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PASCUA YAQUI TRIBE
COURT OF APPEALS
JUN 17 2011
ISSUED
CLERK OF COURT

No. CA-07-009

Pascua Yaqui Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellant,

vs.

Marco Campoy, Defendant/Appellee.

ORDER

Appeal of a decision of the Pascua Yaqui Trial Court in Case No. CR-07-153, the Honorable Melvin Stoof, presiding.

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

Marco Campoy, Pascua Yaqui Public Defender, Tucson, AZ for Appellee.

Appellant Pascua Yaqui Tribe filed a Notice to Appeal in this case on June 12, 2007 and filed an Opening Brief on October 16, 2007.

Appellee has not filed its Response Brief.

Accordingly, the court will decide this case based on the record and the filings before the court, pursuant to 3 PYTC § 2-3-140 (C) (2).

I. Summary

This Court decides two issues in this case: (a) whether the Tribe failed to properly disclose pursuant to 3 PYT R. Crim.P. Rule 38 (now 3 PYTC § 2-2-380) by failing to submit a Notice of Disclosure and (b) whether the learned Judge Stoof of the Pascua Yaqui Trial Court erred in dismissing the case with prejudice

1 in favor of Appellee Marco Campoy, thereby giving rise to an abuse of discretion
2 and or a harsh decision. Having examined and deliberated on this matter with
3 particular consideration given to the appropriate standard of review, this Court
4 upholds the decision of Judge Stoof and I find no evidence with respect to error of
5 law or abuse of discretion on the facts with respect to the remedy ordered at trial.
6 This finding is made in consideration of the appropriate standard of review for
7 both fact and law and with regard to the issues raised on appeal including *prima*
8 *facie* the element of prejudice visited upon the Defendant. The remedy ordered
9 by the learned trial judge falls within the ambit of established and reasonable
10 sanctions and does not constitute an abuse of judicial discretion.

11 **II. Facts and Procedural History**

12 Appellee Campoy was arrested on March 5, 2007 and charged with Disorderly
13 Conduct (4 PYC 1-580(A)) and Threatening or Intimidating (4PYC 1-260(A)).
14 Appellee waived his right to counsel and appeared pro se at his Initial Hearing on
15 March 6, 2007, where he pled not guilty and was released on three hundred
16 dollars bond. On March 20, 2007 the PYT Public Defender entered a notice of
17 appearance on Defendant's behalf and also submitted a Request for Disclosure,
18 asking the Tribe to disclose:
19

- 20 1) the names, addresses, and dates of birth of all witnesses;
- 21 2) evidence of dishonesty by law enforcement officers involved in the
22 investigation of the matter;
- 23 3) Defendant's statements ;
- 24 4) names and addresses of experts who examined evidence in the case;
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- 5) all documents to be used at trial;
- 6) all objects belonging to Defendant to be used at trial;
- 7) list of Defendant's prior convictions to be used at trial; and
- 8) all mitigating evidence

The request, which was submitted on March 20th, 2007, added that all materials must be disclosed by March 16, 2007. Because of the request's temporal impossibility, Judge Stoof ordered that disclosure be fulfilled by March 30th 2007. The Tribe responded on March 27th by objecting to requests 1 and 2.

On April 3, 2007 the Defense entered a Motion to Dismiss stating that the Tribe had failed to file a Notice of Disclosure or respond to the disclosure requests. The Tribe's Response to the Motion to Dismiss stated that a Notice of Witness and Disclosure and Police Report were sent to Defendant on March 16, 2007 and herein lies the crux of the problem; no such document is present in the record transmittal and the Defense states they never received any requested disclosure documents.

To prove compliance with disclosure rules the Tribe submitted a copy of the "PYT Prosecutor Disclosure" transmittal sheet which was signed by the assigned Deputy Prosecutor on March 15, 2007. Court records in this matter, however, confirm the absence of a Notice of Disclosure or of any disclosure related documents. On May 15, 2007 the learned trial judge dismissed the case with prejudice. The Tribe appealed on June 12, 2007.

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III. Analysis

A. The Tribe’s Failure to Properly Disclose Prejudiced Defendant

In this case the standard of appellate review follows the *de novo* standard, which makes this Court the final arbiter on interpreting the relevant statutes and or rules. *PYT v. Soto*, CA-06-010. The question before the Court is one of statutory interpretation which is a question of law and is reviewed *de novo*.

