

1 Pascua Yaqui Public Defender  
2 7474 S. Camino de Oeste  
3 Tucson, Arizona 85746

4 María M. Avilez, SBN 017116  
5 COUNSEL FOR: Defendant/Appellant

03/01/02 7 PM 30

CA-01-006  
RS

6 IN THE APPELLATE COURT OF THE YAQUI NATION  
7 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

8 MORALES, JUAN, )  
9 Appellant, ) Case No.: CA-01-006  
10 vs. ) REQUEST FOR EXTENSION ON COURT  
11 PASCUA YAQUI TRIBE, ) COSTS  
12 Appellee )  
13


14 COMES NOW, Appellant, by and through counsel undersigned  
15 and hereby requests a one-month extension to pay the court costs  
16 issued in this matter. Chief Prosecutor Tamara Walters has been  
17 contacted and has no objections.

18 The reason for this request is that, although this Court  
19 signed the Order Accepting Plea Agreement and Entering Sentence  
20 on December 12, 2001, the Order was not disbursed to either  
21 party until January 4, 2002. Therefore, Appellant had no notice  
22 that his probation had begun. Although Appellant may later need  
23 an extension on other deadlines due to this late notice, he will  
24 make a good faith effort to meet all other deadlines. However,  
25 the due date for the court costs is January 11, 2002 giving him  
26 only one week in which to pay the court costs.

27 For the foregoing reasons, Appellant respectfully requests  
28 that this Court extend the due date for the court costs until  
February 11, 2002.

1 RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of January 2002.

2  
3  
4   
5 Maria M. Avilez  
6 Chief Public Defender

7 ORIGINAL and four copies of the foregoing delivered  
8 this date to: 

9 Clerk of the Court, Pascua Yaqui Tribe Court of Appeals

10 COPY of the foregoing delivered this date to

11 Tamara Walters  
12 Chief Prosecutor  
13 7474 S. Camino de Oeste  
14 Tucson, AZ 85746  
15 Attorney for Appellant  
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1 IN THE APPELLATE COURT OF THE YAQUI NATION  
2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

3 MORALES, JUAN, )  
4 Appellant ) Case No.: CA-01-006  
5 Vs. ) ORDER DISMISSING NOTICE OF APPEAL  
6 PASCUA YAQUI TRIBE, ) ORDER ACCEPTING PLEA AGREEMENT  
7 APPELLEE. ) AND ENTERING SENTENCE  
8 )

9 Upon review of the stipulation to dismiss Notice of Appeal and  
10 good cause appearing,

11 IT IS HEREBY ORDERED that the Notice of Appeal is dismissed.

12 Upon review of the stipulation to accept Plea Agreement and  
13 enter sentence and good cause appearing, the Court hereby finds that  
14 the terms of the Plea Agreement are acceptable, factual basis exists  
15 pursuant to stipulation, and the Plea has been entered into  
16 knowingly, intelligently, and voluntarily. Therefore, the Court  
17 accepts the Appellant's plea of guilt and the Plea Agreement.

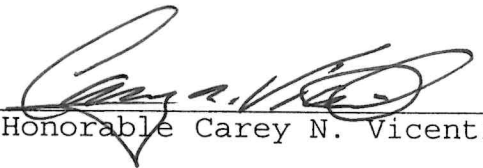
18 IT IS HEREBY ORDERED that the Appellant shall be found guilty of  
19 Count Two, Aggravated Battery, PYTC Section 3.8 (D)(2) and sentenced  
20 as follows:

- 21 1. Defendant shall serve 180 days in detention, suspended for 12  
22 months of supervised probation.
- 23 2. Defendant shall pay \$13.00 per month probation fees.
- 24 3. Defendant shall follow standard conditions of probation,  
25 report to the Probation Officer within two working days of  
26 release from detention, and comply with all requirements of  
27 the Probation Officer.
- 28 4. Defendant shall obtain a Domestic Violence evaluation through  
Behavioral Health or similar entity, submit written proof  
within 45 days, and follow all recommendations made for  
treatment.
5. Defendant shall complete 20 hours of parenting classes and  
submit written proof to the Probation Department within 60  
days.

- 1 6. Defendant shall not harm or harass Camille Grandinetti.  
2 7. Defendant shall complete 50 hours of community service,  
3 submit written proof within 90 days, and report to the  
4 Community Services Supervisor within two working days.  
5 8. Defendant shall pay a court cost of \$100.00 within 30 days of  
6 his release from detention.

