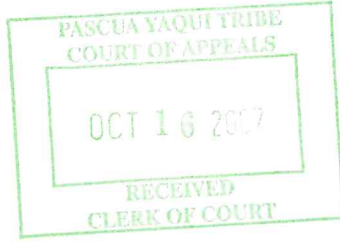


PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR
7474 S. Camino de Oeste
Tucson, AZ 85757
(520) 879-6251



PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

07 OCT 12 AM 11:46

DOCKET NO. CA-06-013

CLERK TS

Yancy A. Jencsok
Interim Chief Prosecutor

IN THE PASCUA YAQUI TRIBE COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,	)	Trial Court Case No. CR-06-156
Plaintiff/Appellant,)	
	)	Appeals Court Case No. CA-06-013
vs.)	
	)	TRIBE'S MOTION FOR EXTENSION
CARINO, JAMES,	)	OF TIME TO TRANSMIT RECORD
Defendant/Appellee.)	
_____)	

The Tribe motions the court for an extension of time for the record to be transmitted, pursuant to 3 PYTRAP Rules 5(B) and 9(A)(3). The Tribe filed its Notice of Appeal on June 23, 2006; however, the Tribal Court did not receive a copy and therefore did not prepare the record for transmittal. The Tribal Court has been noticed of the appeal on this day. A court stamped copy of the notice is attached. The Tribe asks for an extension until November 12, 2007.

RESPECTFULLY SUBMITTED this 12th day of October, 2007.

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR

Yancy A. Jencsok
Interim Chief Prosecutor

Copy delivered/mailed to:

James Carino
7832 Maala Mecha Voo'o
Tucson, AZ 85757

On October 12, 2007 by

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

Yancy A. Jencsok
Interim Chief Prosecutor

PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME
07 OCT 12 AM 10:54
DOCKET NO. CR06156
CLERK *[Signature]*

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,)	
Plaintiff,	)	Case No. CR-06-156
)	
vs.	)	NOTICE TO TRIBAL COURT THAT
	)	APPEAL HAS BEEN FILED AND
CARINO, JAMES,	)	REQUEST THAT RECORD BE
Defendant.	)	TRANSMITTED
_____)	

The Tribe hereby notifies the Tribal Court that a Notice of Appeal was filed in this case on June 23, 2006. A copy of the notice is attached. The Tribe requests that a record of the Tribal Court proceedings be transmitted to the Pascua Yaqui Court of Appeals.

RESPECTFULLY SUBMITTED this 12th day of October, 2007.

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR

[Signature]

Yancy A. Jencsok

Interim Chief Prosecutor

Copy delivered/mailed to:

James Carino
7832 Maala Mecha Voo'oo
Tucson, AZ 85757

On October 12, 2007 by

[Signature]



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

4 Micah Schmit
Chief Prosecutor

05 JUN 29 AM 8:03

BOOKED CA 06 013
K. RY

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

7 PASCUA YAQUI TRIBE,
8 Appellant,

NO.
(Tribal Court No. CR-06-156)

9 vs.

10 CARINO, James
Defendant/Appellee

NOTICE OF APPEAL
Oral argument requested

12 Notice is hereby given that the Pascua Yaqui Tribe appeals to
13 the Appellate Court of the Pascua Yaqui Tribe from the judgment
14 entered in this action by the Pascua Yaqui Tribal Court, Judge
15 Melvin Stoof, on May 30, 2006 (Exhibit A). The Tribal Court
16 dismissed this case, without prejudice, for "failure to prosecute."
17 The Tribe asserts that this ruling was an abuse of discretion for
18 the following reasons.