The main issue is whether the Tribe failed to properly disclose documents requested by the trial court and Appellee. Although 3 PYT R.Crim.P. Rule 38 (now 3 PYTC § 2-2-380) does not specifically mention submitting a Notice of Disclosure to the court during discovery proceedings, it is a common and accepted practice in the Pascua Yaqui Tribal Court. Moreover, this practice speaks to the requirement that the Prosecution fulfill and discharge its duty to disclose within the trial process. As a matter of observation, the Court of Appeals checked several closed criminal cases between 2002 until the present and every case where disclosure documents were submitted contained a Notice of Disclosure. Submitting a Notice of Disclosure is an important aspect of the trial process for many reasons.

One practical purpose for filing a Notice of Disclosure is to avoid the very situation being argued in this case. When one party states that they have complied with an order or rule and opposing counsel disagrees, the only way the Court can resolve the discrepancy is by going to the record. If the record shows compliance, the Court must agree. If the record lacks the necessary evidence to support compliance, the Court must affirm that as well.

1 Here, the case file lacks the necessary evidence that disclosure documents
2 were submitted by March 30, 2007. In an attempt to show compliance with
3 disclosure, the Tribe submitted business records showing an Assistant
4 Prosecutor signing the records out. This evidence is simply not enough to
5 establish that the documents were mailed or received. The Tribe could have
6 submitted other evidence to show compliance with Rule 38, such as
7 submitting a certificate of service, filing a stamped copy of the actual
8 disclosure documents with the court, an acknowledgment of receipt of the
9 disclosure list signed by the defendant, or a certified mail postal green card
10 signed by defendant or a signed receipt through registered mail showing a
11 return receipt. *Order of Dismissal with Prejudice*, CR-07-153. These
12 aforementioned evidentiary considerations were not produced and thus are not
13 part of the record.
14

15
16 The purpose of filing a notice of disclosure is to clarify and memorialize
17 the actions taken by the respective parties to comply with court rules. In the
18 event where there is disagreement over whether certain documents were
19 disclosed or not, the notice filed with the court would serve as proof of
20 compliance. Again, in this case there is no such proof in the record. The
21 Tribe failed to submit disclosure documents ordered by the court and failed to
22 show proof of compliance, and in doing so violated Criminal Rule 38.
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24 **B. Dismissal with Prejudice**

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26 It has been argued that the order for dismissal constitutes an abuse of
27 discretion by the trial court; meaning that because the remedy is not
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prescribed within the Code the learned judge exceeded the range of options and thereby exceeded his decision-making authority. The standard of appellate review for abuse of discretion recognizes that the trial court is the appropriate venue for weighing and assessing evidence in the first instance, making findings of fact based upon submissions and arguments of the parties and their respective counsel, and having the expertise at hand to address the complex issues raised at trial. The standard of review seeks to avoid second-guessing trial court decisions that are informed by its superior ability to make decisions within the fact-finding process and affords a measure of deference in this regard.

There are, however, exceptions to the deference rule. Clearly erroneous decisions are not protected by the deference standard despite the trial court's superior ability to determine the facts of a case. Under this approach, this Court shall reverse a discretionary decision if it rests on a clearly erroneous determination of fact. *PYT v. Soto*, CA-06-010. Having reviewed the record and submissions I cannot find that the sanction was clearly erroneous nor can I find that it constituted an abuse of discretion resulting in a harsh outcome. This Court gives deference to the trial court's determination with regard to the level of prejudice visited upon the Appellee in light of the failure to disclose. *PYT v. Soto*. As the Court in *Soto* held, due process is a fundamental right protected by the Pascua Yaqui Tribal Constitution and the Indian Civil Rights Act (ICRA). *Id.* at 10 (*quoting* 25 U.S.C. § 1302(8))(2010). The ICRA states that a defendant must "be informed of the nature and cause of the accusation"

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and “be confronted with the witnesses against” him. 25 U.S.C. § 1302(6). By failing to provide the Appellee with the disclosure requested by counsel, the Tribe violated the Appellee’s due process rights and prejudiced his ability to prepare an adequate defense to the charges brought against him.

3 PYTC § 2-2-420 (formerly 3 PYT R. Crim. P. Rule 42) provides sanctions the court may impose on parties who fail to comply with discovery rules. The rule points out that the enumerated sanctions are not exhaustive and the trial court retains its discretion to impose sanctions it finds appropriate and just. Based on the foregoing, this Court upholds the dismissal with prejudice by the trial court. First, the trial court is in a better position to determine and weigh the prejudice to the Defendant resulting from the Tribes’ failure to disclose evidence. Second, in *PYT v. Soto*, the Court of Appeals upheld a dismissal with prejudice for failure to comply with disclosure. The Tribe has been sanctioned before for a very similar compliance issue, therefore it has notice of the Court’s expectation of compliance with disclosure rules. While the sanction of dismissal with prejudice is strict, in the case at hand it does not constitute an abuse of discretion. This Court affirms the trial court’s decision to dismiss with prejudice the criminal charges against Appellee Campoy.

