

Pascua Yaqui Tribe  
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2006 CA 06-016  
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Yancy A. Jencsok  
Deputy Prosecutor


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

PASCUA YAQUI TRIBE,	)	Trial Court Case No. JD-06-069
Petitioner/Appellant,	)	
	)	Appeals Court Case No.
vs.	)	
	)	<b>NOTICE OF APPEAL</b>
OCHOA, Erlinda,	)	
Minor/Appellee.	)	
_____	)	

NOTICE IS HEREBY GIVEN that the Pascua Yaqui Tribe appeals from the order of the trial court dated July 21, 2006. A copy of the order is attached. The trial court *sua sponte* dismissed the case with prejudice. The reason given for the dismissal was that the complaint had been filed more than ten days after the date of the offense. In this case, the minor was never taken into custody. It is the Tribe's position that when a minor is not taken into custody, the deadline to file a complaint is one year after the offense, as set forth in 1 PYTC §1.28. The case should not have been dismissed. The Tribe requests oral argument before a three justice panel.

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of August, 2006.

OFFICE OF THE PROSECUTOR  
PASCUA YAQUI TRIBE.

  
\_\_\_\_\_  
Yancy A. Jencsok  
Deputy Prosecutor

**ORIGINAL delivered to:**

Clerk of the Court

Pascua Yaqui Tribe Court of Appeals

**Copy delivered/mailed to:**

Clerk of the Court

Pascua Yaqui Tribal Court

Esmeralda Martinez

7571 Paaros Voo'oo

Tucson, AZ 85757

Mother of Erlinda Ochoa

On August 18, 2006 by: \_\_\_\_\_



IN THE PASCUA YAQUI JUVENILE COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

IN THE MATTER OF:	)	
	)	CASE NO. JD-06-069
OCHOA, ERLINDA,	)	
DOB: 10/04/89,	)	ORDER DISMISSING JUVENILE
A MINOR CHILD.	)	PETITION

The minor, Erlinda Ochoa, and her parent, Esmeralda Martinez, appeared July 21, 2006, for an initial hearing. The minor was not represented by counsel. Appearing for the Tribe was Yancy Jencsok. The court should dismiss the juvenile petition, because the Tribe failed to file its juvenile offender petition in a timely fashion.

Subject matter jurisdiction may be raised at any time, even by the court itself. The court must have subject matter jurisdiction in order to continue to preside in a particular case. The juvenile code sets out time frames in which a case must be filed against a juvenile. The Pascua Yaqui Juvenile Code provides that if a child is released to the custody of his parent, the Tribe shall file its juvenile petition "within ten days." The Tribe has argued in the past, and again in this case, that in cases such as this one where the child has not actually been taken into custody and then released to a parent, the Tribe has no affirmative duty to file within ten days. 2 PYTC, Juvenile Code § 3.9(B)(4). The court differs from the prosecutor's view in its interpretation of when an action must be filed against a minor.

For instance, under the juvenile code section "minor in need of control" provisions, the time for filing petitions provide that "if a youth is not in "custody" or has been released, the petition shall be filed within ten days." The "or" is disjunctive, meaning either if the child is not in custody, that is, has never been detained, or meaning where the child has been detained and then released. 2 PYTC Juvenile Code § 4.6, "Initial Proceedings." The court has interpreted both section 3.9(B)(4) and Section 4.6 when read in harmony to mean that whether the child has actually been detained and released or was never in custody, in either event the Tribe shall file within ten days. Both Chapter 3 and Chapter 4 of the juvenile code are consistent in evincing a policy of a timely and quick filing of actions against juveniles. The court has read these provisions in harmony and not as distinct and separate statutes.



1 The probable cause affidavit attached to the juvenile offender petition reads on page  
2 one that the defendant allegedly committed an offense on May 26, 2006, at 9:55 p.m., and the  
3 “defendant (sic) was long formed without a warrant on 052506 at 2155. . . p.m..”

4 The court has consistently interpreted section 3.9 of the juvenile code to require the  
5 Tribe to file a juvenile offender petition within 72 hours of an alleged offense, if a minor is in  
6 custody, and within 10 days if a minor is not in custody. Such an interpretation is consistent  
7 with the juvenile code which provides that “when a child who has been taken into custody is  
8 not released, a detention hearing shall be held within seventy-two (72) hours, inclusive of  
9 holidays and weekends of the child’s initial detention pursuant to this code (Section 3.1 et  
10 seq.). This is to bring the child before the court in a prompt and timely manner. In contrast,  
11 the code permits longer time frames for calculating times in adult criminal cases, as shown in  
12 the adult criminal procedure code section which provides:

13 Whenever a rule, tribal law, or any order of the court requires that an action be taken  
14 within a certain amount of days, the day of the event from which the time runs shall  
15 not be counted but the last day shall be counted unless it is a Saturday, Sunday, or  
16 tribal holiday. When the last day is a Saturday, Sunday or tribal holiday, the deadline  
17 shall be the first work day following the day that is not counted. When the time limit  
18 is less than seven days, Saturdays, Sundays and tribal holidays shall not be counted at  
19 all. PYTC Crim. R. Proc. R. 102(A).

20 The contrast of the rule for trying adults and adjudicating minors makes clear the Tribal  
21 legislature’s intent to expedite juvenile proceedings to ensure juveniles are brought to  
22 adjudication in a timely fashion and with greater priority than their adult counterparts. As  
23 another example, in adult cases, the speedy trial act provides that an adult in custody shall be  
24 brought to trial within 150 days of service, or to trial within 120 days of an initial hearing or  
25 90 days from an arraignment, whereas in a juvenile case, a minor must be brought to initial  
26 hearing within 15 days and to an adjudication within 14 days. Such shortened time frames  
27 from detention to trial underscore the council’s overarching principles of promoting a more  
28 expeditious, speedy, and prosecutions in juvenile cases at a much more accelerated rate when  
29 compared to adult proceedings. A reading of the juvenile petition statute, that the Tribe shall  
30 file a petition within ten days of an alleged offense if the child is not in custody, is consistent  
31 with the legislative intent to expedite the filing of and promoting the prompt adjudication of  
32 juvenile proceedings.

33 The officer filed his affidavit with the Pascua Yauqi Records Division, as evidenced  
34 by their file stamp showing the document was received on “June 20, 2006.” The presenting  
35 officer for the Tribe would have had “within” 10 days of the alleged incident to have filed a

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juvenile offender petition from the date the child was not in custody under Juvenile Code section 3.9(B)(4), the juvenile offender should have been filed no later than June 5, 2006 at 9:55 p.m.. The presenting officer did not file the petition until June 23, 2006, at 2:46p.m., 18 ½ days past the time it should have been filed, as was mandated by the Juvenile Code. Due to the untimely filing of the petition, the court lacks subject matter jurisdiction over the juvenile proceeding.

**IT IS ORDERED** that based on lack of a timely filed pleading, the juvenile offender petition is dismissed with prejudice to re-filing.

SO ORDERED THIS 21<sup>st</sup> DAY OF JULY, 2006.

  
\_\_\_\_\_  
JUDGE, PASCUA YAQUI JUVENILE COURT

Date: 07.21.06  
 Tribe  Minor/Parent  
\_\_\_\_\_  
Clerk