19 One, the remedy imposed by the Court was unnecessarily severe.
20 Here, the Tribe and Defendant, himself, co-signed a *stipulated*
21 motion to continue the trial, as the parties had come to a plea
22 agreement (Exhibit B). This stipulation was submitted to the trial
23 court the week prior to trial. On the day of trial, Defendant
24 reversed his stance. The Tribe moved to continue the trial, citing
25 no bad-faith or ill-will on its part. Defendant, however, in a
26 gesture of bad-faith, objected to the continuance and the lower
27 court, Judge Stoof, denied the Tribe's continuance and commanded

1 | the trial to proceed. It was therefore an abuse of discretion and
2 | improper case management and unfair to the Victim's statutory
3 | rights to ignore Defendant's contribution to the chain of events.

4 | Two, when the trial court declined to continue the case, the
5 | Tribe asked for a mere five minute recess to retrieve the bulk of
6 | the file and ascertain the trial-worthiness of the case at that
7 | instant. Again, Defendant objected, and even though the lower
8 | court can grant a continuance or brief recess in the interests of
9 | justice, Judge Stoof, once again, denied this reasonable request
10 | and commanded the Tribe to proceed by "calling its first witness."

11 | The Court did not ask for any other motions, nor even offer the
12 | parties an opportunity to conduct opening statements. The Tribe
13 | had no witness in the court room at that instant and the Court
14 | proceeded to dismiss the case. As it turned out, the Victim was in
15 | the lobby of the court house, pursuant to the original notice of
16 | trial. With the court room obviously void of trial witnesses, had
17 | Judge Stoof permitted even the briefest of recesses, the victim
18 | would have been discovered and, not only could the Tribe have
19 | continued on with trial, but the Victim's equal interest in
20 | fairness and justice would not have been unconsidered.

21 | Lastly, when the Tribe moved to continue the case, the Court
22 | declared that time limits would expire in two weeks (June 14th).
23 | Judge Stoof stated that since the Court's calendar could not
24 | accommodate a resetting of the trial in that time-frame, the Court
25 | was compelled to dismiss the case for that reason as well. Judge
26 | Stoof is again wrong for dismissing the case on this ground. Under
27 | the Code, criminal cases take precedent over civil cases and,


1 during those two weeks, a civil case could certainly have been
2 moved to accommodate this matter. In addition, a case may be
3 continued, notwithstanding time limits or a defendant's objection,
4 "for good cause." Defendant's bad faith, and/or the Court's
5 compressed Calendar and/or Defendant's failure to apprise the trial
6 court of impending time-limit expirations (as required by the Code)
7 each operate as independent "good causes" which would typically
8 merit setting a continued trial beyond two weeks. Yet, Judge Stoof
9 disregarded all of these and found that the only remedy was
10 dismissal.

11 Therefore, for any or all of these reasons, Judge Stoof's
12 finding that the Tribe "failed to prosecute" this case, was an
13 improper remedy, an abuse of discretion, and not an action that
14 represents any confidence in the lower court's interest in pursuing
15 this Sovereign Nation's genuine sense of global justice.

16 The Pascua Yaqui Tribe requests oral argument and a three-
17 Justice appellate proceeding.

18 **Respectfully submitted this 28th day of June, 2006.**

19 OFFICE OF THE PROSECUTOR
20 PASCUA YAQUI TRIBE

21 
22 _____
23 Micah Schmit, Chief Prosecutor

22 Original delivered/mailed
23 This date to:

23 Clerk of the Court, Pascua Yaqui Tribe Court of Appeals,
24 Along with 5 additional copies

24 A copy delivered/mailed to:
25 The Pascua Yaqui Tribal Court

25 The PYT Attorney General, Pilar Thomas

26 James Carino, Defendant & Appellee
27 7832 Maala Mecha Voo'o
28 Tucson, AZ 85757

27 By: 

Exhibit A

A/M

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

1		
2		
3	PASCUA YAQUI TRIBE,	) Case No. CR-06-156
4	PLAINTIFF,)
5	vs.	) ORDER DENYING APPOINTMENT OF
6	CARINO, JAMES,	) LEGAL COUNSEL, AND
7	DEFENDANT.	) ORDER OF DISMISSAL
8		) FOR WANT OF PROSECUTION
9)

