

IN THE PASCUA YAQUI COURT OF APPEALS

PASCUA YAQUI TRIBE)	Case No.: CA-05-006
Petitioner/Appellant)	
v.)	<u>OPINION</u>
A JUVENILE,)	
Respondent/Appellee)	

Appeal from a decision of the Pascua Yaqui Tribal Court, Docket Number CR-05-277, the Honorable Melvin R. Stoof, Tribal Court Judge presiding.

Micah Schmit, Esq., Office of the Prosecutor, Pascua Yaqui Tribe, Tucson, Arizona, for the Appellant.

Nicholas A. Fontana, Esq., Office of the Public Defender, Pascua Yaqui Tribe, Tucson, Arizona, for the Appellee.

Per curiam.

Appellee was charged in the Pascua Yaqui Tribe Juvenile Court with battery, 1 PYTC § 3.8, and three counts of theft, 1 PYTC § 3.64, after allegedly assaulting another male at a party, taking his keys, driving away in his car, and removing the stereo. The car was allegedly found abandoned in the desert with the stereo missing. Appellee allegedly committed these offenses when he was seventeen years old. The petition charging Appellee with the offenses was filed in Juvenile Court on September 6, 2005; five days after Appellee turned eighteen years old. The Tribe moved to dismiss its petition in Juvenile Court so it could file criminal charges against Appellee in the Pascua Yaqui

Tribal Court when it discovered that he had turned eighteen years old. The Juvenile Court dismissed the complaint.

On September 14, 2006, criminal charges were brought against Appellee in the Pascua Yaqui Tribal Court. The Tribal Court, however, dismissed the complaint for lack of subject matter jurisdiction. The Tribal Court ruled that Appellee's case belonged in Juvenile Court because he had committed the alleged crimes when he "was a minor." Order of Dismissal (Sept. 20, 2005). According to the Tribal Court's ruling, a person under eighteen years of age is a juvenile and the Juvenile Court has jurisdiction over offenses committed by a juvenile, regardless of the fact that at the time of the juvenile proceeding, that person may have turned eighteen. *Id.* On September 22, 2005, the Tribe appealed and assigned error to the Tribal Court's ruling that the defendant's age at the time he allegedly committed the criminal offense determines whether the complaint should be filed in Juvenile Court or Tribal Court.

The Tribe asserts that the controlling law is the definition of "juvenile" in the definitions section of the Pascua Yaqui Tribe Juvenile Code. The Juvenile Code defines "juvenile" as:

1. A person under eighteen (18) years of age.
2. A person under eighteen (18) years of age or older concerning whom proceedings are commenced in Juvenile Court prior to his eighteenth birthday.

2 PYTC *Definitions*, p. 4. The Tribe argues that it filed the complaint in Tribal Court because, at the time of filing, Appellee did not meet either provision 1 or 2 of the definition of juvenile; i.e., although Appellee was not over eighteen years of age at the time he was alleged to have committed the offenses, proceedings were not started against

him in Juvenile Court before his eighteenth birthday. Thus, the Tribe argues, he must be tried in the Tribal Court.

The Juvenile Court jurisdiction statute gives the Juvenile Court exclusive jurisdiction in cases where a person under eighteen years of age commits a criminal offense. “The Juvenile Court shall have exclusive original jurisdiction ... [i]n all matters where a minor has been alleged to be a juvenile offender” 2 PYTC § 2.1(A)(2). Appellee was a minor at the time he was alleged to have been a juvenile offender. Therefore, the Juvenile Court has exclusive jurisdiction over the offenses committed while he was a minor.

This interpretation of the code is consistent with 2 PYTC § 2.1(A)(2) and 2 PYTC § 1.2(A), both of which authorize transfers of juvenile cases to Tribal Court. Juveniles who turn eighteen years of age while involved in proceedings before the Juvenile Court are not considered adults for purposes of prosecution unless the case is transferred to adult court pursuant to Sections 2.1(A)(2) and 1.2(A).

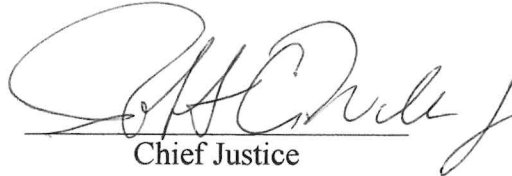
The Tribe agrees that Appellee was a juvenile when he allegedly committed the offenses cited in the charging complaint. The Juvenile Code defines a juvenile offense as “[a]n act which if committed by an adult is designated a crime under the Pascua Yaqui Trial [sic] Law and Order Code.” 2 PYTC *Definitions*, p.4. Thus, the Juvenile Court has exclusive jurisdiction where the person committing the offense is a juvenile offender. In other words, a person who is under eighteen years of age who commits a crime listed in the Pascua Yaqui Tribe Criminal Code has committed a juvenile offense and is classified as a juvenile offender. In this case, Appellee allegedly committed a juvenile offense;

therefore, he meets the definition of juvenile offender. We conclude that the Juvenile Court had exclusive jurisdiction over Appellee and not the Tribal Court.

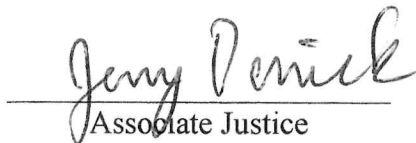
We reiterate that the Tribe, under the Juvenile Code, can refile the complaint for the offenses charged against Appellee in Juvenile Court, and then pursue the statutory remedies to transfer the case to Tribal Court. The Tribal Court judge correctly directed the Tribe to Sections 2.1(A)(2) and 1.2(A), which authorize the Tribe to request a transfer of the case from Juvenile Court to the Tribal Court. Order of Dismissal.

Accordingly, we hold that the Pascua Yaqui Tribal Court correctly ruled that it lacked subject matter jurisdiction in this case. We affirm the Tribal Court's order dismissing the criminal complaint against Appellee.

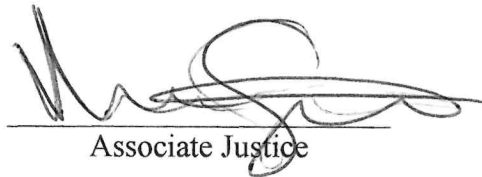
Filed this 25th day of August, 2006.



Chief Justice



Associate Justice



Associate Justice

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PASCUA YAQUI INDIAN COURT
FILED DATE 6/28/06
05 JUN 29 AM 8:03
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5 Micah Schmit,
6 Chief Prosecutor

7 **IN THE PASCUA YAQUI TRIBE COURT OF APPEALS**

8 **IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION**

9 PASCUA YAQUI TRIBE,) App. Case No. CA-05-006
10 Appellant/Plaintiff,)
11 vs.) Trial Case No. CR-05-277
12 Arturo FLORES,) **TRIBE'S SUPPLEMENTAL CITATION**
13 Defendant/Appellee.) **OF LEGAL AUTHORITY**
14)

15 The Tribe supplements its Brief on Appeal with the following additional courtesy legal
16 authority only:

17 ***McBeth vs. C. Kimball Rose (real party in interest)***
18 111 Ariz. 399, 531 P.2d 156 (1975)

19 RESPECTFULLY SUBMITTED this 28th day of June, 2006.

20 MICAH SCHMIT
21 CHIEF PROSECUTOR

22 *Micah Schmit*
23 _____
24 Chief Prosecutor, PYT

25 Original and 5 copies delivered to:
26 Clerk, Pascua Yaqui Tribe Court of Appeals

27 Copy mailed/delivered to:
28 PYT clerk of the Tribal Court

Pascua Yaqui Public Defender, Attorneys for Defendant

On June 28, 2006 by: *[Signature]*
1

C

Supreme Court of Arizona, In Banc.
 Mary Louise McBETH, Petitioner,

v.

Honorable C. kimball ROSE, Judge of the Superior
 Court, Maricopa County,
 Division 27--E, Real Party in Interest, Respondent.
 Carole Jean TATELY and Daniel P. Monohan,
 Petitioners,

v.

JUSTICE COURT OF THE NORTHEAST PHOENIX
 PRECINCT, MARICOPA COUNTY, Justice of
 the Peace Harold Lee, and Moise Berger, County
 Attorney, Maricopa County,
 Respondents.

Nos. 11542, 11552.

Jan. 24, 1975.

Rehearing Denied March 4, 1975.

Proceeding on petition for special actions to prohibit criminal prosecution from proceeding against petitioners who raised substantially the same issues. The petitions were consolidated. The Supreme Court, Holohan, J., held that where minors committed the offenses a few days before their eighteenth birthday and juvenile petitions were filed, such persons after reaching 18 years of age could be prosecuted as adults on felony complaints charging identical offenses without a transfer of proceedings from juvenile court which dismissed the petitions.

Relief denied.


Cameron, C.J., and Struckmeyer, V.C.J., did not participate, and Haire, C.J., and Eubank, J., of the Court of Appeals, Division 1, sat in their stead.

West Headnotes

[1] Infants  **68.1**

211k68.1 Most Cited Cases
 (Formerly 211k68)

Juvenile provisions concern the treatment and not the capacity of the offender and provide a special method of treatment for minors under the age of 18 who have violated the criminal law, and even with such children the application of juvenile or criminal code is left to the discretion of the trial court. A.R.S.Const. art. 6, § 15.

