

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

PASCUA YAQUI TRIBE, )  
Appellee, )  
)  
vs. )  
)  
)  
SALAZAR, FREDDY JOSE )  
Appellant. )  
\_\_\_\_\_ )

APPELLATE CASE NO. CA-14-006

PASCUA YAQUI TRIBAL COURT NO.:  
Case No. CR-12-139

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**RESPONSE BRIEF**

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Guadalupe Gutierrez  
Deputy Prosecutor  
Pascua Yaqui Prosecutors Office  
7777 S. Camino Huivisim, Bldg. A  
Tucson, AZ 85757  
(520) 879-6251

Attorney for Appellee

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## STATEMENT OF FACTS

On April 26, 2012, Appellant Freddie Jose Salazar (hereinafter "Salazar") was arrested and charged by complaint and affidavit on four criminal counts. [Record at 98]. Salazar, with counsel, presented before the trial court for initial hearing and arraignment the same day as his arrest. [Record at 95]. The trial court set bench trial for July 18, 2012 and imposed a \$700 cash bond. [Record at 95]. On June 27, 2012 Salazar filed a Motion to Stay his criminal matter in the Pascua Yaqui jurisdiction due to Writ of Extradition and demand made by another jurisdiction. [Record at 76]. The trial court granted the stay and set a hearing for both the motion to stay and the extradition for July 18, 2012. [Record at 75]. At the hearing in July 2012 the court granted the motion to stay proceedings and time limits were tolled. [Record at 71]. The stay was lifted on September 12, 2013 and Salazar was returned to the Pascua Yaqui jurisdiction for bench trial/plea agreement hearing set for September 26, 2012. [Record at 58]. On that date, with Salazar present, the trial court accepted a plea agreement having first confirmed that Salazar was knowingly, intelligently and voluntarily entering the plea; having informed Salazar of the rights waived and of the consequences; and having reviewed all the terms and conditions of the plea agreement. [Record 55].

The terms of the plea agreement required that Salazar complete a year of supervised probation in lieu of ninety days in custody. [Record at 61]. Along with the court's order from the hearing, Salazar was provided a hardcopy of the (amended) probation order listing all the standard and special conditions to which he was subject during his term of probation. [Record at 53]. Salazar also received a separate writing with all the standard conditions of probation. [Record at 54]. Standard Condition #2 stated "Report to the Probation Officer as directed by

the Tribal Court or Probation Officer.” [Record at 54]. Standard Condition #8 stated “Notify the Probation Officer of current address or change of address within 72 hour.” [Record at 54] This document was signed by both the court and Salazar, with signature affirming that he personally read, understood, and agreed to abide by all of the preceding Terms and Conditions of Standard Probation. [Transcript, page 9, line 5, hereinafter “TR at pg. 9, line 5”; Record at 54]. The original order issued by the court included Special Condition #11, informing Salazar to “pay probation fees in the amount of \$20 per month payable in the form of a money order, due the 1<sup>st</sup> of each month.” [Record at 53]. This term, to pay monthly probation fees, was also included in the plea agreement document signed by Salazar and his counsel. [Record at 61].

On October 5, 2012 Salazar met with Probation Officer Gerardo Rojas for his initial intake. [TR at pg. 10, line 8; TR at pg. 25, lines 19-20; TR at pg. 26, lines 1-2]. At intake, Probation Officer Rojas reviewed the court’s order, including “the conditions of probation, both standard and special” with Salazar. [TR at pg 10, lines 1-2]. Salazar signed and dated an acknowledgment [Entered into evidence as Tribe’s Exh. 2, Attachment A] verifying that he reviewed both the standard and special conditions he needed to comply with, as well as the dates on which he should check in with the probation officer. [TR at pg. 10, lines 11-14]. Salazar also acknowledged that his probation term was for one year, from September 26, 2012 to September 26, 2013. [TR at pg. 11, line 18; See Tribe’s Exh. 2, Attachment A]. Salazar was provided with copies of all the forms the he reviewed and signed with the Probation Officer. [TR at pg. 27 lines 13-14].

On April 4, 2013 Probation Officer Rojas filed a Motion for Revocation of Probation/Request for Arrest Warrant alleging five probation violations committed by Salazar.

[Record at 48]. Violations cited in the Motion for Revocation included standard probation condition #2 “report to the probation officer once a week or as directed by the Probation Officer”, standard condition #8 “notify the probation officer of current address change within 72 hours”, and special probation condition #11 “pay \$20 probation fees due the first day of each month.” [Record at 48]. The court issued an order for warrant of arrest for Salazar on April 9, 2013. [Record at 47]. Salazar was apprehended on the warrant on July 11, 2013. [Record at 46]. Salazar came before the court on the July 17, 2013 regarding the probation violation matter. [Record at 37]. During that hearing, Salazar admitted to violating allegation one, standard probation condition #2, by not checking in regularly with his probation officer. [Record at 37]. Upon revocation, the court did not impose the suspended days, but extended Salazar’s probation period to December 26, 2013. [Record at 37]. In its order the court specifies that “defendant shall comply with all previously imposed conditions of probation and defendant shall continue to report to the Probation Officer as directed by the Probation Officer.” [Record at 37, lines 21-23]. Salazar met with Probation Officer Rojas after his probation was extended, but there was no new paperwork regarding the standard and special conditions of probation. [TR at pg. 28, lines 11-19].

On October 22, 2013 Probation Officer Rojas filed a second Motion for Revocation of Probation and Request for Arrest Warrant. [Record at 35]. The revocation petition listed four allegations:

1. Defendant violated: Standard Condition of Probation #2 “Report to the probation officer once a week or as directed by probation officer; and follow reasonable directives of the probation officer.” The defendant has failed to report to his probation officer. The defendant’s whereabouts are unknown to the probation officer.

2. Defendant violated; Standard Condition of Probation #8 "Notify the probation officer of current address change within 72 hours." The defendant failed to provide notification of a true and current change of address to the probation officer.
3. Defendant violated; Special Condition of Probation #1 "Pay the office of probation as set in fourth [sic] orders." The defendant has failed to pay probation fees for the months of August, September, and October 2013 for a total of \$60.00 of unpaid probation fees.
4. Defendant violated; Special Condition of Probation #18 "Shall obtain counseling for substance abuse or domestic violence treatment with the Centered Spirit Program or any other counseling program approved by the probation department and submit the written proof of any counseling." The defendant failed to submit proof of attending any form of counseling as court ordered.

[Record at 35]. The court issued the warrant of arrest/probation violation for Salazar the same day as the motion for revocation was filed. [Record at 33]. Salazar remained on warrant status for approximately nine months, until his arrest on July 17, 2014. [Record at 34].

Salazar appeared in custody for a detention release hearing the day of his arrest, July 17, 2014. [Record at 30]. At that hearing, the court "reluctantly" granted that he be released on a suspended bond of \$500, so that he could continue substance abuse treatment with the MensPath treatment program. [Record at 30, line 20]. The court noted that this was Salazar's second motion to revoke and second warrant of arrest in the case. [Record at 30, line 18]. Arraignment for Revocation hearing was set for July 23, 2014. [Record at 30]. Salazar filed a motion to accelerate arraignment hearing on July 21, 2014 [Record at 29] which was granted by the court resetting the arraignment for July 22, 2014. [Record at 28]. At arraignment, the revocation hearing was set for August 11, 2014. [Record at 26]. On August 6, 2014 Salazar requested that his revocation hearing be continued. [Record at 17]. The motion was granted by the court, resetting the hearing to August 25, 2014. [Record at 16]. At the August 25

hearing, the hearing was again continued because defense counsel was ill and could not appear that day. [Record at 13]. The revocation hearing was reset to September 4, 2014. [Record at 13]. Salazar was present when the court reset the hearing. [Record at 13]. On August 27, 2014 Salazar request the hearing be moved to September 3 to accommodate his witnesses. [Record at 10]. The court granted the request. [Record at 9]. On September 3, 2014, despite having been served notice of the hearing date and time, Salazar and his witnesses failed to appear for the revocation hearing. [Record at 7]. The Tribe requested a bench warrant, which was granted by the court. [Record at 7]. The warrant was executed on the same day [Record at 6] and the revocation hearing was set for September 10, 2014. [Record at 4]. Salazar was remanded to custody until the time of the probation revocation hearing. [Record at 4].

On September 10, 2014 the revocation hearing occurred, with the Tribe presenting testimony from Probation Officer Rojas [TR at pg. 5-45] and Salazar presenting testimony from Mr. Arnie Kahn [TR at pg. 45-51]. At hearing, probation officer Rojas confirmed that Salazar had entered a plea agreement in which he was placed on probation for a year in lieu of serving 90 days in detention. [TR at pg. 10, lines 20-21]. Probation officer Rojas met with Salazar and reviewed the standard and special conditions in the court's order, and had Salazar sign an acknowledgement of having received and understood these documents. [TR at pg. 9-10]. Salazar had not been compliant with his probation terms and had been revoked, resulting in an extension of the probation period until December 26, 2013. [TR at pg 11-12]. The first revocation and imposition of extended probation occurred on July 17, 2013. [TR at pg 12, line 9]. Probation officer Rojas met with Salazar after the first revocation hearing "to go over the extension of his 90 days and after being found in violation." [TR at pg 13, lines 7-9].

Probation officer Rojas filed a second Motion for Revocation/Request for Warrant of Arrest on October 22, 2013. [TR at pg. 13, line 18-19]. Between July 17, 2013 and October 22, 2013 Salazar only contacted probation two times. [TR at pg 14, lines 18-20]. One contact was in the field, on August 15, 2013, when the probation officer verified the new address (5026 Kapo Sewa) Salazar had provided to probation. [TR at pg 14, lines 22-23; TR at pg 15, line 2]. The other contact was when Salazar came to the probation offices to make a partial payment of fees and to provide a verification of counseling on August 23, 2013. [TR at pg. 14, lines 17-18]. Probation officer Rojas attempted to contact Salazar on October 18, 2013 at his address of record, but no one was at the residence. [TR at pg. 15, line 20]. Subsequently, the probation officer was able to reach Salazar's girlfriend who lived at the residence that Salazar listed as his address. [TR at pg. 15-16]. She indicated that he was not in contact with her, and that she had not heard from him in over a month. [TR at pg. 15-16]. Salazar did not contact probation officer Rojas at all between August 2013 and October 2013, [TR at pg. 16, line 6]. Salazar was not found at his address of record after August 15, 2013. [TR at pg. 16, lines 3-17]. As to his probation fees, Salazar was subject to monthly probation fees of \$20 a month. [TR at pg 17, lines 2-3]. The fees were reviewed with Salazar and he was aware of his obligation to pay the fees. [TR at pg. 17, lines 5-7]. Salazar only made one partial payment of fees in August 2013. [TR at pg 17, line 10]. Salazar did not make any other payments. [TR at pg 17, line 13]. Salazar was not made to pay back fees, only fees for August, September, and October 2013 which represented the term of his extension on probation. [TR at pg 17, lines 16-17; TR at pg 18, lines 15-20]. Salazar did not request an extension for payment due to hardship at any time during his probation period. [TR at pg. 42, line 18; no pleading by Defendant found in the record].

During testimony probation officer Rojas indicated that Salazar had provided verification of counseling on August 23, 2013 [TR at pg 20, lines 10-11]. Upon this information, the Tribe requested that this allegation, #4 of the motion for revocation, be dismissed. [TR at pg 55, lines 3-7].

On October 22, 2013 probation officer Rojas filed the second motion for revocation/request for arrest warrant against Salazar “based on not having contact for 60 days.” [TR at pg. 21, lines 5-6]. Salazar remained on warrant status for nine months until July 2014. [TR at pg 21, lines 11-12]. There was no contact between Salazar and probation for those 9 months that he was on warrant status. [TR at pg 21, lines 19-20].

