

CA-09-009

**Pascua Yaqui Tribe Court of Appeals**

---

**Pascua Yaqui Tribe, Plaintiff/Respondent**

v.

**Gomez, Andrea Nadine, Defendant/Petitioner.**

**ORDER**

Petition for trial de novo in Pascua Yaqui Tribal Court case no. CR-08-366, the Hon. Cornelia Cruz presiding.

Alfred Urbina, Esq., Pascua Yaqui Tribe Office of the Prosecutor, Tucson, AZ, for the Plaintiff/Respondent.


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

\*\*\*\*\*

On Jan 28, 2010, the Petitioner Andrea Nadine Gomez, through her counsel, filed a Notice of Withdrawal of Petition for a trial de novo in the Pascua Yaqui Court of Appeals.

Pursuant to the Petitioner's request, the withdrawal is granted and this case is remanded to Trial Court for further proceedings. This case is closed on appeal.

So **ORDERED** this 2<sup>nd</sup> day of March, 2010.

  
\_\_\_\_\_  
James C. Hopkins, Chief Justice  
Pascua Yaqui Court of Appeals

PASCUA YAQUI TRIBE  
COURT OF APPEALS

Jan 28, 2010

RECEIVED  
CLERK OF COURT

PASCUA YAQUI TRIBAL  
FILED DATE: 1/28/10

10 JAN 28 PM 1:22

CASE NO. \_\_\_\_\_

CLERK \_\_\_\_\_

1 PASCUA YAQUI PUBLIC DEFENDER  
2 7474 S. Camino de Oeste  
3 Tucson, Arizona 85757  
4 (520) 883-5013

Nicholas Fontana  
PYT Bar No. 10051

5  
6 IN THE PASCUA YAQUI TRIBE COURT OF APPEALS  
7 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION  
8

9 PASCUA YAQUI TRIBE,  
10 Plaintiff/Appellee,

11 vs.

12 GOMEZ, ANDREA NADINE,  
13 Defendant/Appellant.

) Appellate Case No: CA-09-009

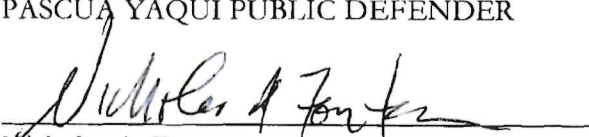
) Tribal Court No.: CR-08-366

) **WITHDRAWAL OF PETITION FOR TRIAL  
DE NOVO**

14  
15 Appellant Andrea Nadine Gomez, through counsel, respectfully gives the Court notice that she  
16 withdraws her petition for a trial de novo in the Pascua Yaqui Court of Appeals.

17 DATED this 28<sup>th</sup> day of January, 2010.

18  
19 PASCUA YAQUI PUBLIC DEFENDER

20   
21 Nicholas A. Fontana  
22 Chief Public Defender  
23  
24  
25  
26  
27  
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that the original copy of the Petition for Trial de Novo was delivered this date to:

3 Clerk of the Court of Appeals  
4 Pascua Yaqui Court of Appeals  
5 7474 South Camino de Oeste  
6 Tucson, AZ 85757

7 and that one copy of the Petition for Trial de Novo was delivered this date to:

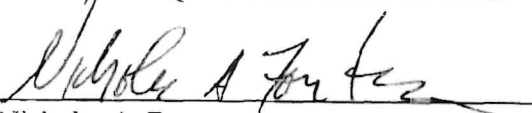
8 Clerk of the Court  
9 Pascua Yaqui Tribal Court  
10 7474 South Camino de Oeste  
11 Tucson, AZ 85757

12 and that one copy of the Petition for Trial de Novo was delivered this date to:

13 Alfred Urbina  
14 Interim Chief Prosecutor  
15 Office of the Prosecutor of the Pascua Yaqui Tribe  
16 7474 South Camino de Oeste  
17 Tucson, AZ 85757

18 DATED this 26<sup>th</sup> day of January, 2010.

19 PASCUA YAQUI PUBLIC DEFENDER

20 

21 Nicholas A. Fontana  
22 Chief Public Defender  
23  
24  
25  
26  
27  
28

Oct 26, 2009

RECEIVED  
CLERK OF COURT

1 PASCUA YAQUI PUBLIC DEFENDER  
2 7474 S. Camino de Oeste  
3 Tucson, Arizona 85757  
4 (520) 883-5013

5 Nicholas A. Fontana  
6 PYT Bar No. 10051

7 IN THE PASCUA YAQUI TRIBAL COURT  
8 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

9 PASCUA YAQUI TRIBE,

10 Appellee,

11 vs.

12 GOMEZ, ANDREA NADINE,

13 Appellant.

CA-09-009

Trial Court: CR-08-366

**RENEWED MOTION TO STAY**

14  
15 Appellant Andrea Nadine Gomez, pursuant to Rule 23, Pascua Yaqui Rules of Appellate Procedure,  
16 respectfully renews her motion to stay all proceedings against her in the trial court.

17 On May 13, 2009, Ms. Gomez was found guilty of one count of domestic violence/aggravated  
18 assault. Ms. Gomez filed a petition for a trial de novo in this Court on May 21, 2009. At the time the  
19 petition was filed, Ms. Gomez also filed a motion to stay her sentencing in the lower court pending the  
20 resolution of her trial de novo in the Court of Appeals. On May 21, 2009, the trial court entered an  
21 ordering staying the sentencing proceeding against Ms. Gomez.