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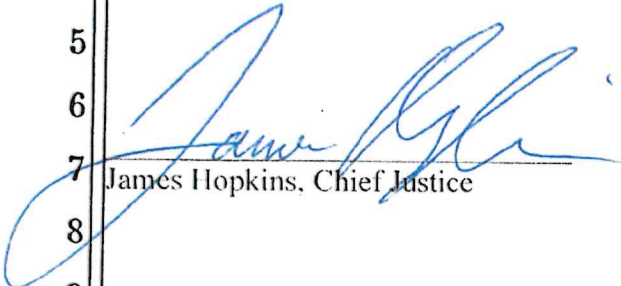
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So ordered on this 16th day of June, 2011.

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James Hopkins, Chief Justice

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No. CA-07-009

Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellant

v.

Campoy, Marco, Defendant/Appellee

ORDER

Appeal of a decision of the Pascua Yaqui Tribal Court in Case No. CR-07-153, the Honorable Melvin Stoof presiding.

Allen Osburne, Esq., Pascua Yaqui Tribe Office of the Prosecutor, Tucson, Arizona, for the Plaintiff/Appellant.

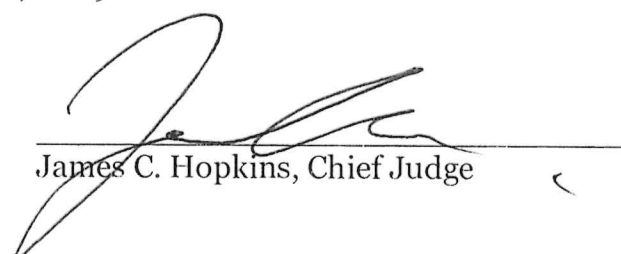
Nicholas Fontana, Esq., Pascua Yaqui Tribe Office of the Public Defender, Tucson, Arizona, for the Defendant/Appellee.

The Court finds that Appellant filed its opening brief in this appeal on October 7, 2008.

An order was entered on October 16, 2008 giving Appellee an extension of time to file his response brief. That brief was due no later than November 17, 2008. To date the response brief has not been filed.

The court now orders that the Appellee file the response brief with the Appellate Clerk no later than 5:00 p.m. on October 23, 2009. Failure to file the brief by that date and time will result in this appeal being considered and a decision made based on the filings presently before the court.

So ORDERED this 5th day of October, 2009.


James C. Hopkins, Chief Judge

IN THE PASCUA YAQUI TRIBE COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

07 OCT 12 PM 3:24

PASCUA YAQUI TRIBE,

Plaintiff/Appellant,

vs.

CAMPOY, Marco

Defendant/Appellee,

Trial Court case no.: CR-07-153

Appeals Court case no: CA-07-009

DOCKET NO. CA-07-009

CLERK TS



ON APPEAL FROM THE PASCUA YAQUI TRIBAL COURT

APPELLANT'S OPENING BRIEF

G. ALLEN OSBURN
DEPUTY PROSECUTOR

7474 S. Camino de Oeste
Tucson, Arizona 85757
Phone: (520) 879-6251
Fax: (520) 879-6260

COUNSEL FOR APPELLANT

STATEMENT OF CASE

This is an appeal from an order dismissing a criminal case regarding threatening and disorderly behavior. The case was dismissed with prejudice by Judge Melvin Stoof, in an order dated May 15, 2007 for the sole reason that the Court refused to accept the Tribe's proof that the Notice of Disclosure had been sent to the defendant in a timely fashion. The twofold proof presented by the Tribe was testimonial and documentary and consisted first, of a transmittal sheet signed by the prosecuting attorney (see attachment 2 to Tribes Response to Defendant's Motion to Dismiss), and second, of an in-court avowal (see Order of Dismissal with Prejudice, page 2 line 17) by the prosecuting attorney which reaffirmed the transmittal sheet information showing that the Notice of Disclosure had in fact been timely sent to Defendant on the March 16, 2007 deadline. A notice of appeal was timely filed on June 13, 2007. This Court has jurisdiction to hear the appeal pursuant to 3 PYTRAP §§ 2 & 3.