[2] Infants  **68.1**

211k68.1 Most Cited Cases
 (Formerly 211k68)

Where infants were under 18 at the time of commission of offenses and juvenile petitions concerning them were filed and then dismissed without adjudication on motion of county attorney after infants became 18, such disposition of the petitions did not prevent their later prosecutions as adults on felony complaints based on identical charges contained in the juvenile petitions. A.R.S.Const. art. 6, § 15; A.R.S. § § 8-202 [D], 8-246 [A].

[3] Infants  **152**

211k152 Most Cited Cases
 (Formerly 211k16.4)

Retention of jurisdiction by juvenile court as permitted by statute with respect to persons over the age of 18 is limited to those whom juvenile court has adjudicated as delinquent or dependent prior to their reaching their eighteenth birthday. A.R.S. § § 8-202 [D], 8-246 [A].

[4] Infants  **68.7(3)**

211k68.7(3) Most Cited Cases
 (Formerly 211k68)

No person under 18 years of age may be prosecuted criminally unless, after hearing, juvenile court transfers matter to adult side of the law for criminal prosecution. A.R.S.Const. art. 6, § 15; A.R.S. § § 8-202 [D], 8-246 [A].

[5] Infants  **68.5**

211k68.5 Most Cited Cases
 (Formerly 211k68)

Once persons, who were a few days short of their eighteenth birthdays at the time they committed offenses, reached the age of 18, they were subject to criminal prosecution as adults and the juvenile court had no jurisdiction. A.R.S. § 8-233.

[6] Infants  **191**

211k191 Most Cited Cases
 (Formerly 211k16.6)

Decision to file juvenile petition was a matter exclusively for the prosecutor. A.R.S. § 8-233.

***399 **156** Ross P. Lee, Maricopa County Public Defender by Oral W. Tucker, Jr., Deputy Public Defender, Phoenix, Lawrence W. Katz, Certified Third-Year Law Student Arizona State University,

for petitioner McBeth.

Treon, Warnicke & Dann by B. Michael Dann and Richard T. Treon, Phoenix, for petitioner Tately.

*400 **157 Trew & Woodford by C. Brad Woodford, Phoenix, for petitioner monohan.

Moise Berger, Maricopa County Attorney by Alan Johnson and J. P. Shaw, Deputy County Attys., Phoenix, for respondents.

HOLOHAN, Justice.

Petitions for special action were filed by petitioners to prohibit criminal prosecution from proceeding against them. Since the petitions both raise substantially the same issues, we ordered them consolidated.

Petitioner Mary Louise McBeth (No. 11542) was arrested November 26, 1973 on two charges of assault with a deadly weapon. At the time of arrest she was seventeen years of age and would not become eighteen until January 15, 1974. She was booked into the county jail on the aforementioned charges, but upon learning of petitioner's age, she was referred to juvenile court. A hearing was scheduled in juvenile court for January 8, 1974, but on the day of the hearing the county attorney moved to dismiss the juvenile petition. The judge of the juvenile court granted the state's motion and dismissed the juvenile petition.

On January 18, 1974, three days after petitioner became eighteen, the state filed a felony complaint against petitioner accusing her of two counts of assault with a deadly weapon which were alleged to have occurred on November 26, 1973. It is conceded by the state that these are the identical charges previously contained in the juvenile petition which was dismissed in juvenile court.

Over objection of defense counsel, petitioner was held to answer in superior court on the charges. An information was filed in superior court on February 21, 1974. On March 20, 1974, at the omnibus hearing, the motion of the defense to dismiss was denied, and petitioner was ordered to stand trial on May 15, 1974.

This Court accepted jurisdiction of the special action filed by petitioner to prohibit the superior court from proceeding further with the criminal case.

Petitioners Carole Jean Tately and Daniel P. Monohan (No. 11552) were arrested on December 2, 1973 for illegal possession of marijuana. The matter was referred to juvenile court as each of the petitioners was seventeen at the time.

Petitions were filed in juvenile court, their case consolidated for an adjudication hearing which was set for March 14, 1974. Prior to the hearing, each of the petitioners became eighteen. On the day before the adjudication hearing, the deputy county attorney in charge of the case moved ex parte to dismiss the juvenile petitions pending against petitioners. The juvenile court judge granted the motions, dismissed the petitions, and vacated and adjudication hearing date.

On April 9, 1974 a complaint was filed by the state in justice court charging that the petitioners on December 2, 1973 illegally possessed marijuana. Petitioners filed a special action in this Court seeking to restrain further action in the criminal case until there was a lawful transfer of the case by juvenile court to adult prosecution.

The argument of the several petitioners is essentially that, once the juvenile court assumes jurisdiction of a case involving a juvenile, there can be no criminal prosecution of that case in adult court unless the juvenile court transfers the matter to adult court for prosecution. They argue that the procedure of simply dismissing the juvenile petition after or shortly before the juvenile turns eighteen and then commencing an adult prosecution violates the provisions of the Arizona Constitution, the Juvenile Code, and the Rules of Procedure for the Juvenile Court.

The Arizona Constitution, in Article 6, Section 15, provides:

'The superior court shall have exclusive original jurisdiction in all proceedings and matters affecting dependent, neglected, incorrigible or delinquent children, or children accused of crime under *401 **158 the age of eighteen years. The judges shall hold examinations in chambers for all such children concerning whom proceedings are brought, in advance of any criminal prosecution of such children, and may, in their discretion, suspend criminal prosecution of such children. The powers of the judges to control such children shall be as provided by law.'

The Juvenile Code provides in A.R.S. s 8--202(D):
'Jurisdiction of a child obtained by the juvenile court in a proceeding under this chapter shall be

retained by it, for the purposes of implementing the orders made and filed in that proceeding, until the child becomes twenty-one years of age, unless terminated by order of the court prior thereto.'

It is further provided in A.R.S. s 8--246(A):

'When jurisdiction has been acquired by the juvenile court of a child, the child shall continue under the jurisdiction of the juvenile court until such child becomes twenty-one years of age, unless sooner discharged pursuant to law. From the time of commitment to the department of corrections, a child shall be subject to the control of the department of corrections until such child's absolute discharge.'

Counsel for petitioners point out that the Rules of Procedure for the Juvenile Court, 17A A.R.S., especially Rules 12, 13 and 14, set forth the procedure to be followed if a juvenile case is to be transferred for adult prosecution. Our attention is directed to the requirements of Rule 14(b) which provides:

'The court may transfer the action for criminal prosecution to the appropriate court having jurisdiction of the offense if the court finds probable cause and reasonable grounds to believe that:

'(1) The child is not amenable to treatment or rehabilitation as a delinquent child through available facilities; and

'(2) The child is not committable to an institution for mentally deficient, mentally defective or mentally ill persons; and

'(3) The safety or interest of the public requires that the child be transferred for criminal prosecution.'

and Rule 14(c) which requires that:

'Upon such transfer the juvenile court shall state the reasons therefor by minute entry or written order and the child shall thereupon be transferred to the custody of an appropriate law enforcement officer, released on bail, if the offense is bailable, or released upon his own recognizance.'

Although the issue presented by these cases is a matter of first impression in this Court, it has been decided in several other jurisdictions. In at least two jurisdictions the decision has been that an accused, who was under the age of eighteen at the time of the offense and who had a juvenile proceeding commenced but later dismissed before adjudication, could be charged and tried as an adult for such offense. Locke v. Commonwealth, Ky., 503 S.W.2d 729 (1973); State v. Kramer, 72 Wash.2d 904, 435 P.2d 970 (1967), cert. denied, 393 U.S. 833, 89 S.Ct.

103, 21 L.Ed.2d 103 (1968).

In Friedman v. Juvenile Court, 20 Ariz.App. 31, 509 P.2d 1068 (1973) Division Two of the Court of Appeals held that a juvenile cause pending and not heard on its merits prior to the time the juvenile reached eighteen results in loss of jurisdiction over the cause in the juvenile court. This Court, in Caruso v. Superior Court, 100 Ariz. 167, 412 P.2d 463 (1966), stated that jurisdiction in the juvenile court does not attach until there has been an adjudication based upon evidence that the child is dependent, neglected, incorrigible or delinquent. Both Friedman and Caruso dealt with dependency matters rather than delinquency.

In Burrows v. State, 38 Ariz. 99, 297 Pac. 1029 (1931), this Court held that a *402 **159 defendant who had reached the age of eighteen, charged by information for a crime committed before his eighteenth birthday was nevertheless subject to prosecution, trial, and sentence as an adult. For cases from other jurisdictions see 89 A.L.R.2d 506 et seq.

[1] The statute concerning juvenile jurisdiction under which Burrows was decided was substantially carried forward into the Arizona Constitution by amendment in 1960 and is now Section 15 of Article 6. We believe the rationale in the Burrows case is equally applicable to Section 15. The purpose of the juvenile provisions in Arizona concerns the treatment, not the capacity, of the offender, or as the Court stated in Burrows:

'... the purpose of the Arizona juvenile law is not to attempt to establish an arbitrary age below which the child is presumed to be ignorant of the consequences of his acts, but rather to provide a special method of treatment for minors under the age of eighteen who have violated the criminal law, and, even with such children, leaving the application of the juvenile or criminal code to the discretion of the trial court.' 38 Ariz. at 111.