7 IT IS FURTHER ORDERED that the appeals bond is exonerated and  
8 shall be returned to the Surety.

9 SO ORDERED this 12<sup>th</sup> day of December 2001.

10   
11 Honorable Carey N. Vicenti

12  
13 

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COPIES to:

14 Counsel for Appellee: Tamara R. Walters

15 Counsel for Appellant: Maria M. Avilez  
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IN THE APPELLATE COURT OF THE YAQUI NATION  
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, ARIZONA

Pascua Yaqui Tribe:

Vs.

Defendant: **MORALES, JUAN**

Docket(s) #: **CA-01-006**

**PROBATION ORDER**

Probation Period 12  month(s) [ ] year(s)

Suspended sentence of 180 days in jail

Supervised [ ] Unsupervised

To begin: DECEMBER 12, 2001 and shall terminate on: DECEMBER 12, 2002

**As Standard Conditions You Shall:**

1. Obey all Laws, and Court Orders. Notify the Probation Officer within 72 hours of contact with any law enforcement agency.
2. Report to the probation officer as directed by the Tribal Court or Probation Officer. Obey the lawful orders of the Probation Officer.
3. To participate in education, training, treatment and /or counseling programs as directed by the Court or Probation Officer. Sign any release of information forms required by the agency and/or Probation Officer.
4. Not associate with any person who is in violation of the law or any convicted felon or any person on probation or parole in any Jurisdiction
5. Not possess or control any firearm(s), ammunition, knives or prohibited weapons.
6. To grant the Probation Officer safe access to your residence and property, to submit to search and seizure as directed by the Probation Officer.
7. Be subject to arrest without a warrant, by the Probation Officer or Law Enforcement Officer, if there is reason to believe I may have violated any condition(s) of probation. Waive extradition for any probation revocation proceedings.
8. Notify the Probation Officer of current address or change of address within 72 hours. Not leave the state of Arizona without first securing approval of the Court and/or Probation Officer.
9. Not to possess or use marijuana, dangerous drugs, narcotics, or drug paraphernalia, except as prescribed for you by a physician or dentist. **YOU SHALL SUBMIT TO RANDOM URINALYSIS TESTING**, as directed by the Probation Officer.

**As Special Conditions You Shall:**

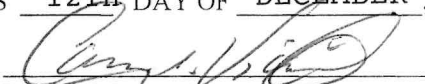
10. Shall not indulge in the use of intoxicating-liquor. Shall be subject to random breathalyzer testing as directed by the Probation Officer
11. Pay to the Clerk of the Court as set forth in the Courts Order the following:
 

	Total	Due on or by:
<input checked="" type="checkbox"/> Court Costs	\$ <b>100.00</b>	<b>JANUARY 11, 2002</b>
[ ] Fine	\$ _____	_____
[ ] Restitution	\$ _____	_____

**\*Payable to the victim:**  
 Probation Fees \$ **13.00** 1<sup>st</sup> of each month  
**All payments are in the form of a money order payable to the Pascua Yaqui Tribe.**
12. Complete 50 hours of COMMUNITY SERVICE and submit any completed hours every two weeks to the Community Service Supervisor. All completed hours are to be completed no later than 03/10/02
13. The FINE may be converted to \_\_\_\_\_ hours of community service, due on or by \_\_\_\_\_
14. Obtain an evaluation and submit written verification for the following as ordered by the Court.
 

Program	Due date:
[ ] Alcohol/Substance abuse	_____
<input checked="" type="checkbox"/> Domestic Violence	<u>January 26, 2002</u>
[ ] Social Services	_____
<input checked="" type="checkbox"/> Behavioral Health Services	<u>February 10, 2002</u>
15. To participate in, cooperate with or enter into the following:
  - [ ] out-patient
  - [ ] Residential Rehabilitation
16. Be restrained from \_\_\_\_\_ and the residence of \_\_\_\_\_ for the duration of probation. Not to harm or harass Camille Grandinetti
17. Shall provide a written apology for their actions to the \_\_\_\_\_ to be submitted to \_\_\_\_\_ Probation Officer by: \_\_\_\_\_
18. Other : \_\_\_\_\_

SO ORDERED THIS 12TH DAY OF DECEMBER, 2001

  
JUSTICE, Pascua Yaqui Appellate Court

Date: 12/10/01  
Clerk: AS Prosecutor P.O. / Defendant/Counsel

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

<b>MORALES, JUAN</b>	)	
	)	
<b>Appellant,</b>	)	
	)	
<b>vs.</b>	)	<b>Court of Appeals No. CA-01-006</b>
	)	<b>(Tribal Court No. CR-01-111</b>
	)	
<b>PASCUA YAQUI TRIBE,</b>	)	<b>APPEAL BOND</b>
	)	
<b>Appellee.</b>	)	

It is ordered that the above named Appellant be released on October 23, 2001 at 12 o'clock noon on a One Thousand Dollar (\$1,000) appeal bond (paid \_\_\_ in cash or \_\_\_ by Cashier's Check by close of business September 4, 2001) pending a resolution of the matter on appeal or by de novo trial.

