

No. CA-07-010
Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe,
Plaintiff/Appellant,

v.

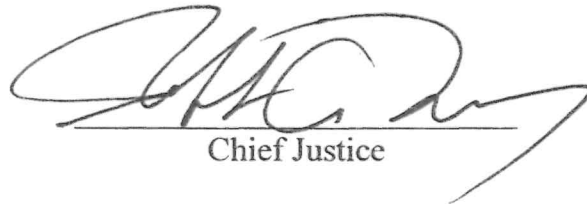
Juvenile A., Minor,
Defendant/Appellee.

ORDER

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

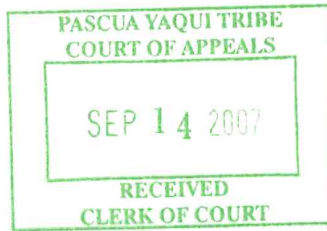
The Tribe filed a motion to dismiss its appeal on September 14, 2007. After review, the Court finds good cause to grant the motion. Accordingly, the Tribe's notice of appeal in this case is dismissed; the case can be filed again in the trial court.

So ORDERED this 18th day of September, 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 SEP 14 AM 10:50
DOCKET NO. CA-07-010
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-07-057
Plaintiff/Appellant,)	
)	Appeals Court Case No. CA-07-010
vs.)	
)	APPELLANT'S MOTION
JUVENILE A.,)	TO DISMISS
Minor/Defendant/Appellee.)	
_____)	

The Tribe motions the court to dismiss this case without prejudice to refile in Tribal Court, pursuant to 3 PYTRAP Rule 20(B). The Tribe no longer wishes to pursue the appeal.

RESPECTFULLY SUBMITTED this 14th day of September, 2007.

OFFICE OF THE PROSECUTOR
PASCUA YAQUI TRIBE.

Yancy A. Jencsok
Interim Chief Prosecutor

Copy delivered/mailed September 14, 2007 to:

Margie Castillo (mother of Juvenile A.)
5380 Koni
Tucson, AZ 85757

By

CA - 07 - 010

In the Pascua Yaqui Court of Appeals

Pascua Yaqui Tribe/Appellant

v.

Juvenile A./Appellee

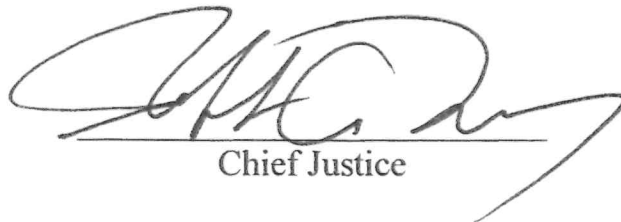
Order

Petition for Tribe's motion for extension of time to file its opening brief; Trial Court Case No. JD-07-057; the Honorable Melvin R. Stoof presiding.

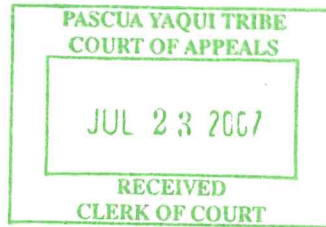
Mr. Jencsok, Esq., Pascua Yaqui Prosecutor Office, Tucson, Arizona, for Appellant.
Margie Castillo, 5380 Koni, Tucson, Arizona, 85757 (mother of Juvenile A)

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

07 JUL 23 PM 2:46

DOCKET NO. _____

CLERK _____

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-07-057
Plaintiff/Appellant,)	
)	Appeals Court Case No. CA-07-010
vs.)	
)	TRIBE'S MOTION FOR EXTENSION
JUVENILE A.C.,)	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). Due to his heavy caseload, counsel has been unable to complete the opening brief in the allotted time. The Tribe asks for a 30 day extension.

RESPECTFULLY SUBMITTED this 23rd day of July, 2007.

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR

Yancy A. Jencsok
Deputy Prosecutor

Copy delivered/mailed to:

Margie Castillo (mother of Juvenile A.C.)
5380 Koni
Tucson, AZ 85757

On July 23, 2007 by

signed affidavit from the officer (identical to the one previously filed in the juvenile case) and submitted that with the adult-court complaint.

It is the position of the government that Judge Stoof should have incorporated by reference or taken judicial notice of the pertinent document(s) readily available in the juvenile court file. There is no provision of the code forbidding this. Moreover, every other jurisdiction routinely performs just such a transfer or recognition of intra-court documents. Finally, the court could have done so in the interests of justice. The tribal and public policies of confidentiality are not furthered, or hindered, in any way by the judge's disallowance of a simple conveyance of a common affidavit from the file of the tribal juvenile court to the file of the tribal adult court, as the information involves the exact same defendant, the exact same incident, the exact same charges, the exact same arresting officer, the exact same affidavit, the exact same prosecutor, the exact same judge and the exact same records clerks within the tribal court.

The Tribe requests oral argument before a three Justice panel.

RESPECTFULLY SUBMITTED this 15th day of June, 2007.