[2] In effect, Burrows held that a juvenile could commit a crime, and his age made it no less a crime, but the law provided a special method of dealing with such a person by reason of his age. This age factor was to be determined as of the time of prosecution. If the age factor was not present at the time of prosecution the accused was to be tried as an adult.

Petitioners argue that Burrows is not applicable because in these cases, unlike Burrows, proceedings had been commenced in juvenile court. They contend that the only way the matters could have

been made subject to adult jurisdiction was after hearing. Miller v. Quatsoe, 348 F.Supp. 764 (E.D.Wis.1972). Petitioners contend that the state may not avoid a transfer hearing by the simple device of dismissing the juvenile petition.

The state argues that the petitioners are not all in the same status so far as a transfer hearing being required. The state contends that Monohan and Tately (No. 11552) both reached their eighteenth birthday before the juvenile court had made any adjudication or held any hearing on the merits of the case, and no transfer hearing was necessary because the juvenile court had no jurisdiction. We agree with this contention.

The authorities from other states generally hold that a juvenile who has reached his eighteenth birthday before being tried as a juvenile or before an adjudication of delinquency cannot validly be tried in juvenile court. Our cases, Caruso v. Superior Court, Supra, and Friedman v. Juvenile Court, Supra, are analogous in holding that juvenile court is without jurisdiction to adjudicate a person dependent who is over the age of eighteen.

Our state's constitution gives the superior court, as the juvenile court, exclusive jurisdiction over children accused of crime under the age of eighteen. Ariz.Const.Art. 6, s 15. When such a person is no longer a child under the age of eighteen the juvenile court has no jurisdiction to try him.

[3] Nor do the statutes A.R.S. s 8--202(D) or A.R.S. s 8--246(A) grant jurisdiction to try a person over the age of eighteen in juvenile court. The retention of jurisdiction referred to in the cited statutes is limited to those persons whom the juvenile court has adjudicated as delinquent or dependent prior to their reaching their eighteenth birthday.

Unlike Monohan and Tately, the other petitioner, Mary Louise McBeth (No. 11542) was within seven days of her eighteenth birthday when the dismissal was granted. The juvenile court had full jurisdiction of the matter. Conceivably she could have been adjudicated a delinquent, if the evidence warranted, and a disposition made which would have prevented any action in the criminal courts resulting in a criminal record. It is equally possible that she *403 **160 could have been transferred to adult criminal prosecution as she is now. Petitioner urges that the important aspect in her case is that she never had a hearing in juvenile court, and the practice of dismissing a case to avoid a transfer hearing to await

an age change for adult prosecution should be stopped.

[4][5][6] Petitioner McBeth further argues that she has a right to a transfer hearing before being prosecuted criminally, and indeed she does as long as she is under the age of eighteen. Neither she nor any person under the age of eighteen may be prosecuted criminally unless, after hearing, the juvenile court transfers the matter to the adult side of the law for criminal prosecution. Once the petitioner reached the age of eighteen, she was subject to criminal prosecution and the juvenile court had no jurisdiction. The decision to file a petition was a matter exclusively for the prosecutor. A.R.S. s 2--233. The dismissal of the juvenile petition and case was approved by the court. This left nothing pending in the juvenile court and freed petitioner from any further control of juvenile court.

The transfer procedure required by the juvenile rules assumes a pending juvenile petition. If the petition has been dismissed there is nothing for the court to hear. The dismissal of the petition removes any control which the juvenile court had on the juvenile by reason of the petition. The juvenile, if detained, must be released, and he is free to follow his own pursuits. There has been no jeopardy because there has been no hearing on the merits.

There is nothing in the constitution or statutes which prevents the court from dismissing a juvenile action on motion of the state. We find nothing which prevents the state from later refileing the charges. Therefore, we can find no sufficient reason to invalidate the procedure used in the McBeth case.

The relief sought in both petitions is denied.

LOCKWOOD and HAYS, JJ., HAIRE, Court of Appeals, Chief Judge, and EUBANK, Court of Appeals, Judge, concur.

Note: CAMERON, C.J., and STRUCKMEYER, V.C.J., and not participate in the determination of this matter. HAIRE, C.J., Court of Appeals, Chief Judge, Division One, and EUBANK, J., Court of Appeals, Judge, Division One, sat in their stated.

111 Ariz. 399, 531 P.2d 156

END OF DOCUMENT

KEYCITE

CMcBeth v. Rose, 111 Ariz. 399, 531 P.2d 156 (Ariz., Jan 24, 1975) (NO. 11542, 11552)**Citing References****Positive Cases (U.S.A.)****★★★ Discussed**

- 1 Matter of Maricopa County, Juvenile Action No. J-81405-S, 594 P.2d 533, 537+, 122 Ariz. 279, 283+ (Ariz.App. Div. 1 Feb 07, 1978) (NO. 1 CA-JUV 56) **HN: 2,6 (P.2d)**

★★ Cited

- 2 Matter of Pima County Juvenile Action No. J-70107-2, 716 P.2d 404, 407, 149 Ariz. 35, 38 (Ariz. Mar 17, 1986) (NO. 18524-PR) **HN: 5 (P.2d)**
- 3 Matter of Appeal in Maricopa County, Juvenile Action No. J-94518, 674 P.2d 841, 844, 138 Ariz. 287, 290 (Ariz. Dec 02, 1983) (NO. 17047-PR) **HN: 4 (P.2d)**
- 4 Matter of Maricopa County, Juvenile Action No. J-81405-S, 594 P.2d 506, 509, 122 Ariz. 252, 255 (Ariz. Mar 29, 1979) (NO. 13624-PR) **HN: 6 (P.2d)**
- 5 Matter of Maricopa County Juvenile Action No. JD-05401, 845 P.2d 1129, 1135, 173 Ariz. 634, 640 (Ariz.App. Div. 1 Jan 26, 1993) (NO. 1 CA-JV 92-0010) **HN: 3 (P.2d)**
- 6 Matter of Maricopa County Juvenile Action No. JV-122733, 838 P.2d 1303, 1306, 172 Ariz. 542, 545 (Ariz.App. Div. 1 Feb 04, 1992) (NO. 1 CA-JV 91-014, 1 CA-CR 91-1166)
- 7 State ex rel. Romley v. Superior Court In and For County of Maricopa, 823 P.2d 1347, 1350, 170 Ariz. 339, 342 (Ariz.App. Div. 1 Sep 24, 1991) (NO. 1 CA-SA 90-255) **HN: 4,5 (P.2d)**
- 8 Matter of Pima County Juvenile Delinquency Action No. 89248-01, 764 P.2d 752, 754, 159 Ariz. 17, 19 (Ariz.App. Div. 2 Jul 07, 1988) (NO. 2 CA-JV 88-0016)
- 9 Matter of Maricopa County, Juvenile Action No. JV-110565, 763 P.2d 268, 270, 158 Ariz. 448, 450 (Ariz.App. Div. 1 Jun 21, 1988) (NO. 1 CA-JV 88-003) **HN: 3 (P.2d)**
- 10 Matter of Appeal in Maricopa County Juvenile Action No. J-93117, 654 P.2d 39, 42+, 134 Ariz. 105, 108+ (Ariz.App. Div. 1 Oct 21, 1982) (NO. 1 CA-JUV 174) **HN: 4,5 (P.2d)**
- 11 Matter of Appeal in Maricopa County Juvenile Action No. J-86843, 608 P.2d 804, 806, 125 Ariz. 227, 229 (Ariz.App. Div. 1 Mar 18, 1980) (NO. 1 CA-JUV 110) **HN: 3 (P.2d)**
- 12 L. H. v. Jamieson, 643 F.2d 1351, 1355 (9th Cir.(Ariz.) May 01, 1981) (NO. 78-3091) **HN: 1 (P.2d)**
- 13 State ex rel. Elliot v. District Court of Sixth Judicial Dist., In and For Sweet Grass County, 684 P.2d 481, 483, 211 Mont. 1, 5 (Mont. Jun 20, 1984) (NO. 83-469) **HN: 1 (P.2d)**
- 14 State v. Manns, 329 S.E.2d 865, 869, 174 W.Va. 793, 796 (W.Va. Apr 18, 1985) (NO. 16358) **HN: 5 (P.2d)**

★ Mentioned

- 15 McCutcheon v. Superior Court of State In and For Pima County, 723 P.2d 661, 664, 150 Ariz. 312, 315 (Ariz. Jul 18, 1986) (NO. CV 86-0055-SA) **HN: 4,5 (P.2d)**
- 16 State v. Myers, 569 P.2d 1351, 1352, 116 Ariz. 453, 454 (Ariz. Sep 20, 1977) (NO. 3890) **HN: 4,5 (P.2d)**

Other Administrative Materials (U.S.A.)

- 17 1982 Ariz. Op. Atty. Gen. 81, Ms. Suzanne Laursen (1982) **HN: 1 (P.2d)**

Secondary Sources (U.S.A.)