After hearing all testimony and closing arguments, the Court found that Salazar had violated the conditions of probation by “preponderance of the evidence and clear and convincing evidence.” [TR at pg 64 line 25]. The Court reasoned that it is “only required to consider whether the defendant did or did not abide by the conditions of probation as imposed by the Court.” [TR at pg 64, lines 5-6]. “[T]he Court did extend Defendant’s probation on July 17, 2013, and it’s...the Court’s Order on that day the Court ordered Defendant’s probation term extended to December 26, 2013 and defendant shall comply will all previously imposed conditions of probation.” [TR at pg. 64, lines 11-14]. “Defendant was directed by the Court to compy will any and all conditions of probation that the Court had previously imposed.” [TR at pg 64, lines 16-17]. “The Court imposed the original conditions of probation...on September 25, 2012...granted the modification on July 17, 2013, and in its Order again the Court ordered the defendant to comply with the original conditions of probation.” [TR at pg 64, lines 19-23]. The Court proceeded to sentencing, imposing the full 90 days of detention originally suspended in

the case, giving credit for 17 days previously served by Salazar on the matter. [TR at pg. 68, lines 24-25].

## STANDARD OF REVIEW

Existing Pascua Yaqui law, to date, is silent on the standard of review for appellate cases on issues of probation revocation. Courts have broad discretion to revoke probation if conditions are violated, but this discretion is not without limits. See *United States v. Shampang*, 987 F.2d 1439, 1443 (9th Cir. 1993); *United States v. Dane*, 570 F.2d 840, 843 (9th Cir. 1977); *United States v. Hamilton*, 708 F.2d 1412, 1414 (9th Cir. 1983). Appellate courts have “authority to review revocation decisions for fundamental unfairness or for an abuse of discretion.” *Hamilton*, 708 F.2d at 1414; *Danes*, 570 F.2d at 843. Procedurally, due process requires that the decision to revoke probation involve factual consideration of whether a condition of probation has been violated and discretionary determination by the “sentencing authority whether violation of a condition warrants revocation of probation.” *Black v. Romano*, 471 U.S. 606, 613 (1985).

## ARGUMENT

- I. THE PROBATION OFFICER DID NOT SUBMIT A MOTION FOR REVOCATION *IN ABSENTIA*, THUS THE PETITION WAS APPROPRIATE IN FORM AND NOT FLAWED.

The Pascua Yaqui Tribal Code governing probation revocation procedures mirrors the state rules of criminal procedure for Arizona. See 4 PYTC § 4-130(A)/Ariz.R.Crim.Proc. Rule 27.6; 4 PYTC § 4-130(B)/Ariz. R. Crim. Proc Rule 27.7; 4 PYTC § 4-130(C)/Ariz.R.Crim.Proc. Rule 27.8; 4 PYTC § 4-130(D)/Ariz.R.Crim.Proc. Rule 27.9; 4 PYTC § 4-130(E)/Ariz.R.Crim.Proc. Rule 27.10. Thus, reference to Arizona state law may be instructive as to the meaning and intent of the code. See 1 PYTC § 2-30(H).

Pursuant to the Pascua Yaqui Code, a probation officer may file a motion to revoke probation if “he has reasonable cause to believe that a probationer has violated a written condition or regulation of probation.” 4 PYTC § 4-130(A)(1). Both the Pascua Yaqui code and the Arizona state rules provide for probation revocation by two alternative methods: (1) one method is used when the probationer can be found and (2) the other method is used when the probationer cannot be found. See *State v. Lovell*, 123 Ariz. 467, 469, 600 P.2d 1099, 1101 (1979). Under tribal code, 4 PYTC § 4-130(A)-(C) provide the procedures to be followed when the probationer can be found, and can be expected to appear for proceedings at some point. *Id.* Meanwhile, 4 PYTC § 4-130(E) states the procedure to be followed when the probationer cannot be found, and is not expected to appear at any revocation proceedings. *Id.*

Typical probation revocation proceedings follow the rules pursuant to 4 PYTC § 4-130(A)-(C). In regular proceedings, the probation officer files a motion to revoke based on reasonable cause to believe that a probationer has violated a written condition or regulation of

probation. 4 PYTC § 4-130(A)(1). Upon receiving the motion for revocation, the court can issue a summons or a warrant of arrest. 4 PYTC § 4-130(A)(2). If arrested, the probationer makes an initial appearance, without unreasonable delay, and is advised of his rights. 4 PYTC § 4-130(B). The case then proceeds to arraignment, revocation hearing, and disposition as set forth in 4 PYTC § 4-130(C).

Revocation *in absentia* is permitted when the probationer's whereabouts have been unknown to the probation officer for at least 30 days. 4 PYTC § 4-130(E)(1). Per the Code, the petition *in absentia* shall include each violation, an allegation that the whereabouts of the probationer are unknown, efforts made to locate the probationer, and the probationer's last known address. 4 PYTC § 4-130(E)(2)(a). If the petition is found to be in proper form, the court issues an order to show cause directing the probationer to appear at a specified date and time. 4 PYTC §4-130(E)(3). If the probationer appears at the time of hearing set by the court, then the rules revert back to the normal procedure. 4 PYTC § 4-130(E)(5).

The language of the Pascua Yaqui Code regarding probation violations *in absentia* are almost identical to the Arizona state rules. Arizona Rule of Criminal Procedure, Rule 27.10. In relevant part Rule 27.10, Revocation of probation in absentia reads:

a. Time for Commencement. A proceeding to revoke probation in absentia shall be commenced only after the probationer's whereabouts are unknown to the probation officer for at least 60 days

b. Petition.

(1) If the supervising probation officer has reasonable cause to believe that a probationer has violated a written condition or regulation of probation, the probation officer or the prosecutor of

the court of jurisdiction in which the probationer is being supervised may petition the court to revoke probation in absentia.

(2) The petition shall be verified and shall include:

(i) Each violation of the terms and regulations of probation.

(ii) An allegation that the whereabouts of the probationer are unknown.

(iii) Efforts made to locate the probationer.

(iv) The probationer's last known address.

Ariz.R.Crim.Proc. Rule 27.10. The only difference in language is that the Pascua Yaqui Code only requires 30 days without knowledge of the probationer's whereabouts, while the state statute requires a period of 60 days prior to filing a petition in absentia. This rule is a "vehicle for revoking probation where the probationer's whereabouts are unknown at the outset of the proceedings and remain so during the entire course thereof." *State v. Canady*, 124 Ariz. 599, 601, 606 P.2d 815, 817 (1980); *See also Lovell*, 123 Ariz. at 469, 600 P.2d at 1101 (1979).

"Generally, if an arrest warrant cannot be executed or a summons served, probationer's whereabouts would be unknown to his probation officer. At that point the Court could convert to *in absentia* proceedings." *Lovell*, 123 Ariz. at 470, 600 P.2d at 1102.

Defects in a petition need not be deemed incurable if the rest of the petition for revocation provides the necessary notice to the probationer. *See for example, State v. Stotts*, 144 Ariz. 72, 80, 695 P.2d 1110, 1118 (1985). Arizona appellate courts have determined that *in absentia* revocation proceedings are irreparably flawed only when the strict procedural

requirements of the statute are not present. *State v. Alegre*, 120 Ariz. 323, 324, 585 P.2d 1236 (1978). For example in *Alegre*, the revocation *in absentia* was deemed improper because

...at the time of hearing at which the probationer did not appear, there was only discussion by the various participants regarding the absence of the defendants. The record shows that the probation officer did not appear, that no evidence was taken in support of the allegation of the violations and that specific findings of fact on each violation were not made.

*Alegre*, 120 Ariz. at 324, 585 P.2d at 1236 . Probation violation hearings must be reasonably timely. *State v. Adler*, 189 Ariz. 280, 283, 942 P.2d 439, 442 (1997) (an unreasonable delay in resolution of several years could have been avoided if state had proceeded with probation revocation *in absentia*). Revocation *in absentia* is a severe remedy and requires strict compliance with procedure. *See Canady*, 124 Ariz. at 601, 606 P.2d at 817.

In this case, the probation did not file a petition for revocation *in absentia*. The probation officer filed the revocation paperwork pursuant to the requirements of the code for a regular revocation and followed normal procedure as indicated in 4 PYTC § 4-130(A)-(C). [Record at 35]. The Motion for Revocation of Probation/Request for Arrest Warrant filed on October 22, 2013 properly described the alleged violations by Salazar. [Record at 35]. Pursuant to 4 PYTC § 4-130(A)(2) the court issued a warrant of arrest for Salazar [Record at 33]. When Salazar was arrested in July of 2014 the revocation proceeded in accordance with the normal procedures of a revocation: Salazar had an initial hearing, with counsel [record at 30]; he was arraigned on the matter [Record at 26]; and Salazar was provided a hearing where he was present, his counsel was present, and witnesses (including the assigned probation officer) presented testimony and were cross-examined. Salazar was never subject to a petition *in*

*absentia*, nor did the pleadings ever indicate that the revocation was being filed *in absentia*. [Record at 35]. The court never issued an order to show cause or indicate in any way that the proceedings were going forward as *in absentia* form. Therefore, the requirements for a revocation petition *in absentia* were never applicable in Salazar's case.

*In arguendo*, even if the Motion for Revocation would have been converted by the trial court to a petition for revocation *in absentia* the proceedings were not incurably flawed so as to constitute a violation of Salazar's rights. Specifically, although the Motion (if presented as the petition for *in absentia* proceedings) did not list the last known address and the probation officer's attempts to locate the probationer, these facts were made available at hearing, and were part of the record. Unlike the circumstances in *State v. Alegre*, 120 Ariz. 323, 585 P.2d 1235 (1978), Salazar was present at his hearing, the probation officer was present and gave testimony, evidence was given in support of the allegation of violations, and the court accepted the facts presented as a finding that Salazar had violated probation. Thus, there was compliance with the strict procedural requirements of *in absentia* revocation.

II. DEFENDANT WAS PROPERLY GIVEN NOTICE OF ALL CONDITIONS OF HIS PROBATION AND NO VIOLATION OF DUE PROCESS OCCURRED.

"Probation shall not be revoked for violation of a condition or regulation of which the probationer has not received a written copy." 4 PYTC § 4-130(C)(2)(b). An essential component of due process is that individuals be given fair warning of acts which may lead to revocation. *Dane*, 570 F.2d at 843; *United States v. Simmons*, 812 F.2d 561, 565 (9th Cir. 1987); *United States v. Foster*, 500 F.2d 1241, 1244 (9th Cir. 1974).

Generally, formal conditions of probation provide notice of proscribed activities. A court also may impute knowledge when the violation is a criminal act. But when ... the proscribed acts are not criminal, due process requires that the probationer receive actual notice. [Internal citations omitted]

*Simmons*, 812 F.2d at 565; *see also Dane*, 570 F.2d at 844. “[W]here the warning is not contained in a formal condition, the record must be closely scrutinized to determine whether the defendant did, in fact, receive the requisite warning.” *Dane*, 570 F.2d at 844. If the defendant is provided notice of probation conditions at the original sentencing proceeding, then due process is satisfied. *Id.* However, courts have recognized that if the probationer is “misled or did not receive adequate notice as to the true nature of his obligations” revocation maybe an abuse of discretion. *See United States v. Hamilton*, 708 F.2d 1412, 1415 (9th Cir. 1983) (defendant was compliant with requirement to report and give notice of change in address per the requirements of probation officer, however when new probation officer imposed more stringent standards without making defendant aware of the new expectations, lack of notice existed).

