

Nos. CA-06-002; CA-06-012; CA-06-016;
CA-06-017; CA-06-018

Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellant,

v.

Juvenile F.E.,
Juvenile R.A.,
Juvenile L.S.,
Juvenile J.M.
Defendants/Appellees.

ORDER

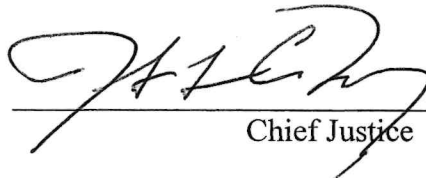
Appeal from decisions of the Pascua Yaqui Tribal Court in trial court docket Nos. JD-06-006; JD-06-066; JD-06-069; JD-06-071; and JD-06-087.

Yancy A. Jencsok, Esq., Office of the Prosecutor, Pascua Yaqui Tribe, Tucson, Arizona, for the Plaintiff/Appellant.

The Chief Justice reviewed the Appellant's motion for consolidation of the above named and numbered cases and finds that all the cases concern the same basic facts and issues which would justify consolidation in the interests of judicial economy. The motion calls for a procedural order which the Chief Justice can act on pursuant to PYTRAP 6(C) (2005).

It is therefore ORDERED that the motion to consolidate is granted.

Filed this 26 day of April, 2007.



Chief Justice

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
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DOCKET NO. CA-06-01
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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]ppels 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.

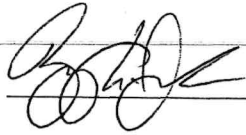
Parent of Juvenile R.A.

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.

Pascua Yaqui Tribe
Office of the Prosecutor
7474 S. Camino de Oeste
Tucson, AZ 85746
(520) 879-6251

Yancy A. Jencsok
Deputy Prosecutor

CS AUG 21 PM 4:11
DICTIONARY NO. CA-06-018
Clerk WK

IN THE PASCUA YAQUI TRIBE COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI RESERVATION

PASCUA YAQUI TRIBE,	)	Trial Court Case No. JD-06-087
Petitioner/Appellant,)	
	)	Appeals Court Case No.
vs.)	
	)	NOTICE OF APPEAL
MOLINA, Juan Luis,)	
Minor/Appellee.)	
_____)	

NOTICE IS HEREBY GIVEN that the Pascua Yaqui Tribe appeals from the order of the trial court dated July 24, 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 field arrested and then released to his mother immediately after the offense without ever being booked into detention.


The Tribe appeals on three grounds. (1) The minor was never “in custody” as that term is contemplated by the Tribal Code at 2 PYTC §3.9(B)(4). (2) 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. (3) Even when a minor is taken into “custody” and later released, if the tenth day falls on a weekend or holiday, as it did in this instance, the deadline should be the next business day, pursuant to 9 PYTC §102(A).

The case should not have been dismissed. The Tribe requests oral argument before a three justice panel.

///

RESPECTFULLY SUBMITTED this 21st 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

Sophia Molina
7681 S. Vatgue
Tucson, AZ 85757
Mother of Juan Molina

On August 21st, 2006 by: 

IN THE PASCUA YAQUI JUVENILE COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

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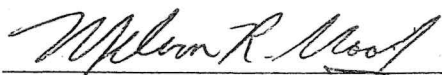
IN THE MATTER OF:)	
)	CASE NO. JD-06-087
MOLINA, JUAN LUIS,)	
DOB: 01/06/93,)	ORDER DISMISSING JUVENILE
A MINOR CHILD.	)	PETITION

The minor, Juan Luis Molina, and his parent, Sophia Molina, appeared July 24, 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.

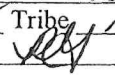
Subject matter jurisdiction may be raised at any time, even by the court itself. The court must have subject matter jurisdiction in order to continue to preside in a particular case. The juvenile code sets out time frames in which a case must be filed against a juvenile. The Pascua Yaqui Juvenile Code provides that if a child is released to the custody of his parent, the Tribe shall file its petition "within ten days." 2 PYTC, Juvenile Code § 3.9(B)(4). The probable cause affidavit attached to the juvenile offender petition reads on page one that the defendant allegedly committed an offense on July 12, 2006, at 12:30 p.m., and he was cited and then released to his parent. Assuming the child was "released" on July 12, 2006, at 12:30 p.m., and the presenting officer would have had "within" 10 days to file a juvenile offender petition from the date the child was released, under Juvenile Code section 3.9(B)(4), the juvenile offender should have been filed no later than July 22, 2006 at 12:30 p.m.. The presenting officer did not file the petition until July 24, 2006, at 11:55 a.m., or nearly two 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 24th DAY OF JULY, 2006.


JUDGE, PASCUA YAQUI JUVENILE COURT

Date: 07-24-06

Tribe Minor/Parent

Clerk

PASCUA YAQUI
Received
JUL 24 2006
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