

No. CA-06-009  
Pascua Yaqui Tribe Court of Appeals

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In the Matter of L.M.,  
a Minor.

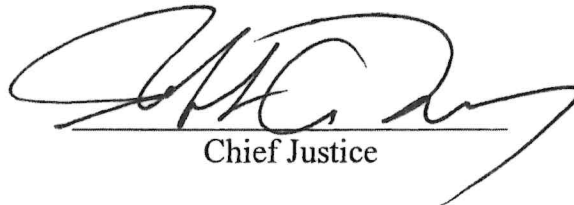
ORDER

Appeal of a decision of the Pascua Yaqui Tribe Juvenile Court in Case No. JD-06-047, the Honorable Melvin Stoof presiding.

Patricia Castro, Esq., Pascua Yaqui Tribe Office of the Prosecutor, Tucson, Arizona for the Plaintiff/Appellant Tribe.

The Court reviewed the record in this matter and finds that the Juvenile Court dismissed this case because the Juvenile Offender Petition was defective in several respects, including an incorrect address, lacked a correct date of birth, lacked a statement of tribal affiliation, lacked a probable cause affidavit, and lacked specific allegations on the custody of the child. This Court agrees with the trial court that a defective Juvenile Offender Petition should be dismissed; therefore, the notice of appeal lacks merit. Accordingly, the notice of appeal filed in this case is summarily denied and dismissed pursuant to Rule 15(A), PYTRAP. The case shall be closed on appeal.

So Ordered this 8th day of October, 2006.

  
Chief Justice



1 IN THE PASCUA YAQUI JUVENILE COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

3 IN THE MATTER OF: )

4 M. ADAMS, JR. L. VORD )

5 DOB: 2/11/89 )

6 A MINOR CHILD. )

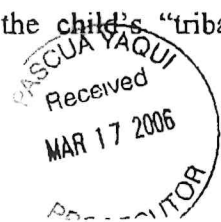
CASE NO. JD-06-047

ORDER DENYING MOTION TO AMEND  
AND ORDER OF DISMISSAL OF PETITION  
WITH PREJUDICE

7 The minor, L. Vord M. Adams Jr., and his parent, L. Vord McAdams Sr. appeared  
8 March 16, 2006, for a second detention hearing and a hearing on the Tribe's motion to amend  
9 petition. The minor was represented by his counsel, M. June Harris. Appearing for the Tribe  
10 was Patricia Castro.

11 The Tribe made a motion to amend the petition, which was filed on March 12, 2006,  
12 and attached to the motion was a proposed Juvenile Offender Petition (Amended) which  
13 contained a different place of address from that address listed in the originally filed petition  
14 where the alleged offense took place, and the minor objected. An amended juvenile offender  
15 petition should contain the same requisite formalities as an originally filed juvenile offender  
16 petition in order for the court to grant leave to amend. The court should deny the Tribe's  
17 motion for leave to amend the petition, because the proposed amended complaint does not  
18 have an attached probable cause affidavit, nor does it contain a proper date of birth, tribal  
19 affiliation and specific allegations of whether the child is in custody and if so, the place of  
20 detention and time and place he was taken into custody. PYTC Juv. Code Sec. 3.11(1)(6).

21 Additionally, the minor challenges the original juvenile offender petition as being  
22 invalid, because it does not contain the proper address where the alleged offense took place, it  
23 contains the wrong "birth date," it does not provide for the child's "tribal affiliation," nor does  
24 the original juvenile offender petition state with specificity "whether the child was taken into  
25 custody and if so the place of detention and the time he was taken into custody," PYTC  
26 Juv.Code Sec. 3.11(1)(5)&(6). The petitioner should be dismissed because based on an  
27 incorrect address, there is no probable cause found, based on a different place pled in the  
28 petition than that time stated in the probable cause affidavit. Additionally, even if the court  
grants the Tribe's motion to amend the date of birth of the minor, which it does, the court  
must dismiss the petition because it does not contain the child's "tribal affiliation" or



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“whether the child is in custody, and if so, the place of detention and time he was taken into custody.”

Although the Tribe moves the court to dismiss the petition without prejudice to re-filing, because it argues that the Tribe may file a new petition within 10 days of the original date and time of detention, the minor objected and requested that the court dismiss the matter with prejudice to re-filing, based on Juv. Code Sec. 3.9, which requires that the Tribe file its juvenile offender petition within 72 hours of the time the child is originally taken into custody. Pascua Yaqui Juvenile Code Sec. 3.9 “Initiation of Proceedings” provides in pertinent part that:

B. . . . the presenting officer may:

- 4. file a petition under section 3.11 of this Code. **The petition shall be filed within 72 hours if the child is in custody.** If the child has been previously released to his parents, guardian or custodian, the petition shall be filed within 10 days. (emphasis added).

Due to the court’s dismissal of the petition, and the fact that the juvenile has been in custody since March 12, 2006, any re-filing of a new juvenile offender petition would be more than 72 hours after the child was taken into custody. The 10 day rule allowing for the Tribe’s petition filing only applies to a child who has been released to his parent, guardian, or custodian. Because the statutory time frame for re-filing of an offense has passed, the court should grant the minor’s motion to dismiss with prejudice for good cause shown.

**IT IS ORDERED** that based on lack of an amended pleading which does not contains a probable cause affidavit, and the proposed amended petition does not contain the child’s correct birth date, tribal affiliation, and whether he is in custody and if so the place of detention and the time he was taken into custody, as required by sec. 3.11 of the juvenile code, the court denies the motion to amend the juvenile offender petition.

**IT IS FURTHER ORDERED** that the court grants the Tribe’s motion to amend the original complaint insofar as the Tribe requested an amendment to the child’s date of birth.

**IT IS FURTHER ORDERED** that the minor’s motion to dismiss the original juvenile offender petition shall be granted, because the original juvenile offender petition lacks the child’s tribal affiliation, lacks specificity as to the location of the alleged offense, and lacks specific facts of whether the child was in custody and if so the place of detention and time he was taken into custody. The court denies the Tribe’s request to dismiss without

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prejudice to re-filing, because the petition cannot be re-filed, due to the time lapse of 72 hours since the child being taken into custody. Any re-filing would violate the statute of limitations set forth in Juv. Code Sec. 3.9(B)(4).

**IT IS FURTHER ORDERED** that the minor L [REDACTED] M [REDACTED] shall be released from custody immediately and returned to his parents, [REDACTED]

SO ORDERED THIS 16<sup>th</sup> DAY OF MARCH, 2006.

*William R. Hoof*  
\_\_\_\_\_  
JUDGE, PASCUA YAQUI JUVENILE COURT

Date: 03/16/06  
\_\_\_\_\_  
Tribe                      Minor/Parent                      Counsel

*[Signature]*  
\_\_\_\_\_  
Clerk