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Beckley, West Virginia

[State News](#)

February 17, 2010

Judge overturns W.Va. Rainbow Family convictions

MORGANTOWN (AP) — A federal judge has overturned the nearly 5-year-old illegal assembly convictions of eight members of the Rainbow Family of Living Light, ruling a magistrate's makeshift courtroom in the Monongahela National Forest inadvertently denied the defendants the ability to effectively appeal.

U.S. District Judge Robert Maxwell said it's clear U.S. Magistrate John Kaul "was sincerely trying to help" by holding onsite hearings in the summer of 2005, sparing the itinerant campers the need to hitchhike 70 miles to a federal courtroom in Elkins.

But the lack of a transcriptionist and decent sound recording produced an incomplete record of what transpired, and that "had the unintended effect of denying each of the defendant's right to a meaningful appeal," Maxwell ruled last week.

"The court simply cannot imagine a case where a better argument could be made that counsel's ability to identify issues for their clients' appeals was significantly prejudiced," he wrote.

The defendants are wanderers who are difficult to reach, so many still didn't know about the ruling Tuesday afternoon, said Scott Addison, a Rainbow Family legal observer from St. Louis. But those who have been reached are disappointed the judge failed to address underlying issues about the right to peaceful assembly on public lands.

"The court's own blunders become its pretext to ignore the issues," Addison said in a telephone interview. "They were railroaded into fast trials and had no other reasonable option. ... They felt their civil rights were violated, and they were."

While Maxwell said he had no alternative but to vacate the convictions, he noted his decision "is, in no way, a reflection on the merits of said convictions."

"The court feels confident that the convictions in question were likely handed down by Magistrate Kaul without error," he wrote.

The Rainbow Family is a loosely connected counterculture group that gathers on public land somewhere in the United States every summer, to party, play and pray for peace and the environment. Every year, the gathering culminates in a July 4 prayer circle, and every year, they battle the U.S. Forest Service over the right to be there.

The Forest Service requires groups of 75 or more to obtain noncommercial use permits when congregating in a national forest, but many Rainbow Family members refuse to sign or acknowledge the need for those permits.

In 2005, during a dispute over where to set up camp in the 900,000-acre Monongahela wilderness, more than 140 people were cited for the misdemeanor offense of failing to secure permits.

Federal prosecutors cut deals with most, allowing them to pay \$30 or perform eight hours of community service without pleading guilty — agreements Addison called “uniquely humane” at the time.

Eight people demanded trials, and all of them were convicted. They were ordered to pay fines ranging from \$125 to \$350 apiece, plus \$25 in court costs.

They have been appealing ever since.

While Addison and the volunteer attorneys raised a variety of constitutional and civil rights issues, Maxwell’s ruling focused only on the narrow issue of preserving a record of the trials for appeal.

The judge said he reviewed the tapes and found the quality to be “very poor.” One side of a cassette was blank, he said, while many other portions of the tapes were inaudible, incomprehensible or failed to identify speakers.

The Rainbow Family has continued to challenge the Forest Service since 2005, and federal officials have continued to set up what Addison considers illegal “executive tribunals.” But with courts allowing only narrow discussion in the permit disputes, Addison said, it will likely take a civil lawsuit to change the Forest Service tactics.

Kate Goodrich-Arling, a spokeswoman for the U.S. Forest Service in Elkins, said the agency does not comment on legal matters.