- 18 Age of child at time of alleged offense or delinquency, or at time of legal proceedings, as criterion of jurisdiction of juvenile court, 89 A.L.R.2d 506, § 506+ (1963) **HN: 1,4 (P.2d)**
- 19 Wharton's Criminal Law s 98, s 98. Infancy and youth -- Jurisdiction of juvenile court (2006) **HN:**

C

3 (P.2d)

20 CJS Infants s 27, s 27. Jurisdiction of courts to try or prosecute offenders -- Age at time of commission of offense (2006) **HN: 5 (P.2d)**

Court Documents
Appellate Court Documents (U.S.A.)

Appellate Briefs

21 T. M. "Jim" PARHAM, et al., Appellants, v. J. L. and J. R., et al., Appellees., 1977 WL 189791, *189791 (Appellate Brief) (U.S. Oct Term 1977) **Brief of the Child Welfare League of America as ...** (NO. 75-1690) *

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DOCKET NO. CA-05-006

CLERK *Dr*

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6 **IN THE PASCUA YAQUI TRIBE COURT OF APPEALS**
7 **IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA**

8 PASCUA YAQUI TRIBE,)
Appellant,)
9 Vs.)
10 Arturo M. FLORES)
11 Appellee.)
_____)
12

NO. CA-05-006
(Tribal Court No. CR-05-277)

Appellant's Opening Brief

13 COMES NOW The Pascua Yaqui Tribe, by and through counsel
14 undersigned, and hereby files its Brief on Appeal within the time
15 limits specified and the manner prescribed by the Court of Appeals
16 Procedures Act of 2000 (hereinafter, CAPA).
17

18 **A. JURISDICTIONAL STATEMENT**

19 The Tribe has appealed a September 20th, 2005 trial court Order
20 which dismissed a Complaint filed by the Tribe under cause number
21 CR-05-277, a copy of which is attached as Exhibit A. The Tribe
22 timely filed its Notice of Appeal, September, 22nd, 2005 - within
23 the requisite 14 days, Exhibit B. Under CAPA, Section 1.12, this
24 Court "shall have jurisdiction to hear all appeals from any Order
25 of the Trial Court." Lastly, Appellant's opening brief is due
26 October 13, 2005 - 21 days after filing of said notice.
27
28

1 **B. PERTINENT FACTS & PROCEDURAL HISTORY**

2 On September 1, 2005, in an earlier juvenile case (JD-05-
3 085) Appellee, Arturo Flores, was sentenced for an unrelated
4 incident. Defendant, however, had turned 18 years of age on that
5 very sentencing date, his birthday being September 1, 1987.
6 Appropriately, he was ordered to serve his short incarceration
7 time in an adult detention facility, though these proceedings
8 remained in Juvenile Court.

9 Unbeknownst to both the Trial Court and the Prosecutor's
10 Office at that time, just days earlier, on August 27, 2005,
11 Defendant had also assaulted an individual and stolen his vehicle
12 (and ultimately, the stereo from that vehicle). It is this
13 incident that is the direct subject of this appeal. The
14 immediately preceding events are nonetheless relevant to lay the
15 background for why/what had occurred subsequently and to bolster
16 the discussion on statutory intent (and practice) regarding the
17 lower court's Juvenile Court jurisdiction.

18 Returning to the August 27th incident, the victim's vehicle
19 was later recovered, abandoned and in a desert area. The victim
20 was interviewed and wished to pursue charges against Mr. Flores
21 for the car-jacking. When the officer's Affidavit (the avowed
22 report upon which charges may be based) arrived at the
23 prosecutor's office, it was approved, and a Complaint (the
24 "charging document" used in Tribal Courts) was filed on September
25 6, 2005 (the Tuesday after Labor Day).¹

26 _____
27 1 Incidentally, the Complaint that was filed also comported with the
28 "within-10-days" requirement for filing juvenile, in-custody Complaints,
per Sec. 3.9 of the Juvenile Code.

1 Unfortunately, however, the Tribal Complaint was filed in
2 Juvenile Court, under JD-05-121, by the prosecutor that handled
3 Mr. Flores's sentencing on September 1, 2005 - the error
4 understandably borne of repetition in dealing with Arturo as a
5 juvenile in a previous matter.

6 When the undersigned Chief Prosecutor later saw the
7 Complaint, he noticed that it had been filed in Juvenile Court
8 rather than Tribal Court.² He filed a dismissal of that juvenile
9 Complaint, due to lack of jurisdiction (Exhibit C) and re-filed
10 the case in Tribal Court under the above-captioned cause-number,
11 CR-05-277 (Exhibit A).

12 In simultaneous Orders dated September 20th, 2005, Judge
13 Melvin Stoof granted the dismissal requested on the Juvenile
14 Court complaint, but then disallowed the filing of the subsequent
15 (adult) complaint in Tribal Court. See Minute Entry entitled:
16 "Order of Dismissal Due To Lack Of Subject Matter Jurisdiction"
17 (Exhibit D). The lower court decided that jurisdiction in Mr.
18 Flores's new case lay exclusively with the Juvenile Court,
19 essentially, because the Juvenile Court has jurisdiction over any
20 "juvenile offense." Id. And, since the offense "occurred" while
21 Arturo was under 18 y.o., the case belonged in Juvenile Court.
22 Id., *Emphasis Added*. As the following discussion will reveal,
23 this reasoning is contrary to both public policy and to the plain
24 language of further provisions within the PYT Juvenile Code.

27 2 Among the definitions in the Juvenile Code is the term "Tribal Court"
28 which is specifically defined as "the adult court" for the Pascua Yaqui Tribe.

1 **C. PUBLIC POLICY AND PROCEDURAL CONCERNS**
2 **CORROBORATE CHARGING 18 Y.O.'s IN ADULT COURT.**

3 As a matter of policy, juvenile courts are set up with the
4 idea of treating minors in criminal court proceedings differently
5 from adults. This proved valid until one got to the serious
6 juvenile offender. Then mixing serious juvenile offenders with the
7 other youths, became nonsensical. Indeed, in the mid-late 1990s,
8 when the Arizona County Juvenile Courts were wrestling with
9 legislative modifications to the triggers for transfer, the primary
10 argument in favor of *automatically* transferring certain 15, 16 and
11 17 year-olds directly to Superior Court was that these offenders
12 were getting neither the appropriate deterrent penalties nor
13 rehabilitative treatment, prior to turning eighteen. The crimes or
14 histories were too serious and the available jurisdictional time
15 was simply too brief. The automatic transfer legislation passed.

16 Independent of this automatic case-transfer mechanism,
17 coexists a well recognized practice of charging juveniles *directly*
18 as adults once they have turned eighteen. This is a long-standing
19 and unchallenged practice that has occurred in surrounding courts
20 for decades.

21 Once an offender reaches eighteen, he may be charged in adult
22 court immediately, even if the offense occurred when he was only
23 17-1/2 years old. This makes sense because, to hold otherwise
24 would allow juveniles the absurd license to offend recklessly and
25 deliberately just before they turned eighteen (hypothetically going
26 on crime binges just days before), in hopes of frustrating the
27 investigative process which cannot be completed in such short a
28

1 time frame.

2 Indeed, in other jurisdictions, be it Pima County, around
3 the state, or around the country, agencies routinely wait for a
4 juvenile (who is closing in on 18) to actually turn eighteen
5 before charging that individual (in felony situations) so that he
6 may be charged in adult court via traditional grand jury (GJ) and
7 also proceed through the criminal justice process with like-
8 adults (as Mr. Flores now is), rather than true, small, and
9 vulnerable youngsters that occupy the bulk of juvenile court
10 systems. As the following analysis will further show, the Trial
11 Court erred by not following existing code definitions when
12 holding that the Tribe could not file against Mr. Flores in
13 Tribal Court.

14
15 **D. THE ACT OF CHARGING AN 18 Y.O. ADULT UNDER THE**
16 **YAQUI CODE VESTS JURISDICTION IN TRIBAL COURT,**
17 **REGARDLESS OF WHEN THAT OFFENSE CHRONOLOGICALLY**
18 **OCCURRED.**

19 The Tribe asserts that when the Code employs the terms
20 "juvenile" and "jurisdiction," it very intentionally grants
21 jurisdiction to the Juvenile Court *only* when both:

- 22 (1) court proceedings have begun,
23 (2) involving a person *under* 18 years of age.³

24 **1. The Code's Definition of "Juvenile"**

25 To determine when/where jurisdiction begins for a juvenile,

26 ³ Curiously, however, this requisite is neither cited, nor addressed, in
27 the lower court's September 20th minute entry, despite it being specifically
28 cited as the reason for the Tribe's motion to dismiss and re-file in (adult)
Tribal Court. See Exhibit C, page 2.

1 one must first look to the Code's definitions. Under Title 2 (The
2 Juvenile Code) "Juvenile" is defined specifically as:

- 3 1. A person under eighteen (18) years of age; [or]
- 4 2. A person under eighteen (18) years of age or older
5 concerning whom *proceedings are commenced in Juvenile*
6 *Court* prior to his eighteenth (18) birthday.

7 Critical, is the wording in number two, as there the
8 determinative intent is laid forth. This important condition can
9 be broken down in to three key necessary parts:

- 10 (a) commencement of;
- 11 (b) proceedings in Juvenile Court;
- 12 (c) prior to the offender's eighteenth birthday.