I, JUAN MORALES, Appellant, do hereby bind myself to the following conditions of release:

1. I agree that I will notify the Pascua Yaqui Police Department of my whereabouts during the entire duration of the appellate period. Should the Police Department not be able to locate me after reasonable efforts at the places I list, a warrant shall be issued for my arrest.
2. I agree to refrain from any use of intoxicating liquor, illegal drugs, or narcotic drugs without a prescription by a licensed medical practitioner during the term of this bond.

I understand that if I fail to appear as required or do not comply with the conditions of release, a warrant for my arrest will be issued, and I will be required to serve my original sentence, plus an additional thirty (30) days for direct contempt of this Court, and all bond money will be forfeited.

I understand that my conditions of release will be revoked and I will be charged with a separate criminal offense if I intimidate or threaten the victim, a witness or if I otherwise obstruct justice.

I understand that my conditions of release will be revoked if I violate any laws or ordinance of the Pascua Yaqui Tribe, or a state, local or federal law during the term of this bond.

I understand that this Court may review and reconsider these conditions of release at any time, without notice.

I understand all of the above conditions of release and agree to comply fully with each of the conditions imposed on my release.

\_\_\_\_\_  
Date

8/31/01  
Date

\_\_\_\_\_  
Appellant

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

Debra A. Doggenis  
Signature of surety placing appeal bond

\_\_\_\_\_  
Address

5111 W. Vai Sevoi

578-5354

\_\_\_\_\_  
Telephone Number

The Appellant shall be released from custody on October 23, 2001 at noon upon the posting of the required bond by September 4, 2001. Appellant shall appear at the Pascua Yaqui Tribal Court to sign this Appeal Bond agreement by close of business on October 25, 2001. Failure to sign the agreement shall automatically revoke the conditions of release and result in forfeiture of the bond.

8/29/01  
Date

Carolyn J. Abeita  
Carolyn J. Abeita, Acting Chief Justice

## APPEAL BOND INFORMATION

Persons posting bond must understand that the following conditions apply.

1. By posting bond, you **guarantee** that the person will appear for all court proceedings.
2. You **guarantee** that the defendant will not flee the jurisdiction of the court.
3. If the defendant violates the bond release, the bond money is subject to forfeiture and **YOU WILL NOT GET YOUR MONEY BACK**. The court will also issue a warrant for the defendant-appellant.
4. If the defendant-appellant fails to appear for proceedings, you may be subject to contempt of court.
5. If after bond has been posted, you feel you cannot guarantee the defendant-appellants appearance, you can ask for the bond back. The court will ask the defendant-appellants to post bond, or may issue a warrant for the defendant-appellant.
6. When the bond money is released it will be returned to the person who posted the bond. The bond will not be released to anyone else.

I have read and understand the foregoing information.

8/31/01  
Date

Debra Doggen's  
Name

5111 W. Vai Sevoi  
Address

526-63-8710  
Social Security #

Cc:

Date: 831-01

Prosecutors Appelle

Surety

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

<b>MORALES, JUAN</b>	)	
	)	
<b>Appellant,</b>	)	
	)	
<b>vs.</b>	)	<b>Court of Appeals No. CA-01-006</b>
	)	<b>(Tribal Court No. CR-01-111</b>
	)	
<b>PASCUA YAQUI TRIBE,</b>	)	<b>INTERIM ORDER</b>
	)	
<b>Appellee.</b>	)	

This Court received Notice of Appeal filed on August 13, 2001. The Appellant requested, among other things, a stay of execution of sentence and motioned to stay the appeal pending this Court’s decision on Appellant’s Request for Trial De Novo. This Court also received by separate pleading also filed August 13, 2001, the Appellate’s Request for Trial De Novo and Request for Pre-Trial Conference.

We note that the Appellant requests a trial de novo for only Count 2 in the Tribal Court case number CR-01-111. This Court recognizes that the Constitution of the Pascua Yaqui Tribe, Article VII, Section 5, provides for the right of a trial de novo in a criminal matter. However, the trial de novo is not defined in the Constitution. As a result, this Court, pursuant to Pascua Yaqui Rules of Appellate Procedure (PYRAP) Section 1.24, will need to consider the propriety of a trial de novo for the requested Count 2.