In this case, Salazar received actual notice of the conditions of his probation. [Record at 54 and 53]. He was provided actual notice in multiple forms. Salazar received, reviewed (with counsel) and signed the plea agreement, which included the condition that he pay monthly probation fees. [Record at 61]. He received written notice of standard conditions of probation at his change of plea/sentencing hearing on September 26, 2012, which he signed as verification that he had personally read, understood and “agreed to abide by” these terms. [Record at 54]. Salazar also received a hardcopy of the (amended) probation order issued by the court on September 26, 2012 advising him of the special conditions of his probation.

[Record at 53]. On October 5, 2012 Salazar met with Probation Officer Rojas who reviewed the probation order and all conditions of probation with Salazar. [TR at pg 6, lines 1-4; TR at pgs 8-10]. Salazar signed an acknowledgment of probation wherein he verified he had received the standard and special probation conditions, and indicated he understood that non-compliance could result in revocation. [TR at pg 9, lines 24-25 and TR at pg 10, lines 1-3; Exh. 2 Acknowledgment of Probation]. Upon his first revocation in April 2013, Salazar was again given notice of his obligations, not only in the motion for revocation itself [Record at 48], but also in the resultant order of the court which specified “defendant’s probation term is extended to December 26, 2013 and defendant shall comply with all the previously imposed conditions of probation and the defendant shall continue to report to the probation officer as directed by the probation officer.” [Record at 37, lines 21-22]. The law does not require that the probationer receive repeated notice, only that the probationer be provided fair warning of the conduct that may lead to revocation. *See Simmons*, 812 F.2d at 565; *see also Dane*, 570 F.2d at 844. In this case, Salazar received all the conditions of his probation, standard and special, in written form. The probation officer personally reviewed the terms with him. And, given that the revocation at issue here is his second revocation, it is fair to conclude that Salazar knew about the behaviors would constitute a probation violation.

In his petition for appeal, Salazar argues that because he was not provided specific dates and times to report to probation he was “misled” and not provided adequate notice of this condition. Salazar relies on *United States v. Hamilton*, 708 F.2d 1412 (9th Cir. 1983), to support this assertion. In *Hamilton*, the probationer received notice of all conditions of his probation, and did comply with these pursuant to the requirements of the probation officer initially

assigned to his case. *Id.* at 1413-1414. However, when a new probation officer took over his case, the new probation officer did not advise Hamilton that he was imposing a different standard as to what would satisfy compliance with the conditions of probation. *Id.* at 1414. This was not the case with Salazar. Salazar had only one probation officer during the entirety of his pre-revocation period, between 2012 and 2014. Probation officer Rojas had previously informed Salazar he needed to check in with some regularity and that he needed to advise of any changes in address. No other notice was required. *See Dane*, 570 F.2d at 844. It was Salazar's responsibility to comply with these conditions, not the probation officer's obligation to make him comply. Further, unlike this case, the probationer in *Hamilton* did substantially comply with his conditions of release, just not to the standards imposed by the new probation officer. *Hamilton*, 708 F. 2d at 1415. Hamilton let the court know that he had not completed his detention days, he informed probation of where he was, and he checked in with probation, even if it was on an informal basis. *Id.* Here, Salazar did not make attempts, formal or informal, to communicate with probation. [TR at pg. 31, lines 15-16]. Salazar simply stopped communicating with the probation officer completely, and his whereabouts were unknown. [TR at pg. 31, lines 15-16; TR at pg. 21, lines 5-20].

III. THE COURT DID NOT ERR BY NOT INQUIRING INTO THE REASONS FOR SALAZAR'S FAILURE TO PAY FEES

Due process protections are built into the Pascua Yaqui Constitution, Art. 1 by incorporation of the Indian Civil Rights Act, 25 U.S.C. 1302 *et.seq.* At its foundation, due process guarantees fairness in any proceedings that may "deprive any person of liberty or property." Pascua Yaqui Constitution, Art 1, Sect. 1(h); *see also Bearden v. Georgia*, 461 US 660, 673 (1983).

Where a condition of probation is that a defendant pay a fine or restitution, probation cannot be automatically revoked for inability to make payments. *Bearden*, 461 U.S. at 662. In *Bearden*, the probationer was sentenced to three years of probation, with the only condition of probation being a \$500 fine and \$250 in restitution. *Id.* *Bearden* borrowed money from his parents to make initial payments. *Id.* Subsequently, he was laid off from work and was unable to obtain other work despite repeated efforts because of his limited education and inability to read. *Id.* at 663. *Bearden* informed the probation office that he was going to be late with his payments before the due date imposed by the court. *Id.* Despite this information, the state failed to revoke his probation based solely on *Bearden's* failure to pay the balance of the fine and restitution. *Bearden*, 461 U.S. at 663. At the revocation hearing, probationer and his wife "testified about their lack of income and assets and of his repeated efforts to obtain work." *Id.* at 673. The court revoked *Bearden* based on his failure to pay, but did not consider that he had made bona fide efforts to find work and make payments. *Id.*

On appeal, the U.S. Supreme Court determined that absent evidence that a probationer lacked ability to pay or made good faith efforts to pay, revocation for failure to pay fees or restitution is appropriate. *Id.* at 668. The court reasoned:

If the probationer has willfully refused to pay the fine or restitution when he has the means to pay, the State is perfectly justified in using imprisonment as a sanction to enforce collection. Similarly, a probationer's failure to make sufficient bona fide efforts to seek employment or borrow money in order to pay the fine or restitution may reflect an insufficient concern for paying the debt he owes to society for his crime.... But if the probationer has made reasonable efforts to pay the fine or restitution, and yet cannot do so through no fault of his own it is fundamentally unfair to revoke probation automatically without considering whether

adequate alternative methods of punishing the defendant are available.

*Bearden*, 461 U.S. at 668-669.

The instant case is significantly different from the facts in *Bearden*. Here, as in *Bearden*, Salazar was given proper notice that payment of probation fees was a condition of his probation terms. [Record at pg. 17 lines 2-10]. However, the similarities end there. Unlike the situation in *Bearden*, Salazar's revocation was not based solely on a failure to pay fees. [Record at 35]. Salazar did not offer anything into the record to indicate that he was unable to pay despite bona fide efforts to find employment or other methods (loans) to meet his requirement to pay fees. No testimony was offered to indicate he tried to find work, or that he had no assets. Salazar never filed for extensions to make the payments, and never requested to commute the fees to community service hours. Again, Salazar did nothing at all. He disappeared and did not communicate with the probation officer for months. [TR at pg. 21, lines 11-20]. Salazar was given the opportunity to present information for the court to consider regarding his inability to pay the fees at the revocation hearing. He did not present any such evidence for the court's consideration. The court did not err in not inquiring into why Salazar did not make payment, given the testimony and record available to the court it was reasonable to conclude that Salazar was disinterested in complying with this term of probation, and had no concern for the fees he owed.

## CONCLUSION

The tribal court's decision to revoke Appellant Freddie Jose Salazar's probation and impose the suspended sentence of detention was supported by both the law and the facts. The record does not support a finding that the court abused its discretion or was fundamentally unfair in the proceedings. Appellant Salazar's arguments on appeal are inapposite to relevant and applicable law, and are without validation in the record.

First, the Motion for Revocation filed by the probation officer was not flawed in form. Salazar's contention that probation filed a petition for revocation *in absentia* is inaccurate. The Motion for Revocation was filed pursuant to the *regular* procedure indicated in the Pascua Yaqui Tribal Code. No *in absentia* request for revocation was made through pleading or any other method. Therefore, Salazar's argument that the form of the petition was flawed is unfounded.

Second, Salazar received notice of all probation conditions in writing, both through the court's orders and through probation. Salazar signed documents acknowledging that he had received written notification of his probation conditions, that he understood the conditions, and that he was aware that non-compliance with the conditions could lead to revocation and imposition of the suspended sentence. The appeal is based on Salazar's *second* revocation. He had actual knowledge of the conditions of his probation, including that he provide an accurate address and check in with his probation officer. In this case, Salazar did not communicate with the probation officer over a period of several months. The court did not err in finding that Salazar had violated the conditions of his probation, despite proper notice. The record does not support Salazar's contention that there was a violation of his due process rights.

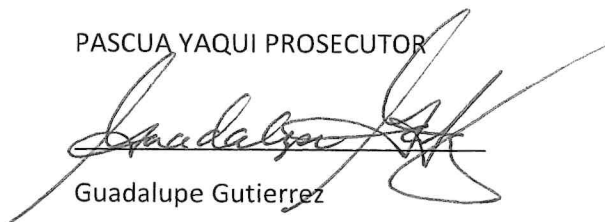
Third, the court fairly considered the facts on the record in finding that Salazar violated the conditions of his probation when he failed to pay probation fees. The record clearly shows that Salazar had notice of the obligation to pay fees. The fees imposed were not extraordinary, and limited to only

three months. Salazar gave no testimony as to any financial hardship, nor did he ever enter anything into the record requesting an extension for payment of fees or for commutation of the fees owed.

The court did not commit any errors constituting fundamental unfairness or abuse of discretion in this case. The appellant's arguments are unsupported by the record, and not founded in the law.

Dated this 27<sup>th</sup> day of October, 2014

PASCUA YAQUI PROSECUTOR

A handwritten signature in black ink, appearing to read 'Guadalupe Gutierrez', written over a horizontal line. The signature is stylized and includes a large flourish on the right side.

Guadalupe Gutierrez

Deputy Prosecutor

Pascua Yaqui Tribe, Appellee

ATTACHMENT A

# PASCUA YAQUI TRIBAL COURT

## OFFICE OF PROBATION & PAROLE



### Acknowledgment of Probation

I, SALAZAR Freddie

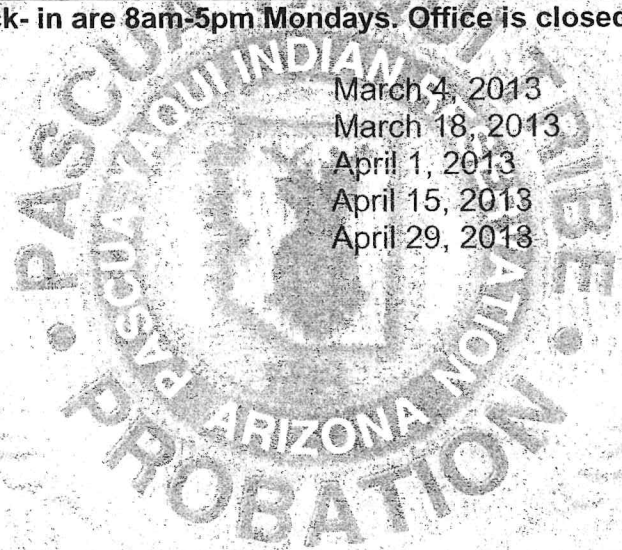
Docket # CR-12-139

I hereby acknowledge receipt of the foregoing standard and special probation conditions, which I understand and which I will comply. I understand that a violation of any of the standard and special probation conditions could result in the revocation of my probation. Furthermore, I understand I am subject to arrest without a warrant by the Probation Officer or Law Enforcement Officer, if there is reason to believe I may have violated any conditions of probation.