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR



Micah Schmit
Chief Prosecutor

Original and five copies delivered to:

Clerk of Court, Pascua Yaqui Tribe Court of Appeals

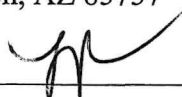
Copies delivered/mailed to:

Pascua Yaqui Tribal Court

Pascua Yaqui Tribe,
Office of the Attorney General

Margie Castillo (mother of Juvenile Alberto)
5380 Koni
Tucson, AZ 85757

By _____



1 IN THE PASCUA YAQUI JUVENILE COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

3 IN THE MATTER OF:)

4 CASTILLO, ALBERTO,)
5 DOB: 02/20/91,)
6 A MINOR CHILD.)

CASE NO. JD-07-057

ORDER GRANTING PETITION
TO TRANSFER TO ADULT COURT
AND ORDER DENYING RELEASE OF
PROBABLE CAUSE AFFIDAVIT FROM
JUVENILE FILE

8 _____)
9 On May 17, 2007, the minor and his parent appeared for a hearing on the Tribe's
10 petition to transfer to adult court. G. Allen Osburn appeared for the Tribe as did Yvette
11 Valencia, probation officer.

12 The minor was read his rights and he and his parent did not object to the court granting
13 the Tribe's motion to transfer to the adult court. The probation officer established good cause
14 to transfer the juvenile matter to adult court, in that the minor has a history of prior juvenile
15 offenses, including 4 revocations of juvenile probation. He also has a history of failures to
16 appear. The probation officer has established through her testimony of the minor's prior
17 failures to comply with rehabilitative efforts through probation, that there is no reasonable
18 prospect for rehabilitating the child through the resources available to the Juvenile Court, and
19 the alleged offense committed by the child evidence a pattern of conduct which constitutes a
20 substantial danger to the public. The minor and his parent did not contest the petition for
21 transfer, and he understood the consequences of doing so would be to transfer the juvenile
22 case to the adult court.

23 Pursuant to 3 PYT R.Juv.P. Rule 60, the court finds that Tribe has established by clear
24 and convincing evidence the petition to transfer this juvenile matter to the Tribal Court should
25 be granted.

26 The Tribe filed a criminal complaint at the end of the transfer hearing, and the
27 criminal complaint did not contain an attached probable cause affidavit, and therefore the
28 court could not find probable cause under 3 PYT Crim.R.P. Rule 9(D) to issue a summons
and to set the matter for initial hearing. The Tribe then asked the court to incorporate the
contents of the probable cause affidavit from the juvenile case and incorporate the affidavit by



1 reference and make it part of the criminal complaint, so that the criminal court could find
2 probable cause.

3 The Pascua Yaqui Juvenile Code is silent on the issue of whether the court may
4 transfer information from a juvenile case and incorporate the statements in an adult case. But
5 based on the following authorities, the court should not grant the Tribe's request to adopt by
6 reference the probable cause affidavit in the juvenile proceeding, because it would, in effect,
7 be an unlawful disclosure of documents made part of a juvenile proceeding, when such
8 documents are confidential as a matter of Pascua Yaqui law.

9 Although under federal and state of Arizona law, when a case is transferred from an
10 adult proceeding to a juvenile court, the juvenile court maintains all of the same records from
11 the adult case file, (see for example, A.R.S. 8-302 *Transfer between juvenile and criminal*
12 *courts*: “. . .the [adult] court shall transfer the case to the appropriate juvenile court, together
13 with all of the original pleadings and other papers, documents and transcripts and any
14 testimony relating to the case . . . the appropriate court shall then proceed with further
15 proceedings. . . as if . . . the complaint alleging delinquency . . had been filed with the
16 appropriate criminal court pursuant to. . .the Arizona rules of criminal procedure . . .”), under
17 Pascua Yaqui law, the reciprocal rule does not hold true, because all juvenile proceedings are
18 confidential and all records confidential, 5 PYTC, Sec. 7-490, 7-500, the Tribe should be
19 ordered to file an appropriate criminal complaint and probable cause affidavit under a newly
20 designated adult complaint. See also A.R.S. 8-302(C), (. . . “the court shall dismiss without
21 prejudice any count in the petition charging an offense for which a juvenile is subject to
22 prosecution as an adult pursuant to section 13-501 to allow criminal charges to be filed.”)

23 **IT IS ORDERED** that the court grants the Tribe's petition to transfer to adult court.

24 **IT IS FURTHER ORDERED** that the because the Pascua Yaqui Juvenile code and
25 Pascua Yaqui Criminal Procedures code do not have a provision which allows release of
26 juvenile court records and documents to the adult court for its case files, upon transfer from
27 the juvenile to the adult court, the juvenile court shall follow 5 PYTC, Sec. 7-490, 7-500, and
28 it shall not transfer the records of any juvenile transcript or proceeding or any other juvenile
records or documents, including statements contained in the juvenile record as to probable
cause, to the adult court.

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IT IS FURTHER ORDERED that the Tribe shall file a criminal complaint along with a probable cause affidavit in the newly numbered adult criminal court case.

SO ORDERED THIS 17th DAY OF MAY, 2007.

Melvin R. Roof

JUDGE, PASCUA YAQUI JUVENILE COURT

cc: Date 05-17-07
 Tribe Minor/Parent Detention

Clerk *[Signature]*