gtb-nsn.gov)  
Email & Inter-Office Mail

I declare the statements above are true to the best of my information, knowledge, and belief.

Date: 1/18/2024



Lauren Parzych, Clerk of the Court