Scheduled dates to report to the Office of Probation Services, Pascua Yaqui Tribe  
**Office hours for check- in are 8am-5pm Mondays. Office is closed for lunch from 12pm-1pm**

October 22, 2012  
November 5, 2012  
November 19, 2012  
December 3, 2012  
December 17, 2012  
January 2<sup>nd</sup>, 2013  
January 14, 2013  
January 21, 2013  
February 4, 2013  
February 18, 2013

March 4, 2013  
March 18, 2013  
April 1, 2013  
April 15, 2013  
April 29, 2013



Supervised Probation began on: September 26, 2012

Supervised Probation ends on: September 26, 2013

Defendant: Freddie Salazar

Date: \_\_\_\_\_

Probation Officer: [Signature]

Date: 10/5/12

Pascua Yaqui Tribe  
Office of Probation Services  
7777 S. Camino Huivisim  
Tucson, Arizona 85757  
Phone (520) 879-6240 or (520) 879-6283  
Fax (520) 879-6277

CERTIFICATE OF SERVICE

I hereby certify that the Tribe's Response Brief was delivered this date to:

Linda Imonode

[Linda.Imonode@pascuayaqui-nsn.gov](mailto:Linda.Imonode@pascuayaqui-nsn.gov)

Clerk of the Court of Appeals

Pascua Yaqui Court of Appeals

7777 S. Camino Huivisim

Tucson, AZ 85757

And that one (1) copy of the Tribe's Response Brief was delivered this date to

Patricia Leon-Enriquez

[Patricia.Leon-Enriquez@pascuayaqui-nsn.com](mailto:Patricia.Leon-Enriquez@pascuayaqui-nsn.com)

Senior Staff Attorney

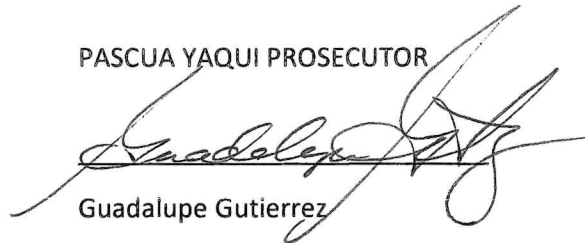
Pascua Yaqui Public Defender

7474 S. Camino de Oeste

Tucson, AZ 85757

Dated this 27<sup>th</sup> day of October, 2014

PASCUA YAQUI PROSECUTOR

A handwritten signature in black ink, appearing to read 'Guadalupe Gutierrez', written over a horizontal line.

Guadalupe Gutierrez

Deputy Prosecutor

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

PASCUA YAQUI TRIBE,	)	APPELLATE CASE NO. CA-14-006
	)	
Appellee,	)	PASCUA YAQUI TRIBAL COURT NO.:
	)	CR-12-139
vs.	)	
	)	
SALAZAR, FREDDY JOSE,	)	
	)	
Appellant.	)	

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**OPENING BRIEF**

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Patricia Leon-Enriquez  
Pascua Yaqui Bar No. 10186  
PASCUA YAQUI PUBLIC DEFENDER  
7474 South Camino de Oeste  
Tucson, AZ 85757  
(520) 883-5013

Attorney for Appellant

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B. Whether the Tribal Court erred in revoking Appellant’s probation for violation of conditions of which he had not received written notice in violation of his due process rights.

C. Whether the Tribal Court erred in failing to inquire into the reasons for Appellant’s failure to pay the probation fees thereby depriving him of the fundamental fairness required by the Pascua Yaqui Constitution.

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### JURISDICTIONAL STATEMENT

The jurisdiction of the Pascua Yaqui Court of Appeals extends to all appeals from final orders and judgments of the Tribal Court, in both civil and criminal matters. *See* Pascua Yaqui Const., art. VIII, §5 and the Pascua Yaqui Court of Appeals Procedures Act of 2000, §1.12 (codified under Title 3 of the Pascua Yaqui Judicial Titles and Codes). Appellant Freddy Jose Salazar appeals an order of the Pascua Yaqui Tribal Court [September 10, 2014, Order entered in CR-12-139] in which the Tribal Court found Appellant in violation of his conditions of probation, revoked his probation and reinstated the 90 days suspended jail term.

## STATEMENT OF THE CASE

On April 26, 2012, Appellant Freddy Jose Salazar was arrested and charged by complaint and affidavit. [*PYT v. Freddy Salazar*, Pascua Yaqui Trial Court Record, document 98, hereinafter “Record at 98”]. The Initial Hearing was held on the same date. Appellant plead “not guilty” and bond was set at \$700. The Bench Trial was set for July 18, 2012. [Record at 95]. On July 18<sup>th</sup>, the matter was stayed in Tribal Court due to Appellant’s extradition to another jurisdiction. The bond of \$700 remained the same. [Record at 71].

On August 30, 2012, Appellee filed a Motion to Lift Stay. The Motion requested that the \$700 bond be re-imposed. [Record at 69]. A plea agreement was entered into on September 25, 2012. Appellant plead guilty to 2 counts and a sentence was entered pursuant to the plea agreement. [Record at 52]. On the same date, the Court issued a Probation Order, signed *only* by the Judge, indicating that the Probation term began on September 26, 2012 and terminated on September 26, 2013. The form also contained the special conditions of probation. [Record at 53]. The Standard Conditions of Probation Form was signed by both the Judge and Appellant. [Record at 54].

On April 4, 2013, Probation filed a Motion for Revocation of Probation citing 5 allegations and requesting a \$200 bond. [Record at 48]. On July 11, 2013, Appellant appeared in custody for a detention release hearing. The bond was set at \$300. [Record at 43]. The \$300 bond was posted on July 15, 2013. [Record at 40]. Appellant was released. [Record at 39]. On July 17, 2013, at the arraignment hearing, Appellant admitted allegation one and his probation term was modified by extending the probation term to December 26, 2013. [Record at 37].

On October 22, 2013, a Motion for Revocation of Probation and Request for Arrest Warrant was filed. [Record at 35]. An arrest warrant was issued on October 22, 2013 and executed on July 17, 2014. [Record at 33 & 34]. Appellant appeared before the Court on July 17, 2014 for a detention release hearing. Appellant was released on a \$500 suspended bond provided he remained at Men's Path Treatment Facility. The Probation Officer informed the Court that he felt Appellant should be given another chance in the matter since he had self-admitted into treatment and the Probation Officer wished to work with him. The arraignment hearing was set on July 23, 2014. [Record at 30].

On July 21, 2014, Appellant filed a motion to expedite the arraignment hearing since the treatment facility staff and residents would be off-site and unable to transport Appellant to the hearing on July 23<sup>rd</sup>. The prosecutor did not object. [Record at 29]. The motion to expedite was granted and the arraignment hearing was reset to July 22, 2014. [Record at 28]. On July 22, 2014, Appellant appeared for the arraignment hearing and entered denials to the allegations. Appellant remained released on the \$500 suspended bond pending his continued stay at Men's Path Treatment Facility. Revocation Hearing was set for August 11, 2014. [Record at 26].

On July 29, 2014, Appellant filed a Motion to Modify Conditions of Release requesting permission to leave the State on a Treatment Facility sponsored trip to California. [Record at 20]. A letter from the Treatment Facility Therapist was attached to the Motion. [Record at 21]. The Probation Officer filed a response, objecting to Appellant's request. [Record at 23]. Although Probation reviewed the Motion on the same date the Court received it, the Court denied the Motion stating that the Office of Probation was not duly or timely notified of the motion and was

not supplied with supporting documentation and that due to Appellant's history he was a flight risk. [Record at 19].

A motion to continue the probation revocation hearing was filed on August 6, 2014 due to the birth of Appellant's child. [Record at 17]. The Motion was granted and the revocation hearing was reset to August 25, 2014. [Record at 16]. On August 25, 2014, the revocation hearing was continued again to September 4, 2014, due to medical reasons by defense counsel. [Record at 13]. On August 27, 2014, defense counsel filed a motion to reset the hearing to September 3, 2014 due to the unavailability of a witness on September 4<sup>th</sup> at 11:00 a.m. [Record at 10]. The Motion was granted and the revocation hearing was reset to September 3, 2014, at 9:30 a.m. [Record at 9].

On September 3, 2014, Appellant failed to appear and a Bench Warrant was issued. The bond was set at \$700. [Record at 4]. Appellant had arrived in court ½ hour late due to a mix-up at the facility with the times of Appellant's hearings. The facility had the court hearing scheduled at 10:00 a.m. A detention release hearing was held later that same afternoon. The Court found Appellant in contempt and set a bond of \$700. The revocation hearing was reset to September 10, 2014. [Record at 4]. The revocation hearing was held on September 10, 2014. [Record at 2]. The Notice of Appeal was filed on September 12, 2014. [Record at 1].

### STATEMENT OF FACTS

On April 26, 2012, Appellant Freddy Jose Salazar was arrested and charged by complaint and affidavit. [ Record at 98]. He entered a plea agreement on September 25, 2012 whereby he pled guilty to 2 counts and was sentenced pursuant to the plea agreement. [Record at 52]. On the same date, the Court issued a Probation Order, signed *only* by the Judge, indicating that the Probation term began on September 26, 2012 and terminated on September 26, 2013. The form also contained the standard conditions and the special conditions of probation. [Record at 53]. Contrary to the Probation Officer's testimony that Appellant signed the special conditions of probation, the form does not contain Appellant's signature. [Transcript, page 9, line 5, hereinafter "TR at pg. 9, line 5"]. Conversely, the Standard Conditions of Probation Form was signed by both the Judge and Appellant. [Record at 54].

Subsequent to being placed on probation, Appellant met with the probation officer on October 5, 2013, for his initial intake. [TR, pg. 25, lines 19-20 and TR, pg. 26, lines 1-2]. At the time of the intake, Appellant signed an Acknowledgement of Probation form. The form was signed by both the Probation Officer and by the Appellant acknowledging they had reviewed the probation terms, conditions *and dates Appellant was expected to check in*. [TR, pg. 26, lines 4-23]. *The written conditions that were reviewed and the dates on which Appellant was required to check in were for the initial one year period*. [TR, pg. 26, line 25 and TR, pg. 27, line 1]. Appellant was also given a copy of all the forms that he had signed and reviewed. [TR, pg. 27, lines 12-14].

On April 4, 2013, Probation filed its first Motion for Revocation of Probation citing 5 allegations. The petition alleged that Appellant violated Standard Condition #2 in that he failed to report to probation and his whereabouts were unknown. The second allegation provided that Appellant violated Standard Condition #8 in that he failed to notify probation of a change of address within 72 hours. It also provided that on March 13<sup>th</sup>, 2013, the probation officer attempted to make contact at the defendant's last known address of 190 W. Valencia Avenue #226 Tucson, Arizona and that the residence was unoccupied and a notice of eviction was posted. The other three allegations concerned probation fees, community service hours and counseling. [Record at 48]. At his arraignment hearing on July 17, 2013, Appellant admitted to allegation one and his probation term was *modified* and extended an additional 90 days. The new termination date was set for December 26, 2013. [Record at 37].

On October 22, 2013, a second Motion for Revocation of Probation and Request for Arrest Warrant was filed. [Record at 35]. The petition contained four allegations: Allegation 1 provided that Standard Condition of Probation #2 was violated because Appellant failed to report to the probation officer once a week or as directed by probation officer. The petition stated that “[t]he defendant has failed to report to his probation officer. The defendant’s whereabouts are unknown to the probation officer. [Id].

However, when Appellant met with the Probation Officer after the Court modified his probation period on July 17, 2013, Appellant did not sign any forms or acknowledgments concerning the modification. [TR, pg. 28, lines 14-20]. The Probation Officer never gave Appellant any instructions, written or otherwise, informing him as to when he was suppose to

report or how often. [TR, pg. 28, lines 21-25 & TR, pg. 29, line1-20]. From the date Appellant's probation period was extended, the Probation Officer made one field contact on August 15, 2013 and Appellant made one office contact on August 23, 2013. [TR, pg. 14, lines 16-25 & TR, pg. 15, lines 1-12]. The Probation Officer made one other attempt to contact Appellant almost 2 month later on October 18, 2013, when he conducted a field contact to Appellant's girlfriend's residence. [TR, pg. 15, lines 1-25]. The Probation Officer went to the home one time and he did not make contact with anyone, as nobody answered the door. [TR, pg. 30, lines 14-25].