22 On May 26, 2009, the Tribe filed a motion requesting that the lower court lift the stay and on July 8,  
23 2009, the lower court entered an order lifting the stay and setting the matter for sentencing. [Exhibit A].  
24 Ms. Gomez is currently set for sentencing on October 27, 2009 at 11:00 a.m. in the Pascua Yaqui Tribal  
25 Court.

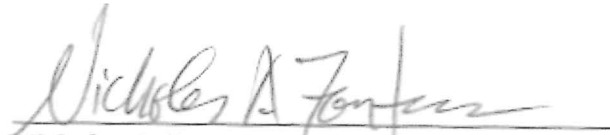
26 This Court has not yet designated a justice to preside over Ms. Gomez's trial de novo nor has it  
27 conducted a conference as required by Rule 27(C), Pascua Yaqui Rules of Appellate Procedure. Permitting  
28 the lower court to proceed with sentencing would essentially render Ms. Gomez's invocation of her

1 constitutional right to a trial de novo, as guaranteed by Article VIII, § 5, Constitution of the Pascua Yaqui  
2 Tribe, a meaningless exercise.

3 WHEREFORE Appellant Andrea Gomez respectfully moves this Court to enter an order staying all  
4 proceedings against her in this matter in the Pascua Yaqui Tribal Court.

5 Dated this 26<sup>th</sup> day of October, 2009.

6  
7 PASCUA YAQUI PUBLIC DEFENDER

8  
9 

10 Nicholas A. Fontana  
11 Chief Public Defender

12 E-mailed this date to:

13 Pascua Yaqui Court of Appeals  
[Tobias.Schneider@pascuayaqui-nsn.gov](mailto:Tobias.Schneider@pascuayaqui-nsn.gov)

14 Pascua Yaqui Prosecutor  
[Alfred.Urbina@pascuayaqui-nsn.gov](mailto:Alfred.Urbina@pascuayaqui-nsn.gov)

EXHIBIT A

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE )  
Plaintiff )  
Vs. )  
Gomez Andrea Nadine )  
AKA Gomez Andrea )  
Defendant )  
\_\_\_\_\_ )

NO. CR-08-366

ORDER

The Tribe filed a Motion To Lift Stay; Revoke Defendant's Release Conditions, and Reset Sentencing Hearing in the above matter.

The Court finds that, defense counsel has file their response to the motion and that the Tribe has filed their response; that the Court finds after reviewing the motion, response and reply, and after reviewing the Law and Order Code that the Tribe is correct in it's arguments that sentence should be imposed prior to filing for a Trial De Novo pursuant to the Tribe's arguments and statue/case citations provided by the Tribe in their motion and reply as the imposition of sentence would be considered the final judgment in this process; that the Court will lift the stay and will set the sentencing hearing and that Court will deny the Tribe's motion to revoke the defendant's conditions of release as sufficient grounds have not been provided.

IT IS ORDERED THAT, the Tribe's Motion To Lift Stay is granted and the stay issued in this matter is hereby lifted and the defendant shall appear before this Court on **TUESDAY, AUGUST 4, 2009 AT 3:00 P.M.** for the Sentencing hearing and the Tribe's Motion To Revoke Defendant's Release Conditions is denied.

THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

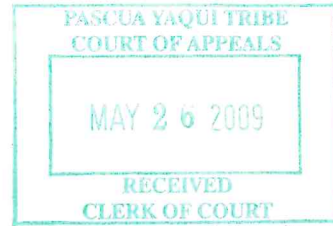
SO ORDERED THIS 8th DAY OF July, 2009.

Cornelius S.  
Judge, Pascua Yaqui Tribal Court

Cc: \_\_\_\_\_  
Date: 07-08-09  
 Tribe  Defendant/Counsel \_\_\_\_\_ Probation \_\_\_\_\_ Detention \_\_\_\_\_ Other \_\_\_\_\_  
Clerk

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

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



Case: CA-09-009  
Clerk: TS

6 Alfred L. Urbina, Esq.  
7 PYT Bar No. 10141  
8 SBN: 026389  
9 Deputy Prosecutor

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

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

|                                  |   |                                 |
|----------------------------------|---|---------------------------------|
| 10 <b>PASCUA YAQUI TRIBE,</b>    | ) | Trial Court Case No.: CR-08-366 |
| 11 Plaintiff/Appellee,           | ) |                                 |
| 12 vs.                           | ) | Appeals Court Case No. CA-09-   |
| 13 <b>GOMEZ, ANDREA, NADINE,</b> | ) | <b>APPELLEE'S MOTION</b>        |
| 14 Defendant/Appellant.          | ) | <b>TO DISMISS FOR LACK OF</b>   |
|                                  | ) | <b>JURISDICTION</b>             |

15  
16 COMES NOW the Pascua Yaqui Tribe, by and through counsel  
17 undersigned, pursuant to Article VIII § 1, 2, and 5 of the Constitution of the Pascua  
18 Yaqui Tribe; 3 PYT R.Crim.P., Rules 48 and 49; 3 PYTRAP Rule 23(A), and 3 PYTRAP  
19 Rule 27(A), and respectfully requests the court to dismiss this matter for lack of appellate  
20 jurisdiction. The Trial Court has not rendered a final judgment convicting the Defendant  
21 and thus the Petition is premature. The grounds for this Motion are set forth in the  
22 following Memorandum of Points and Authorities.  
23