Because the Appellant also timely filed his request for appeal along with his request for a trial de novo, this Court recognizes that the briefing requirements triggered by the filing of the Notice of Appeal continue to run.

In addition, this Court also recognizes that the request for a trial de novo is a matter of first impression within the Pascua Yaqui Court of Appeals and feels that the interests of justice will be better served pending a full consideration of this matter if the Appellant’s sentence is stayed during that time. However, this Court hesitates to allow an individual who was apparently released on bond and charged with the crime underlying this de novo request and appeal while out on said bond, to be released upon his own recognizance.

Therefore, this Court orders the following:

1. The briefing requirements of PYRAP Section 1.22, are temporarily suspended pending a determination by this Court as to the propriety of a trial de novo in this matter, provided that should Appellant’s request for a trial de novo be denied by this Court or withdrawn

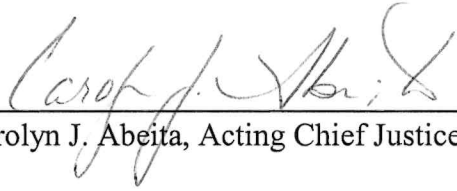
by the Appellant, that the briefing schedule shall resume upon this Court's written notice to the Appellant.

2. The Court, in its discretion, suspends the timeframe for requiring a criminal bond under PYRAP Section 1.18. The execution of the Appellant's sentence is hereby stayed pending this Court's determination on the propriety of a trial de novo and/or a resolution of the matter on appeal provided that Appellant tender to the Clerk of the Court by close of business on September 4, 2001, an amount of \$1,000 in cash or cashier's check, as an appeal bond.

3. The stay of execution granted by this Court shall dissolve by the terms of this Order if the Appellant fails to pay the appeal bond by the deadline specified.

4. The Appellant's request for a pre-trial conference is granted and the Court shall notify all parties of the date and time of the pre-trial conference to address the propriety of a trial de novo.

IT IS SO ORDERED this 24<sup>th</sup> day of August 2001.

  
\_\_\_\_\_  
Carolyn J. Abeita, Acting Chief Justice

1 Pascua Yaqui Public Defender  
7474 S. Camino de Oeste  
2 Tucson, Arizona 85746

3 María M. Avilez, SBN 017116  
4 COUNSEL FOR: Appellant

APPELLATE COURT  
AND THE  
01 AUG 21 PM 4:42  
CA-01-006  
CMW

5 IN THE APPELLATE COURT OF THE YAQUI NATION  
6 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

7  
8 MORALES, JUAN, ) Case No.: CA-01-006  
9 Appellant, )  
10 vs. ) RESPONSE TO OPPOSITION TO REQUEST  
11 PASCUA YAQUI TRIBE, ) FOR STAY OF EXECUTION OF SENTENCE;  
12 Appellee. ) RESPONSE TO OPPOSITION TO MOTION TO  
SET BOND

13  
14 APPELLANT, by and through counsel undersigned hereby  
15 responds to Appellee's opposition to Appellant's Request for  
16 Stay of Execution of Sentence and to Stay Appeal. Appellant  
17 further responds to Appellee's Motion to Set Bond.

18 Appellee opposes Appellant's request to stay the execution  
19 of his sentence in this matter, and thereby releasing him on  
20 October 23, 2001 at noon. In support of this opposition Appellee  
21 lays out for this Court Appellant's history. However, this  
22 history is irrelevant in staying the sentence imposed pending  
23 this Court's resolution of the matter on appeal. Appellee's  
24 mention of Appellant's history serves only to confuse the issue  
25 at hand. Appellant is not requesting that this Court set aside  
26 the sentence, only to stay the execution of the sentence pending  
27  
28

1 final resolution by this Court. Further, Appellee fails to  
2 mention her recommendations to the lower court that Appellant be  
3 released on October 23, 2001, and that the remainder of the  
4 sentence be suspended for probation. This recommendation made by  
5 Appellee at the time of sentencing was made in the best interest  
6 of the victim and the community at large. Appellee further omits  
7 the apparent and severe disappointment of the victim upon  
8 hearing of Appellant's conviction and sentence.  
9

