

Aug 11, 2010

ISSUED
CLERK OF COURT

CA-07-002

Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellant

v.

Rivera, Valentin, Jr., Defendant/Appellee

ORDER

Appeal of a decision of the Pascua Yaqui Tribal Court in Case No. JD-07-002, the Honorable Melvin Stoof presiding.

Allen Osburn, Esq., Pascua Yaqui Tribe Office of the Prosecutor, Tucson, **AZ**, for the Plaintiff/Appellant.

Valentin Rivera, 7351 S. Camino Rahum, Tucson, AZ, 85757, pro se, Defendant/Appellee.

On November 14, 2006 Appellant Pascua Yaqui Tribe filed a Notice of Appeal with the Pascua Yaqui Tribe Court of Appeals and then filed an Opening Brief on November 1, 2007. Appellee has not filed its Response Brief.

This court has jurisdiction to hear the appeal pursuant to 3 PYTC Sections 2-3 and in accordance holds that this appeal be considered and a decision made based on the filings before the court, pursuant to Rule 16 PYTRAP.

Statement of the case.

On October 17, 2006 the Pascua Yaqui Juvenile Court dismissed the juvenile petition for lack of probable cause due to errors contained in the pleadings. The Juvenile Court dismissed the case without prejudice and in its final order stated that the petition could be re-filed if the errors were corrected.

Argument.

Subsequent to the Appellants filing their appeal in the instant case, the Pascua Yaqui Tribe Court of Appeals issued an order controlling disputes involving misspelled and mistake-in-name in the pleadings [Order *Pascua Yaqui Tribe v. Julianna McAdams*, No. CA-06-011 (June, 2007)].

In *Julianna McAdams*, the appellate court denied and dismissed the appeal because,

similar to the case at hand, the defendant's name was misspelled in the pleadings. In *McAdams*, the appellate court further stated that:

incorrectly spelled names should be corrected before the trial court to prevent waste of party and judicial resources. Here the Tribe has a remedy below – it can re-file the charges under the Defendant's/Appelles's correct name.

Final Order, PYT v. Julianna McAdams, CA-06-011, June 2007

The Appellant Pascua Yaqui Tribe subsequently filed a petition for reconsideration in the *Julianna McAdams* case, arguing that the court had failed to address the issue, and the Court of Appeals denied and dismissed the petition for reconsideration because:

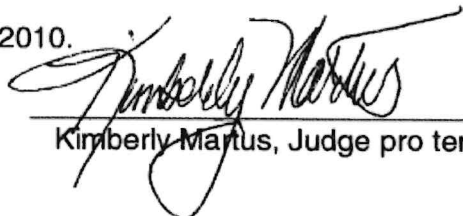
- 1) The June 21, 2007 order is a decision denying an appeal to this [appellate] Court because the Appellant Tribe had a remedy available in the trial court; and
- 2) The PYTRAP, Rule 19(D), does not permit a petition for reconsideration of a decision denying an appeal.

Order.

Just as in the *Julianna McAdams* case, misspelled and mistake-in-name errors in the pleadings should be corrected before the trial court to prevent unnecessary legal proceedings and waste of party and judicial resources, especially since the trial court dismissed the case without prejudice to re-filing, and the Appellant has a remedy below – it can re-file the charges under the juvenile's correct name. Accordingly, the decision of the Trial Court in JD-07-002 is affirmed and the appeal in the instant case is dismissed.

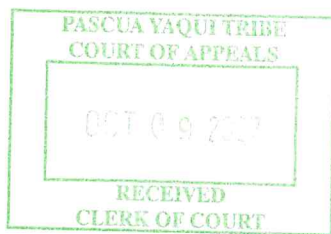
Additionally, considering that the Tribe failed to re-file this case in Trial Court pursuant to this courts' Order in *Julianna McAdams*, and instead filed an appeal, this case is now dismissed with prejudice. Acting otherwise would unduly prejudice the Defendant/Appellee.

So ORDERED this 10th day of August, 2010.



Kimberly Martus, Judge pro tem

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 -5 PM 2:32

DOCKET NO. CA-07-002

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. JD-07-002
Plaintiff/Appellant,)	
	)	Appeals Court Case No. CA-07-002
vs.)	
	)	TRIBE'S MOTION FOR SECOND
VALENTIN RIVERA,	)	EXTENSION OF TIME
Minor/Defendant/Appellee.	)	TO FILE BRIEF
_____)	

The Tribe motions the court for a second extension of time to file its opening brief pursuant to 3 PYTRAP Rule 5(B). The brief was due July 24, 2007. Counsel inadvertently missed the due date. The Tribe asks for an extension until November 2, 2007. No further extensions will be requested by the Tribe.

RESPECTFULLY SUBMITTED this 5th day of October, 2007.

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR

Yancy A. Jencsok
Interim Chief Prosecutor

Copies delivered/~~mailed~~ October 5, 2007 to:

Gloria and Valentin (Sr.) Rivera (parents of Valentin Rivera)
7351 S. Camino Rahum
Tucson, AZ 85757

By

No. CA-07-002

Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellant

v.

