

Pascua Yaqui Tribe
Office of the Prosecutor
7474 S. Camino de Oeste
Tucson, AZ 85757
(520) 879-6251

Yancy A. Jencsok
Juvenile Presenting Officer

PASCUA YAQUI TRIBAL CO.
FILED DATE AND TIME

07 FEB 23 AM 11:3

DOCKET NO. CA-06-01

CLERK WJ

IN THE PASCUA YAQUI TRIBE COURT OF APPEALS


IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,)	
Plaintiff/Appellant,)	
)	
Juvenile F.E.,)	CA-06-002, JD-06-006
Juvenile R.A.,)	CA-06-012, JD-06-066
Juvenile E.O.,)	CA-06-016, JD-06-069
Juvenile L.S.,)	CA-06-017, JD-06-071
Juvenile J.M.,)	CA-06-018, JD-06-087
Defendants/Appellees.)	
)	
)	MOTION TO CONSOLIDATE AND FOR DECISION ON THE RECORD

Appellant moved the court to consolidate the above referenced cases and to make a decision based on the record. This motion is supported by the attached Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 23rd day of February, 2007.

MICAH SCHMIT
CHIEF PROSECUTOR



YANCY A. JENCOK
Deputy Prosecutor
Counsel for Appellant

STATEMENT OF FACTS

Each of these cases involves the same basic set of facts. A minor allegedly commits a “juvenile offense” as defined in the Pascua Yaqui Juvenile Code. The minor is cited for the offense, but is not taken into custody or arrested. A juvenile offender petition is filed. The trial court dismisses the petition with prejudice. The reason given for the dismissal is that the petition was filed within ten days from the offense, citing to the Pascua Yaqui Tribe Juvenile Code, 2 PYTC §3.9(B)(4) [now 5 PYTC § 7-110(4)]. In each case, a Notice of Appeal was timely filed.

ARGUMENT

A. The cases involve identical sets of facts and an identical issue of law and should be consolidated to promote judicial economy.

The Pascua Yaqui Tribe Rules of Appellate Procedure do not address the consolidation of appeals. However, it is a common practice in the tribal trial court to consolidate cases involving the same parties. Also, many jurisdictions allow the consolidation of appeals when there are common sets of fact or legal issues.¹

As described above, each of the cases listed involves an identical fact pattern. In addition, each case has a single dispositive issue of law and can be decided by the application of a single appellate court decision.²

The issue of law central to each case is the correct interpretation of 2 PYTC §3.9(B)(4). The trial court interpreted that section to mean that when a minor has committed a “juvenile offense”³, a juvenile offender petition must be filed within 10 days, irrespective of whether the minor has been in custody. However, the Pascua Yaqui Court of Appeals recently interpreted §3.9(B)(4) to mean that the ten day deadline applies only when a minor has been taken in to custody and subsequently released. *Pascua Yaqui Tribe vs. A Juvenile*, CA-05-005 (August 25, 2006). That decision goes on to state that in order for a child to be considered “taken into custody,” the juvenile must have been arrested and placed into a detention facility. In all of these

¹ For example, the Arizona Rules of Criminal Procedure provide that “[a]ppeals which raise a common question of law or fact may be consolidated at any time.” Rule 31.4(b)(1).

² Juvenile J.M. contains the additional issue of whether, when the tenth day falls on a weekend, the deadline should be the next business day, pursuant to 9 PYTC §102(A) [now 3 PYT R.Crim.P. Rule 3(A)]. However, this issue is made moot by the court’s decision in *Pascua Yaqui Tribe vs. A Juvenile*, CA-05-005 (August 25, 2006).

³ A “juvenile offense” is “[a]n act which if committed by an adult is designated a crime.” Pascua Yaqui Juvenile Code Definitions, 5 PYTC § 7-20(X).

cases, the minor was never taken into custody. Therefore, the ten day deadline of §3.9(B)(4) does not apply and the Tribe should have had a full year from the date of the offense to file the petition.⁴

To promote judicial economy, the cases listed should be consolidated.

B. The cases should be disposed of by a decision on the record.

PYTRAP Rule 16(D) gives the appellate court the discretion to decide an appeal on the record. These cases are amenable to being decided on the record. The fact pattern for each is simple. Each trial court decision appealed from is based on a single issue. The orders appealed from, and attached to the Notice of Appeal for each case, contain an adequate summary of the facts and description of the reason for the decision. It is not necessary for an involved, drawn out process in order to reach a just decision.

CONCLUSION

The cases should be consolidated as they have a similar set of facts and an identical legal issue in common. The cases should be decided on the record as the facts and legal issue are simple and do not require briefing and legal argument.

RESPECTFULLY SUBMITTED this 23rd day of February, 2007.

MICAH SCHMIT
CHIEF PROSECUTOR



YANCY A. JENCOK
Deputy Prosecutor
Counsel for Appellant

⁴ 1 PYTC §1.28 [now 4 PYTC § 1-40].

Original and 5 copies delivered to:

Clerk, Pascua Yaqui Tribe Court of Appeals

Copies mailed to:

Guillermo Saldivar
Advocate for Juvenile F.E.

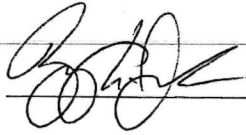
Parent of Juvenile R.A.

Parent of Juvenile E.O.

Parent of Juvenile L.S.

Parent of Juvenile J.M.

On February 23, 2007 by:

A handwritten signature in black ink, appearing to be 'G. Saldivar', written over a horizontal line.

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CKET NO. CA-06-012

CLERK PC

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

IN THE PASCUA YAQUI TRIBE COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA

8 PASCUA YAQUI TRIBE,
9 Appellant,
10 In the matter of:
ARMENTA, Richard
11 (DOB: 05/02/89)
12 Minor Appellee.

NO.
(Juvenile Court No. JD-06-066)
NOTICE OF APPEAL
Oral argument requested

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 June
16 21, 2006, regarding the "lack of a timely filed pleading". The
17 Pascua Yaqui Tribe requests oral argument.
18

19 **Respectfully submitted this 23rd day of June, 2006.**

20 OFFICE OF THE PROSECUTOR
PASCUA YAQUI TRIBE
21 Patricia Castro
22 Patricia Castro,
23 Juvenile Presenting Officer

24 Original delivered/mailed
This date to:
25 Clerk of the Court, Pascua Yaqui Tribe Court of Appeals
26 Copy delivered/mailed to:
Pascua Yaqui Tribal Court
27 By: PC