10  
11 Appellee opposes Appellant's Motion to Stay Appeal solely  
12 on the basis that Appellee has filed its opposition to the  
13 request for trial de novo. Appellant, however, has cited to  
14 sufficient legal authority for trial de novo in his request for  
15 a de novo hearing and in his Response to Appellant's Opposition  
16 to Request for Trial De Novo and Pre-trial Conference.  
17

18 Finally, Appellee moves this Court "...pursuant to Section  
19 1.18(A) to set an appeals bond at no less than \$1,000.00...."<sup>1</sup>  
20 Section 1.18(C) of the PYRAP states that "...if no bond is set  
21 within seven (7) calendar days of the receipt of the Notice of  
22 Appeal, then no bond shall be required."<sup>2</sup> Undersigned counsel  
23 contacted Clerk of Court, Celina Valenzuela today who indicated  
24 that Appellant's Notice of Appeal was faxed to this Court on  
25 August 13, 2001 - eight days ago. As of yet, this Court has not  
26  
27

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<sup>1</sup> See Appellant's Motion to Set Bond, *id.*

<sup>2</sup> *Id.*

1 set bond. Therefore, pursuant to Section 1.18(C) no bond shall  
2 be required.

3 WHEREFORE, Appellant requests that his requests for stay of  
4 execution of sentence and to stay appeal be granted. Appellant  
5 further requests that this Court follow Section 1.18(C), and  
6 thereby not require a release bond.  
7

8 RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of August 2001.  
9


10   
11 María M. Avilez  
12 Chief Public Defender

13 ORIGINAL of the foregoing delivered this date to  
14 Clerk of the Court, Pascua Yaqui Court of Appeals

15 COPY of the foregoing delivered/mailed this date to

16 Tamara Walters  
17 Chief Prosecutor  
18 7474 S. Camino de Oeste  
19 Tucson, AZ 85746  
20 Prosecuting Attorney

21 Juan Morales  
22 C/O CCA Florence Detention Center  
23 P.O. Box 6900  
24 Florence, AZ 85232

25 By: 

1 Pascua Yaqui Public Defender  
7474 S. Camino de Oeste  
2 Tucson, Arizona 85746

3 María M. Avilez, SBN 017116  
4 COUNSEL FOR: Appellant

APPELLATE COURT  
CASE AND TIME  
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CA-01-006  
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5 IN THE APPELLATE COURT OF THE YAQUI NATION  
6 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

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8 MORALES, JUAN,  
9 Appellant,

10 vs.

11 PASCUA YAQUI TRIBE,  
12 Appellee.

)  
)  
) Case No.: CA-01-006  
)  
) RESPONSE TO OPPOSITION TO  
) REQUEST FOR TRIAL DE NOVO AND  
) PRE-TRIAL CONFERENCE  
)  
)

13 APPELLANT, by and through counsel undersigned hereby  
14 responds to Appellee's opposition to Appellant's Request for  
15 Trial de Novo and Pre-trial Conference. The PYRAP provide in  
16 Section 1.24 that, where a defendant in a criminal matter  
17 requests a trial de novo from the Court of Appeals, the  
18 designated Justice "...shall convene a pre-hearing\*conference to  
19 determine the propriety of a de novo hearing...."<sup>1</sup> There are no  
20 further procedures for a de novo hearing mentioned in the PYRAP.  
21 Further, Article VIII, Section 5 of the Pascua Yaqui  
22 Constitution mandates that "...trial de novo shall be provided  
23 in any criminal matter upon the request of any defendant."<sup>2</sup>  
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<sup>1</sup> Id. Emphasis mine.  
<sup>2</sup> Id. Emphasis mine.

1           The PYRAP do not dictate procedures indicating that  
2 Appellant must present grounds suggesting the propriety of a  
3 trial de novo prior to the pre-hearing conference. In fact, the  
4 rules state that the propriety of a de novo hearing is  
5 determined at this pre-hearing conference.  
6

7           Appellee's assertion that "...no legitimate or legal  
8 grounds exist to grant a Trial De Novo, other than Appellant not  
9 liking the outcome of his Trial and Sentence in the lower  
10 Court..."<sup>3</sup> is incorrect. First, Appellant has a constitutionally  
11 guaranteed right to appeal and to a trial de novo. The whole  
12 basis of having a Court of Appeals is to appeal unfavorable  
13 decisions. Appellee implies that a criminal defendant cannot  
14 appeal a trial court's findings of facts regardless of the  
15 insufficiency of the evidence. Appellee further assumes that the  
16 trial court is always correct in its rulings.  
17  
18