STATEMENT OF PROCEEDINGS AND FACTS

Appellee/Defendant is Marco Campoy, an enrolled member of the Pascua Yaqui Tribe. In the early evening of March 5, 2007, Defendant was arrested at the PYT Cultural Grounds after engaging in behavior considered to be disorderly and threatening. Defendant was held overnight and brought to court for his Initial Hearing on March 6, 2007 where probable cause was established. The Court accelerated the setting of the Arraignment such that the Arraignment was held immediately following the Initial Hearing. Thus, the ten day deadline for submission of the Notice of Disclosure was

March 16, 2007. On March 16, 2007 two items were mailed directly to the Defendant who was *pro se* at the time. The first item was the Police Report, which was mailed by the Tribe's file clerk who documented the mailing by filling out and signing a transmittal sheet (Document 16, attachment 1). The second item was the Tribe's Notice of Witness and Disclosure which was mailed by the Deputy Prosecutor assigned to the case who also documented the mailing by filling out and signing a separate transmittal sheet (Document 16, attachment 2).

Defense counsel entered a Notice of Appearance and Request for Disclosure on March 20, 2007. In the Tribe's March 27, 2007 response, reference was made to the Notice of Witness and Disclosure which had previously been mailed to the Defendant. Defendant filed a Motion to Dismiss (Disclosure Violation) on April 3, 2007 and on April 4, 2007, a second, duplicate Notice of Witness and Disclosure was presented to Defendant, this time, by hand delivery to his defense counsel. The Tribe filed a Response to the Motion to Dismiss, and Defendant filed a Reply. On May 15, 2007, the matter was heard by Judge Melvin Stoof who found that there was no proof satisfactory to the Court submitted by the Tribe evidencing that the defendant actually received the notice of disclosure.

DISPOSITION

The Tribal court dismissed the case with prejudice by Order dated May 15, 2007.

STATEMENT OF ISSUES

Is it appropriate to dismiss a criminal case with prejudice for not comporting with an “unwritten” rule regarding documentation of the act of providing disclosure, where the Notice of Disclosure was in fact sent to the defendant as shown by proof in the form of a Prosecutor’s Office transmittal sheet-- contemporaneously signed by the assigned prosecutor-- and such transaction was subsequently supported by that prosecutor’s personal recollection and in-court avowal that the disclosure had in fact been sent. The answer is “no.”

ARGUMENT

The Dismissal with Prejudice was overly harsh and inappropriate

(1) Courts vary regarding practice of filing disclosure at court

The Pascua Yaqui Tribal Code has no rule regarding the proof required to show disclosure has been accomplished. In practice the Tribe would generally, but not always file a copy of the Notice of Witness and Disclosure with the Court contemporaneous with sending a copy to the Defendant by mail, or— when possible— have the defendant sign for direct receipt of the Notice of Witness and Disclosure. The notion that the issue is settled and that disclosure must be filed at court is inaccurate as the practice varies here at the Pascua Yaqui Tribe, and in other jurisdictions as well. In Arizona, the Arizona Rules of Criminal Procedure provide that:

For misdemeanor and petty offenses triable in limited jurisdiction courts, **materials disclosed by the parties pursuant to rule 15.1 and rule 15.2, or notices of their service, shall not be filed with the court** unless they are filed as attachments or exhibits to other documents when relevant to the determination of an issue before the court. On motion of a party, victim, or on the court’s own motion, for

good cause, the court may order the general standard shall not apply and that discovery papers shall be filed with the court to the extent helpful or necessary to maintain efficient and appropriate case management. [16 ARS Rules Crim. Proc. Rule 15.4(f)][emphasis added]

In civil matters, the general practice in Arizona in fact is to not file disclosure statements as a standard procedure. This issue has been addressed in the Arizona Practice Series Civil Rules Handbook which advises:

“... whenever a disclosure was made pursuant to the Rule, a ‘notice of disclosure’ was to be filed. This provision was deleted in 1996, **suggesting that such notices need no longer be prepared or filed.** The disclosures themselves have not been expressly exempted from the filing requirement of Rule 5(g), Ariz.R.Civ.P The amendment to that Rule, which became effective June 1,1993, directs that “discovery papers”, which are defined to include ‘notices of service’ of any discovery or discovery response,’ are not to be filed. The amended Rule does not, however, mention Rule 26.1 disclosure statements or notices of service thereof. **The prevailing practice is not to file disclosure statements as a matter of course.**” [Arizona Practice Series, Arizona Civil Rules Handbook, R. 26.1 (2007) Daniel J. McAuliffe]

The Corpus Juris Secundum legal encyclopedia echos the above by noting that, “The applicable rule does not specifically address the issue whether the written disclosures made pursuant to the Rules are to be filed with the Court. The prevailing practice is **not to file disclosure statements as a matter of course**” [CJS., Trial § 17(2)][emphasis added]