13 All three of these are prerequisites to any viability in Juvenile
14 Court. By its very declaration, if any of these components is
15 absent, there cannot be jurisdiction with the Juvenile Court. And,
16 notably, no where is the "date of the juvenile offense" identified
17 in this section as influential in anything.

18 In Appellee's case, when the Complaint was *filed*, the
19 defendant had neither requisite number one (a person under
20 eighteen) nor requisite number two (a person over eighteen, *but*
21 *whom proceedings had already commenced in Juvenile Court* prior to
22 that).⁴ Indeed, the charging document (Complaint) wasn't even
23 filed until September 6, 2005.

24 Moreover, having the filing of the Complaint determine
25

26
27 ⁴ It is truly puzzling how the lower court, normally analytical and
28 attentive to definitions, omitted discussion of this provision and,
especially, Sec. 2.1, *infra*.

1 Finally, it cannot be disputed that it is by the filing of the
2 Complaint that any case necessarily generates its first "court
3 proceeding." There is no court proceeding initiated or calendared
4 or even in existence when an "offense" merely has "occurred."
5 Indeed, these words lie nowhere in the definition of Juvenile, nor
6 in the definition of Jurisdiction.⁵

7 Fate had Mr. Flores's birthday occur only days prior to the
8 possibility of filing the Complaint. As a result, Mr. Flores's
9 car-jacking Complaint with affidavit could only reasonably have
10 been filed after he had already turned eighteen. Since he was
11 already eighteen, it *had* to be filed in (adult) Tribal Court.

12 The earliest possible moment that any lower court could have
13 conducted any kind of "proceeding" would have been *after* the
14 Appellee was an adult. In fact, the Complaint filing is precisely
15 what alerts a trial court to create a file and generate
16 "proceedings" under a real *case number*. There aren't even any
17 "parties" which a court could entertain jurisdiction over until the
18 Complaint is lodged by the Tribe in a lower court.

19 Here, the Complaint was filed, at its earliest, on September
20 6th, 2005.⁶ Consequently, there could not have been appropriate
21 Juvenile Court jurisdiction ever. And there could never be since
22 Appellee Flores was, at *no* point during any court pendency of any
23 fragment of this case, "under eighteen years of age."

24
25 ⁵ Typical of most jurisdictions, 1/3 or more alleged offenses never rise
26 to formal Complaints (or indictments). To follow the lower court's logic,
27 however, they could, nonetheless have jurisdiction over all of these parties
28 as jurisdiction begins from the offense date, not the court-proceedings date.

⁶ Remember, assuming only *arguendo* that such filing can even be deemed
"valid," since it is the Tribe's position that Mr. Flores's Complaint
could/should never have been filed in Juvenile Court to begin with.

1 **CONCLUSION**

2 The Tribe respectfully asserts that the trial court abused its
3 discretion by dismissing the September 14th, 2005 re-filing of the
4 Complaint in (adult) Tribal Court. The inertial moment at which
5 "Juvenile" status is determined is the moment at which "court
6 proceedings" begin in that case. When proceedings began here,
7 Appellee Flores was eighteen. The lower court was therefore in
8 error when it construed clear Code language to suggest that the
9 "offense date" triggers determination of jurisdiction. Here,
10 however, proceedings never initiated with any lower court, Juvenile
11 or Tribal, until after Appellee had already turned eighteen.

12 To uphold the September 20th minute entry from the lower court,
13 would not only frustrate the plain reading of the terms "juvenile"
14 and "proceedings" but would create an illogical loop-hole for young
15 offenders to exploit, non-existent in any other known jurisdiction.

16 For all of these reasons, The Tribe prays this Court grant it
17 relief by reversing the lower court's September 20th Order
18 dismissing jurisdiction of Mr. Flores's case in Tribal Court.
19 Since Mr. Flores was an adult when first court-proceedings began,
20 jurisdiction appropriately vested with Tribal Court.

21 **Respectfully submitted this 13th day of October, 2005.**

22
23 OFFICE OF THE PROSECUTOR
24 PASCUA YAQUI TRIBE

25 
26 _____
27 Micah Schmit
28 Chief Prosecutor

27 / / /
/ / /

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Original and four copies of the foregoing delivered/mailed
This **date** to:

Clerk of the Court, Pascua Yaqui Tribe Court of Appeals

Copy delivered/mailed this date to:

Nick Fontana c/o
PYT Public Defenders Ofc
Attorney for Appellee

PYT Attorney General's Office
Tucson, Arizona 85757

Pascua Yaqui Tribal Court

By: 

Exhibit A

IN AND FOR THE PASCUA YAQUI TRIBAL COURT

05 SEP 14 AM 10:50

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

Pascua Yaqui Tribe,

Case No. CR-05-~~277~~

DOCKET NO. CR 05 277

Plaintiff,

CRIMINAL COMPLAINT

CLERK RM

Vs.

FLORES, Arturo Martin

Defendant.

The PASCUA YAQUI TRIBE, hereby complains and alleges, upon information and belief, that the above named defendant, an Indian, while on the Pascua Yaqui Reservation, did commit the following offense(s):

COUNT 1: BATTERY: 1 PYTC § 3.8

On or about August 27, 2005 at approximately 6:00 a.m., at or near 7851 Maala Mecha Voo'o, willfully struck Giovanni Valencia in the face.

COUNT 2: THEFT: 1 PYTC § 3.64

On or about August 27, 2005 at approximately 6:00 a.m., at or near 7851 Maala Mecha Voo'o, took property of Giovanni Valencia without his consent, to wit: car keys.

COUNT 3: THEFT: 1 PYTC § 3.64

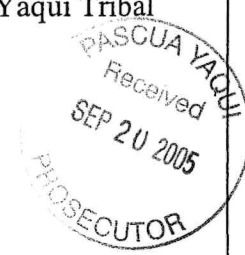
On or about August 27, 2005 at approximately 6:00 a.m., at or near 7851 Maala Mecha Voo'o, took property of Giovanni Valencia without his consent, to wit: vehicle.

COUNT 4: THEFT: 1 PYTC § 3.64


On or about August 27, 2005 at approximately 6:00 a.m., at or near 7851 Maala Mecha Voo'o, took property of Giovanni Valencia without his consent, to wit: stereo system.

And such violations, upon conviction, are punishable under the Pascua Yaqui Tribal Codes.

DATED this 13th day of September 2005.



1 The undersigned hereby swears and affirms that this complaint is based upon
2 information and belief, and the attached Affidavit and Verification.

3 
4 Complainant/Deputy Prosecutor

5
6 DEFENDANT: Arturo Flores
7 ADDRESS: 7831 Camino Tetaviecti, Tucson, Arizona 85757
8 DOB: 09/01/87 SSN: 601-42-5268 ORIGIN: Pascua Yaqui #2694U06320
9 SEX: Male HT: WT: EYES: HAIR:

10 *Note: Accused persons may obtain disclosure information about their case ten days after arraignment by*
11 *contacting the Prosecutor's Office at 4725 West Tetakusim Bldg C, Tucson AZ 85746. [PYTC Title 10*
12 *Rule 5.1]*

IN THE PASCUA YAQUI TRIBAL COURT PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, 2

<p>PASCUA YAQUI TRIBE, Plaintiff,</p> <p>Vs.</p> <p>ARTURO FLORES, Defendant</p>	<p>DOCKET NO. <u>JD-05-121</u></p> <p>CLERK <u>[Signature]</u></p> <p>COURT USE ONLY</p> <p>Case Number: 050827-3554</p>
PROBABLE CAUSE AFFIDAVIT	

AFFIDAVIT

1. I, CHET BABCOCK, being a duly authorized law enforcement officer of the Pascua Yaqui Indian Tribe and for the Pascua Yaqui Indian Reservation, do hereby swear and affirm as follows:

- A. I am the arresting officer in this case; OR
 I am a law enforcement officer and make this statement on information and belief.

2. SUSPECTED PARTY (Defendant)

Name: ARTURO FLORES
 Driver's license number:
 PY Enrollment number:
 Date of Birth: 09-01-87

ARTURO FLORES is is not an enrolled member of the Pascua Yaqui Tribe.

3. The defendant was arrested without a warrant on _____ at A.M. P.M.

4. I have probable cause to believe that the defendant committed the following offense(s) at 7851 MALLA MECHA VOOD (address) which is within the exterior boundaries of the Pascua Yaqui Indian Reservation:

- PYC / ARS , Title _____ , Chapter 3, Section 3.6, ASSAULT
- PYC / ARS , Title _____ , Chapter 3, Section 3.64, THEFT
- PYC / ARS , Title _____ , Chapter _____ , Section _____ ,
- PYC / ARS , Title _____ , Chapter _____ , Section _____ ,

PASCUA POLICE
RECEIVED

AUG 29 2005

- PYC / ARS , Title , Chapter , Section ,
- PYC / ARS , Title , Chapter , Section ,
- PYC / ARS , Title , Chapter , Section ,
- PYC / ARS , Title , Chapter , Section ,

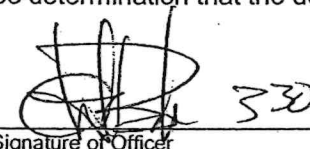
5. I believe that the defendant committed the above-listed offense(s) because: (Summarize facts to support probable cause claim)

At the above-stated date and time and at the above-referenced location within the exterior boundaries of the Pascua Yaqui Indian Reservation I did witness the following:

ON 08-27-05 AT 1043 HOURS, OFFICERS RESPONDED TO A REPORT OF A STOLEN VEHICLE. FURTHER INVESTIGATION REVEALED THAT THE OWNER OF THE VEHICLE, GIOVANNI VALENCIA, HAD BEEN DRINKING AT A PARTY WHEN ARTURO FLORES PUNCHED HIM IN THE FACE, RENDERING HIM PARTIALLY CONCIIOUS. FLORES REMOVED THE KEYS TO VALENCIA VEHICLE FROM VALENCIA'S PANTS POCKET. FLORES LEFT WITH THE VEHICLE, WHICH WAS LATER RECOVERED ABANDONED IN THE DESERT. THE VEHICLE'S STEREO SYSTEM HAD BEEN REMOVED.

