

**IN THE PASCUA YAQUI COURT OF APPEALS  
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION**

Docket No. CA-01-002

|                               |   |               |
|-------------------------------|---|---------------|
| Pascua Yaqui Tribe of Arizona | ) |               |
| Complainant-Appellee          | ) |               |
|                               | ) |               |
| v.                            | ) | INTERIM ORDER |
|                               | ) |               |
| Bruce Garcia                  | ) |               |
| Defendant-Appellant           | ) |               |

This Court received a hand-written Notice of Appeal by facsimile transmission on October 25, 2000. . The Notice stated, among other things, that the Appellant “request[ed] for [his] jail sentence...[to] be turned into a satisfactory fine, up to the courts (sic) discretion”. The Notice of Appeal left little indication what errors the trial court may have made in its findings of fact or conclusions of law that would merit a review of this case. Before this Court could convene to consider the merits of the Notice of Appeal<sup>1</sup>, the defendant-appellant, the defendant-appellant Bruce Garcia submitted yet another pleading on January 18, 2001, at this point, a ‘Motion for a Parole Hearing’.<sup>2</sup> The pleading, though directed toward the Chief Prosecutor for the Tribe, was forwarded thereafter to this Court.

Having convened telephonically, this Court hereby finds that in tendering an appeal to the Court of Appeals the defendant-appellant has effectively removed from the jurisdiction of the Trial Court in its entirety any matter which may arise regarding this case. We must, therefore, either consider the ‘Motion for a Parole Hearing’ either to constitute an abandonment of the original appeal, or, to be a request for a decision on the question of parole tendered to the wrong forum.

As to the latter, a brief discussion is in order. Customarily, within American jurisprudence, an appellate court does not take up matters which are of a fact-finding nature. Certainly, the process of sentencing (the matter raised in the original Notice of Appeal) and of consideration for parole, are laden with the necessity to perform the fact-finding mission. Though we do recognize that the Constitution of the Pascua Yaqui Tribe provides at Article VIII, Section 5, for the right of a trial de novo in a criminal matter, the defendant-appellant, Bruce Garcia, has never invoked the use of the essential phrase ‘de novo’. If he had done so, we would find ourselves obliged to consider whether the scope of a de novo trial allowed the Court of Appeals to change sentences, or even to consider motions for parole.

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<sup>1</sup> Due to a family emergency affecting Justice Vicenti, a consideration of the matter was inadvertently postponed.

<sup>2</sup> The Pascua Yaqui Tribe submitted ‘Tribe’s Response to Respondent’s Motion for Parole’ on January 19, 2001, apparently directed toward the Trial Court.

As to the former, we recognize that the request for parole may very well operate as an abandonment of the appeal tendered in this case. However, we should aspire to give the most reasonable and fair meaning to motions and pleadings filed by criminal defendants when they go unrepresented by legal counsel.

We, therefore, order the following:

1. The Defendant-Appellant Bruce Garcia is hereby granted leave *if he has not abandoned his appeal* to tender to the Clerk of the Court an Amended Notice of Appeal stating with particularity the errors in findings of fact or conclusions of law made by the trial court in entering its Order of August 29, 2000. Additionally:
  - A. In submitting his Amended Notice of Appeal, he shall indicate whether he requests a trial de novo (a new trial) by the appellate court;<sup>3</sup>
  - B. The Amended Notice of Appeal must be accompanied by an Appeal Bond of \$1,000.00 cash or cashier's check;
  - C. The Amended Notice and the Appeal Bond must be submitted to the Clerk of the Court, postmarked no later than March 1, 2001, or hand delivered no later than March 2, 2001.
2. Upon receipt of the Notice of Appeal and the Appeal Bond this Court shall convene to consider whether to accept the Appeal.
3. If the Defendant-Appellant requests a trial de novo in his Amended Notice of Appeal, in conformity with paragraph 1 above, and tenders the Appeal Bond, this Court, when it convenes, shall designate a single justice to convene a pre-trial conference to consider and determine the procedures to be employed in this case. If requested, on the date that the Clerk of the Court receives such request this Order directs the immediate release of the Defendant-Appellant from incarceration pending the convening of such Pre-Trial Conference, provided that:
  - A. The Defendant-Appellant must leave with the Police Department notice of his whereabouts the entire duration of the appellate period;
  - B. If the Defendant-Appellant is not located after reasonable efforts have been made to locate him at the places he indicates he is staying, this Court will deem the Defendant-Appellant to have abandoned his right to appeal, and:
    - (1) A warrant shall be issued for his arrest;
    - (2) Upon arrest, he shall be required to serve the remainder of his original sentence, plus an additional thirty (30) days for direct contempt of this Court;
    - (3) His bond shall be forfeited; and
    - (4) The Appeal shall be deemed, by this Order, to be permanently waived.

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<sup>3</sup> The Constitution of the Pascua Yaqui Tribe provides at Article VIII, Section 5 provides for the right of a trial de novo in a criminal matter. The de novo trial is not defined in the Constitution. We will construe the term liberally to include the entire criminal process from arraignment to sentencing. In light of the Defendant-Appellant's original Notice of Appeal, however, the Defendant-Appellant may only be requesting a sentencing de novo and should clarify his intentions as part of his Amended Notice. The Defendant Appellant Garcia should also be aware that in requesting any form of trial de novo, the appellate period may be lengthened by an unpredictable amount of time as of this writing.

3. If the Defendant-Appellant does not request a trial de novo, the right to a de novo trial shall be deemed waived, and the Appellate Court shall consider the Amended Notice of Appeal to determine whether sufficient ground exists to accept the appeal.

4. If the Defendant-Appellant has, by his January 18, 2001, 'Motion for a Parole Hearing', signaled his intention to abandon his appeal, he must resubmit a statement to that effect in order for the jurisdiction of this Court to be relinquished; if such a statement is submitted by the dates given in 1 (C) above, this Order shall automatically, by this provision, dismiss this matter without prejudice and remand it to the trial court for consideration of the Motion for a Parole Hearing.

5. Nothing herein shall be construed to constitute an acceptance of this case for appeal, nor a denial of a future right of an appeal regarding the decision of the trial court in this case

IT IS SO ORDERED this 15<sup>th</sup> day of February, 2001.

R. A. Monette by cw  
Richard A. Monette, Chief Justice

*approved  
telephonically*

Carolyn Abeita by cw  
Carolyn Abeita, Associate Justice

Carey N. Vicenti  
Carey N. Vicenti, Associate Justice