(2) No PYT rule exists requiring the filing of disclosure at court

In the Order of Dismissal, the Trial Court implicitly concedes that there is no rule regarding filing disclosure with the Court, but the Court nevertheless refers to the practice as a “requirement” [Document 24, pg. 2, line 1], making a generalized reference to

“unwritten rules.” [Document 24, pg. 1, line 26] This reasoning however, fails to account for the code provisions that explicitly provide the Trial Court with authority to establish procedures and rules of Court. The Code provides that “All court rules and procedures not prescribed in the Pascua Yaqui Code shall be adopted in writing by the respective chief judge of the Trial and Appellate Courts in Rules of Court, subject to the additional requirements of this Ordinance.” [3 PYTC § 1-2-70 (A)] If a need exists to establish a rule requiring that disclosure be filed with the Court, the Trial Court has the authority to create such a rule explicitly, in writing, and subject to the review and approval of the Tribal Council.

(3) Other remedies were available and appropriate

No violation of the disclosure requirements took place in the instant matter. However, even if such a violation did take place, the remedy provided was unreasonably severe. Several remedies are available to the Court in addressing disclosure violations. 3 PYTC § 1-2-60. Rule 42 provides that a court has many alternatives


- (1) Ordering disclosure of the information not previously disclosed;
- (2) Granting a continuance;
- (3) Holding a witness, party, or counsel in contempt of court;
- (4) Precluding a party from calling a witness, offering evidence, or raising a defense not disclosed; and
- (5) Declaring a mistrial when necessary to prevent a miscarriage of justice.

To dismiss the matter with prejudice does not comport with the severity, or lack thereof, of circumstance. Should the Court deem a remedy necessary, ordering the tribe to produce duplicate copies or continuing the matter would be more properly address the alleged error in this matter. Dismissal with prejudice is an inappropriate resolution.

CONCLUSION

This case should not have been dismissed with prejudice. The Tribe fully and completely fulfilled its disclosure requirements, and as such, any sanction is inappropriate. The Court's reliance upon and concomitant attempt to establish "unwritten rules" is unnecessary and inappropriate as the PYT code explicitly— and in writing— provides the Trial Court with a method for the promulgation of court rules and procedures. Use of the code-established procedure for the creation of new court rules is appropriate not only because it is the law, but also because it would provide for oversight and input from the Tribal Council and would allow for all interested parties to become aware of the new requirements with ample time to adjust varying methods and practices. Even were a remedy to be deemed appropriate, the extreme step of dismissing the matter with prejudice is overly harsh and inappropriate given the circumstances. For these reasons, this case should be reinstated to its pretrial hearing status.

RESPECTFULLY SUBMITTED this 12th day of October, 2007.

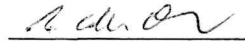

G. Allen Osburn
Deputy Prosecutor

Original delivered October 12th, 2007 to:

Pascua Yaqui Appellate Court

Additional copies mailed to:

Pascua Yaqui Public Defender

By: 

On: 10-12-07

CA - 07 - 009

In the Pascua Yaqui Court of Appeals

Pascua Yaqui Tribe/Appellant

v.

Marco Campoy/Appellee

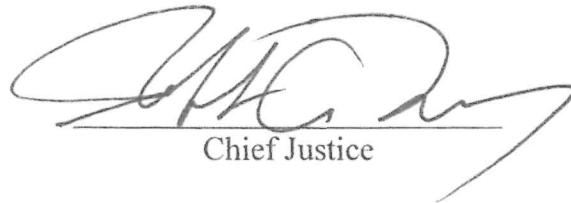
Order

Tribe's motion for extension of time to file its opening brief; Trial Court Case No. CR-07-153; the Honorable Melvin R. Stoof presiding.

Mr. Osburn, Esq., Pascua Yaqui Prosecutor Office, Tucson, Arizona, for Appellant.
Mr. Fontana, Esq., Pasqua Yaqui Public Defenders Office, Tucson, Arizon, for Appellee.

The court reviewed the Appellant's motion for an extension of time to file its opening brief and the court finds good cause for the motion. Accordingly, the Appellant shall be granted a 29 day extension and file the stipulated statement of facts on October 12th, 2007.

So Ordered this 13th day of September, 2007.



Chief Justice

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

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DOCKET NO. CA-07-009

CLERK TS

G. Allen Osburn
Deputy Prosecutor

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

PASCUA YAQUI TRIBE,
Plaintiff/Appellant,

vs.

CAMPOY, Marco
Defendant/Appellee.

