

UNITED STATES SUPREME COURT HOLDS TRIBAL COURTS ARE NOT COURTS OF "GENERAL JURISDICTION"

by

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EXECUTIVE SUMMARY

On June 25, 2001, the United States Supreme Court held in *Nevada v. Hicks* that the tribal court in and for the Fallon Paiute-Shoshone Tribes did not have jurisdiction to adjudicate a tribal member's claims against a Nevada state law enforcement officer for alleged tortious conduct in executing a search warrant for an off-reservation crime. The Court's opinion applied *Montana v. United States* in assessing the scope of tribal court jurisdiction, even though the officer's alleged wrongful conduct occurred on tribal trust lands.

INTRODUCTION

On June 25, 2001, the United States Supreme Court issued its decision in *Nevada v. Hicks, et al.*, Supreme Court Case No. 99-1994 (June 25, 2001). The case presented the question whether a tribal court may assert jurisdiction over civil claims against state officials who entered tribal land to execute a search warrant against a tribe member suspected of having violated state law outside the reservation.

In 1990, Floyd Hicks ("Hicks") came under suspicion of having killed a California big horn sheep outside the Fallon Paiute-Shoshone Tribes' reservation, a gross misdemeanor under Nevada law. A Nevada state game warden obtained a search warrant through state court to search Hicks' on-reservation property. That search failed to uncover any evidence. Approximately one year later, based on additional information obtained from tribal police officers, state game wardens obtained a second state court issued warrant to search Hicks' property. Following that search, Hicks claimed that his personal property had been damaged and that the second search exceeded the bounds of the warrant. Hicks thus brought suit against the tribal officers and state game wardens involved in the search in their individuals and official capacities, and the state of Nevada in tribal court in and for the Fallon Paiute-Shoshone Tribes. His causes of action included trespass to land and chattels, abuse of process, and violation of civil rights under 42 U.S.C. § 1983.

The tribal court held that it had jurisdiction over the claims and the tribal appeals court affirmed. The state officials and the state of Nevada then filed an action in federal district court seeking a declaration that the tribal court lacked jurisdiction. On summary judgment, the federal district court held that the tribal court had jurisdiction and further held that the state officials would have to exhaust their remedies in tribal court. The United States Court of Appeals for the Ninth Circuit affirmed.

THE SUPREME COURT'S OPINION

The Supreme Court reversed the decision below, holding that the tribal court did not have jurisdiction to adjudicate the alleged tortious conduct of state officers in executing a search warrant for an off-reservation crime. Writing for a six-justice majority, Justice Scalia framed two questions for the Court to resolve:

In this case, which involves claims brought under both tribal and federal law, it is necessary to determine, as to the former, whether the Tribal Court in and for the Fallon Paiute-Shoshone Tribes has jurisdiction to adjudicate the alleged tortious conduct of state wardens executing a search warrant for evidence of an off-reservation claim; and, as to the latter, whether the Tribal Court has jurisdiction over claims brought under 42 U.S.C. § 1983.

Slip op. at 3. As to the first issue, Justice Scalia explained that the "principle of Indian law central to this aspect of the case is our holding in *Strate v. A-1 Contractors* . . . 'as to non-members . . . a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction . . .'" *Id.* Justice Scalia then turned to the principles set forth in *Montana v. United States*, 450 U.S. 544 (1981), to define an Indian tribe's regulatory authority over nonmembers.

Where nonmembers are concerned, the "exercise of tribal power *beyond what is necessary to protect tribal self-government or to control internal relations* is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation."

Slip op. at 5 (emphasis in original). Justice Scalia concluded that *Montana's* principles apply to activities on both Indian and non-Indian land. According to Justice Scalia, the "ownership status of land . . . is only one factor to consider in determining whether regulation of the activities of nonmembers is 'necessary to protect tribal self-government or to control internal relations.'" Slip op. at 6. "[T]he existence of tribal ownership is not alone enough to support regulatory jurisdiction over nonmembers." *Id.*

Justice Scalia then considered whether jurisdiction over state officers in this case is necessary "to protect tribal self-government or to control internal relations," and, if not, whether such jurisdiction has been conferred by Congress. First, "our cases make clear that the Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation. State sovereignty does not end at a reservation's border." Slip op. at 7. Instead,

When on-reservation conduct involving only Indians is at issue, state law is generally inapplicable, for the state's regulatory interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strongest. . . . When, however, state interests outside the reservation are implicated, states may regulate the activities even of tribe members on tribal land . . .

Slip op. at 8 (internal citations and quotation marks omitted). After reviewing prior Supreme Court decisions, Justice Scalia thus concluded that

tribal authority to regulate state officers in executing process related to the violation, off-reservation, of state laws is not essential to tribal self-government or internal relations - to "the right to make laws and be ruled by them." The state's interest in execution of process is considerable, and even when it relates to Indian-fee lands it no more impairs the tribe's self-government than federal enforcement of federal law impairs state government.

Slip op. at 10-11.

Second, Justice Scalia concluded that Congress has not stripped the states of inherent jurisdiction over reservation property. "Nothing in the federal statutory scheme prescribes, or even remotely suggests, that state officers cannot enter a reservation (including Indian-fee land) to investigate or prosecute violations of state law occurring off the reservation." Slip op. at 12.

Justice Scalia then turned to the question of whether the tribal court is a court of general jurisdiction having authority to entertain federal claims under 42 U.S.C. § 1983. Justice Scalia found that the "historical and constitutional assumption of concurrent state-court jurisdiction over federal-law cases is completely missing with respect to tribal courts." Slip op. at 13. Moreover, he concluded that tribal courts are not courts of general jurisdiction. "Tribal courts, it should be clear, cannot be courts of general jurisdiction . . . for a tribe's inherent adjudicative jurisdiction over nonmembers is at most only as broad as its legislative jurisdiction." *Id.* Accordingly, he concluded that tribal courts do not have jurisdiction to entertain claims under § 1983. Slip op. at 15.

Finally, Justice Scalia considered whether the state officials were required to exhaust their jurisdictional claims in tribal court before bringing them in federal district court. He acknowledged that the Court's earlier decision in *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845 (1985), recognized exceptions to the exhaustion requirement where "an assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith, . . . or where the action is patently violative of express jurisdictional prohibitions, or where exhaustion would be futile because of the lack of an adequate opportunity to challenge the court's jurisdiction." Slip op. at 15. While he conceded that none of those exceptions appear applicable to the facts in *Hicks*, he found the broader reasoning behind the Court's more recent opinion in *Strate v. A-1 Contractors* to be controlling. In *Strate*, the Court recognized that when "it is plain that no federal grant provides for tribal governance of nonmembers' conduct on land covered by *Montana's* main rule, the exhaustion requirement would 'serve no purpose other than delay.' 520 U.S. at 459-460, and n. 14." Slip op. at 16. According to Justice Scalia, "since it is clear . . . that tribal courts lack jurisdiction over state officials for causes of action relating to their performance of official duties, adherence to the tribal exhaustion requirement in such cases would serve no purpose other than delay, and is therefore unnecessary." *Id.*

Justice Souter, together with Justices Kennedy and Thomas, filed a concurring opinion as did Justice Ginsburg. Justice O'Connor filed an opinion concurring in part and concurring in the judgment in which Justices Stevens and Breyer joined. Justice Stevens also filed a separate opinion concurring in the judgment in which Justice Breyer joined.