Valentin Rivera, Minor/Defendant/Appellee

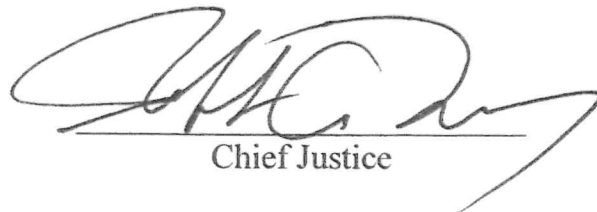
ORDER

Petition for Tribe's motion for extension of time to file its opening brief; Trial Court Case No. JD-07-002; the Honorable Melvin R. Stoof presiding.

Mr. Jencsok, Esq., Pascua Yaqui Public Defender Office, Tucson, Arizona, for Appellant.

The court has received and reviewed the Tribe's motion for extension of time to file pursuant to PYTRAP Rule 5(B). The Court finds good cause for granting the motion. The sixty-day extension shall run from the date on which the Tribe received the transmittal of the records from the tribal court.

So ORDERED this 13th day of July, 2007



Chief Justice

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 JUN 25 PM 4:21

DOCKET NO. CA-07-002

CLERK TS

Yancy A. Jencsok
Deputy Prosecutor

IN THE PASCUA YAQUI TRIBE COURT OF APPEALS

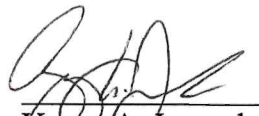
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,	)	Trial Court Case No. JD-07-002
Plaintiff/Appellant,)	
	)	Appeals Court Case No. CA-07-002
vs.)	
	)	TRIBE'S MOTION FOR EXTENSION
VALENTIN RIVERA,	)	OF TIME TO FILE BRIEF
Minor/Defendant/Appellee.)	
_____)	

The Tribe motions the court for an extension of time to file its opening brief pursuant to 3 PYTRAP Rule 5(B). The tribal court recently transmitted the records for this and several other appeals altogether, causing a number of briefs to come due at once. The Tribe is unable to timely prepare the briefs that are due. The Tribe asks for a 60 day extension.

RESPECTFULLY SUBMITTED this 25th day of June, 2007.

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR

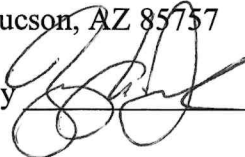


Yancy A. Jencsok
Deputy Prosecutor

Copies delivered/mailed to:

Gloria and Valentin (Sr.) Rivera (parents of Valentin Rivera)
7351 S. Camino Rahum
Tucson, AZ 85757

By



07 JUN -5 AM 10:40

DOCKET NO. _____

CLERK _____

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

Yancy A. Jencsok
Juvenile Presenting Officer

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

PASCUA YAQUI TRIBE,)	
Plaintiff/Appellant,)	
	)	CA-06-011, CR-06-183
Julianna McAdams,	)	CA-07-002, JD-07-002
Juvenile V.R.,)	
Defendants/Appellees.	)	MOTION TO CONSOLIDATE
)	
_____)	

Appellant moves this Honorable Court to consolidate the above referenced cases. This motion is supported by the attached Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 5th day of June, 2007.

MICAH SCHMIT
CHIEF PROSECUTOR, By



YANCY A. JENCOSK
Deputy Prosecutor
Counsel for Appellant

STATEMENT OF FACTS

Each of these cases involves the same basic set of facts. The cases were dismissed by Judge Melvin Stoof for the sole reason that the defendants' first names were misspelled by one letter. In each case, a Notice of Appeal was timely filed.

In the Julianna McAdams case, Defendant's first name was misspelled in the police Affidavit and the subsequent government Complaint as "Juliana" (with one "n"). The correct spelling of Defendant's first name is "Julianna" (with two "n"s). All other indicia of identity (i.e., notice) were accurate. The Tribe filed its opening brief September 20, 2006.

Defendant/Appellee has not filed a response brief.

In the Juvenile V.R. case, Defendant's first name was correctly spelled in the police Affidavit, but was misspelled in the government's charging Petition. The affidavit spelled the Defendant's first name as "Valentin" (with no "e" on the end). The Petition spelled his name as "Valentine" (with an "e" on the end). The Tribe has not yet filed a brief in this case, as the issues, law and circumstances are fundamentally identical with those of the McAdams case. Noteworthy, in both cases the errant spellings both comported with Microsoft's spellchecker (i.e., Juliana and Valentine).

Should this motion be granted, the Tribe will simply defer to the legal brief already filed in the McAdams case.

ARGUMENT

Both 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 In addition, this Honorable Court has previously seen the prudence of consolidating five earlier cases together because they all dealt with virtually identical facts and legal issues.²

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 In an order dated April 26, 2007, the court consolidated five cases involving application of 2 PYTC §3.9(B)(4) [now 5 PYTC § 7-110(4)].