Trial Court Case No. CR-07-153

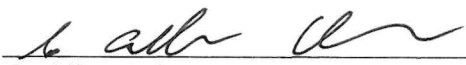
Appeals Court Case No. CA-07-009

**TRIBE'S MOTION FOR EXTENSION
OF TIME TO FILE BRIEF**

The Tribe motions the court for an extension of time to file its opening brief pursuant to 3 PYTRAP Rule 5(B). The Office of the Prosecutor is undergoing a substantial personnel change such that completion of the brief has become problematic. As such the Tribe is unable to timely prepare the brief that is due. The Tribe asks for an extension of a time frame that suits the convenience of the Court.

RESPECTFULLY SUBMITTED this 6th day of September, 2007.


PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR



G. Allen Osburn
Deputy Prosecutor

Copy mailed/delivered on September 6, 2007, to:

Public Defender

By  _____

CA - 07 - 009

In the Pascua Yaqui Court of Appeals

Pascua Yaqui Tribe/Appellant

v.

Marco Campoy/Appellee

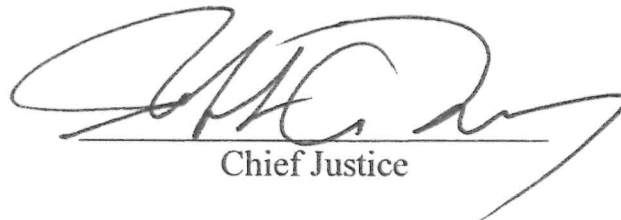
Order

Petition for Tribe's motion for extension of time to file its opening brief; Trial Court Case No. CR-07-153; the Honorable Melvin R. Stoof presiding.

Mr. Osburn, Esq., Pascua Yaqui Prosecutor Office, Tucson, Arizona, for Appellant.
Mr. Fontana, Esq., Pascua Yaqui Public Defender Office, Tucson, Arizona, for Appellee.

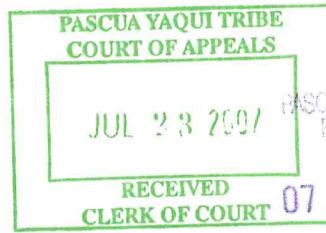
The court reviewed the Appellant's motion for an extension of time to its opening brief and the court finds good cause for the motion. Accordingly, the Appellant shall file its opening brief 45 days from July 23rd, 2007 and serve a copy on opposing party on the same day it is filed with the court.

So Ordered this 30th 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

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DOCKET NO. _____

CLERK _____

G. Allen Osburn
Deputy Prosecutor

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

PASCUA YAQUI TRIBE,
Plaintiff/Appellant,

vs.

CAMPOY, Marco
Defendant/Appellee.

Trial Court Case No. CR-07-153

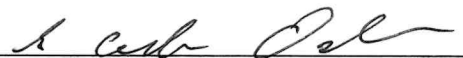
Appeals Court Case No. CA-07-009

**TRIBE'S MOTION FOR EXTENSION
OF TIME TO FILE BRIEF**

The Tribe motions the court for an extension of time to file its opening brief pursuant to 3 PYTRAP Rule 5(B). Coordination, consultation, and fact checking with the subject Deputy Prosecutor has been problematic as a result of his specific caseload, and the office caseload in general. The Tribe is unable to timely prepare the briefs that are due. The Tribe asks for a 30 day extension.

RESPECTFULLY SUBMITTED this 23rd day of July, 2007.

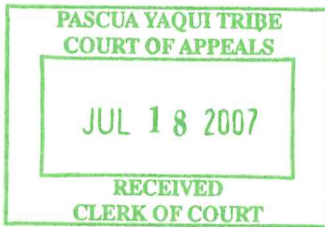
PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR


G. Allen Osburn
Deputy Prosecutor

Copy mailed/delivered on July 23, 2007, to:

Marco Campoy
5071 Tarook
Tucson, AZ 85757

By _____



PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

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DOCKET NO. CA-07-009
CLERK TS

1 Pascua Yaqui Public Defender
2 7474 S. Camino de Oeste
3 Tucson, Arizona 85746

4 Nicholas A. Fontana, Esq.
5 State Bar No. 014429
6 Attorney for Appellee

7 IN THE PASCUA YAQUI COURT OF APPEALS
8 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

9 PASCUA YAQUI TRIBE,

10 Appellant,

11 vs.

12 CAMPOY, MARCO,

13 Appellee.

Case No. CA-07-009

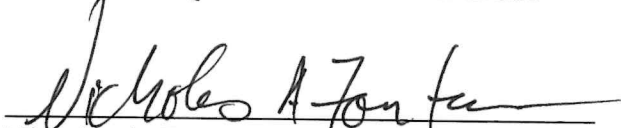
Tribal Court No. CR-07-153

NOTICE OF APPEARANCE

14
15 The Office of the Pascua Yaqui Public Defender, through undersigned counsel, respectfully enters
16 its notice of appearance in this matter on behalf of Appellee Marco Campoy.

