

Aug 25, 2010

ISSUED
CLERK OF COURT

CA-09-013

PASCUA YAQUI TRIBE COURT OF APPEALS

Pascua Yaqui Tribe, Appellee,

v.

Dino Valencia, Appellant.

ORDER

Patricia Leon-Enriquez, Pascua Yaqui Public Defender's Office, Tucson, 85757, for Appellant Dino Valencia.

Alfred Urbina, Pascua Yaqui Prosecutor's Office, Tucson, 85757, for Appellee.

On August 2, 2010, the Pascua Yaqui Office of the Public Defender filed a Motion to Withdraw as Counsel for Dino Valencia, the legal proceedings in this case being final and this court having entered a Final Order on January 26, 2010.

For good cause shown, the Motion to Withdraw is hereby granted. The Office of the Public Defender has not longer any duties to the appellant Dino Valencia.

So ORDERED this 24th day of August, 2010.



James Hopkins, Chief Justice

Aug 02, 2010

RECEIVED
CLERK OF COURT

1 Patricia Leon-Enriquez
2 State Bar No. 022222
3 OFFICE OF THE PUBLIC DEFENDER
4 7474 South Camino de Oeste
5 Tucson, AZ. 85757

6 Attorneys for Defendant

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

9 PASCUA YAQUI TRIBE,

10 Appellee,

11 vs.

12 VALENCIA, DINO,

13 Appellant.

) Case No.: CA-09-013

) **MOTION TO WITHDRAW**

14
15 The Office of the Public Defender respectfully moves this Court to enter an order
16 permitting the Office of the Public Defender to withdraw as legal counsel since the legal
17 proceedings in this matter are final.

18 DATED this 2nd this day of August, 2010.

19 PASCUA YAQUI PUBLIC DEFENDER

20 

21 Patricia Leon-Enriquez
22 Senior Staff Attorney – Public Defender

23 ORIGINAL e-mailed this
24 date to PYT COA by:

25 COPY e-mailed this date to
Alfred Urbina, PYT Prosecutor's
Office by:



CA-09-013

Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Plaintiff/Appellee

v.

Dino Valencia, Defendant/Appellant

ORDER

Appeal of a decision of the Pascua Yaqui Tribal Court in Case No. CR-09-238, the Honorable Melvin Stoof presiding.

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

Nicholas Fontana, Esq., Pascua Yaqui Office of the Public Defender, Tucson, AZ, 85757, Defendant/Appellant.

Appellant filed a Notice of Appeal in this case on September 3, 2009. A Notice pursuant to Rule 10 PYTRAP was issued on September 3, notifying the parties that the record on appeal had been filed and that the Appellant's Opening Brief was due within 30 days.

Appellant's Opening Brief was due on October 5, 2009, but has not been filed.

Accordingly, this appeal is being dismissed for lack of prosecution, pursuant to Rule 15 PYTRAP.

So ORDERED this 26th day of January, 2010.

A handwritten signature in cursive script, appearing to read "James C. Hopkins".

James C. Hopkins, Chief Justice

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

4 Nicholas A. Fontana
Pascua Yaqui Bar No. 10051

5 COUNSEL FOR: Appellant



CA - 09 - 013

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

9 PASCUA YAQUI TRIBE,

10 Plaintiff/Appellee,

11 vs.

12 VALENCIA, DINO,

13 Defendant/Appellant.
14

) Court of Appeals Case No:

) Trial Court Case No.: CR-09-238

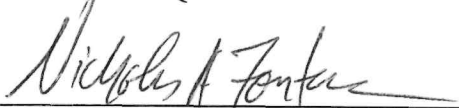
) **NOTICE OF APPEAL**

15 Pursuant to Rule 7, Pascua Yaqui Tribe Rules of Appellate Procedure, counsel for Appellant Dino
16 Valencia, respectfully files a Notice of Appeal in the Appellate Court from the Order entered in this action
17 by the Pascua Yaqui Tribal Court on September 1, 2009. A copy of the Court's Order is attached hereto as
18 required by Rule 7, Pascua Yaqui Rules of Appellate Procedure.
19

20 The Appellant further requests that this Court enter an order directing the Clerk of the Pascua Yaqui
21 Tribal Court to prepare and submit the record within thirty (30) days.

22 DATED this 2nd day of September, 2009.

23 PASCUA YAQUI PUBLIC DEFENDER

24 

25 Nicholas A. Fontana
26 Chief Public Defender

27 ///

28 ///

1
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that the original copy of the Notice of Appeal were delivered this date to:

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

8 and that one copy of the Notice of Appeal was delivered this date to:

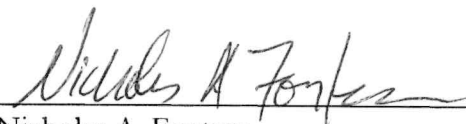
9 Pascua Yaqui Tribal Court
10 7474 South Camino de Oeste
11 Tucson, AZ 85757

12 and that one copy of the Notice of Appeal was delivered this date to:

13 G. Allen Osburn
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 2nd day of September, 2009.

19 PASCUA YAQUI PUBLIC DEFENDER

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21 _____
22 Nicholas A. Fontana
23 Chief Public Defender
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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,)
Plaintiff,)
Vs.)
VALENCIA, DINO,)
Defendant.)
_____)

Case No. CR-09-238

ORDER CLOSING CASE

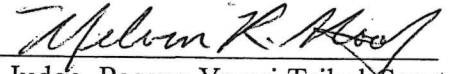
This matter came before the court on September 1, 2009, on the motion of defendant's counsel to reopen the dismissed case and grant a dismissal with prejudice. The defendant appeared with his counsel, Nicholas Fontana, and G. Allen Osburn appeared for the Tribe.

On August 7, 2009, the Court granted a dismissal without prejudice because the Tribe no longer desired to pursue the criminal charges filed against the defendant. Defendant's counsel argues that the Court should reconsider the dismissal without prejudice and instead grant the dismissal with prejudice, because there was a pending defendant's motion to dismiss for disclosure violation, the Tribe failed to respond to the defendant's motions, and therefore, The Tribe was in default and the Court should have granted a dismissal with prejudice.

Whenever the prosecutor makes a motion to dismiss, also known as nolle prosequi, the Tribe no longer desires to prosecute the case. The effect of the dismissal is that it is allowed without prejudice to re-filing. Such a dismissal through a nolle prosequi does not create an acquittal of a defendant, and a prosecutor may refile charges. Because the Court has granted the dismissal without prejudice, the Court lacks jurisdiction to consider the defendant's motion to dismiss based on disclosure violations that was pending at the time of the Tribe's motion to dismiss, based on the Tribe's authority to dismiss the case prior to hearing the defendant's motion.

IT IS ORDERED that the defendant's motion to dismiss with prejudice is denied, because the Court has already granted the prosecution's motion to dismiss without prejudice to re-filing, and the case has been closed.

SO ORDERED THIS 1st DAY OF SEPTEMBER, 2009.



Judge, Pascua Yaqui Tribal Court

cc:
Date: 09/01/09
X Tribe X Defense/Counsel
Clerk rg