The information contained herein is true and accurate to the best of my knowledge and belief.

6. I request that the Court make a probable cause determination that the defendant may be continued in custody pending further proceedings.


 Signature of Officer _____
 Date 8-28-05

SUBSCRIBED AND SWORN BEFORE ME ON August 29, 2005


 Notary Signature

My Commission expires: March 27, 2007

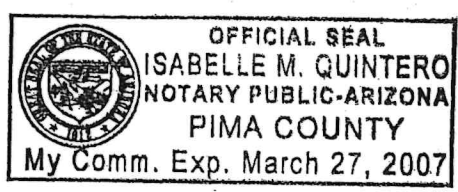


Exhibit B

05 SEP 22 PM 3:22

DOCKET NO. CA05-006

CLERK *[Signature]*

1 PASCUA YAQUI TRIBE
2 OFFICE OF THE PROSECUTOR
3 7474 S. Camino de Oeste
4 Tucson, Arizona 85746
5 (520) 879-6251

6 G. Allen Osburn
7 Deputy Prosecutor

8 **IN THE PASCUA YAQUI TRIBE COURT OF APPEALS**
9 **IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA**

10 PASCUA YAQUI TRIBE,
11 Appellant,

NO.
(Tribal Court No. CR-05-277)

12 Vs.
13 FLORES, Arturo

NOTICE OF APPEAL
Oral argument requested

14 Defendant.

15 Notice is hereby given that the Pascua Yaqui Tribe appeals to
16 the Appellate Court of the Pascua Yaqui Tribe from the judgment
17 entered in this action by the Pascua Yaqui Tribal Court on
18 September 20, 2005. The Pascua Yaqui Tribe requests oral argument.

19 Respectfully submitted this 22nd day of September, 2005.

20 OFFICE OF THE PROSECUTOR
21 PASCUA YAQUI TRIBE

22 *[Signature]*
23 G. Allen Osburn
24 Deputy Prosecutor

25 Original delivered/mailed
26 This date to:

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

28 Copy delivered/mailed to:

Public Defender
Attorney for Appellee

Pascua Yaqui Tribal Court
By:

[Signature]



Exhibit C

05 SEP 14 AM 10:50

DOCKET NO. JD-05-121

CLERK (Signature)

PASCUA YAQUI TRIBE
7474 S. Camino de Oeste
Tucson, Arizona 85757
(520) 879-6251

Micah Schmit,
Juvenile Presenting Officer

IN THE PASCUA YAQUI JUVENILE COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, ARIZONA

In the matter of:

NO. JD-05-121

FLORES, Arturo Martin
DOB: 09/01/87
Minor:

MOTION TO DISMISS

COMES NOW the Pascua Yaqui Tribe, by and through the Juvenile Presenting Officer undersigned, and hereby moves to Dismiss, without prejudice, the above entitled matter for the reason that this case was mistakenly filed in Juvenile Court. The crime in question occurred on August 27th, 2005. Defendant turned 18 on September 1, 2005. And the Complaint with affidavit was filed on (Tuesday) September 6, 2005. As an aside, Defendant was also sentenced on a juvenile case, in Juvenile Court, on September 1st, 2005.

As a matter of law and procedure, the filing of the Complaint in this incident generated the first court proceeding or involvement and that was a finding a probable cause and a setting of a September 30th initial appearance. See minute entry dated September 7th, 2005.

1 Because the first Court proceeding commenced after Defendant
2 obtained the age of majority, pursuant to Title 2, definition of
3 "Juvenile" and Sec. 2.1 (B) (1) "Jurisdiction," Juvenile Court
4 simply could not have had jurisdiction over the matter.

5 Accordingly, since the Tribal Code only compels that
6 juvenile matters be heard in Juvenile Court when a minor's
7 proceedings *initiated* there prior to his turning 18 years of age,
8 and there being no possible prejudice to Defendant in the brief
9 pendency of this matter while Defendant is incarcerated on a
10 sentence for an entirely different crime, the Tribe asks this
11 Court to grant its requested dismissal of JD-05-121 without
12 prejudice.
13

14
15 **Respectfully submitted this 14th day of September, 2005.**
16

17 OFFICE OF THE PROSECUTOR
18 PASCUA YAQUI TRIBE

19 

20

Micah Schmit
21 Juvenile Presenting Officer

22
23 Original of the foregoing delivered this date to:
Clerk of the Court, Pascua Yaqui Tribal Court

24 Copy mailed to:
25 Arturo Martin Flores
C/o Antonia Flores (mother)
26 7831 Camino Tetaviecti
Tucson, Arizona 85757

27 And to the Tribal Public Defender's Ofc

28 By: 

Exhibit D

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,)
Plaintiff,)
Vs.)
FLORES, ARTURO MARTIN,)
Defendant.)

Case No. CR-05-277

ORDER OF DISMISSAL
DUE TO LACK OF SUBJECT MATTER
JURISDICTION

This matter came before the court on September 20, 2005, based on the Tribe's filing of a criminal complaint. The court reviewed the complaint and finds it lacks subject matter jurisdiction over the alleged offense, because it was allegedly committed when the defendant was a minor.

The prosecutor filed the criminal complaint on September 14, 2005, and the Tribe alleged the defendant committed a criminal offense on August 27, 2005 at 6:00 a.m.. The probable cause affidavit indicates that the defendant's date of birth is on September 1, 1987. The defendant would have been under the age of 18 at the time of the alleged criminal offense. The Pascua Yaqui Juvenile Code provides that the juvenile court has jurisdiction over any alleged "juvenile offense" if committed by a "juvenile," defined as "a person under the age of eighteen (18) years of age." Pascua Yaqui Juvenile Code, Title 2, Definitions. The prosecutor could have filed the petition as a juvenile offender petition in order for the court to maintain jurisdiction over the juvenile for an alleged offense occurring before his eighteenth birthday, but failed to do so. The juvenile presenting officer could have filed a petition to transfer a juvenile matter to adult court, under juvenile code section 3.12, but failed to do so.

IT IS ORDERED that the complaint is dismissed for lack of subject matter jurisdiction.

SO ORDERED THIS 20th DAY OF SEPTEMBER, 2005.

Melvin R. Stof

Judge, Pascua Yaqui Tribal Court

CC: 09-20-05

Date

Tribe Defendant

[Signature]

Clerk



05 NOV -8 PM 3:49

DOCKET NO. CA 05-006

CLERK YR

1 PASCUA YAQUI TRIBE
2 OFFICE OF THE PROSECUTOR
3 7474 S. Camino de Oeste
4 Tucson, Arizona 85757
5 (520) 879-6251

6 Micah Schmit, SB# 014887
7 Chief Prosecutor

8 **IN THE PASCUA YAQUI TRIBE COURT OF APPEALS**
9 **IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA**

10 PASCUA YAQUI TRIBE,)
11 Appellant,)

NO. CA-05-006
(Tribal Court No. CR-05-277)

12 Vs.)

Appellant's Reply Brief And Motion
to Strike Appellee's Response Brief
as Untimely.

13 Arturo M. FLORES)
14 Appellee.)
15 _____)

16 COMES NOW The Pascua Yaqui Tribe, by and through counsel
17 undersigned, and hereby files its Reply Brief on Appeal within the
18 time limits specified and the manner prescribed by the Court of
19 Appeals Procedures Act of 2000 (hereinafter, CAPA).

20 **JURISDICTIONAL STATEMENT**

21 The Tribe has appealed a September 20th, 2005 trial court Order
22 which dismissed a Complaint filed by the Tribe under cause number
23 CR-05-277. The Tribe timely filed its Notice of Appeal, September,
24 22nd, 2005 - within the requisite 14 days. Appellant's opening
25 brief was due October 13, 2005 - 21 days after filing of said
26 notice - and it was properly filed.

27 Appellee was delivered a copy of the Appellant's Brief the
28 following day, October 14th, 2005. Appellee's Response Brief was
then due on October 28th, 2005 - 14 days after being served with
Appellant's Brief. Appellee did not file his Response until
October 31st, 2005.

1 Appellant has 7 days from service of that Response to file the
2 instant Reply. Appellee delivered a copy of his Response November,
3 3rd, 2005. Accordingly, this Reply is due November 10th, 2005.