17 DATED this 16th day of July, 2007.

18 PASCUA YAQUI PUBLIC DEFENDER

19 
20 _____
21 Nicholas A. Fontana
22 Chief Public Defender

23 ORIGINAL hand-delivered this date
PYT Court of Appeals: TS

24 Copy of the foregoing hand-delivered this date
To PYT Tribal Court by: TS

25 COPY of the foregoing hand-delivered this date
26 PY Prosecutor's In-Box by: TS

07 JUN 12 PM 4:55

DOCKET NO. CA-07-009

CLERK WC

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

6 G. Micah Schmit
7 Chief Prosecutor

8
9 **IN THE PASCUA YAQUI TRIBE COURT OF APPEALS**
10 **IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA**

11 **PASCUA YAQUI TRIBE,**
12 **Appellant,**

13 Vs.
14 CAMPOY, Marco

15 Defendant.

16 NO.
17 (Tribal Court No. CR-07-153)

18 **NOTICE OF APPEAL**
19 **Oral argument requested**

20 Notice is hereby given that the Pascua Yaqui Tribe appeals to
21 the Appellate Court of the Pascua Yaqui Tribe from the judgment
22 entered in this action by the Pascua Yaqui Tribal Court on May 15,
23 2007. [see attached] In Defendant's Motion to Dismiss (Disclosure
24 Violation), the defense attorney asserted that the charges must be
25 dismissed with prejudice because of the Tribe's failure to provide
26 timely disclosure. In written response, the Tribe attached a
27 photocopy the "PYT Prosecutor Disclosure" transmittal sheet which
28 was signed by the assigned Deputy Prosecutor and demonstrated that
disclosure had been properly accomplished within the deadline as it
had been sent on March 16, 2007, directly to the defendant as he
was *pro se* at that time. Additionally, the assigned Deputy
Prosecutor made an in-court avowal that the disclosure had been
mailed by the March 16, 2007 deadline. The Court found that the
aforementioned testimonial and/or documentary evidence were

1 insufficient and that there was "no proof satisfactory to the Court
2 submitted by the Tribe evidencing that the defendant actually
3 received the notice of disclosure..." The Tribe appeals the Court's
4 decision as it fabricates for the first time a level of proof which
5 is not embodied anywhere in any tribal code provision or rule.

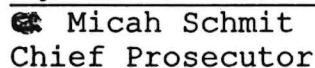
6 The Court not only dismissed this case, but dismissed it with
7 prejudice. The dismissal with prejudice was not for failure to
8 comply, but in essence, for failing to provide sufficient evidence
9 of compliance.

10 The Pascua Yaqui Tribe requests oral argument and a three-
11 Justice appellate proceeding.

12 **Respectfully submitted this 13th day of June, 2007.**

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14 OFFICE OF THE PROSECUTOR
15 PASCUA YAQUI TRIBE

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18 _____
19 Micah Schmit
20 Chief Prosecutor

21 Original delivered/mailed
22 This date to:

23 Clerk of the Court, Pascua Yaqui Tribe Court of Appeals

24 Copy delivered/mailed to:
25 Pascua Yaqui Tribal Court

26 Public Defender

27 By: 

1 IN THE PASCUA YAQUI TRIBAL COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

3 PASCUA YAQUI TRIBE,)
4 Plaintiff,)
5 Vs.)
6 CAMPOY, MARCO,)
Defendant.)

Case No. CR-07-153

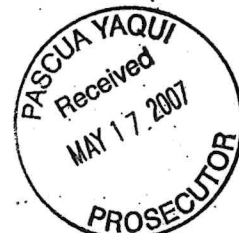
ORDER OF DISMISSAL
WITH PREJUDICE

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8 On May 15, 2007, this matter came before the court for hearing on a motion to dismiss
9 filed by the defendant, by and through Nicholas Fontana, who appeared with the defendant.
10 Appearing for the Tribe was Yancy Jencsok.

11 The defendant argued that because there is not a copy of the Notice of Disclosure
12 from the Tribe in the Court file as documentary proof indicating that a notice of disclosure
13 was provided by the Tribe to defendant, that the Tribe failed to comply with Rule 38 for
14 Disclosure. The defendant argues that 3 PYT R.Crim.P. Rule 38 requires that the Tribe
15 provide disclosure within 10 days of the arraignment, and this was not done, based on absence
16 of any Notice of Disclosure found in the court's file, and based on the Tribe's failure to
17 provide the disclosure within the 10 days mandated by the disclosure statute, there was a
18 violation of the defendant's civil rights.