19           Appellee further opposes a de novo hearing on the basis  
20 that the victim is a minor and should not be subjected to trial  
21 de novo. However, Appellant in this matter is facing a loss of  
22 liberty. He has constitutional rights that must be protected  
23 *regardless* of the age of the victim. Further, as Appellee is  
24 aware, the victim has expressed a desire to set the record  
25 straight and was traumatized by the lower court's ruling.  
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<sup>3</sup> See Appellee's Opposition to Request for Trial De Novo and Pre-trial Conference, *id.*

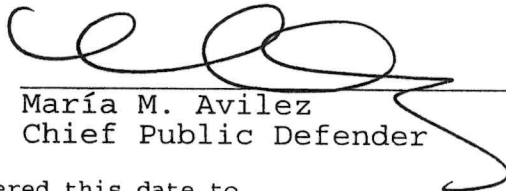
1 Finally, the victim has not indicated a reluctance to testify at  
2 a new trial.

3       Until a pre-hearing conference is held by this Court and  
4 the parties, any determination of the propriety of a de novo  
5 hearing is premature. Appellee's objections are therefore  
6 inappropriate.  
7

8       WHEREFORE, Appellant requests that his requests for trial  
9 de novo and pre-hearing conference be granted.

10       RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of August 2001.

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María M. Avilez  
Chief Public Defender

ORIGINAL and three copies of the foregoing delivered this date to  
Clerk of the Court, Pascua Yaqui Court of Appeals

COPY of the foregoing delivered/mailed this date to

Tamara Walters  
Chief Prosecutor  
7474 S. Camino de Oeste  
Tucson, AZ 85746  
Prosecuting Attorney

Juan Morales  
C/O CCA Florence Detention Center  
P.O. Box 6900  
Florence, AZ 85232

By: 

PASCUA YAQUI TRIBE  
OFFICE OF THE PROSECUTOR  
7474 S. Camino de Oeste  
Tucson, Arizona 85746  
(520) 879-5780

Tamara Walters, SBN 10510  
Chief Prosecutor

PASCUA YAQUI COURT  
OFFICE AND TIME

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FILE NO. CA-01-006

BY ME

IN THE PASCUA YAQUI TRIBE COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA

MORALES, JUAN, )  
Appellant, )

NO. CA-01-006  
(Tribal Court No. CR-01-111)

Vs. )

PASCUA YAQUI TRIBE, )  
Appellee. )

OPPOSITION TO REQUEST FOR TRIAL  
DE NOVO AND PRE-TRIAL CONFERENCE

COMES NOW The Pascua Yaqui Tribe, by and through counsel undersigned, and hereby opposes Appellant's request for a Trial De Novo and Pre-Trial Conference as Appellant presents no grounds for the propriety of a Trial De Novo. Although an appellant "may" request a trial de novo, the Appellate Court must determine the propriety of such a request. Appellee asserts that there are no legitimate or legal grounds to grant a Trial De Novo, other than Appellant not liking the outcome of his Trial and Sentence in the lower Court. The victim in this case is a minor, and it would not be in the best interest of justice to subject her to another trial without legitimate legal grounds.

Respectfully submitted this 17th day of August, 2001.

OFFICE OF THE PROSECUTOR  
PASCUA YAQUI TRIBE



Tamara Walters  
Chief Prosecutor

1 Original of the foregoing delivered/mailed  
This date to:

2  
3 Clerk of the Court, Pascua Yaqui Tribe Court of Appeals

4 Copy delivered/mailed to:

5 Maria Avilez  
6 Chief Public Defender  
7474 S. Camino de Oeste  
6 Tucson, Arizona 85746  
Attorney for Appellant

7  
8 By: trWalker

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1 PASCUA YAQUI PUBLIC DEFENDER  
7474 S. Camino de Oeste  
2 Tucson, Arizona 85746

3 María M. Avilez, SBN 017116  
4 COUNSEL FOR: Appellant

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CA-01-111  
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5 IN THE APPELLATE COURT OF THE YAQUI NATION  
6 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

7  
8 MORALES, JUAN,  
9 Appellant,

10 vs.

11 PASCUA YAQUI TRIBE,  
12 Appellee.

) Case No.: CA-01-006  
) (Tribal Court No. CR-01-111)  
)  
) REQUEST FOR TRIAL DE NOVO AND  
) PRE-TRIAL CONFERENCE  
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14 Pursuant to Article VIII, Section 5 of the Pascua Yaqui  
15 Constitution and the Pascua Yaqui Rules of Appellate Procedure,  
16 Section 1.24 Appellant, by and through counsel undersigned,  
17 hereby requests trial de novo for Count 2 Aggravated Battery in  
18 docket number CR-01-111. Appellant further requests that a pre-  
19 hearing conference be convened pursuant to Section 1.24(A) of  
20 PYRAP to determine the propriety of a de novo hearing on Count 2  
21 only.