In Allegation 2, the petition indicates that "[d]efendant violated; Standard Condition of Probation #8 "Notify the probation officer of current address change within 72 hours. The defendant failed to provide notification of a true and current change of address to the probation officer." [Record at 35]. After the modification of the probation period in July, Appellant provided the Probation Officer with a new address. [TR, pg. 30, lines 14-16]. The field contact conducted by the Probation Officer on August 15, 2013 was to verify Appellant's new address. [TR, pg. 15, lines 2-4].

When the Probation Officer was questioned about other attempts at contact, the Officer stated that he had "...attempted to make other field contacts on other dates and was not successful." [TR, pg. 15, lines 16-18]. Upon further questioning, the Probation Officer stated that it was almost 2 month later, on October 18, 2013, that he made any attempt at contacting Appellant again by conducting a field contact to Appellant's girlfriend's residence. [TR, pg. 15,

lines 1-25]. The Probation Officer went to the home one time and he did not make contact with anyone, as nobody answered the door. [TR, pg. 30, lines 14-25].

Four days later, on October 22, 2013, the Appellant's girlfriend returned the probation officer's phone call. At that time, she informed him that she had not heard from Appellant in over a month. [TR, pg. 15, lines 19-22]. The Probation Officer only spoke with her by phone and he did not know where she was calling from or if she was still living at the address Appellant gave him in August. [TR, pg. 31, lines 2-12]. The Probation Officer never attempted to go back to the home to verify that Appellant no longer lived there. [TR, pg. 31, lines 17-19]. He filed a Motion to Revoke Probation on the same day he spoke with Appellant's girlfriend.

Allegation 3 provided that Defendant violated Special Condition of Probation #1 in that he "failed to pay probation fees for the months of August, September and October 2013 for a total of \$60 of unpaid probation fees." [Record at 35]. During his probation term, Appellant made three payments. [TR, pg. 29, lines 21-23]. Appellant paid his court costs on October 26, 2012. He made a payment in November, 2012, another in December 2012 and the third payment in August, 2013. [TR, pg. 18, lines 10-14]. The Probation Officer was aware that Appellant was having a difficult time paying, so he accepted the partial payments. [TR, pg. 29, lines 24-25 & TR, pg. 30, line 1-4].

The 4<sup>th</sup> allegation provided that Defendant violated Special Condition of Probation #18 in that he failed to submit proof of attending any form of counseling as court ordered." [Record at 33]. This allegation was dismissed after Appellee requested that it be dismissed because

Appellant had, in fact, turned in documentation verifying that he obtained counseling. [TR, pg. 55, lines 3-7][Record at 2].

An arrest warrant was issued on October 22, 2013 and executed on July 17, 2014. [Record at 33 & 34]. Appellant appeared before the Court on July 17, 2014 for a detention release hearing and was released on a \$500 suspended bond, provided he remained at Men's Path Treatment Facility. At the hearing, the Probation Officer informed the Court that he felt Appellant should be given another chance in the matter since he had self-admitted into treatment and the Probation Officer wished to work with him [Record at 30].

After the detention release hearing, the Probation Officer met with Appellant, residential substance abuse therapist Arnie Kahn, Jessica Turk and defense counsel. At that time, the Probation Officer advised Appellant that this was the last chance he was going to give him to comply and that he had put his neck on the line, so Appellant had to make sure he didn't mess up. [TR, pg. 33, lines 16-22]. The following day, July 18, 2013, the Probation Officer met with Appellant and had him sign the Modification of Conditions of Probation. The modification was that Appellant remain at Men's Path. [Record at ][TR, pg. 34, lines 10-25]. The Probation Officer testified that he felt it was important for Appellant to sign changes in his conditions and it was important to give him the changes in writing. [TR, pg. 35, lines 1-9].

Appellant was admitted into Men's Path residential treatment facility in June, 2013. [TR, pg. 46, lines 14-18]. The facility is not a lockdown facility. People have the freedom to leave, if they want. [TR, pg. 47, lines 11-14]. Appellant remained at Men's Path and attended counseling. [TR, pg. 34, lines 4-9]. While at Men's Path, Appellant submitted community service hours and

counseling information. [TR, pg. 35, lines 10-16]. Based on Appellant's actions since the detention release hearing on July 17, 2014, when the Probation Officer told the court that he wished to work with Appellant, the Probation Officer testified that Appellant did not give him any reason to make him feel that Appellant would not comply. [TR, pg. 39, lines 10-13].

The revocation hearing was held on September 10, 2014. After the hearing, the Court found that Appellant had violated his conditions of probation by not reporting in to the probation officer, by not paying the probation fees and by not providing a current address to probation. The Court stated that it reached the decision because Appellant was aware of the terms and condition of probation because the Court's order of July 17, 2013 ordered him to comply with all previously imposed conditions of probation. [Record at 2].

### ISSUES PRESENTED FOR REVIEW

- I. Whether the Tribal Court erred in finding that the petition to revoke was in proper form when the petition did not include efforts made to locate the probationer or probationer's last known address as required by 4 PYTC §4-130(E)
- II. Whether the Tribal Court erred in revoking Appellant's probation for violation of conditions of which he had not received written notice in violation of his due process rights.
- III. Whether the Tribal Court erred in failing to inquire into the reasons for Appellant's failure to pay the probation fees thereby depriving him of the fundamental fairness required by the Pascua Yaqui Constitution and the United States Constitution.

## STANDARD OF REVIEW

The Pascua Yaqui Constitution and Pascua Yaqui Judicial Titles and Codes are silent regarding the standards of review to be applied by the Pascua Yaqui Court of Appeals. Questions of law are subject to *de novo* review on appeal. *Pascua Yaqui Tribe v. Alma Soto*, CA-06-010, at 8 (2007); *United States v. Semler*, 883 F.2d 832, 833 (9<sup>th</sup> Cir. 1989). Although Courts have broad discretion to revoke probation if its conditions are violated, the court's discretion has limitations, and on appeal the courts have authority to review revocation decisions for fundamental unfairness or for an abuse of discretion. *United States v. Dane*, 570 F.2d 840, 843 & n. 4 (9th Cir.1977), cert. denied, 436 U.S. 959, 98 S.Ct. 3075, 57 L.Ed.2d 1124 (1978).

## ARGUMENT

### I. WHETHER THE TRIBAL COURT ERRED IN FINDING THAT THE PETITION TO REVOKE WAS IN PROPER FORM AS REQUIRED BY 4 PYTC 4-130 (E).

4 PYTC § 4-130 (E) of the Pascua Yaqui Tribal Code sets forth the requirements for filing a petition to revoke when a probationer's whereabouts are unknown. "A proceeding to revoke probation in absentia shall be commenced only after the probationer's whereabouts are unknown to the probation officer for at least 30 days." 4 PYTC § 4-130 (E)(1). The Tribal Code further provides the procedures to follow when petitioning the court and sets forth the requirements for the petition itself.

"The petition shall be verified and **shall** include:

- (i) Each violation of the terms and regulations of probation
- (ii) An allegation that the whereabouts of the probationer are unknown.
- (iii) Efforts made to locate the probationer.
- (iv) The probationer's last known address

4 PYTC § 4-130 (E)(1)(a).

In this case, the petition filed on October 22, 2013 was verified by Probation Officer Gerardo Rojas. In the verification he provided that the statements in the petition were "true to his personal knowledge as a probation officer." [Record at 35]. The petition also outlined 4 allegations and included each specific standard or special condition alleged to have been violated, as required by subsection (i). Pursuant to subsection (ii), the petition also included an allegation that the whereabouts of the probationer were unknown. "The defendant has failed to provide a true and current address to the probation officer. The defendant's whereabouts are and

have been unknown to the probation officer as of August 23, 2013.” [Record at 35].

Nevertheless, despite the mandatory language of the code providing that the petition shall include efforts made to locate the probationer under subsection (iii) and the probationer’s last known address under subsection (iv), neither of those items was included. The Probation Officer was aware of these requirements because he complied with them when he filed the first petition on April 4, 2013. [Record at 48]. The April petition stated that on March 13<sup>th</sup>, 2013, the probation officer attempted to make contact at the defendant’s last known address of 190 W. Valencia Avenue #226 Tucson, Arizona and that the residence was unoccupied and a notice of eviction was posted. [Record at 48]. The same requirements were not complied with in the petition filed on October 22, 2013. Consequently, the October petition to revoke was not in proper form as required by 4 PYTC 4-130 (E).

II. WHETHER THE TRIBAL COURT ERRED IN REVOKING APPELLANT’S PROBATION FOR VIOLATION OF CONDITIONS FOR WHICH HE WAS NOT GIVEN PROPER WRITTEN NOTICE IN VIOLATION OF HIS DUE PROCESS RIGHTS.

4 PYTC § 4-130(C)(2)(b) provides, in pertinent part, that “[p]robation shall not be revoked for violation of a condition or regulation of which the probationer has not received a written copy.” The Tribal Code does not provide further explanation of this code section. However, the language of the Tribal Code is identical to the language in Rule 27.7(c)(2) of the Arizona Rules of Criminal Procedure, therefore it is instructive to look at the case law and Court reasoning of other jurisdictions that have addressed this issue. Although this Court does not have to follow the findings of other jurisdictions, this Court has held that “[w]hile decisions of the

Arizona and United States Supreme Courts are not controlling authority in this court, they are highly persuasive.” *PYT v. Miranda*, CA-08-015.

The Ninth Circuit Court of Appeals addressed this precise issue in *United States v. Hamilton*, 708 F.2d 1412 (9<sup>th</sup> Cir. 1983) where the defendant appealed the lower court’s order revoking his probation and reinstating his suspended sentence. Hamilton, the defendant, was placed on probation after a plea of guilty on conspiracy charges. He was sentenced to a 5 year jail term suspended on condition that he complete 5 years probation and serve 120 days in jail. The court allowed him to serve the 120 days on 60 consecutive weekends. During the course of his probation, Hamilton completed 49 of the 60 weekends of imposed jail and then failed to report to the jail to complete the remaining weekends. Additionally, Hamilton did not meet regularly with his probation officer and he reported his whereabouts and activities on an informal basis. The probation officer took no action and Hamilton’s performance appeared to be acceptable.

In the 5<sup>th</sup> year of his probation, a new probation officer was assigned to Hamilton. The new probation officer mailed Hamilton a letter instructing him to meet with him and to appear in court a week after meeting. Hamilton did not appear on either date. The court issued a warrant and a hearing was held at which Hamilton was charged with violations for failing to complete his jail sentence, failing to report to the probation office as requested, failing to appear in court and failing to work at a lawful occupation. The District Court revoked Hamilton’s probation and reinstated his 5 year sentence.

On appeal, the 9<sup>th</sup> Circuit Court of Appeals held that the lower court had exceeded its discretion and it remanded the case with instructions to reinstate the probation. The Court held that Hamilton had made efforts to bring the matter of his not reporting to jail to the court's attention, but the court took no action. Consequently, this basis for revoking his probation was no longer valid. "Revocation of probation after unreasonable delay or under circumstances inherently misleading to the probationer is an abuse of discretion." *Id* at 1415.

As to the allegations that Hamilton failed to keep appointments and report his whereabouts and employment, the Court held that he "was misled or did not receive adequate notice as to the true nature of his obligations and that to revoke on those grounds was an abuse of discretion." *Id*. The Court reasoned that the first probation officer in that case had not imposed the probationer's obligations rigorously therefore, it was unfair for the second probation officer to impose stricter standards without proper notice to the defendant. The Court also stated that "[t]he interests of fairness require some level of consistency in the supervision of a probationer." *Id*.

