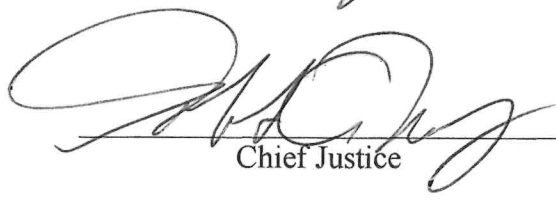


been filed late. Juvenile Court Order, No. JD-06-027 (Jan. 12, 2006). According to the Juvenile Court, the Juvenile Offender Petition should have been filed within ten days of the alleged offense. *Id.* The Tribe filed a timely notice of appeal on January 18, 2006.

This Court finds that the Pascua Yaqui Juvenile Court erred when it ruled that the Juvenile Offender Petition should have been filed within ten days of the alleged offense. According to the Pascua Yaqui Juvenile Code, Section 3.9(B)(4), and this Court's interpretation of that section, if a juvenile had been arrested and then released to a parent, or if the juvenile had been placed in a secure detention facility and then released to a parent, the juvenile presenting officer must file a petition against the juvenile within ten days of the release. *Pascua Yaqui Tribe v. A Juvenile*, No. CA-05-005 (PYT Ct. App. Aug. 25, 2006). In this case, the Appellee Juvenile was not arrested and then released to a parent; neither was she placed in a secure detention facility and then released to a parent. Thus, the ten-days filing requirement of Section 3.9(B)(4) does not apply to this case. Furthermore, the Juvenile Court's ruling that the Juvenile Offender Petition must be filed against the Appellee Juvenile within ten days of the alleged crime does not have a basis in 2 PYTC § 3.9. The Juvenile Court, therefore, erred in its interpretation of Section 3.9(B)(4).

Accordingly, the Pascua Yaqui Juvenile Court Order dismissing the Juvenile Offender Petition for lack of subject matter jurisdiction is reversed. The case is remanded to the Juvenile Court so it can reinstate the Juvenile Offender Petition. In addition, the Appellee Juvenile's identity has been changed in the caption of this appeal for confidentiality reasons and the Juvenile Court should likewise do the same.

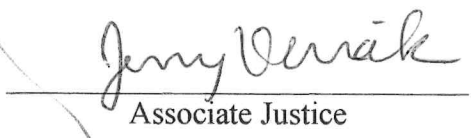
So ORDERED this 28 day of Sept., 2006.



Chief Justice



Associate Justice



Associate Justice

06 JAN 24 PH 4:25

DOCKET NO. CA-06-007

CLERK [Signature]

1 PASCUA YAQUI TRIBE
2 OFFICE OF THE PROSECUTOR
3 7474 S. Camino de Oeste
4 Tucson, Arizona 85757
5 (520) 879-6251
6
7 Micah Schmit, SB# 014887
8 Chief Prosecutor

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

9 PASCUA YAQUI TRIBE,)
10 Appellant,) NO. CA-06-007
11 Vs.) (Juvenile Court No. JD-06-027)
12)
13) **Appellant's Motion To Join In**
14) **Its Appeals, Filed In Arturo**
15) **Flores & Fabian Elenes**
16)
17)

18 COMES NOW The Pascua Yaqui Tribe, by and through counsel
19 undersigned, and hereby files this Motion, requesting that the
20 Tribe be permitted to procedurally and substantively join the
21 appeal of this case with those of the others captioned above.

22 The Tribe incorporates by reference the arguments in the
23 above pending appeals, all filed in the preceding 4 months.
24 This is urged in the interests of preserving both resources
25 and time with this Honorable Court as the issues are the same.
26 Authority for this motion lies under Pascua Yaqui Rules of
27 Appellate Procedure Ordinance of 2005 (hereinafter, PYTRAP)
28 Rule 6.

JURISDICTIONAL STATEMENT

On January 12th, 2006, the Juvenile Tribal Court, sua
sponte, dismissed with prejudice the above-captioned criminal
case, then existing under cause number JD-06-027, a copy of
which is attached as **Exhibit A**. The Tribe timely filed its

1 Notice of Appeal, January 18th, 2006, **Exhibit B**, within the 30
2 days required by Rule 8, PYTRAP. Appellant's Opening Brief is
3 then normally due within 30 days after the Appellate Court
4 clerk mails notice to the parties that the lower court's
5 record on appeal has been filed. *Id.* Rule 12. However, in so
6 far as the Tribe hereby motions the Court of Appeals to join
7 this appeal with those similarly pending (as noted above), the
8 Tribe waives submitting an Opening Brief at this time and
9 incorporates by reference those arguments submitted in the
10 briefs regarding the Arturo Flores and Fabian Elenes appeals
11 (CA-05-005 and CA-06-002, respectively).