24 RESPECTFULLY SUBMITTED this 26th day of May, 2009.

25 PASCUA YAQUI TRIBE  
26 OFFICE OF THE PROSECUTOR

27   
28 \_\_\_\_\_  
Alfred L. Urbina, Deputy Prosecutor

1 MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 FACTS

4  
5 Appellant was found guilty in this matter on May 12, 2009, by a jury of her peers,  
6 in the Pascua Yaqui Tribal Court. Appellant did not motion for a new trial, 3 PYT R.  
7 Crim.P. Rule 48, and defense counsel requested a Sentencing hearing. The trial court  
8 granted the request and set a Sentencing hearing for June 3, 2009, in conjunction with the  
9 Order of the jury trial verdict issued on May 13, 2009 by Chief Judge Cornelia Cruz.  
10 (Exhibit A) Appellant was released on her own recognizance and ordered to obey all  
11 laws pending sentencing. On May 21, 2009, Appellant was arrested on charges of  
12 Driving Under the Influence and Injury to Public Property. (Exhibit B) Appellant then  
13 immediately filed a premature Petition for Trial de Novo on May 21, 2009 (Exhibit C),  
14 based on Judge Cruz's May 13<sup>th</sup> 2009 Order, an Order that is neither final nor appealable.  
15 The Appellant simultaneously filed an improper and untimely Motion to Stay in the Trial  
16 Court (Exhibit D), pursuant to PYTRAP Rule 23(sic), requesting that the Sentencing  
17 hearing be stayed pending the outcome of her "appeal."(sic) The Trial Court, relying on  
18 Appellant's faulty reasoning, granted the request for a Stay pending the outcome of the  
19 Appellate proceedings (Exhibit E).

20  
21  
22  
23 **I.**  
24 **APPELLANT'S REQUEST IS UNSUPPORTED, UNTIMELY, AND IMPROPER**  
25 **AND THE PASCUA YAQUI APPELLATE COURT LACKS JURISDICTION IN**  
26 **THIS MATTER PENDING THE OUTCOME AND FINALITY IN THE TRIBAL**  
27 **PROCEEDINGS IN CR-08-366.**

28 Appellant Petitions for a Trial de Novo. The Appellant asserts that the Appellate  
Court maintains jurisdiction simply because a Petition for Trial de Novo was filed at the

1 Court of Appeals. The Appellant's belief is unsupported and this matter must be  
2 dismissed for lack of jurisdiction because Appellant's Petition is premature and there lies  
3 no jurisdictional basis for her ill-timed request.  
4

5 Generally, the Tribal Court has original subject matter jurisdiction over all  
6 criminal actions in which an Indian is alleged to have violated the criminal provisions of  
7 the Pascua Yaqui law. 3 PYTC § 1-1-20(A). *See also* 3 PYTC § 1-1-30(A)(B); 3 PYTC  
8 § 1-1-60(A)(B); Article II Pascua Yaqui Tribe Constitution. Upon conviction, a person  
9 has 10 days to motion for a new trial. 3 PYT R.Crim.P. Rule 48(B). **At Sentencing**  
10 Appellant had a right to request an appeal bond or release on her own recognizance. 3  
11 PYT R.Crim.P. Rule 49(A)(emphasis added). **Execution of the sentence shall be stayed**  
12 **pending appeal** when the defendant posts an appeal bond in accordance with the order of  
13 the trial court. 3 PYT R.Crim.P. Rule 49(B) (emphasis added). If the trial court denied  
14 such a request, or determines that a defendant be held without bond, a defendant may  
15 petition the Court of Appeals for relief. 3 PYT R.Crim.P. Rule 49(C). A Stay of  
16 Execution may be filed **at any time after a decision is final.** 3 PYTRAP Rule 23(A)  
17 (emphasis added). The Defendant's Petition for Trial de Novo before the appellate court  
18 shall be filed by the appellate court no later than 20 days **after the judgment convicting**  
19 **the defendant is signed by the trial court judge.** 3 PYTRAP Rule 27(A). Article VIII,  
20 Section 5 of the Tribal Constitution provides that: "the Court of Appeals of the Pascua  
21 Yaqui Tribe shall have the power of judicial review of all civil and criminal matters  
22 appealed from the Pascua Yaqui Tribal Court. Article VIII § 5.  
23  
24  
25

26 Criminal cases are generally not subject to appellate review **until and after**  
27 **conviction and sentence.** *See Flanagan v. United States*, 465 U.S. 259, 263, 104 S.Ct.  
28

1 1051, 79 L.Ed.2d 288 (1984); *United States v. Pace*, 201 F.3d 1116, 1118 (9th Cir.2000);  
2 *United States v. Lewis*, 368 F.3d 1102, 1104 (9th Cir.2004). *See also, Peterson v.*  
3 *Jacobson*, 2 Ariz.App. 593, 411 P.2d 31 (App. 1966)( Appeal to superior court from  
4 justice court conviction was prematurely taken where defendant had not as yet been  
5 sentenced.) In a criminal case, imposition of sentence is required for finality and  
6 concomitantly for appealability of a judgment of conviction. 4 Am.Jur.2d, Appeal and  
7 Error § 161. The sentence is the judgment. *Parr v. United States*, 351 U.S. 513, 76 S.Ct.  
8 912, 916, 100 L.Ed. 1377 (1956). This rule of finality is designed to prohibit “piece-  
9 meal appellate review of trial court decisions that do not terminate the litigation. *U.S. v.*  
10 *Hollywood Motor Car Co.*, 458 U.S. 263, 265 (1982). Courts, however, have carved out  
11 a small class of cases from this jurisdictional bar under the “collateral order doctrine.”  
12 *Pace*, 201 F.3d at 1119. To fall within this exception, the appealed order must “1)  
13 ‘conclusively determine the disputed question,’ 2) ‘resolve an important issue completely  
14 separate from the merits of the action ’ and 3) be effectively unreviewable on appeal from  
15 a final judgment.’ ” *United States v. Bird*, 342 F.3d 1045, 1046 (9th Cir.2003) (*quoting*  
16 *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468, 98 S.Ct. 2454, 57 L.Ed.2d 351  
17 (1978)).