4 **A. APPELLEE'S RESPONSE SHOULD BE STRICKEN AS UNTIMELY.**

5 The Court of Appeals Procedure Act of 2000 requires an
6 Appellee's response brief to be filed 14 days after service of
7 the Appellant's opening brief. *Id.* Section 1.22. The Tribe
8 properly filed the Opening Brief on October 13, 2005 and served
9 defense counsel (Appellee) on October 14th, 2005. Appellee's
10 response brief was therefore due on October 28th, 2005. Since
11 Appellee did not actually file his Response until October 31st,
12 2005, as a matter of both law and jurisdiction, this Court must
13 strike Appellee's Response as untimely.

14 **B. APPELLEE'S SUBSTANTIVE RESPONSE FAILS TO REBUTT
15 THE RULE-BASED AUTHORITATIVE ARGUMENTS PRESENTED IN
16 SUBSECTION "D" OF APPELLANT'S OPENING BRIEF.**

17 As for the merits of Appellee's Response, his brief fails to
18 reconcile the most on-point references from Appellant's Opening
19 Brief, namely the definitions of "Juvenile" and "jurisdiction"
20 from the PYT Juvenile Code. This Reply will not reiterate that
21 entire discussion. Rather the Tribe hereby incorporates by
22 reference, Section D, of Appellant's Opening Brief.

23 Curiously, however, Defendant/Appellee recognizes in his
24 Response that the term "Juvenile" is defined and accurately
25 quotes the pivotal portion, subsection (2). However, in the
26 immediately following paragraph he charges that the Tribe argues
27 the merits of this section "without any authority." This makes

1 absolutely no sense. The authority **is** the very language (and
2 prerequisite) identified in subsection (2), of the J-CODE.

3 Under Title 2, "Juvenile" is defined specifically as:

- 4 1. A person under eighteen (18) years of age; [or]
- 5 2. A person under eighteen (18) years of age or older
6 concerning whom **proceedings are commenced in Juvenile**
7 **Court prior to his eighteenth (18) birthday.**

8 Id. (Emphasis Added).

9 Since Defendant Arturo Flores was never under 18 when proceedings
10 commenced in court (recall, the filing of the Complaint was
11 September 6th at the earliest, and Mr. Flores turned 18 on September
12 1st, 2005), the Juvenile Court's jurisdiction is an *impossibility*.
13 Yet, despite repeated citation to this provision of the J-CODE,
14 Appellee still comments, at page 5:

15 In an effort to circumvent the plain meaning of
16 these provisions, the Appellant argues, without any
17 authority whatsoever, that the Juvenile Court has
18 jurisdiction only when court proceedings have begun which
involve a person under the age of eighteen years.

19 Id.

20 Indeed, that is precisely what the Tribe is arguing and it is
21 derived directly from (i.e., the "authority" of) subsection (2),
22 the definition of "Juvenile," PYT Juvenile Code.

23 Curiously, Appellee spends no effort distinguishing this, nor
24 the second compelling authority cited by The Tribe, namely, the J-
25 CODE's definition of "Jurisdiction" in Sec. 2.1. Here, the
26 Juvenile Code reaffirms that Juvenile Court jurisdiction **cannot** lie
27 where the defendant has already turned 18. Notably, this is also

1 distinct from "transfer". (a recurring misdirection by Appellant).
2 In "transfer" a case *properly* originated in the Juvenile Court, but
3 the government nonetheless, sought to continue the case in regular
4 Tribal Court, despite the offender being a juvenile still.

5 Here, Mr. Flores' case never had proper Juvenile Court
6 jurisdiction in the first place, because he was *never* a "juvenile"
7 when "proceedings commenced," i.e., when the Complaint was first
8 filed in any Pascua Yaqui Court. The Juvenile Code unambiguously
9 says there is **no** jurisdiction unless the case *was pendent* while the
10 defendant was, at least at its inception, a "juvenile":

11 B. Jurisdiction is obtained by Juvenile Court [and
12 retained] ***until terminated by..***

13 (1) ***The juvenile becoming an adult,***
14 except where a juvenile becomes an adult
15 during the pendency of proceedings in Juvenile
Court.

16 *Id.* (*emphasis added*).

17 Defendant/Appellee was *never* eighteen when proceedings
18 initiated, so if there is any "illegality" (referring to
19 Defendant/Appellee's Response at footnote 3) it would be
20 in compelling juvenile jurisdiction over a defendant who
21 was *always* an adult when court proceedings formally began
22 against him.

23 **CONCLUSION**

24 The Tribe respectfully asserts that the trial court abused its
25 discretion by dismissing the September 14th, 2005 re-filing of the
26 original September 6th Complaint. Since Defendant/Appellee had
27 turned 18 on September 1st, 2005, there was no way that *any* court

1 proceeding could have commenced in any tribal court, except with
2 Defendant/Appellee as an adult. Put another way, by the
3 controlling definitions of "Juvenile" and "Jurisdiction," derived
4 from the Pascua Yaqui Juvenile Code, Appellee was never a juvenile
5 for purposes of valid Juvenile Court jurisdiction.

6 For all of these reasons, The Tribe prays this Court grant it
7 relief by reversing the lower court's September 20th Order
8 dismissing jurisdiction of Mr. Flores's case. Since Mr. Flores was
9 an adult when court-proceedings first began, jurisdiction
10 appropriately vested with Tribal Court, not Juvenile Court.

11
12 **Respectfully submitted this 8th day of November, 2005.**

13 OFFICE OF THE PROSECUTOR
14 PASCUA YAQUI TRIBE

15 

16 Micah Schmit
17 Chief Prosecutor

18 Original and four copies of the foregoing delivered/mailed

19 This **date** to:

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

21 Copies delivered/mailed this date to:

22 Nick Fontana c/o PYT Public Defenders Ofc
23 Attorney for Appellee

24 PYT Attorney General's Office

25 Pascua Yaqui Tribal Court

26 By: 

05 OCT 32 AM 9:45

DOCKET NO. CA-05-004

CLERK [Signature]

1 Nicholas A. Fontana
2 State Bar No. 014429
3 OFFICE OF THE PUBLIC DEFENDER
4 7474 South Camino de Oeste
5 Tucson, AZ 85746

6 Attorney for Appellee

7 IN THE PASCUA YAQUI COURT OF APPEALS
8 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

9 PASCUA YAQUI TRIBE,

10 Appellant,

11 vs.

12 ARTURO FLORES,

13 Appellee.

) APPELLATE CASE NO. CA-05-006

) PASCUA YAQUI TRIBAL COURT NO.:
) CR-05-277

) **MOTION TO PERMIT UNTIMELY
) FILING OF BRIEF IN RESPONSE**

14 COMES NOW Appellee Arturo Flores, through undersigned counsel, and pursuant to Title
15 11, Pascua Yaqui Judicial Titles and Codes, §§ 1.11 and 1.20, and respectfully moves this Court to
16 accept the Appellee's Brief in Response which not filed in a timely manner. Under Title 11, Pascua
17 Yaqui Judicial Titles and Codes, § 1.11, this Court has the power to suspend the requirements or
18 provisions of the Rules of Appellate Procedure in a particular case.

19 The Appellant's Opening Brief was filed on October 13, 2005, and was served on the
20 Appellee on October 14, 2005. Pursuant to the Rules of Appellant Procedure, the Appellee's Brief
21 in Response should have been filed on Friday, October 28, 2005. Title 11, Pascua Yaqui Judicial
22 Titles and Codes, § 1.22. Due to a calendaring error, the Appellee did not file his Brief in Response
23 until Monday, October 31, 2005.

24 Counsel for the Appellant, Chief Prosecutor Micah Schmit, has been contacted and has
25 indicated his opposition to the Appellee's motion.

1 DATED this 1st day of November, 2005.

2 PASCUA YAQUI PUBLIC DEFENDER

3
4 
5 Nicholas A. Fontana
6 Chief Public Defender

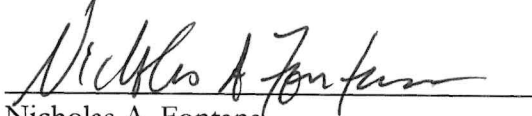
7
8 CERTIFICATE OF SERVICE

9 ORIGINAL and four (4) copies of the foregoing delivered this 1st day of November, 2005, to:

10 Clerk of the Court of Appeals
11 Pascua Yaqui Court of Appeals
12 7474 S. Camino de Oeste
13 Tucson, AZ 85746

14 COPY of the foregoing delivered this 1st day of November, 2005, to:

15 Micah Schmit
16 Chief Prosecutor
17 Office of the Prosecutor for the Pascua Yaqui Tribe
18 7474 S. Camino de Oeste
19 Tucson, AZ 85746

20 BY: 
21 Nicholas A. Fontana
22 Chief Public Defender
23
24
25

05 OCT 31 PM 4:45

IN THE PASCUA YAQUI COURT OF APPEALS DOCKET NO. _____
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION CLERK _____

PASCUA YAQUI TRIBE,

Appellant,

vs.

ARTURO M. FLORES,

Appellee.