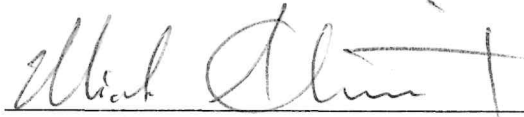
12 **CONCLUSION:**

13 The definition of the term "detention" is instrumental to
14 the functionality of the charging deadlines contained in JCODE
15 §3.9(B)(4). Yet, the lower court's order in this case ignores
16 the JCODE's deliberate definition of the word "detention"
17 which contemplates *only* detention within a physical facility -
18 not "interview date" or talking-to-the-parent date or "offense
19 date." As such, the lower court abused its discretion when it
20 interpreted the Tribe's charging deadlines to originate from
21 the "offense date" in this case. See **Exhibit A**, pg 2, lines
22 14-22. Since only the statute of limitations should be the
23 relevant time limit to this long-formed (never-detained)
24 juvenile prosecution, the Tribe prays this Court reverse the
25 lower court's sua sponte dismissal and reinstate this matter
26 for an Initial Hearing.

27 ///

1
2 Respectfully submitted this 24th day of January, 2006.
3

4 OFFICE OF THE PROSECUTOR
5 PASCUA YAQUI TRIBE

6 

7 Micah Schmit
8 Chief Prosecutor
9

10 Original and six copies of the foregoing delivered/mailed
11 This January 24th, 2006 to:

12 Clerk of the Court, Pascua Yaqui Tribe Court of Appeals
13

14 Copies delivered/mailed this date to:

15 Appellee (since this was a sua sponte dismissal
16 By the court, there is no attorney to send this to.
17 c/o Parents/Guardians Cornelio & Gloria Valenzuela
18 7572 S. Parros Vo'od

19 PYT Attorney General's Office
20 Attn: Pilar Thomas
21 Tucson, Arizona 85757

22 Pascua Yaqui Tribal Court

23 By: 

Exhibit A

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

4 Patricia Castro,
Juvenile Presenting Officer

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

8 PASCUA YAQUI TRIBE,
9 Appellant,

NO. CA-06-007
(Juvenile Court No. JD-06-027)

10 In the matter of:
ALEJANDRO, Sivouneh
11 (DOB: 07/29/92)

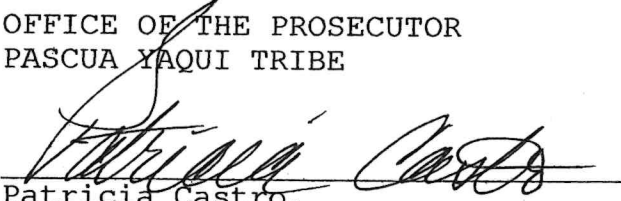
NOTICE OF APPEAL
Oral argument requested

12 Minor Appellee.

13 Notice is hereby given that the Pascua Yaqui Tribe appeals to
14 the Appellate Court of the Pascua Yaqui Tribe from the judgment
15 entered in this action by the Pascua Yaqui Juvenile Court on
16 January 12, 2006. The Pascua Yaqui Tribe requests oral argument.
17

18 **Respectfully submitted this 18th day of January, 2006.**

19 OFFICE OF THE PROSECUTOR
20 PASCUA YAQUI TRIBE

21 
22 Patricia Castro,
Juvenile Presenting Officer

23 Original delivered/mailed
24 This date to:

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

26 Copy delivered/mailed to:

27 Pascua Yaqui Tribal Court

28 By: 

COPY

Exhibit B

1 IN THE PASCUA YAQUI JUVENILE COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

3 IN THE MATTER OF:)
4)
5 ALEJANDRO, SIVOUNEH,)
6 DOB: 07/29/92,)
A MINOR CHILD.)

CASE NO. JD-06-027

ORDER DISMISSING JUVENILE PETITION

7 On January 11, 2006, the presenting officer, Patricia Castro, submitted a motion to
8 stay proceedings in this matter, which has been set for an initial hearing on January 26, 2006.
9 At an initial hearing, the court generally makes its determination as to whether probable cause
10 exists. Additionally, the court must make determinations as to whether it has both personal
11 and subject matter jurisdiction over the case.