10 The defendant, James Carino, appeared without legal counsel for a bench trial on May
 11 30, 2006. The court denied the defendant's request to appoint him legal counsel pursuant to
 12 the 6th amendment right under the U.S. Constitution, because the U.S. Constitution does not
 13 apply to Tribes. Pursuant to both the Indian Civil Rights Act, 25 U.S.C. 1301, et seq. and the
 14 Pascua Yaqui Constitution, there is no absolute right to a court appointed counsel, but rather a
 15 defendant in a tribal court proceeding has a right to legal counsel at his own expense. For lack
 16 of good cause shown, the request for court appointed legal counsel should be denied.
 17 Appearing for the Tribe was G. Allen Osburn. The Tribe moved to continue the matter, and
 18 the defendant objected to the continuance.

19 Although the Tribe submitted a motion to continue and stated in its motion filed May
 20 26, 2006, that "the defendant would like to accept the plea offer made by the Tribe" and the
 21 Tribe had submitted a photocopy of a purported proposed plea agreement, the defendant
 22 requested that he be allowed to withdraw the plea. Additionally, the defendant objected to the
 23 Tribe's request for continuance and he stated he did not wish to waive time limits. The Tribe
 24 responded to the defendant's objection to the continuance of the trial, because it believed it
 25 had a valid agreement and that is why the Tribe had requested the matter be continued.
 26 However, the tribal code states that a plea agreement may be withdrawn or revoked at any
 27 time by any party to the proposed plea. PYTC Crim. Pro. R. 318(B).

28 Pascua Yaqui Law and Order Code Section 1.55 provides that the court may grant a
 continuance for good cause shown. If the court were to grant the Tribe's request for a
 continuance, and the defendant does not waive time limitations, then the only other available
 court dates would be after June 14, 2006, which is 90 days after the defendant's arraignment
 or the last day the court would be able to set a speedy trial, pursuant to rule 402 "Speedy
 Trial: Time Limits." Because the defendant was arraigned on March 16, 2006, the last day to
 hold his trial would be June 14, 2006. The court finds that because the defendant has a right to
 a speedy trial and he does not wish to waive time limits, the Tribe has failed to show good
 cause as to why the trial should be continued. The court asked the Tribe if it were ready to try
 the case, it requested a brief recess, to which the defendant objected, and because the Tribe
 failed to call a witness, the case should be dismissed for want of prosecution.

IT IS ORDERED that for lack of good cause shown, the defendant's request for court
 appointed counsel is denied, because he is entitled to legal counsel at his own expense under
 the Indian Civil Rights Act and under the Pascua Yaqui Constitution.

Exhibit B

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

3
4 G. Allen Osburn
Deputy Prosecutor

5
6 IN THE PASCUA YAQUI TRIBAL COURT
IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA

7
8 PASCUA YAQUI TRIBE,
Plaintiff,

9 Vs.
10 CARINO, James
Defendant

NO. CR-06-156
MOTION TO CONTINUE

11
12 COMES NOW The Pascua Yaqui Tribe, by and through counsel
13 undersigned, and Defendant undersigned and hereby requests this
14 Honorable Court to continue the above entitled matter for the
15 purpose of finalization of plea negotiations.

16 Defendant has advised this date that he would like to accept
17 the plea offer made by the Tribe and waives all applicable time
18 limits. A copy of that agreement is submitted herewith. The
19 victims have been advised of this motion and have no objection.

20 The Tribe requests that the matter be rescheduled at the
21 convenience of the court.

22
23 Respectfully submitted this 26th day of May, 2006.

24
25
26 James Carino
27 James Carino
Defendant

OFFICE OF THE PROSECUTOR
PASCUA YAQUI TRIBE
G. Allen Osburn
G. Allen Osburn
Deputy Prosecutor

