



CA-06-004

Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellant

v.

Martinez, Michael, Defendant/Appellee

ORDER

Appeal of a decision of the Pascua Yaqui Tribal Court in Case No. CR-06-037, the Honorable Cornelia Cruz presiding.

Allen Osburn, Esq., Pascua Yaqui Tribe Office of the Prosecutor, Tucson, AZ, for the Plaintiff/Appellant.

Michael Martinez Jr., 5120 W. Tarook, Tucson, Arizona, 85757, pro se, Defendant/Appellee.

Appellant Pascua Yaqui Tribe filed a Notice of Appeal in this case on December 19, 2005 and an amended Notice on December 20, 2005.

After a Motion for Extension was granted, Appellant filed its Opening Brief on November 14, 2007. Appellee has not filed its Response Brief.

Accordingly, the court will decide this case based on the record and the filings before the court, pursuant to Rule 16 PYTRAP.

Statement of the case.

This case arises from an order dismissing with prejudice a criminal case, because the matter should have been filed in Juvenile Court rather than in Tribal Court.

The alleged facts occurred on or around Nov. 26, 2004 according to the police affidavit and the criminal complaint. The complaint was filed in Tribal Court on Nov. 15, 2005, almost a year later. For reasons not apparent on the record, the Prosecutor waited almost 12 months. At the time of filing in Tribal Court, the accused was no longer a juvenile.

At the initial hearing, held on Dec. 14, 2005, Trial Court held that there was no probable cause to believe that the alleged offenses occurred since the defendant was a minor at the time and that the charges should have been filed in Juvenile Court.

Argument.

The Juvenile Court jurisdiction statute gives the Juvenile Court exclusive jurisdiction in cases where “a minor has been alleged to be a juvenile offender”, unless jurisdiction is transferred to Adult Court [3 PYTC 1-1-40(2); CA-05-006, *PYT v. a Juvenile*, 2006].

A juvenile offender is one who commits a juvenile offense, which the Juvenile Code defines as “an act which, if committed by an adult, is designated a crime under the Pascua Yaqui Tribal Codes” [5 PYTC 7-20(X)]. Appellee was a minor at the time he was alleged to have committed the juvenile offenses. Therefore, the Juvenile Court has exclusive jurisdiction over the charged offenses.

The Tribe does not dispute that Appellee was a juvenile at the time the alleged offenses were committed. He meets the definition of a juvenile offender and we conclude that the Juvenile Court had exclusive jurisdiction.

The Tribe’s argument, that the seriousness of the crimes warranted the delay and filing in Adult Court is unpersuasive. It is not the prosecutor’s privilege to decide whether a case should be decided in Juvenile or in Adult Court. Rather, the Tribe must go through the motion of filing a Rule 60 Petition and let a judge decide whether removal to Adult Court is justified by the facts and the circumstances. [60 PYT R. Juv. Proc]

The Juvenile Code contains measures to protect the juvenile and to ensure speedy processing and filing of a Juvenile Offender Petition. In particular, the Juvenile Code provides for an initial investigation within 48 hours of a juvenile’s detention or detention and release, and filing of a petition within 72 hours if the juvenile is detained or 10 days if he is released upon arrest. This guarantees that juvenile matters will be investigated promptly and brought to trial 5 PYTC 7.

Such limitations are absent in the Criminal Code, which affords prosecutors an entire year to commence an action in Tribal Court (4 PYTC 1-40). Allowing Law Enforcement and the Prosecutor’s Office to prolong filing of a complaint until the juvenile reaches the age of 18 so that they can benefit of the longer statute of limitation appears contrary to the Legislators’ intent.

Juvenile Offenses, meaning offenses committed by minors, should be investigated and commenced pursuant to the provisions of the juvenile code. If the juvenile is about to or reaches the age of 18 before or during criminal proceedings, the prosecutor should file a petition under 3 PYT R. Juv. Proc. Rule 60 to have the case removed to Adult Court.

Decision.

Accordingly, and for the reasons set forth, this court upholds the Tribal Court's dismissal with prejudice in CR-06-037.

So ORDERED this 26th day of January, 2010.

A handwritten signature in cursive script, appearing to read "James C. Hopkins".

James C. Hopkins, Chief Justice

No. CA-06-004
Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellant,

v.