12 The Pascua Yaqui Constitution provides that the Tribe "in exercising its powers of self
13 government shall not deny to any person in a criminal proceeding the right to . . . be informed
14 of the nature and cause of the accusation," PYT CONST. Art. I. Sec. 1(f), nor shall the Tribe
15 "deny to any person within its jurisdiction the equal protection of its laws or deprive any
16 person of liberty or property without due process of law." Id. at Sec. 1(h).

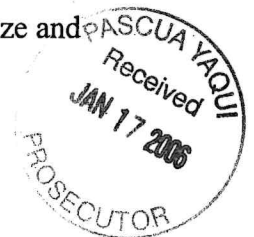
17 The Powers of the Pascua Yaqui Tribal Council are
18 to develop and adopt ordinances, resolutions, rules and regulations
19 to protect and promote the peace, health, safety and general welfare
20 of the Pascua Yaqui people and to facilitate the conduct and operation
21 of the tribal government. PYTC Const. Art. VI. Sec. 1(o).

22 Further the Tribal Council has the power:

23 To enact ordinances, subject to applicable federal law and this constitution,
24 regulating activities, including but not limited to . . . crimes. . .
25 protection of minors. . . Id. at Sec. 1(t).

26 The Pascua Yaqui legislature, through its constitutional authority to do so, established
27 the "purpose" of the juvenile code, under Juvenile Code section 1.1, which provides in
28 pertinent part as follows:

The Juvenile Code shall be construed and interpreted to fulfill the
following purposes: . . .
(D) to provide fair procedures for enforcing this Code that recognize and
protect the rights of the parties.



1 The Pascua Yaqui Juvenile Code provides for two separate time frames in which
2 juvenile offender petitions shall be filed against alleged juvenile offenders. The juvenile code
3 provides firstly, that if a child is detained, the Tribe must file a petition within 72 hours of the
4 child's detention, 2 PYTC § 3.9 (B)(4), and secondly, if the child is released to the custody of
5 his parent, the Tribe shall file its petition within ten days. 2 PYTC § 3.9(B)(4). According to
6 the officer's probable cause affidavit, the child was "long formed without a warrant," as noted
7 in paragraph 3. The officer did not request a custody warrant for the child's apprehension.

8 This case file indicates that the child allegedly committed a juvenile offense on
9 December 18, 2005, and the probable cause affidavit filed by the police officer attached to
10 and made part of the juvenile offender petition bears the notation and date "Pascua Police
11 Received December 19, 2005." The file stamp on the officer's probable cause affidavit
12 indicated the statement was made on December 19, 2005, the day after the alleged incident,
13 and contains a police stamped showing received December 19, 2005. The juvenile offender
14 petition itself bear a court file stamp of January 11, 2006, which is 24 days after the alleged
15 juvenile offense was to have occurred.

16 The intent of the juvenile filing statute requiring a juvenile petition filing within 72
17 hours of a child's detention, if the child is still in detention, or a filing of a petition within 10
18 days after the incident, if a child is not detained and in custody, is to promote prompt and
19 timely filing of the juvenile offender petitions to reasonably apprise juveniles, their parents
20 and guardians of the allegations filed against them either in 72 hours, if detained, or within ten
21 days, if not detained.

22 Allowing the Tribe's prosecutor to file later than 10 days after an alleged juvenile
23 offense would be a violation of the minor's right to a prompt initial hearing so that the court
24 could "provide fair procedures for enforcing this code that recognize and protect the rights of
25 the parties." PYTC Juv. Code § 1.1(D).


26 The presenting officer did not file the petition until January 11, 2006, or twenty four
27 days after the alleged incident, well beyond the ten days from the date of the alleged incident.
28 Due to the untimely filing of the petition, the court lacks subject matter jurisdiction over the
juvenile proceeding. A period of 24 days after an offense is not considered timely, does not
fairly protect the rights of the juvenile to be cited or summoned promptly, when the Tribe has
already established a "10 day rule" as to when petitions should be filed against minors who
are not in custody or detained.

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The juvenile offender petition should be dismissed, because the Tribe failed to file its juvenile offender petition in a timely fashion, and therefore, the court lacks subject matter jurisdiction over the juvenile case.

IT IS ORDERED that based on lack of a timely filed petition, the juvenile offender petition is dismissed with prejudice to re-filing. The motion for stay is denied, based on lack of continuing jurisdiction over the case.

SO ORDERED THIS 12th DAY OF JANUARY, 2006.



JUDGE, PASCUA YAQUI JUVENILE COURT

Date: 01-13-06

Tribe Minor/Parent

By: 

Clerk