21  
22 Nevertheless, the Supreme Court has warned against broadening the scope of  
23 interlocutory review in criminal cases. Piecemeal appeals encourage delay, which “is  
24 fatal to the vindication of the criminal law.” *United States v. MacDonald*, 435 U.S. 850,  
25 853-54, 98 S.Ct. 1547, 56 L.Ed.2d 18 (1978) (*citing Cobbletick v. United States*, 309  
26 U.S. 323, 325, 60 S.Ct. 540, 84 L.Ed. 783 (1940)). [The tribe] has an “interest in  
27 providing a speedy trial which exists separate from, and at times in opposition to, the  
28

1 interests of the accused.” *Id.* at 862, 98 S.Ct. 1547 (*quoting Barker v. Wingo*, 407 U.S.  
2 514, 519, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972)). “[D]elay may prejudice the  
3 prosecution's ability to prove its case, increase the cost to society of maintaining those  
4 defendants subject to pre-trial detention, and prolong the period during which defendants  
5 released on bail may commit other crimes.” *Id.* Accordingly, we interpret the collateral  
6 order doctrine with the “utmost strictness” in criminal cases. *California v. Mesa*, 813  
7 F.2d 960, 962 (9th Cir.1987) (*citing Flanagan*, 465 U.S. at 265, 104 S.Ct. 1051).  
8

9  
10 Similarly, In 1963, the Supreme Court spoke directly to this finality issue in the  
11 non-capital context. *In Andrews v. United States*, 373 U.S. 334 (1963), two petitioners  
12 challenged the constitutionality of their sentences under § 2255, arguing that they had  
13 been denied their right of allocution at sentencing. The district court granted relief,  
14 vacated the petitioners’ sentences, and ordered that they be resentenced. The government  
15 appealed, and the district court stayed the resentencing. The court of appeals reversed the  
16 district court’s resentencing order. *Id.* at 336. The Supreme Court held that the court of  
17 appeals did not have jurisdiction because the district court’s judgment did not become  
18 final until it granted one of the four remedies listed in § 2255: discharging the prisoners,  
19 resentencing them, granting them a new trial, or correcting their sentences. *Id.* at 340-41.  
20  
21 The Court said that it was clear that the order granting resentencing was interlocutory, not  
22 final. Finally, where a defendant in a criminal prosecution had filed a notice of appeal to  
23 the Court of Appeals, a District Court does not lose jurisdiction to revoke a prior order  
24 admitting defendant to bail. *Bridges Et Al. v. United States*, 184 F.2d 881 (9th Cir. 1950);  
25 Fed.Rules Crim.Proc. Rule 46(a) (2), 18 U.S.C.A.  
26  
27  
28

1 Here, the Tribal Code clearly demonstrates that an appeal is not ripe until a final  
2 order or judgment is issued in a lower court case. Appellant was found guilty by a jury of  
3 her peers and subsequently requested a Sentencing hearing and the judgment is not yet  
4 final. The Tribal court maintains jurisdiction through sentencing and posting of an appeal  
5 bond pursuant to Rule 49. A Defendant can then seek relief through the Court of Appeals  
6 if an appeal bond is denied pursuant to Appellate Rule 23. The mere filing of a Notice of  
7 Appeal or A Petition for Trial de Novo does not automatically divest the lower court of  
8 jurisdiction. Additionally, PYTRAP Rule 23(A) enforces this sensible reading of our  
9 statutes, "... a stay of execution may be filed at any time **after a decision is final.**" A  
10 stay of execution refers to a criminal sentence or of the imposition of a final order.  
11 Moreover, if the procedural meandering of the Appellant is sanctioned then there would  
12 be no purposeful use for 3 PYT R.Crim.P. Rule 49 and 3 PYTRAP Rule 23(A), they  
13 would in effect be moot. Surely this was not the intention of the framers of our Code.  
14 The trial court did not sentence Appellant and did not file a written judgment.  
15 Consequently, no final judgment exists to enable appellate review or Trial de Novo. The  
16 Petition should be deemed premature and dismissed.

17  
18  
19  
20 Another reason why jurisdiction remains with the trial court is the styling of  
21 Appellant's prayer: "Petition for Trial de Novo." This suggests that the Trial proceedings  
22 are final and Defendant has legitimate grounds for a new trial. However, she failed to  
23 request a new trial pursuant to 3 PYTR.Crim.P. Rule 48, the Order is not a final order,  
24 and sentencing has not occurred. If however, she is appealing an "order," than her prayer  
25 should be in the form and would in essence be an interlocutory appeal as opposed to a  
26 Petition for A Trial de Novo. The Order would not be final and the Appellant would  
27  
28

1 have to meet the mandates of the Collateral Order Doctrine and the time parameters set  
2 by the Pascua Yaqui Rules of Appellate Procedure.