22 Appellant has filed a Notice of Appeal and Motion to Stay  
23 the Appeal pending this Court's decision on the request for  
24 trial de novo.

25 RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of August 2001.

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27   
28 María M. Avilez  
Chief Public Defender

ORIGINAL four copies of the foregoing delivered this date to

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Clerk of the Court, Pascua Yaqui Court of Appeals

COPY of the foregoing delivered/mailed this date to

Tamara Walters  
Chief Prosecutor  
7474 S. Camino de Oeste  
Tucson, AZ 85746  
Prosecuting Attorney

Juan Morales  
C/O CCA Florence Detention Center  
P.O. Box 6900  
Florence, AZ 85232

By:  \_\_\_\_\_

1 PASCUA YAQUI TRIBE  
2 OFFICE OF THE PROSECUTOR  
3 7474 S. Camino de Oeste  
4 Tucson, Arizona 85746  
5 (520) 879-5780

6 Tamara Walters, SBN 10510  
7 Chief Prosecutor

CLERK OF THE COURT  
PASCUA YAQUI TRIBE

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FILED CA-01-006  
JMW

8 IN THE PASCUA YAQUI TRIBE COURT OF APPEALS

9 IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA

10 MORALES, JUAN, )  
11 Appellant, )

NO. CA-01-006  
(Tribal Court No. CR-01-111)

12 Vs. )

13 PASCUA YAQUI TRIBE, )  
14 Appellee. )

15 OPPOSITION TO REQUEST FOR STAY OF  
16 EXECUTION OF SENTENCE; OPPOSITION  
17 TO MOTION TO STAY APPEAL; MOTION  
18 TO SET BOND

19 COMES NOW The Pascua Yaqui Tribe, Appellee, by and through  
20 counsel undersigned, and hereby opposes Appellant's request for a  
21 Stay of the Execution of Sentence and also opposes the Motion to  
22 Stay Appeal for the following reasons.

23 Appellant was found guilty of Count Two, Aggravated Battery  
24 against a minor by hitting a minor in the face and leaving a red  
25 mark. Appellant was sentenced to one year detention; 90 days to  
26 be served consecutive to CR-01-025, and 275 days suspended for  
27 one year of supervised probation. Appellant was out on bond in  
28 Case Number CR-01-025 when the offense in this case was  
committed. His suspended bond was then revoked in CR-01-025 and  
he had to post bond prior to release. He was ordered to post a  
\$700.00 bond in this case. He was convicted in CR-01-025 of  
Domestic Violence Assault on a minor by striking her with his  
fist and grabbing her around her neck, leaving bruises, and  
pushing her to the floor. Appellant was sentenced to six months  
detention, which he is still currently serving. Appellant has a

1 prior conviction for aggravated assault on a minor in CR-97-  
2 150 where he punched a child in the mouth and cut her upper lip.

3 Appellant has presented no legal or legitimate grounds for  
4 the stay of execution of sentence and the release of Appellant  
5 from custody. Appellee disagrees that Appellant's conviction and  
6 sentence will be overturned. Appellant was convicted of a  
7 serious offense against a minor while on a suspended bond in a  
8 another case, has a history of violence against minors, and is a  
9 risk to the community if released and would not be in the best  
10 interest of the minor victim. Wherefore, Appellee opposes the  
11 request for stay of execution of sentence. The Court has  
12 discretion to deny Appellant's requested relief.

13 In the event the Appellate Court grants Appellant's request  
14 for stay of execution of sentence and releases Appellant,  
15 Appellee moves this Court, pursuant to Section 1.18(A) to set an  
16 appeals bond at no less than \$1,000.00.

17 Appellee further opposes Appellant's Motion to Stay Appeal  
18 as Appellee has filed its opposition to the request for trial de  
19 novo, and because sufficient grounds have not been set forth to  
20 justify a legal cause to grant a trial de novo.

