Hinton v. United States, ___ F. Supp. 3d ___, 2021 WL 1783190 (D. Ariz. May 5, 2021)

- **Holding:** Indian defendant convicted in tribal and then federal court for offenses arising from a sexual assault was not entitled to vacatur of his federal sentence under 28 U.S.C. § 2255 on ineffective assistance of counsel grounds because his attorney did not argue violation of the Double Jeopardy Clause.
- **Summary:** Defendant, then a member of the San Carlos Apache Tribe, was convicted of sexually assaulting another member in tribal court. He was subsequently indicted and convicted in federal court for aggravated sexual abuse and kidnapping under the Major Crimes Act. Defendant received a sentence of 224 months imprisonment followed by 10 years of supervised release for the latter convictions. He sought post-conviction relief under § 2255, arguing principally that his trial counsel had failed to provide effective assistance of counsel by not arguing former jeopardy as a defense to the federal prosecution. The magistrate judge issued a report and a recommendation that the petition be denied. The district court accepted the R&R.

  The court began by discussing the dual-sovereignty principle established in *United States v. Wheeler*, 435 U.S. 313 (1978), and concluding, like the magistrate judge, that "[b]ecause the Tribe exercised its inherent sovereign power to prosecute Hinton for kidnapping and sexual assault, the dual sovereignty doctrine applies and Hinton's federal prosecution for the same crimes is not barred by the Double Jeopardy Clause of the Fifth Amendment." As such, and also like the magistrate judge, it "found that Hinton has not satisfied the first prong of *Strickland* [*v. Washington*, 466 U.S. 668 (1984)]–-counsel did not fall below an objective standard of reasonableness by failing to raise a meritless double jeopardy argument." It added that "Hinton cites no authority suggesting that Congress has withdrawn the San Carlos Apache Tribe's inherent sovereign power to prosecute its members for crimes committed on the reservation."
- **Relevant (2020) Deskbook Section:** 4:9 n.14