3 Our Code and the weight of Federal and State law inform that in order for an  
4 appeal to be filed after a criminal conviction, the order must be final and the sentence  
5 imposed. The Appellant can no longer unilaterally drive the direction of this case  
6 without following the rules. Until the Tribal Court issues a sentence Order the Appellant  
7 may not continue "piece-meal" litigation. The Appellant's procedural actions at this  
8 juncture are untenable, perplexing, and dilatory in nature. Her actions could be "fatal to  
9 the vindication" of Yaqui law. Undoubtedly, Appellant, through Counsel has jumped the  
10 procedural gun. Not only is her appeal untimely, her request for a Stay of tribal court  
11 proceedings is procedurally and statutorily deficient. Pursuant to Rule 23, Appellate  
12 relief is only proper when the tribal court denies an appeal bond or release on a  
13 defendant's own recognizance. Appellant cited Rule 23 for her Motion to Stay in the trial  
14 court when she should have relied on and the Tribal Court ruled on the request pursuant  
15 to Rule 49(B), after sentencing. Appellant improperly relies on a rule that obviously does  
16 not support her motion because it is not supported by a final order.

17  
18  
19  
20 **CONCLUSION**

21 Wherefore, for the foregoing reasons, the Tribe respectfully requests that this  
22 Court dismiss Appellant's Petition for Trial de Novo and Issue an Order Lifting the Stay  
23 in the lower court.

24  
25 RESPECTFULLY SUBMITTED this 26th day of May, 2009.

26 PASCUA YAQUI TRIBE  
27 OFFICE OF THE PROSECUTOR

28   
Alfred L. Urbina, Deputy Prosecutor

1 **CERTIFICATE OF SERVICE**

2  
3 Pascua Yaqui Tribe )  
4 ) ss.  
5 County of Pima )  
6

7 Alfred L. Urbina hereby certifies that he is a Deputy Prosecutor of the Pascua  
8 Yaqui Tribe in the above-entitled action and that on the 26th day of May, 2009, he caused  
9 to be delivered and/or e-mailed the following:  
10

11 **TRIBE'S RESPONSE TO APPELLANT'S MOTION FOR RELEASE PENDING**  
12 **APPEAL**

13 That the original of the foregoing document was electronically filed with:

14 **CLERK OF THE PASCUA YAQUI COURT OF APPEALS**

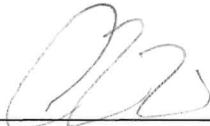
15 7474 South Camino de Oeste

16 Tucson, AZ 85757  
17

18 That two copies of the foregoing document were delivered/e-mailed to:

19 Honorable Cornelia Cruz  
20 Chief Judge, Pascua Yaqui Tribal Court  
21 7474 S. Camino de Oeste  
Tucson, AZ 85757

22 Nicholas A. Fontana, Esq.  
23 Pascua Yaqui Public Defender  
24 Attorney for Defendant/Appellant  
7474 S. Camino de Oeste  
Tucson, AZ 85757

25  
26 

27 ALFRED L. URBINA  
28 Deputy Prosecutor

# **EXHIBIT A**

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE )  
Plaintiff )  
VS. )  
Gomez Andrea Nadine )  
Defendant )

No. CR-08-366

ORDER

COPY


The above named defendant appeared before this Court on the 11<sup>th</sup> and 12<sup>th</sup> day of May, 2009 with legal counsels Nicholas Fontana and Mryla Garcia for jury trial hearing. Alfred Urbina appeared for the Tribe.

The Court finds that, after addressing motions and issues prior to the beginning of the trial hearing the Court will adopt the Tribe's jury instructions as filed by the Tribe as they appear to be more detailed and appear to be easier for the jury to understand, and that after hearing sworn testimony, after reviewing all evidence presented, the Court denies the defendant's motion for directive verdict as the reasonable doubt is sufficiently present to allow the Tribe to go forward and that Tribe's Exhibits, 28,1,24,31,2-21,26 and 27 were admitted into evidence, and that after deliberating, the jury entered a verdict of not guilty to Count One-Disorderly Conduct Domestic Violence and enters a guilty plea to Count Two-Aggravated Assault Domestic Violence and enters a not guilty plea to Count Three-Assault Domestic Violence; that defense counsel moves the Court for a separate sentencing hearing; that the Tribe moves the Court to modify the conditions of release and to set bond of \$10,000.00 to be posted prior to release as defendant has been convicted of the charge in Count Two; that defense counsel objects as the defendant has been attending all of her hearings, has ties to the Reservation, has no prior history and is not a flight risk; that the Tribe after conferring with the victim moves the Court to impose the original conditions of release which include recognizance release.

IT IS ORDERED THAT, defendant's motion for directive verdict is denied and the defendant is acquitted of the charges in Counts One and Three and the defendant is found guilty of the charge in Count Two and the defendant shall continue being released on her own recognizance, is restrained from any contact with Edmund Worthen and Priscilla Gomez, shall obey all laws and appear for all hearings and the defendant shall appear before this Court on WEDNESDAY, JUNE 3, 2009 AT 9:00 A.M. for Sentencing hearing in Count Two.

**THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.**

SO ORDERED THIS 13<sup>th</sup> DAY OF May, 2009.

