



CA-08-002

Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellee

v.

Acuna, Diane, Defendant/Appellant

ORDER

Appeal of a decision of the Pascua Yaqui Tribal Court in Case No. CR-07-310, the Honorable Cornelia Cruz presiding.

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

Nicholas Fontana, Esq., Pascua Yaqui Public Defender's Office, Tucson, Arizona, Defendant/Appellant.

Appellant Diane Acuna filed a Notice of Appeal in this case on October 25, 2007 and filed her Opening Brief on July 7, 2008.

On October 27, 2009, this court granted Appellant's unopposed Motion for Decision on the Record.

Statement of the case.

This case arises from a Tribal Court order refusing to accept an Alternative Prosecution Plea agreement by the Defendant, wherein the Defendant agreed to enter a plea of no contest. The Tribal Court argued that it does not accept no contest pleas as they are not in the best interest of the community and that a Jury Trial would be held as scheduled.

The Court of Appeals is asked to decide whether the Tribal Court erred in refusing to accept the plea agreement.

Argument.

The Tribal Code gives trial judges authority to reject plea agreements by making it discretionary whether to accept one:

“A plea of no contest may be accepted only after due considerations of the views of the parties and the interest of the public in the effective administration of justice.” 3 PYT R.Crim.P. 26

While the statutory language requires that a plea agreement only be accepted after due consideration, the code is silent regarding the rejection of a plea agreement. However, it is reasonable to believe that when the Office of the Prosecutor agrees to enter into a plea agreement with a defendant, the prosecuting attorney has weighed the interest of the community with those of the individual and concluded that a plea agreement is in the best interest of justice. Accordingly, the Trial Court Judge should not summarily dismiss a proposed plea agreement unless an evaluation of the circumstances indicates that the Prosecutor’s Office failed in its due diligence and proposed a plea agreement which does not serve the administration of justice.

In the present case, it appears that the trial court gave very little attention to any consideration here other than a general belief that no contest pleas are “not in the best interest of the community” (Order, CR-07-310) and hence are only minimally accepted. The judge did not elaborate and the specific plea agreement in this case was not referenced. No factual finding was made with respect to that plea agreement. “Due consideration” can scarcely have occurred where no consideration did.

The Pascua Yaqui community is entitled to have plea agreements such as the one in this case scrutinized to see if they are of benefit not just to the parties but to the community as a whole and serve the administration of justice. Ms. Acuna’s agreement required regular monitoring for a period of 12 months, as well as abstention from alcohol and illicit drugs. In addition, defendant was to submit to random alcohol screening, drug screening and, potentially, treatment. Moreover, the plea agreement required the defendant be in school, employed, or in search of employment, perform community service, and not “harm or harass” the victims for the probationary term.

It appears from the complaint and police affidavit that the underlying actions leading up to this case were committed while the defendant was intoxicated. This could indicate a substance abuse or behavioral problem, in which case the community would be better served by Ms. Acuna getting treatment and regular monitoring to prevent further substance abuse rather than having her serve a jail term upon completion of which she could easily relapse. In this case, the plea agreement may have had a more permanent solution in sight whereas a jury trial could lead to a completely different outcome.

It seems that, at a minimum, an inquiry into the specifics of the plea agreement should have been made before rejecting it. Even when a judge has discretion on an issue, he or she is often required to set forth the findings that lead to a particular decision. The Tribe or the community can never know whether a plea agreement is acceptable, based on the circumstances of the crime, without some specific findings from the court. In the judges own words in this case – how is anyone to know on what “minimal basis” plea agreements might be accepted without additional guidance from the court.

Decision.

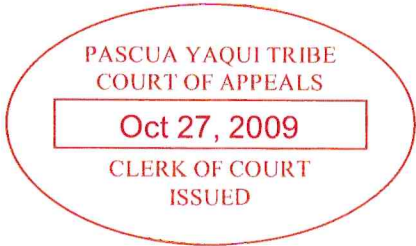
While the decision to accept or reject a plea agreement falls within the discretion of the Trial Judge, such a decision may only be taken upon “due consideration of the views of the parties and the interest of the public in the effective administration of justice”. 3 PYT R. Crim. Proc. 26. Judges should review a proposed plea agreement and articulate in an order their decision to accept or reject it.

Accordingly, and for the reasons set forth, this court reverses the Tribal Court’s order rejecting Ms. Acuna’s plea of no contest and the proposed Alternative Prosecution Agreement. The stay is lifted and this case is remanded to Trial Court for further proceedings.

So ORDERED this 26th day of January, 2010.



James C. Hopkins, Chief Justice



CA-08-002

Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellee

v.

Acuna, Diane, Defendant/Appellant

ORDER

Appeal of a decision of the Pascua Yaqui Tribal Court in Case No. CR-07-310, the Honorable Cornelia Cruz presiding.

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

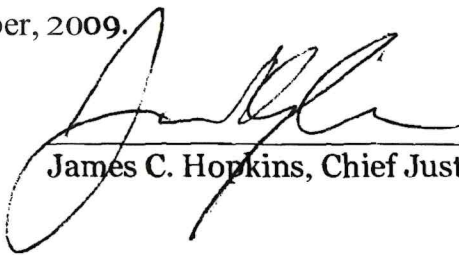
Nicholas Fontana, Esq., Pascua Yaqui Tribe Public Defender's Office, Tucson, Arizona, for the Defendant/Appellant.

Appellant Diane Acuna filed a Notice of Appeal in this case on October 25, 2007 and filed its Opening Brief on July 7, 2008.

Appellee has not submitted a Response Brief and thus Appellant filed a Motion for Decision on the Record on September 11, 2008. The Tribe has not opposed this Motion.

The court now orders that the Appellant's Motion be granted and this appeal being considered and a decision made based on the filings before the court, pursuant to Rule 16 PYTRAP.

So ORDEKED this 27th day of October, 2009.



James C. Hopkins, Chief Justice

No. CA-08-002
Pascua Yaqui Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellee,

vs.

Diane Acuña, Defendant/Appellant.

ORDER

Appeal of a decision of the Pascua Yaqui Trial Court in Case No. CR-07-310, the honorable Cornelia Cruz presiding.

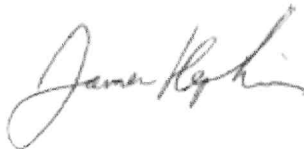
Yancy A. Jencsok, Esq., Pascua Yaqui Tribe Office of the Prosecutor, Tucson, AZ., for the Plaintiff/Appellee.

Nicholas Fontana, Esq., Pascua Yaqui Public Defender Office, Tucson, AZ., for the Defendant/Appellant.

The Tribe's Motion to set a briefing schedule—no motion in opposition from the Defendant /Appellant having been made with this Court---is granted. The Defendant/Appellant must file an Opening Brief no later than forty-five-days from May 21st, 2008.

Furthermore, the Clerk of the Pascua Yaqui Tribal Court is hereby instructed to prepare the Transmittal of the Record no later than fifteen days from the date of this order.

So **ORDERED** this 21st day of May, 2008.



James C. Hopkins, Chief Judge