Michael Martinez, Jr., Defendant/Appellee.

ORDER

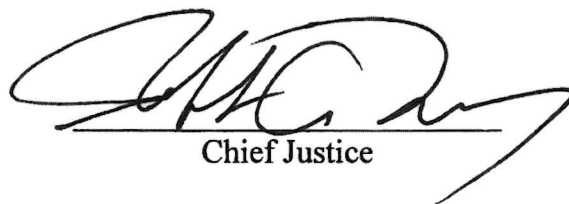
Appeal from a decision of the Pascua Yaqui Tribal Court, Case No. CR-06-037, the Honorable Cornelia Cruz presiding.

G. Allen Osburn, Esq., Pascua Yaqui Tribe Office of the Prosecutor, Tucson, Arizona, for the Appellant Tribe.

Michael Martinez, Jr., Appellee pro se, Tucson, Arizona.

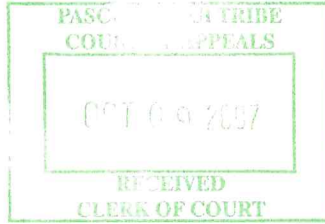
The Tribe's October 7, 2007 motion for extension of deadlines and for a briefing schedule is granted. The Tribe shall file its opening brief and serve a copy on the Appellee no later than November 13, 2007. The Appellee shall file his response brief and serve a copy on the Tribe no later than December 13, 2007. The Tribe shall file its reply brief and serve a copy on the Appellee no later than December 28, 2007. Thereafter, the case shall be at issue.

So ORDERED this 11th day of October, 2007.



Chief Justice

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR
7474 S. Camino de Oeste
Tucson, AZ 85757
(520) 879-6251



PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

07 OCT -5 PM 4:53

DOCKET NO. CA -06-004

TRK TS

G. Allen Osburn
Deputy Prosecutor

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

PASCUA YAQUI TRIBE,
Plaintiff/Appellant,

vs.

MARTINEZ, Michael Jr.
Defendant/Appellee

Appeals Court Case No. CA-06-004

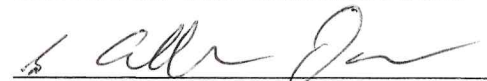
Trial Court Case No. CR-06-037

**TRIBE'S MOTION TO EXTEND
DEADLINES AND SET BRIEFING
SCHEDULE**

The Tribe motions the court to extend time limits and set forth a briefing schedule regarding the Appellate Brief, Response Brief and Reply Brief in the above entitled matter pursuant to 3 PYTRAP Rule 5(B). The Tribe asks for a briefing schedule convenient to the schedule of the Appellate Court.

RESPECTFULLY SUBMITTED this 5th day of October, 2007.

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR


G. Allen Osburn
Deputy Prosecutor

Copy mailed/delivered this date, to:

Michael Martinez Jr.
5120 W. Tarook
Tucson, AZ 85757

By _____

IN THE PASCUA YAQUI TRIBE COURT OF APPEALS

Pascua Yaqui Tribe
Plaintiff / Appellee

CASE: CA-06-004

CERTIFICATE OF
SERVICE

Vs.

Michael Martinez Jr.
Defendant/ Appellant

State of Arizona
County of Pima

I certify that I am a Bailiff/Pascua Yaqui process server an officer of the Pascua Yaqui Tribal Courts and I certify I am authorized by Pascua Yaqui Tribe to serve process. On 01-26-10, I received the Order from the Court of Appeals.

ORDER -CA-06-004

In each instance I personally served a copy of each document listed above upon:

Michael Martinez Jr.
On 02-03-10 @ 10:00 am
5120 W Tarook
Tucson, Arizona 85757 (Pima County)

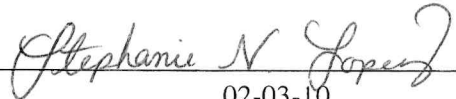
In the manner shown below:

By leaving true copy to the above document with

Michael Martinez Jr.

Personal services, a person of the suitable age and discretion within their usual place of residence,
Located at the above address.

I declare under penalty of perjury that the foregoing is true.



02-03-10

Stephanie N. Lopez
Bailiff #513
Pascua Yaqui Tribal Courts