  
\_\_\_\_\_  
Judge, Pascua Yaqui Tribal Court

cc:  
Date: 05/15/09  
X Tribe X Defendant/Counsel  
Clerk: Rg

# **EXHIBIT B**

**IN THE PASCUA YAQUI TRIBAL COURT**  
**IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION**

|  |                                    |
|--|------------------------------------|
| <p><b>PASCUA YAQUI TRIBE,</b><br/> <span style="float: right;"><b>Plaintiff,</b></span></p> <p><b>Vs.</b></p> <p><b>Gomez, Andrea</b><br/> <span style="float: right;"><b>Defendant</b></span></p> |                                    |
|  | <b>COURT USE ONLY</b>              |
|  | Case Number:<br><b>090521-2165</b> |
| <b>PROBABLE CAUSE AFFIDAVIT</b>  |                                    |

COPY

**AFFIDAVIT**

1. I, **D. Pascual**, being a duly authorized law enforcement officer of the Pascua Yaqui Indian Tribe and for the Pascua Yaqui Indian Reservation, do hereby swear OR affirm as follows:

A.  I am the arresting officer in this case; OR  
 I am a law enforcement officer and make this statement on information and belief.

2. SUSPECTED PARTY (Defendant)

Name: **Andrea Nadine Gomez**  
 Driver's license number:  
 PY Enrollment number: **2694U07442**  
 Date of Birth: **03/23/86**

is  is not an enrolled member of the Pascua Yaqui Tribe.

3. The defendant was  arrested  cited  long formed without a warrant on **05/21/09** at **2:00**  A.M.  P.M.

4. I have probable cause to believe that the defendant committed the following offense(s) at , which is within the exterior boundaries of the Pascua Yaqui Indian Reservation:

**ARS, Title 28, Section 1381.A1, driving under the influence**

**ARS, Title 28, Section 662, failure to stop at an accident**

PYC 4, Title 1, Section 630, injury to public property

- 5. I believe that the defendant committed the above-listed offense(s) because: (Summarize facts to support probable cause claim) a witness identified Andrea as being the sole driver/ occupant of the vehicle which was involved in a single car accident.

At the above-stated date and time and at the above-referenced location within the exterior boundaries of the Pascua Yaqui Indian Reservation I did witness the following:

On 05/21/09 at approximately 0659 hrs, I was dispatched to the PYT cemetery, auto accident. Dispatch advised that the caller reported a grey vehicle had crashed.

I arrived and noticed a single grey Ford Taurus on top of a grave, which apparently had crashed. I noticed the Taurus with major front end damage and no driver or anyone in the area. I also noticed a gravestone belonging to a deceased person to be knocked off its base, damaging the grave.

The female, Andrea Gomez was identified as the sole driver of the Taurus and had suffered some injuries sustained from the accident. Andrea was arrested at another location, Vahcom and Tetakusim which she had fled the scene on foot.

Andrea (Yaqui Enrolled) was read her rights and admitted to driving while she had been drinking the night before. I could smell a slight odor of alcoholic beverage coming from Andrea's breath as she spoke to me. Andrea also admitted that she was the driver and no one else was in the Taurus.

Andrea was cited and released to PYFD, who treated Andrea and decided that she needed to be transported to the hospital.

I needed to obtain blood from Andrea to complete my DUI investigation, as she was transported to St. Mary's hospital for further evaluation.

Andrea committed driving under the influence, injury to public property and failure to stop at an accident.

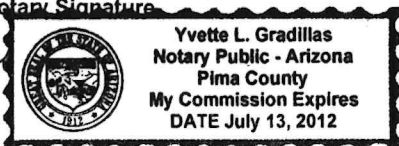
The information contained herein is true and accurate to the best of my knowledge and belief.

[Signature] 342  
Signature of Officer  
05 21 09  
Date

SUBSCRIBED AND SWORN BEFORE ME ON 05/21/09

Yvette L. Gradillas  
Notary Signature

My Commission expires: 7/13/2012

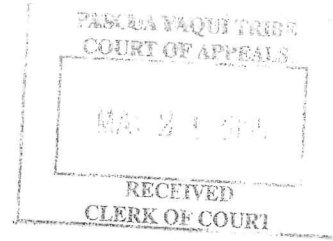


# **EXHIBIT C**

1 PASCUA YAQUI PUBLIC DEFENDER  
2 7474 S. Camino de Oeste  
3 Tucson, Arizona 85757  
4 (520) 883-5013

Myrla I. Garcia,  
PYT Bar No. 1005412

5 COUNSEL FOR: Defendant/Appellant



COPY

6  
7 IN THE PASCUA YAQUI TRIBE COURT OF APPEALS  
8 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

9  
10 PASCUA YAQUI TRIBE,  
11 Plaintiff/Appellee,

12 vs.

13 GOMEZ, ANDREA NADINE,  
14 Defendant/Appellant.

) Appellate Case No: CA-09-

) Tribal Court No.: CR-08-366

) **PETITION FOR TRIAL DE NOVO**

15  
16 Appellant Andrea Nadine Gomez, through counsel and pursuant to Article VIII, § 5, Constitution  
17 of the Pascua Yaqui Tribe and Rule 27, Pascua Yaqui Tribe Rules of Appellate Procedure, respectfully  
18 petitions this Court for a trial de novo on her conviction of Count 2 of the criminal complaint in CR-08-  
19 366. Count 2 of the complaint charges Ms. Gomez with Domestic Violence Aggravated Assault, a violation  
20 of 4 P.Y.T.C. §§ 1-150(B)(2) and 3-10(F), and alleges that:

21 On or about July 6, 2008 at approximately 11:13 p.m., at or near 7340 S. Camino Potam,  
22 while using a knife, a deadly instrument, intentionally, knowingly, or recklessly caused  
23 physical injury to Edmund Worthen, a person of opposite sex with whom she shares a  
24 home.

25 *Pascua Yaqui Tribe v. Andrea Nadine Gomez*, Criminal Complaint (filed 12/4/08).