CONCLUSION

The cases should be consolidated in the interests of justice and economy, as they share a very similar set of facts and an identical legal issue.

RESPECTFULLY SUBMITTED this 5th day of June, 2007.

MICAH SCHMIT
CHIEF PROSECUTOR, By



YANCY A. JENCOK
Deputy Prosecutor
Counsel for Appellant

Original and 5 copies delivered to:

Clerk, Pascua Yaqui Tribe Court of Appeals

Additional Copies mailed to:

PYT Public Defender
Attorneys for Julianna McAdams

Parents of Juvenile V.R.

PYT Attorney General

On June 5, 2007 by:



1 PASCUA YAQUI TRIBE
2 OFFICE OF THE PROSECUTOR
3 7474 S. Camino de Oeste
4 Tucson, AZ 85757
5 (520) 879-6251

03/14 P. 1:20
CASE NO. JD-07-002
BY ABW

5 Micah Schmit
6 Chief Prosecutor

7 **IN THE PASCUA YAQUI TRIBE COURT OF APPEALS**

8 **IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION**

9 PASCUA YAQUI TRIBE,)
10 Plaintiff/Appellant,) Trial Court Case No. JD-07-002
11 vs.) Appeals Court Case No. CA 07-002
12 RIVERA, Valentin, Jr.,)
13 D.O.B. 02/08/89) NOTICE OF APPEAL & STAY
14 Defendant/Appellee.) (Oral argument requested before
15) the full Appellate Panel)

16 NOTICE IS HEREBY TIMELY GIVEN that, pursuant to PYTRAP, Rules 7, 8 & 23, the
17 Pascua Yaqui Tribe appeals from the order of the initial detention hearing (IH) dated October 17,
18 2006 (attached). The trial court *sua sponte* dismissed this 17 year old defendant's four domestic-
19 violence based offenses because the minor-Defendant's first name was misspelled (Valentine,
20 rather than Valentin) in the government's initial probable cause affidavit and charging petition.¹

21 It is the Tribe's position that the trial court's order was unwarranted under either the
22 Code or due process because the minor-Defendant was booked into custody directly and/or
23 because the affidavit and complaint carried with them numerous other, singularly-describing,
24 accurate indicia of identity, including unique enrollment number, DOB, residential address and
25 corroborating parental information. For each of these reasons, notice was reasonably sufficient
26 for charging purposes and this case should not have been dismissed.

27 ///

28 ¹ Ironically, just as with the Julianna McAdams case, currently pending before this Court, the lower court once again captions their own dismissal order using the incorrect spelling of Appellee's name.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Tribe further asks that, if necessary to this matter, under Rule 23 the case be deemed stayed/suspended, pending the Appellate Court's ruling on whether or not to reverse the trial court's order of dismissal.

The Tribe would request oral argument before a three Justice panel.

RESPECTFULLY SUBMITTED THIS 14 day of November, 2006.

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR



Micah Schmit
Chief Prosecutor, PYT

Original and copies delivered
this ____ November, 2006, to:

Clerk of Court, Pascua Yaqui Tribe Court of Appeals (6 copies)

Pascua Yaqui Tribal Court

Pascua Yaqui Tribe, Office of the Attorney General

Minor-Defendant/Appellee, Valentin Rivera
Parents: Gloria and Valentin (Sr.) Rivera
7351 S. Camino Rahum, Tucson, 85757

By 

IN THE PASCUA YAQUI JUVENILE COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE MATTER OF:)
)
Rivera, Valentine,)
DOB: 02/08/89,)
A MINOR CHILD.)
_____)

CASE NO. JD-07-002

ORDER OF DISMISSAL OF
JUVENILE PETITION

The minor, Valentin Rivera, and his mother, Gloria Rivera, appeared October 17, 2006 for an initial detention hearing. The minor was not represented by counsel. Appearing for the Tribe was Patricia Castro.

The juvenile was read his rights. The court cannot find probable cause based on two different names listed in the probable cause affidavit and the petition. The affidavit reads in the body of the affidavit "Valentin," and in the juvenile offender petition the name reads "Valentine." The mother indicate that the child's name is "Valentin." Although the Tribe moved to amend the petition to read "his mother" instead of "her mother," the Tribe did not request to amend the name of the minor in the juvenile offender petition. Due to inconsistencies contained within the affidavit and the juvenile offender petition, the court cannot discern which of the two different names listed should be found to be the correct one. The case should be dismissed without prejudice to re-filing, based on a misnomer.

IT IS ORDERED that based on lack of probable cause due to a misnomer, based on a different name listed in the probable cause affidavit from that listed in the petition, the juvenile offender petition is dismissed without prejudice to re-filing. The minor shall be released immediately to the custody of his parent, Gloria Rivera.

SO ORDERED THIS 17th DAY OF OCTOBER, 2006.



JUDGE, PASCUA YAQUI JUVENILE COURT

CC: Date: 10/17/06
 Tribe Minor/Parent Detention

Clerk