) APPELLATE CASE NO. CA-05-006
)
) PASCUA YAQUI TRIBAL COURT NO.:
) CR-05-277
)
)
)
)
)
)

BRIEF IN RESPONSE

Nicholas A. Fontana
State Bar No. 014429
OFFICE OF THE PUBLIC DEFENDER
7474 South Camino de Oeste
Tucson, AZ 85746

Attorney for Appellee

STATEMENT OF JURSDICTION

This Court has pursuant to the provisions of Article VIII, § 5 of the Constitution of the Pascua Yaqui Tribe, and Title 11, Pascua Yaqui Judicial Titles and Codes, §1.12.

STATEMENT OF FACTS¹

On September 14, 2005, the Appellant filed a Criminal Complaint charging Appellee Arturo Flores, an enrolled member of the Pascua Yaqui Tribe, with one count of battery and three counts of theft, based on events which allegedly occurred on August 27, 2005. [Criminal Complaint, CR-05-277, filed September, 14, 2005, hereinafter “Complaint.”]. The Complaint is signed by Deputy Prosecutor G. Allen Osburn. [*Id.*]. The Complaint was accompanied by a sworn Probable Cause Affidavit stating that Appellee Arturo Flores was an enrolled member of the Pascua Yaqui Tribe and that his date of birth was September 1, 1987. [Probable Cause Affidavit, JD-05-121, filed September 6, 2005, hereinafter “Affidavit.”].

On September 20, 2005, the Pascua Yaqui Tribal Court entered an order dismissing the Criminal Complaint for lack of subject matter jurisdiction. [Order, CR-05-277, filed September 20, 2005, hereafter “Order.”]. The Appellant filed a Notice of Appeal and request for oral argument on September 22, 2005, and its Opening Brief on October 13, 2005.

¹ Unlike the Appellant, the Appellee limits his Statement of Facts to information contained in the record of the lower court due to a belief that it is unethical for an attorney to refer to matters that are not part of the record before the appellate court.

STATEMENT OF ISSUES

1. Whether the trial court erred in dismissing the criminal complaint for lack of subject matter jurisdiction.

ARGUMENT

I. THE TRIAL COURT PROPERLY DISMISSED THE CRIMINAL COMPLAINT AGAINST THE APPELLEE FOR LACK OF SUBJECT MATTER JURISDICTION.

A. Standard of Review.

The Pascua Yaqui Constitution and Pascua Yaqui Judicial Titles and Codes are silent regarding the standards of review to be applied by the Pascua Yaqui Court of Appeals. In other tribal jurisdictions, appellate courts give great deference to the factual determinations of trial courts because of the trial court's ability to observe the demeanor and evaluate the credibility of witnesses. *Coin v. Mowa*, No. AP-005-95 (Hopi 3/23/1997), 1997.NAHT.0000006 at ¶ 37 <http://www.tribalresourcecenter.org>; *United States v. Robinson*, 94 F.3d 1325, 1327 (9th Cir. 1996) (findings of fact reviewed for clear error). Questions of law are generally subject to de novo review on appeal. *Coin, supra*, at ¶ 39; *United States v. Sanchez-Lopez*, 879 F.2d 541, 550 (9th Cir. 1989).

B. The Pascua Yaqui Juvenile Court has Exclusive Jurisdiction in all Matters Where a Minor is alleged to be a Juvenile Offender.

The Pascua Yaqui Tribe has adopted a juvenile code, in part, to remove from children committing juvenile offenses “the legal consequences of criminal behavior and to substitute therefore a program of supervision, care and rehabilitation with the protection of the Pascua Yaqui Community.” Title 2, Pascua Yaqui Judicial Titles and Codes, § 1.1 (F).

The Pascua Yaqui Juvenile Court is vested with *exclusive original jurisdiction* in all matters where a minor has been alleged to be a juvenile offender unless the Juvenile Court transfers jurisdiction to the Tribal Court pursuant to Title 2, Pascua Yaqui Judicial Titles and Codes, § 1.2 (A).² The Code does not define the word “minor,” but the word “child” is defined as “[a]n individual who is under the age of eighteen (18) years of age.” Title 2, Pascua Yaqui Judicial Titles and Codes, Definitions. The Code defines “juvenile” as:

1. A person under eighteen (18) years of age.
2. A person under eighteen (18) years of age or older concerning whom proceedings are commenced in Juvenile Court prior to his eighteenth (18) birthday.

Title 2, Pascua Yaqui Judicial Titles and Codes, Definitions. A “juvenile offense” is defined as “an act which if committed by an adult is designated a crime under the Pascua Yaqui Law and Order Code.” *Id.*

In an effort to circumvent the plain meaning of these provisions, the Appellant argues, without any authority whatsoever, that the Juvenile Court has jurisdiction only when court proceedings have begun which involve a person under the age of eighteen years. [Appellant’s Opening Brief at 5]. Not only is this version of the Juvenile Court’s jurisdiction nowhere to be found in the laws of the Pascua Yaqui Tribe, it ignores a provision of the law cited by the lower court.

Title 2, Pascua Yaqui Judicial Titles and Codes, § 3.12, sets forth the procedures which may be used to transfer a child to the jurisdiction of the adult court. Rather than ask this Court to torture the clear and unambiguous language of the Code, if the Appellant

² No adjudication upon the status of any child in the jurisdiction of the Juvenile Court shall be deemed a conviction of a crime unless the Juvenile Court transfers jurisdiction to the Tribal Court. Title 2, Pascua Yaqui Judicial Titles and Codes, §1.2(A).

wished to try the Appellee as an adult, it could have filed a petition in the Juvenile Court and then requested that the case be transferred to adult court. In essence, the Appellant is asking this Court to create a judicial exception that would render the transfer provisions of the Juvenile Code meaningless.

C. The Pascua Yaqui Juvenile Court had Exclusive Jurisdiction over the Appellee for any Offenses Alleged to have Occurred Prior to his Eighteenth Birthday.

According to the criminal complaint, the acts giving rise to the charges filed against the Appellee occurred on August 27, 2005. [Complaint]. The affidavit in support of the criminal complaint indicated that the Appellee's date of birth was September 1, 1987. [Affidavit at paragraph 2].³ At the time of the alleged offenses, the Appellee was less than eighteen years of age. As the lower court correctly held, under the Pascua Yaqui Judicial Titles and Codes, the Pascua Yaqui Juvenile Court was vested with exclusive jurisdiction and properly dismissed the complaint for lack of subject matter jurisdiction.

D. The Appellant's "Public Policy" Argument Ignores the Stated Purposes of the Pascua Yaqui Juvenile Code and the Sovereignty of the Pascua Yaqui Tribe.

Confronted with a dearth of law in support of its position, the Appellant argues that "public policy" requires the reversal of the lower court's order. Curiously, the Appellant focuses on the practices of the Arizona County Juvenile Courts and practices in Pima County, but ignores the stated wishes of the Pascua Yaqui Tribe.

³ Although not addressed by the lower court, the affidavit filed in the Tribal Court bore the case number for a juvenile matter. The use of an affidavit from a juvenile matter for a proceeding in adult Tribal Court is illegal. *See, e.g.* Title 2, Pascua Yaqui Judicial Titles and Codes, §§ 1.2 (B), 17.1 and 17.2 (confidentiality of juvenile records).

The Pascua Yaqui Tribe is a sovereign nation, not a political subdivision of the State of Arizona or Pima County. *See, e.g.,* Constitution of Pascua Yaqui Tribe; *Ex parte Crow Dog*, 109 U.S. 556 (1883). As a sovereign nation, the Tribe has the power to enact laws. As previously discussed, the Pascua Yaqui Tribe has adopted a juvenile code, in part, to remove from children committing juvenile offenses “the legal consequences of criminal behavior and to substitute therefore a program of supervision, care and rehabilitation with the protection of the Pascua Yaqui Community.” Title 2, Pascua Yaqui Judicial Titles and Codes, § 1.1 (F). When it adopted the Juvenile Code, the Tribe stated that the Code shall be construed and interpreted to fulfill this purpose. Title 2, Pascua Yaqui Judicial Titles and Codes, § 1.1.

The Juvenile Code was not intended to mirror the practices of the State of Arizona or Pima County. If the Tribe wished to do so, it could have adopted Arizona’s juvenile laws verbatim. This Court must reject the Appellant’s invitation to ignore the stated public policy of the Pascua Yaqui Tribe.

CONCLUSION

For all of the above and foregoing reasons, the Appellee respectfully moves this Court to enter an order affirming the trial court’s order dismissing the complaint against the Appellee

DATED this 31st day of October, 2005.

PASCUA YAQUI PUBLIC DEFENDER



Nicholas A. Fontana
Chief Public Defendant
Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that the original and four (4) copies of the Brief in Response were delivered
this date to:

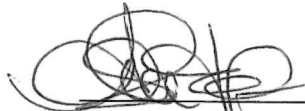
Clerk of the Court of Appeals
Pascua Yaqui Court of Appeals
7474 South Camino de Oeste
Tucson, AZ 85757

and that one copy of the Brief in Response was delivered this date to:

Micah Schmit
Chief Prosecutor
Office of the Prosecutor of the Pascua Yaqui Tribe
7474 South Camino de Oeste
Tucson, AZ 85757

DATED this 31st day of October, 2005.

PASCUA YAQUI PUBLIC DEFENDER



Anselma Torres
Office Manager