26 A copy of the lower court's Order is attached pursuant to Rule 7, Pascua Yaqui Rules of Appellate  
27 Procedure.

28 ///

///



1 DATED this 21<sup>ST</sup> day of May, 2009.

2  
3 PASCUA YAQUI PUBLIC DEFENDER

4 Myrla Garcia

5 Myrla I. Garcia

6 Assistant Public Defender

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I hereby certify that the original copy of the Petition for Trial de Novo was delivered this date to:

Clerk of the Court of Appeals  
Pascua Yaqui Court of Appeals  
7474 South Camino de Oeste  
Tucson, AZ 85757

and that one copy of the Petition for Trial de Novo was delivered this date to:

Clerk of the Court  
Pascua Yaqui Tribal Court  
7474 South Camino de Oeste  
Tucson, AZ 85757

and that one copy of the Petition for Trial de Novo was delivered this date to:

Alfred Urbina  
Deputy Prosecutor  
Office of the Prosecutor of the Pascua Yaqui Tribe  
7474 South Camino de Oeste  
Tucson, AZ 85757

DATED this 21<sup>st</sup> day of May, 2009.

PASCUA YAQUI PUBLIC DEFENDER



---

Anselma Torres  
Office Manager

# **EXHIBIT D**

F

PASCUA YAQUI TRIBAL COURT  
FILED DATE AND TIME

09 MAY 21 PM 3: 31

1 Pascua Yaqui Public Defender  
2 7474 S. Camino de Oeste  
3 Tucson, Arizona 85757

3 Myrla I. Garcia, SBN 024817 PYT Member No. 10054  
4 COUNSEL FOR: Defendant

DOCKET NO. CR08-366  
CLERK [Signature]

5 IN THE PASCUA YAQUI TRIBAL COURT  
6 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION  
7

COPY

8 PASCUA YAQUI TRIBE,

9 Plaintiff,

10 vs.

11 GOMEZ, ANDREA NADINE,

12 Defendant.

Case No.: CR-08-366

MOTION TO STAY

13  
14 Pursuant to Rule 23, Pascua Yaqui Rules of Appellate Procedure, Defendant Andrea Nadine  
15 Gomez, respectfully moves this Court to enter an order staying the Sentencing Hearing currently scheduled  
16 for June 3, 2009 at 9:00 a.m. pending the resolution of Ms. Gomez's appeal in the Pascua Yaqui Tribe Court  
17 of Appeals. Ms. Gomez's Petition for Trial de Novo was filed in the Pascua Yaqui Court of Appeals on  
18 May 21, 2009.

19 Dated this 21<sup>st</sup> day of May, 2009.

20 PASCUA YAQUI PUBLIC DEFENDER

21  
22  
23 Myrla Garcia

24 Myrla I. Garcia  
Assistant Public Defender

25 ORIGINAL of the foregoing delivered this date  
26 To PY Tribal Court by: MG

27 COPY of the foregoing delivered this date to  
28 Prosecutor's Office: MG

PASCUA  
Retain  
MAY 22 2009  
PROSECUTOR

# **EXHIBIT E**

IN THE PASCUA YAQUI TRIBAL 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  
26  
27  
28

PASCUA YAQUI TRIBE )  
Plaintiff )  
Vs. )  
Gomez Andrea Nadine )  
Defendant )  
\_\_\_\_\_ )

NO. CR-08-366

COPY

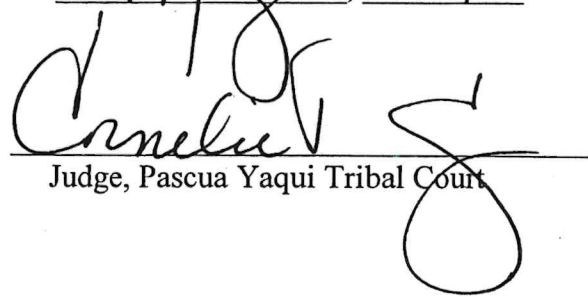
ORDER

The defendant through legal counsel filed a Motion To Stay in the above matter.

The Court finds that, the defendant is moving the Court to stay the Sentencing hearing scheduled for June 3, 2009 pending the resolution of the appeal filed in this matter as the defendant has filed for trial de novo with the Appellate Court; that good cause is shown to grant the defendant's motion.

IT IS ORDERED THAT, the defendant's motion is granted and time limits are deemed waived based on the defendant's motion and the Sentencing hearing scheduled for June 3, 2009 is hereby stayed and the defendant shall continue under the same conditions of release.

SO ORDERED THIS 21<sup>st</sup> DAY OF May, 2009.

  
\_\_\_\_\_  
Judge, Pascua Yaqui Tribal Court

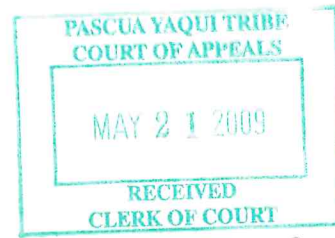
Cc: \_\_\_\_\_  
Date: 05/21/09  
 Tribe  Defendant/Counsel \_\_\_\_\_ Probation \_\_\_\_\_ Detention \_\_\_\_\_ Other \_\_\_\_\_  
Clerk



1 PASCUA YAQUI PUBLIC DEFENDER  
7474 S. Camino de Oeste  
2 Tucson, Arizona 85757  
3 (520) 883-5013

4 Myrla I. Garcia,  
PYT Bar No. 1005412

5 COUNSEL FOR: Defendant/Appellant



Case : CA-09-009  
Clerk : TS

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

9 PASCUA YAQUI TRIBE,  
10  
11 Plaintiff/Appellee,

12 vs.