In this case, when Appellant was initially placed on probation on September 25, 2012, the probation officer took the time to review the terms of probation with him. He not only reviewed the terms and conditions, but he also provided Appellant with a list of dates on which he was to report to the probation office. The Probation Officer had Appellant sign the Acknowledgment of Probation form in which Appellant acknowledged that he received a copy of the forms for the period of September 26, 2012 to September 26, 2013. The Acknowledgment form also contained a list of dates Appellant was to report to probation. This was done even though the

Court had issued a Probation Order and had the Appellant sign the Standard Conditions of probation in court.

In stark contrast, when Appellant's probation was modified and extended on July 17, 2013, the court issued an order stating that the probation term was modified and extended to December 26, 2013. It stated that Appellant was to comply with previously imposed conditions of probation and that he was to continue to report to the Probation Officer *as directed* by the Probation Officer. [Record at 30]. However, when Appellant met with the Probation Officer after the modification, Appellant did not sign any forms or acknowledgments concerning the modification extending his probation. Additionally, Appellant was not given dates that he was to report to probation nor was he told how often he was suppose to report.

Approximately a month after the extension of probation, Appellant provided the Probation Officer with a new address which the Officer verified on August 15, 2013 through a field contact. There was no testimony from the Probation Officer that he admonished Appellant for not reporting prior to that date or that he even told Appellant to report at all. A week later, on August 23, 2013, Appellant went to the Probation Office and submitted a payment and verification of counseling. Even after the second contact with Appellant on August 23, 2013, the Probation Officer testified that he did not give Appellant any instructions on when or how often to report or that he even talked to him about it. [TR, pg. 29, lines 11-20]. It was almost 2 month later, on October 18, 2013, that the Probation Officer himself attempted any contact with Appellant again by conducting a field visit but nobody answered the door. [TR, pg. 15, lines 1-25]. The Probation Officer made no other attempts to contact Appellant.

Like in *Hamilton*, Appellant was misled and did not receive adequate notice as to the true nature of his obligations. Appellant was not advised of his obligations regarding when or how often to report, he was not admonished or even talked to for reporting infrequently and the Probation Officer only made a single attempt to contact Appellant 2 months after Appellant had made an office visit with the Probation Officer. This lack of consistency in the supervision of Appellant by the Probation Officer, who failed to provide adequate guidance or direction, does not meet the interests of fairness. A violation for failing to report when Appellant was not advised regarding when and how often to report, cannot form the basis for revocation and is fundamentally unfair.

Additionally, the Probation Officer testified that he thought it was important that Appellant sign when there were changes to his conditions of probation and that it was important for Appellant to receive something in writing, however he never had Appellant sign anything regarding the modification extending the probation period nor did he give him anything in writing regarding when or how often he was to report to probation. In fact, the Probation Officer testified that he had not even given an oral directive to Appellant on when he was to report to probation.

Nevertheless, Tribal Court revoked Appellant's probation stating that "the Court's findings in reaching this decision were that the defendant was aware of what the terms and condition[s] of probation were as the Court in it's (sic) order of July 17, 2013 clearly ordered the defendant to comply with all previously imposed conditions of probation..." [Record at 2]. However, the language of the Tribal Code in 4 PYTC § 4-130(C)(2)(b), which mirrors the

language of Rule 27.7(c)(2), requires that Appellant receive written notice of a specific directive or his probation cannot be revoked on that ground. “We hold that Rule 27.7(c)(2) precludes a probation violation finding based on failure to comply with an oral order.” *State v. Robinson*, 177 Ariz. 543,546, 869 P.2d 1196, 1199 (1994).

Here, the Tribal Court ordered Appellant to report to probation as directed by the probation officer (*see* Order dated July 17, 2013), however the Probation Officer testified that he never told Appellant when or how often to report. There simply was no directive by probation. Consequently, the revocation of his probation under these circumstances is inherently misleading and an abuse of discretion.

As to Allegation 2, the petition indicates that “[d]efendant violated; Standard Condition of Probation #8 “Notify the probation officer of current address change within 72 hours. The defendant failed to provide notification of a true and current change of address to the probation officer.” [Record at 35]

When Appellant provided the Probation Officer with a change of address in August, the Probation Officer did not rely on the information received, but actually went to the address to verify that it was correct. At the hearing, the Probation Officer testified that he conducted a field visit with Appellant on August 15, 2013 and verified his new address. [TR, pg. 15, lines 1-4]. He did not attempt another field contact until October 18, 2013 when he went to Appellant’s residence. The Probation Officer testified that he only went to the home once and he did not make contact with anyone, as nobody answered the door. [TR, pg. 30, lines 14-25].

Four days later, on October 22, 2013, Appellant's girlfriend returned the probation officer's call. According to the Probation Officer, she informed him that she had not heard from Appellant in over a month. [TR, pg. 15, lines 19-22]. However, the Probation Officer testified that he did not know where the girlfriend was calling from or whether she was the one that moved out. [TR, pg. 31, lines 2-12]. Instead, the probation officer assumed that her statement meant that Appellant had moved from the address and not given notice. He never went back to the address to verify that Appellant had in fact moved out without notice. [TR, pg. 31, lines 17-19]. Instead, he filed a Motion to Revoke Probation on the same day he spoke with Appellant's girlfriend.

The allegation that Appellant failed to provide notification of a true and current change of address to the probation officer within 72 hours, when the Probation Officer made assumptions based on a phone call and failed to verify the information, was fundamentally unfair and cannot form the basis for a violation. "The interests of fairness require some level of consistency in the supervision of a probationer." *Hamilton*, 708 F.2d at 1415.

### III. WHETHER THE TRIBAL COURT ERRED IN FAILING TO INQUIRE INTO THE REASONS FOR APPELLANT'S FAILURE TO PAY THE PROBATION FEES THEREBY DEPRIVING HIM OF THE FUNDAMENTAL FAIRNESS REQUIRED BY THE PASCUA YAQUI CONSTITUTION AND THE CONSTITUTION OF THE UNITED STATES.

Article I, § 1(h) of the Pascua Yaqui Constitution and the Indian Civil Rights Act, 25 U.S.C 1302(8) provide that the court may not deprive any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law. In *Martinez v. Santa Clara Pueblo*, 540 F.2d 1039, 1047 (1976) (*rev'd on other grounds*), the

court held that, while the Fourteenth Amendment standards do not apply with full force to tribal nations, “[t]he history and decisions teach us that the Indian Bill of Rights is modeled after the Constitution of the United States and is to be interpreted in the light of constitutional law decision.” Accordingly, U.S. Supreme Court constitutional jurisprudence provides strong guidance as to the due process rights which should be accorded to defendants in Pascua Yaqui Tribal Court.

In addressing the issue of failing to pay fines and restitution in a probation revocation, the United States Supreme Court held that:

“...in a revocation proceeding for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay. If the probationer willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay, the court may revoke probation and sentence the defendant to imprisonment within the authorized range of its sentencing authority. If the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternate measures of punishment other than imprisonment. Only if alternate measures are not adequate to meet the State’s interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay. To do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment.”

*Bearden v. Georgia*, 461 U.S. 660,672, 103 S.Ct. 2064,2072 (1983)

In this case, allegation 3 provided that Defendant violated Special Condition of Probation #1 in that he “failed to pay probation fees for the months of August, September and October 2013 for a total of \$60 of unpaid probation fees.” [Record at 35]. First, there is some confusion as to what period the probation fees covered. At the revocation hearing, the Probation

Officer testified that the probation fees were for the period of July 2013 to October 2013. [TR, pg. 18, lines 15-18]. Later he testified that Appellant had previously been found in violation of probation and he was extended 3 months (September 16, 2013 to December 26, 2013). He stated that all Appellant had due was \$60 because the other conditions were dismissed. [TR, pg. 19, lines 4-13]. Therefore, if the first revocation was on July 17, 2013 and all that Appellant had due at that time was \$60 and Appellant made a payment on August 2013, then the math is wrong.

Next, the Probation Officer testified that Appellant had made three payments and the court costs. The Probation Officer stated that he knew Appellant had some difficulty paying the full amount so partial payments were accepted. Appellant was making an effort to pay and there was nothing in the record to show that any alternative measures were considered. The facts show that the fine was reduced due to the previous revocation, however Appellant was making efforts to pay as evidenced by his making a payment in August. Additionally, the Probation Officer was aware that Appellant was having difficulty paying and he never directly addressed the issue of lapsed payments with him. Consequently, it was fundamentally unfair to revoke Appellant's probation for his inability to pay the probation fees without considering whether there were alternative methods of punishing him available.

In addition to the failures to provide Appellant with specific directives regarding when and how often he was to report to probation and not verifying whether Appellant had, in fact, moved from his address without notice, the Probation Officer also gave Appellant assurances that he would not be revoked and should continue to comply with his treatment. Appellant relied on assurances made by the probation officer at the detention release hearing on July 17,

2014 and at a meeting with him after the hearing. At the hearing, the Probation Officer informed the Court that he felt Appellant should be given another chance in the matter since he had self-admitted into treatment and the Probation Officer wished to work with him [Record at 30]. After the detention release hearing, the Probation Officer met with Appellant, Arnie Kahn the residential substance abuse therapist, Jessica Turk and defense counsel. At that time, the Probation Officer advised Appellant that this was the last chance he was going to give him to comply and that he had put his neck on the line, so Appellant had to make sure he didn't mess up. [TR, pg. 33, lines 16-22].

Appellant had admitted into Men's Path residential treatment facility in June, 2013. [TR, pg. 46, lines 14-18]. The facility is not a lockdown facility so people have the freedom to leave, if they want. [TR, pg. 47, lines 11-14]. Notwithstanding, Appellant remained at Men's Path and attended counseling from June until the hearing in September. [TR, pg. 34, lines 4-9]. While at Men's Path, Appellant submitted community service hours and counseling information. [TR, pg. 35, lines 10-16].

Based on Appellant's actions since the detention release hearing on July 17, 2014, when the Probation Officer told the court that he wished to work with Appellant and told Appellant that this was his last chance, the Probation Officer testified that Appellant did not give him any reason to make him believe that Appellant would not comply. [TR, pg. 39, lines 10-13]. Appellant trusted the assurances made to him by the Probation Officer and he complied.

## CONCLUSION

The Tribal Court's decision to revoke Appellant's probation and reinstate the suspended time was fundamentally unfair and an abuse of discretion given that Appellant was misled by the probation officers failure to provide any directions or requirements, in writing or otherwise, regarding his obligations to report to probation. Especially when the Court's Order stated that Appellant was to report to probation *as directed* by the probation officer, but the probation officer never gave Appellant any directive to report.

In addition, it was abuse of discretion to find that Appellant failed to provide notification of his current address change within 72 hours, when there was no evidence that Appellant had changed address and the probation officer failed to verify whether or not Appellant was still at the address he had provided.

Additionally, it was error for the Tribal court to find a violation of the allegation that Appellant had not paid the probation fees when the Probation Officer had been accepting the payments at irregular intervals, he was aware of Appellant's inability to pay and the Court failed to establish that Appellant had not made attempts to pay.

The errors were fundamentally unfair and an abuse of discretion which violated his due process rights.

DATED this 17<sup>th</sup> day of October, 2014.