19 The Tribe argues that there is no statutory requirement that the prosecutor file with the
20 court a copy of the Notice of Disclosure sent to a defendant. The prosecutor argues that under
21 the holding in a Court of appeals decision, Soto, the Tribe need only provide a "list" of
22 disclosure to the defendant and no more. The Tribe attempted to prove that the defendant was
23 served with its disclosure list by referring to the Tribe's business records from the
24 prosecutor's office that purportedly show the police report and list of disclosure was sent to
25 the defendant on March 15, 2007, ten days after the March 5, 2007 initial hearing.

26 The Tribe argues that a practice of having each party submit a notice of disclosure is
27 not a rule, and therefore there is no requirement that the Tribe be required to submit a copy of
28 what it purportedly sent to the defendant. There are many local practices of this tribal court,
just as there are un-written rules in federal courts and state courts, that are not provided for in
an explicit statute or written rule.



1 However, the requirement of submitting a notice of disclosure to the other party and
2 filing a copy with the court with a certificate of service, shows that the party has complied
3 with Pascua Yaqui Criminal Procedure Rule 38 or 39, and additionally providing a certificate
4 of service attached to the document is a universal practice of nearly every jurisdiction. The
5 certificate is in effect the written assurance or official representation by an officer of the court
6 that some act has or has not been done, or some event occurred, or some legal formality has
7 been complied with.

8 The function of the parties filing a notice of disclosure and a certificate of service with
9 the court is to make clear what actions have been taken by the respective parties to comply
10 with court rules of disclosure. Such a file stamped copy of what has been filed with the court
11 documents and memorializes that the party certifies to the court that it has sent a true and
12 correct copy of a document. The purpose is to keep a paper trail, so all parties and the court
13 make track the progress of the case to ensure compliance with disclosure requirement. In the
14 event a party argues it did not receive certain documents that were required to be disclosed,
15 the notice to court with the attached certificate of service is one form of proof that the party
16 may use to show it complied with the rules.

17 The Court notes that all attorneys are required to comply the American Bar
18 Association rules in their actions, and that would include making truthful assertions to the
19 court. The Tribe's prosecutor genuinely believes that he sent the disclosure notice to the
20 defendant in a timely fashion, and he refers to his office documents recording the transaction.
21 A file stamped copy of the notice of disclosure would have been satisfactory to the court as a
22 time stamped proof that he had complied with the disclosure requirements on March 15, 2007.
23 However, such a file stamped copy is conspicuously missing from the court's file and the
24 Tribe has not provided the court with its file stamped copy as proof it filed the notice with the
25 court.

26 As an aside, the court mentioned that in the absence of the Tribe's notice of disclosure
27 submitted to the court, and the certificate of service, there could have been other methods the
28 Tribe could have proven that the defendant actually received the notice of disclosure. There
could have been an acknowledgement of receipt of the disclosure list signed by the defendant
on a form created by the prosecutor's office, there could have been a certified mail postal

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green card signed by the defendant, or other form of return requested, or a signed receipt through a registered mail red card showing a return receipt. However, the Tribe has not provided such evidence to the satisfaction of the court.

The prosecutor on requesting that the Court reconsider its ruling asked incredulously "Is it the Court's finding that the Tribe did not send the disclosure?" The Court responds that it finds that there was no proof satisfactory to the Court submitted by the Tribe evidencing that the defendant actually received the notice of disclosure and that includes the absence of any court stamped documents showing a date stamp prior to March 15, 2007 that would have shown the Tribe provided its list to the defendant. Although the prosecutor argued in its written response that copies of its office's documents would prove he sent the notice to the defendant, the prosecutor did not offer into evidence at today's hearing any exhibits of his business record, or records of regularly conducted activity, as part of the court's record.

The court is not impugning the integrity of an officer of the court, it merely finds that the Tribe has not provided testimonial or documentary evidence satisfactory to the court, such as a postal green card, signed acknowledgment of receipt, as an example of showing the defendant was actually served. Nor did the Tribe provide copies of its business records as documentation admitted into evidence to bolster its assertion that it had proof it provided notice to the defendant in compliance with the disclosure rules.


IT IS ORDERED that the defendant's motion to dismiss shall be granted, for good cause shown, this matter shall be dismissed with prejudice to re-filing, and the case is closed. The \$300.00 cash bond shall be exonerated and returned to the surety, Maria V. Alvarez.

SO ORDERED THIS 15th DAY OF MAY, 2007.



Judge, Pascua Yaqui Tribal Court

CC: Date 05-16-07
✓ Tribe Defendant ✓ Counsel



Clerk