13 GOMEZ, ANDREA NADINE,  
14 Defendant/Appellant.

) Appellate Case No: CA-09-

) Tribal Court No.: CR-08-366

) **PETITION FOR TRIAL DE NOVO**

15 Appellant Andrea Nadine Gomez, through counsel and pursuant to Article VIII, § 5, Constitution  
16 of the Pascua Yaqui Tribe and Rule 27, Pascua Yaqui Tribe Rules of Appellate Procedure, respectfully  
17 petitions this Court for a trial de novo on her conviction of Count 2 of the criminal complaint in CR-08-  
18 366. Count 2 of the complaint charges Ms. Gomez with Domestic Violence Aggravated Assault, a violation  
19 of 4 P.Y.T.C. §§ 1-150(B)(2) and 3-10(F), and alleges that:  
20

21 On or about July 6, 2008 at approximately 11:13 p.m., at or near 7340 S. Camino Potam,  
22 while using a knife, a deadly instrument, intentionally, knowingly, or recklessly caused  
23 physical injury to Edmund Worthen, a person of opposite sex with whom she shares a  
24 home.

25 *Pascua Yaqui Tribe v. Andrea Nadine Gomez*, Criminal Complaint (filed 12/4/08).

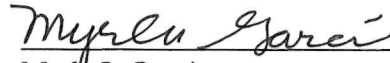
26 A copy of the lower court's Order is attached pursuant to Rule 7, Pascua Yaqui Rules of Appellate  
27 Procedure.

28 ///

///

1 DATED this 21<sup>ST</sup> day of May, 2009.

2  
3 PASCUA YAQUI PUBLIC DEFENDER

4 

5 Myrla I. Garcia  
6 Assistant Public Defender  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the original copy of the Petition for Trial de Novo was delivered this date to:

3 Clerk of the Court of Appeals  
4 Pascua Yaqui Court of Appeals  
5 7474 South Camino de Oeste  
6 Tucson, AZ 85757

7 and that one copy of the Petition for Trial de Novo was delivered this date to:


8 Clerk of the Court  
9 Pascua Yaqui Tribal Court  
7474 South Camino de Oeste  
Tucson, AZ 85757

10 and that one copy of the Petition for Trial de Novo was delivered this date to:

11 Alfred Urbina  
12 Deputy Prosecutor  
13 Office of the Prosecutor of the Pascua Yaqui Tribe  
14 7474 South Camino de Oeste  
Tucson, AZ 85757

15 DATED this 21<sup>st</sup> day of May, 2009.

16 PASCUA YAQUI PUBLIC DEFENDER

17 

18 \_\_\_\_\_  
19 Anselma Torres  
20 Office Manager

IN THE PASCUA YAQUI TRIBAL 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  
26  
27  
28

PASCUA YAQUI TRIBE )  
Plaintiff )  
VS. )  
Gomez Andrea Nadine )  
Defendant )

No. CR-08-366

ORDER

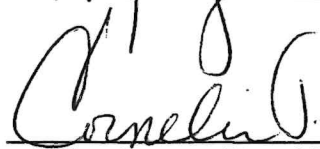
The above named defendant appeared before this Court on the 11<sup>th</sup> and 12<sup>th</sup> day of May, 2009 with legal counsels Nicholas Fontana and Mryla Garcia for jury trial hearing. Alfred Urbina appeared for the Tribe.

The Court finds that, after addressing motions and issues prior to the beginning of the trial hearing the Court will adopt the Tribe's jury instructions as filed by the Tribe as they appear to be more detailed and appear to be easier for the jury to understand, and that after hearing sworn testimony, after reviewing all evidence presented, the Court denies the defendant's motion for directive verdict as the reasonable doubt is sufficiently present to allow the Tribe to go forward and that Tribe's Exhibits, 28,1,24,31,2-21,26 and 27 were admitted into evidence, and that after deliberating, the jury entered a verdict of not guilty to Count One-Disorderly Conduct Domestic Violence and enters a guilty plea to Count Two-Aggravated Assault Domestic Violence and enters a not guilty plea to Count Three-Assault Domestic Violence; that defense counsel moves the Court for a separate sentencing hearing; that the Tribe moves the Court to modify the conditions of release and to set bond of \$10,000.00 to be posted prior to release as defendant has been convicted of the charge in Count Two; that defense counsel objects as the defendant has been attending all of her hearings, has ties to the Reservation, has no prior history and is not a flight risk; that the Tribe after conferring with the victim moves the Court to impose the original conditions of release which include recognizance release.

IT IS ORDERED THAT, defendant's motion for directive verdict is denied and the defendant is acquitted of the charges in Counts One and Three and the defendant is found guilty of the charge in Count Two and the defendant shall continue being released on her own recognizance, is restrained from any contact with Edmund Worthen and Priscilla Gomez, shall obey all laws and appear for all hearings and the defendant shall appear before this Court on **WEDNESDAY, JUNE 3, 2009 AT 9:00 A.M.** for Sentencing hearing in Count Two.

**THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.**

SO ORDERED THIS 13<sup>th</sup> DAY OF May, 2009.

  
\_\_\_\_\_  
Judge, Pascua Yaqui Tribal Court

cc:  
Date: 05/15/09  
X Tribe X Defendant/Counsel  
Clerk: Rg