PASCUA YAQUI PUBLIC DEFENDER



Patricia Leon-Enriquez  
Senior Staff Attorney  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that Mr. Freddy Salazar's Opening Brief was delivered this date to:

Linda Imonode  
[Linda.Imonode@pascuayaqui-nsn.gov](mailto:Linda.Imonode@pascuayaqui-nsn.gov)  
Clerk of the Court of Appeals  
Pascua Yaqui Court of Appeals  
7474 South Camino de Oeste  
Tucson, AZ 85757

and that one (1) copy of Mr. Freddy Salazar's Opening Brief was delivered this date to:

Guadalupe Gutierrez  
[Guadalupe.Gutierrez@pascuayaqui-nsn.gov](mailto:Guadalupe.Gutierrez@pascuayaqui-nsn.gov)  
Deputy Prosecutor  
Office of the Prosecutor of the Pascua Yaqui Tribe  
7474 South Camino de Oeste  
Tucson, AZ 85757

DATED this 17<sup>th</sup> day of October, 2014.

PASCUA YAQUI PUBLIC DEFENDER



Patricia Leon-Enriquez  
Senior Staff Attorney

1 PASCUA YAQUI PUBLIC DEFENDER  
7474 S. Camino de Oeste  
2 Tucson, Arizona 85757

3 Patricia Leon-Enriquez  
4 PYT Bar No. 10186  
Attorney for Appellant

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

8 PASCUA YAQUI TRIBE,  
9

10 Appellee,

11 vs.

12 SALAZAR, FREDDY JOSE,

13 Appellant.

Case No(s). CA-14-006,

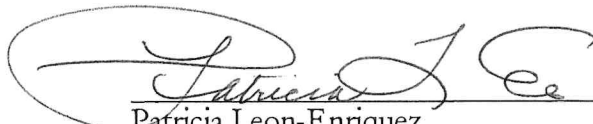
Tribal Court No(s). CR-12-139

NOTICE OF FILING OF TRANSCRIPT

14  
15 Appellant Freddy Salazar, through counsel and pursuant to 3 PYTC § 2-3-110(F), Pascua  
16 Yaqui Rules of Appellate Procedure, respectfully files the transcript of the proceedings before the lower  
17 court.

18 DATED this 6<sup>th</sup> day of October, 2014.

19 PASCUA YAQUI PUBLIC DEFENDER

20   
21 Patricia Leon-Enriquez  
22 Senior Staff Attorney

23 ORIGINAL delivered this date to  
24 PYT Court of Appeals:

25 COPY of the foregoing hand-delivered this date  
26 PY Prosecutor's In-Box by:  
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PASCUA YAQUI TRIBAL COUNCIL

PASCUA YAQUI TRIBE,

Case No. CR12-139

PROSECUTOR,

v.

FREDDY SALAZAR,

DEFENDANT.

BEFORE THE HONORABLE CORNELIA CRUZ

DATED: SEPTEMBER 10, 2014

APPEARANCES:

For the Prosecutor:  
Ms. Guadalupe Gutierrez, Attorney at Law

For the Defendant:  
Ms. Patricia Leon-Enriquez, Attorney at Law

**COPY**

Transcribed by: Kari Lynne Simpson  
Kathy Fink & Associates, Inc.  
2819 East 22nd Street  
Tucson, Arizona 85713  
Phone: (520) 624-8644  
Fax: (520) 624-9336

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THE COURT: The Pascua Yaqui Tribal Court is now in session in the matter of the Pascua Yaqui Tribe versus Freddy Salazar, Docket Number CR 12-139. Today's date is September 10, 2014. Gerardo Rojas appears for the Probation Department, Guadalupe Gutierrez for the Tribe, Defendant appears with legal counsel, Patricia Leon-Enriquez, and this is the Trial Hearing on the Motion to Revoke Probation.

And, Ms. Leon-Enriquez, do you waive reading of your client's Rights?

MS. LEON-ENRIQUEZ: Yes, Your Honor.

THE COURT: And are the Parties ready to proceed?

MS. LEON-ENRIQUEZ: Yes, Your Honor.

MS. GUTIERREZ: Yes, Your Honor.

THE COURT: And Mr. – oh, the Tribe, go ahead and call your first witness.

MS. GUTIERREZ: Yes, Your Honor, before we do that, Your Honor, I'd like to invoke Rule 35 of the (inaudible) -- for the exclusion of witnesses. I believe the defense has one witness here present that will be taking the stand. We ask that he be excluded from the proceedings until it is his time to – to testify.

THE COURT: Okay. Any objections?

MS. LEON-ENRIQUEZ: Rule 35?

MS. GUTIERREZ: Of the Rules of Evidence.

MS. LEON-ENRIQUEZ: Okay. Your Honor, we would object to that as the Rules of Evidence don't apply in probation or revocation hearings.

Pursuant to Rule what?

1 MS. GUTIERREZ: Actually, (inaudible) ...

2 THE COURT: And can you please speak a little bit louder?

3 MS. GUTIERREZ: Pardon?

4 THE COURT: Speak a little bit louder.

5 MS. GUTIERREZ: Excuse me. Actually, Your Honor, the Rules  
6 of Evidence do apply. They are just --- thank you, sir -- a little more lenient in terms of  
7 the availability of evidence that can enter, in that certain Hearsay Evidence can enter;  
8 however, the Rules are -- of evidence are in play here during these hearings.

9 THE COURT: The Court will allow the Motion. The witness will  
10 remain outside until called to testify.

11 Who's the witness?

12 MS. GUTIERREZ: Mr. Kahn.

13 MS. LEON-ENRIQUEZ: Yes.

14 MS. GUTIERREZ: Thank you.

15 THE COURT: Go ahead.

16 MS. GUTIERREZ: My apologies, Your Honor.

17 Your Honor, the probation officer, Gerardo Rojas, to --

18 THE COURT: Mr. Rojas, please stand and raise your right hand.

19

20 GERARDO ROJAS,

21 Having been duly sworn, testified as follows:

22

23 THE WITNESS: Yes, Ma'am. I do.

24 THE COURT: Go ahead and be seated.

25 MS. GUTIERREZ: Your Honor, may I take the podium --

1 THE COURT: It's --

2 MS. GUTIERREZ: -- to ask questions?

3 THE COURT: -- up to you.

4 MS. GUTIERREZ: Thank you. My apologies, Your Honor. I'm  
5 having a little bit of difficulty with my voice today.

6

7 DIRECT EXAMINATION

8 BY MS. GUTIERREZ:

9 Q. Officer Rojas, could you please introduce yourself to the Court  
10 briefly?

11 A. Yes. Good morning. My name is Officer Rojas and I'm a  
12 probation officer for the Pascua Yaqui Probation and Parole. I've been employed in that  
13 position for nearly three years.

14 Q. Thank you, sir, and when you -- in your position as a probation  
15 officer, can you tell us your general functions?

16 A. To monitor a case load that's been assigned by the Court to  
17 follow conditions of probation and the special conditions that have been applied by the  
18 Court through field contacts, office visits and follow up through case management for  
19 counseling or things of that nature.

20 Q. You mentioned that your -- part of your job is to make sure that  
21 the probationers follow conditions of probation; is that correct?

22 A. Yes. Those conditions set by the Court and part of my duty is to  
23 make sure they comply with the Court's orders.

24 Q. Now, when you're making sure that they comply, is there any --  
25 do you initially go over those provisions with the probationer?

1           A.       Yes. When the probationer is placed on probation an intake is  
2 scheduled and all of the conditions, standards and special are agreed with the  
3 probationer to make sure they understand that copy of the agreement and again to allow  
4 them an opportunity to ask questions about their conditions and terms.

5           Q.       Now, in terms of – you’ve been a probation officer here with the  
6 Pascua Yaqui three years, did you say?

7           A.       Nearly three years.

8           Q.       Nearly three years, during that time did you have occasion to  
9 have a Freddy Salazar as one of your probationers?

10          A.       Yes, Mr. Salazar was assigned to my case load.

11          Q.       And do you recall about when he was assigned to you?

12          A.       September 25<sup>th</sup>, 2012, he was assigned in CR12-139.

13          Q.       And, sir, I see that you are referring to some notes.

14          A.       Yes. I’m referring to a Supervision of Record for that individual.

15          Q.       And these are the notes that you’ve -- you’ve written or what are  
16 you referring to?

17          A.       These are my case notes that I’ve written.

18          Q.       Okay.

19                MS. GUTIERREZ: I want to make sure the defense –

20                MS. LEON-ENRIQUEZ: (Inaudible) ...

21                MS. GUTIERREZ: Thank you.

22 BY MS. GUTIERREZ:

23          Q.       And did you have occasion to meet Mr. Salazar?

24          A.       Yes, through field contacts and office visits.

25          Q.       And is Mr. Salazar currently in the court room?

1 A. Yes, he is. He's right over there.

2 Q. And when you say "over there," sir, could you describe what  
3 he's --

4 A. Sitting next to counsel, to my left.

5 Q. Okay, and would that be defense counsel?

6 A. Yes.

7 Q. And what is he wearing?

8 A. An orange jail suit.

9 Q. Oh, thank you, sir.

10 MS. GUTIERREZ: Would -- would the record please reflect, Your  
11 Honor, that the witness has identified the probationer, Mr. Freddy Salazar, is the person  
12 here present in the court room at these hearings?

13 THE COURT: ID's reflected.

14 MS. GUTIERREZ: Thank you, Your Honor.

15 BY MS. GUTIERREZ:

16 Q. Now, you mentioned that Mr. Salazar was initially put on  
17 probation in September of 2012; is that accurate?

18 A. Yes.

19 MS. GUTIERREZ: Your Honor, may I approach?

20 THE COURT: Go ahead.

21 BY MS. GUTIERREZ:

22 Q. Sir, I'm handing you what is Tribe's Exhibit -- we'll call it Tribe's  
23 Exhibit 1. I don't know if (inaudible) --

24 THE COURT: You're supposed to mark it.

25 MS. GUTIERREZ: I apologize, Your Honor. I'll do that

1 immediately.

2 BY MS. LEON-ENRIQUEZ:

3 Q. This is Tribe's Exhibit 1, have you seen Tribe's Exhibit 1 before?

4 A. Yes. These are the probation orders issued by the Court to the  
5 Defendant, Freddy Salazar, outlining the timeframe of his supervised probation and  
6 conditions he's ad -- he's supposed to adhere to.

7 BY MS. GUTIERREZ:

8 Q. And how many pages do we have there?

9 A. I have one page -- three pages, total.

10 Q. Okay. And are those all of the conditions that are -- that he was  
11 supposed to adhere to?

12 A. Yeah, these are the conditions imposed by the Court and a  
13 review of the standard conditions that the Defendant signed for the Court.

14 Q. And you mentioned that the Defendant signed them?

15 A. Yes. On the third page it is an Order of Probation that the  
16 Defendant signed, agreeing to abide by the conditions Number 1 through 11, signed by  
17 the Defendant and Judge Cruz.

18 Q. Okay. Now, 1 through 11 are the standard conditions; is that  
19 correct?

20 A. Yes. This is the Standard Conditions of Probation form.

21 Q. And they were signed by the Defendant on what date, please?

22 A. On 9-26-2012.

23 Q. And you mentioned in the first couple of pages, that's the -- a  
24 copy of the original Order?

25 A. Yes.

1 Q. Issued by the Court regarding the conditions?

2 A. Yes.

3 Q. Are there only standard conditions attached to that Order?

4 A. No. That's the Standard Conditions form, on the second page  
5 here, there's also special conditions which the -- was also signed by the Defendant to  
6 review with the Court.

7 Q. And how many special conditions are there?

8 A. Special Condition Number 10, 11, 12, 14 and 18, so a total of  
9 one, two three, four -- five conditions -- special conditions.

10 Q. Thank you, sir.

11 Now, going back to -- particularly Mr. Salazar, did Mr. Salazar  
12 ever -- in addition to signing off on that document that you have there, did he ever sign  
13 off on any sort standard paper work saying he understood all of the terms of his  
14 probation?

15 A. Yes. The Defendant, when he completed his intake, reviewed  
16 Acknowledgement of Probation form, also (inaudible) ... Release of Information form  
17 and Referral of Counseling form, which is standard forms for probation intake.