21 **Respectfully submitted this 17th day of August, 2001.**

22  
23 OFFICE OF THE PROSECUTOR  
24 PASCUA YAQUI TRIBE


25 

26 Tamara Walters  
27 Chief Prosecutor  
28

1 Original of the foregoing delivered/mailed  
This date to:  
2 Clerk of the Court, Pascua Yaqui Tribe Court of Appeals

3 Copy delivered/mailed to:

4 Maria Avilez  
5 Chief Public Defender  
7474 S. Camino de Oeste  
6 Tucson, Arizona 85746  
Attorney for Appellant

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8 By: 

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1 PASCUA YAQUI PUBLIC DEFENDER  
7474 S. Camino de Oeste  
2 Tucson, Arizona 85746

3 María M. Avilez, SBN 017116  
4 COUNSEL FOR: Appellant

APPELLATE COURT  
CLERK'S OFFICE  
AUG 13 PM 12:20  
CA-01-006  
CR-01-111  
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5 IN THE APPELLATE COURT OF THE YAQUI NATION  
6 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

7  
8 MORALES, JUAN,  
9 Appellant,

10 vs.

11 PASCUA YAQUI TRIBE,  
12 Appellee.

) Case No.: CA-01-006  
) (Tribal Court No. CR-01-111)  
)  
) NOTICE OF APPEAL AND REQUEST  
) FOR TRANSCRIPT OF TRIAL  
)  
) REQUEST FOR STAY OF EXECUTION  
) OF SENTENCE  
)  
) MOTION TO STAY APPEAL PENDING  
) DECISION ON REQUEST FOR TRIAL  
) DE NOVO  
)

14  
15 Pursuant to the Pascua Yaqui Rules of Appellate Procedure,  
16 Section 1.16 Appellant, by and through counsel undersigned,  
17 hereby timely files his Notice of Appeal to the Court of  
18 Appeals. Appellant requests appellate review of the Order of  
19 judgment and sentence of the Trial Court on July 30, 2001, at  
20 which time Appellant was found guilty of and sentenced for Count  
21 2 Aggravated Battery. Appellant requests a three-Justice  
22 appellate proceeding. Appellant further requests, pursuant to  
23 Section 1.17 that the Clerk of the Court of Appeals prepare a  
24 transcript of the trial, unless the request for trial de novo is  
25 granted.

26 Further, pursuant to Section 1.18 and 1.21 of PYRAP,  
27 Appellant requests this Court stay the execution of sentence and  
28 release Appellant on his own recognizance on October 23, 2001 at



PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE )  
Plaintiff )  
Vs. )  
Morales Juan )  
Defendant )  
\_\_\_\_\_ )

NO. CR-01-111

ORDER

The above named defendant appeared before this Court in custody and with legal counsel Maria Avilez for trial hearing on this 30<sup>th</sup> day of July, 2001. Tamara Walters appeared for the Tribe.

The Court finds after hearing sworn testimony from the Tribe's and defendant's witnesses that the Tribe has not met it's burden of proof in Count One Aggravated Assault and that the Tribe has met it's burden of proof beyond a reasonable doubt in Count Two Aggravated Battery; that the defendant through legal counsel wishes to proceed to sentencing and the Tribe and defense counsel make sentencing recommendations.

IT IS ORDERED THAT defendant is acquitted of Aggravated Assault and defendant is found guilty of Aggravated Battery and defendant is sentenced to 365 days in jail and defendant shall serve 90 days immediately and shall serve the days consecutive to the jail days imposed in CR-01-025 and the balance of 275 days is suspended for 1 year of supervised probation and defendant shall obtain a Domestic Violence evaluation within 45 days of his release and shall follow all recommendations made and shall submit written proof of the evaluation to the Probation Officer and defendant shall not posses or consume alcohol or illegal drugs and shall be subject to random urinalysis tests by and defendant shall complete 20 hours of parenting classes within 60 days of release and defendant shall submit written proof of the classes to the Probation Officer and defendant shall complete 50 hours of community service due within 90 days after release and defendant shall submit written proof of the completed community service hours to the Community Service supervisor and defendant shall not harm or harass Camille Grandinetti and defendant shall pay Court cost of \$100.00 after release and defendant shall report to the Probation Officer and to the Community Service supervisor within two days after his release and defendant shall abide by the standard conditions of probation contained in the Order of Probation and defendant shall begin the sentence imposed in this matter on October 23, 2001 or on the day he is to be released if early release or parole is granted in CR-01-025 and defendant shall be released from custody on **JANUARY 21, 2002** if early release or parole is not granted; that the Court will issue another order with the due dates once a decision in CR-01-025 is issued.

SO ORDERED THIS 30<sup>th</sup> DAY OF July, 2001.

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Cornelia S. C.  
Judge, Pascua Yaqui Tribal Court

Cc:  
Date: 7/31/01  
 Tribe  Defendant/Counsel  C/S supervisor  Other DA/CCA  
RP  
Clerk