18 MS. GUTIERREZ: Permission to -- to approach, Your Honor.

19 BY MS. GUTIERREZ:

20 Q. Officer, this is Tribe's Exhibit 2; have you seen Tribe's Exhibit 2  
21 before?

22 A. Yes.

23 Q. And can you tell us what that is?

24 A. It is an Acknowledgement of Probation form, it's a form that is  
25 signed by the supervising probation officer and the Defendant, Freddy Salazar, outlining

1 acknowledgment that we reviewed the conditions of probations, both standard and  
2 special, at the time of the intake and that he acknowledged that he would abide by those  
3 conditions of the Court.

4 Q. And did the -- did this probationer, Mr. Salazar, sign this  
5 document?

6 A. Yes. His signature's here on the document.

7 Q. And what's the date?

8 A. October 5<sup>th</sup>, 2012.

9 Q. And in the Acknowledgement, what does he acknowledge?

10 A. He acknowledges his check-in dates for supervision, that he  
11 reviewed both standard and special conditions which he was to adhere to comply by the  
12 Court, and furthermore he understands that he would be subject to arrest by, one, the  
13 probation officer or law enforcement if there was reason to believe that he may have  
14 violated any conditions of the probation.

15 Q. Okay. And how long was Mr. Salazar to be on probation?

16 A. His original probation term, I believe was for one year, suspended  
17 for 90 days of detention.

18 Q. So when was his original probation term supposed to end?

19 A. Allow me a minute for my notes, please. Okay. According to the  
20 Court Order, 12 -- I'm sorry CR12-139, he was placed on probation for one year,  
21 suspended for 90 days, (inaudible) ... so from one year of the date, September 25,  
22 2012, to December 25, 2013.

23 Q. All right. And what -- did he make it to September 25, 2013?

24 A. No. The Defendant did not complete his term of probation prior to  
25 that date.

1 MS. GUTIERREZ: Your Honor, may I approach the (inaudible) ...  
2 Your Honor, we would move -- the Tribe would move for there to  
3 be judicial notice -- I believe they are already a part of the Court's record, in terms of  
4 Exhibit 1 and Exhibit 2, Exhibit 1 being the original probation order signed by Your  
5 Honor, and also the standard conditions of probation which were signed by both Your  
6 Honor, and the -- the Court and the probationer on September 26, 2012. We would ask  
7 that judicial notice permit that these be admitted, as they are already a part of the Court  
8 record.

9 THE COURT: Any objections?

10 MS. LEON-ENRIQUEZ: No objections.

11 THE COURT: One -- Tribe's Exhibit 1 and 2, the Court takes  
12 judicial notice and is admitted.

13 MS. GUTIERREZ: Thank you, Your Honor.

14 BY MS. GUTIERREZ:

15 Q. Mr. Rojas, you mentioned that there was the original term of  
16 probation which began on December -- on -- excuse me, September 25<sup>th</sup>, was supposed  
17 to end in December on or about the 25<sup>th</sup> of 2013. Did I hear that correctly?

18 A. September, one year, 12 months.

19 Q. And that did not happen.

20 A. No.

21 Q. What happened?

22 A. The Defendant at that time was found to be in violation of the  
23 conditions of probation.

24 Q. And what was the result of that original violation?

25 A. The Defendant was found in violation of conditions of probation

1 and extended for additional three months.

2 Q. And so when -- what was the date of his extension, sir?

3 A. That extension would have ended on December -- I believe  
4 December 25<sup>th</sup> -- give me a second.

5 Q. Sure.

6 A. I'm sorry, December 26<sup>th</sup>, 2013, 90 days.

7 Q. Ninety days, and do you recall the date on which that extension  
8 was granted by the Court?

9 A. I believe it was on July 17<sup>th</sup> of 2013.

10 MS. GUTIERREZ: Your Honor, may I approach the witness?

11 THE COURT: Yes.

12 BY MS. GUTIERREZ:

13 Q. Officer, this is Tribe's Exhibit 3. Have you seen Tribe's Exhibit 3  
14 before?

15 A. Yes, I have.

16 Q. What is it, sir?

17 A. It is a Modification of Conditions of Probation.

18 Q. And what does that document specify?

19 A. That the probation officer had modified the conditions of probation  
20 for Mr. Freddy Salazar and that it instructed the family to remain at Men's PATH until the  
21 day of July 23, which was the next court proceeding.

22 Q. And does it in any way offer a -- an extension of probation?

23 A. No. It's just a condition instructing the Defendant to remain at  
24 Men's PATH until the next court hearing.

25 MS. GUTIERREZ: Okay and may I -- and I apologize (inaudible)

1 a lot of paper, my apologies, Your Honor.

2 BY MS. GUTIERREZ:

3 Q. Now, when the extension occurred was that intended by the  
4 Court?

5 A. Yes, it was intended by the Court.

6 Q. And did you start the Defendant on his terms of probation?

7 A. Yes. I believe after that hearing the Defendant was instructed to  
8 check in with probation, to go over the extension of his 90 days and after being found in  
9 violation (inaudible) ...

10 Q. And that 90 days was to end in December; is that correct?

11 A. December 26 of 2013.

12 Q. And was there occasion -- well, let's talk about that.

13 As part of his probation, did the Defendant meet his  
14 requirements?

15 A. During that extension, the Defendant did not meet the  
16 requirements.

17 Q. And did that lead to you filing a revocation?

18 A. Yeah. I filed a Motion for an arrest warrant on October 22, 2013,  
19 after not having any contact with the Defendant and also other alleged violations of  
20 probation.

21 Q. Now, let's talk about that second violation which was entered on  
22 October 22, is that correct, of 2013?

23 A. Yes.

24 Q. Is that what you just testified to?

25 Now, you mentioned that there was several violations listed. Is --

1 is it fair to say that on that document there were two standard conditions that were not  
2 met and two special conditions that were not met?

3 A. Yes.

4 Q. Okay. Let's go through those briefly. Standard Condition of  
5 Probation Number 2, can you tell us what that standard condition is?

6 A. On the Standard Condition form that was reviewed earlier, that  
7 was signed by the Defendant and the Court, explained to him his conditions of probation.  
8 Standard Condition Number 2 reads as: report to the probation officer once a week or  
9 as directed by the probation officer and follow all reasonable directives of the probation  
10 officer.

11 Q. Now, you had testified that Mr. Salazar was reinstated on  
12 probation on July 17<sup>th</sup> of 2013.

13 A. That's correct, he was extended to that time.

14 Q. And you filed this revocation document on October 22<sup>nd</sup> of 2013.

15 A. That's correct.

16 Q. Now, between those two dates of -- of July 17<sup>th</sup> and October 22<sup>nd</sup>  
17 of 2013, how many times did Mr. Salazar check in with you?

18 A. I have on my notes here from those days from July 17<sup>th</sup>, 2013, to  
19 the time I filed a Motion of Revocation for the arrest warrant on October 22, 2013, I have  
20 two contacts.

21 Q. What -- what was the nature of that -- those contacts?

22 A. To verify the new address the Defendant gave of 5026 Copa  
23 Sava and the second contact was the Defendant received \$15.00 and a Verification of  
24 Counseling on August 23<sup>rd</sup>, 2013.

25 Q. Okay. Now, when did you -- what was the date in which you had

1 the first contact to verify the new address?

2 A. The new address was verified on August 15<sup>th</sup>, 2013.

3 Q. And that was in person, sir?

4 A. Yes. It was a field contact.

5 Q. And the second contact?

6 A. The second contact was in the office, the Defendant made a  
7 payment and received a receipt and a Verification of Counseling was copied and placed  
8 in his file.

9 Q. Okay. And that was on --

10 A. August 23<sup>rd</sup>, 2013.

11 Q. Okay. So is it fair to say that between July 17<sup>th</sup> and October 22<sup>nd</sup>  
12 there were only two contacts?

13 A. Yes.

14 Q. In person?

15 A. Yes.

16 Q. Did you attempt to make other contacts with him?

17 A. I attempted to make other field contacts on other dates and was  
18 not successful.

19 Q. Can you tell me which dates you attempted contact?

20 A. I attempted a contact on October 18<sup>th</sup> at his girlfriend's residence  
21 and again on October 22<sup>nd</sup> once again at the door -- I'm sorry, I spoke to his girlfriend  
22 and she stated that she did not hear from him for over a month.

23 Q. Okay. So she -- this was his address of record?

24 A. Yes. This was the address that he updated with the probation  
25 office.

1 Q. And your information indicated -- I'm sorry, what was that again,  
2 that he didn't live there?

3 A. That he was residing at the address 5026 Copa Sava on  
4 August 15, 2013.

5 Q. Okay. Thank you. Did -- did -- was there any other contact?

6 A. No, none that's in my notes.

7 Q. Now, as to Condition Number 8, can you tell us what the standard  
8 condition was?

9 A. Condition Number 8 Probation reads as follows: Notify the  
10 probation officer of current address change within 72 hours.

11 Q. Okay. And were there any address changes between July 17<sup>th</sup>  
12 and October 22<sup>nd</sup>?

13 A. Just the one address change on August 15<sup>th</sup>, the 5026 Copa  
14 Sava address.

15 Q. Okay. And it seems like he did inform you of that.

16 A. Correct, but after August 15<sup>th</sup> I attempted to make contact and I  
17 could not locate the Defendant.

18 Q. Okay. And that is -- did you -- excuse me, and that information  
19 was based on that he was supposed to be at that address but he was not?

20 A. Correct.

21 Q. Okay. As to Special Condition Number 1, can you tell us what  
22 Standard Condition Number 1 is?

23 A. It reads as follow: Probation Condition Number 1, pay the office  
24 of probation parole as set and report to (inaudible) the Defendant was instructed by the  
25 Court to pay probation fees during his supervision (inaudible).

1 Q. And what is the -- what are the probation fees that are due?

2 A. I believe at the time the Defendant was placed on probation and  
3 had probation fees, a monthly fee of \$20.00 a month.

4 Q. And did you review those with him?

5 A. Yes. As part of the Conditions during the intake that he had  
6 (Inaudible) ... supervision.

7 Q. Was -- so he was aware of those fees?

8 A. Yes.

9 Q. Did he make any payments towards those probation fees?

10 A. The last report of payment was made August 23<sup>rd</sup> for \$15.00.

11 Q. Okay. After that date were there any attempts at making  
12 payments?

13 A. Not by the Defendant, no.

14 Q. How much had in probation fees had the -- did the -- did the  
15 probationer owe?

16 A. At that time that the Motion was filed for revocation, \$60.00  
17 unpaid probation fee for the month of August, September, October of 2013.

18 Q. And in total?

19 A. Sixty dollars.

20 Q. Sixty dollars. All right.

21 Now, this is Tribe's Exhibit 4 --

22 MS. GUTIERREZ: May I approach, Your Honor?

23 THE COURT: Go ahead.

24 BY MS. GUTIERREZ:

25 Q. Sir, have you seen this document before?

1 A. Yes.

2 Q. Can you tell me what it is?

3 A. It is a record of payment for the Defendant, Freddy Salazar, which  
4 is reflective on his case of supervision to track payments.

5 Q. Okay. Now, tell me, sir, this is a tracking of payments; is that  
6 correct?

7 A. Yes.

8 Q. I see that there are two columns. Can you explain to me the  
9 difference between the first column and the second column?

10 A. The first column on the left is for court costs and fines. The  
11 Defendant did pay a \$50.00 court cost on October 26, 2012.

12 Q. All right. And the second column reflects ...?

13 A. Reflects probation fees in which three payments were logged in  
14 November of 2012, December 2012, and the last one in August 2013.

15 Q. So between -- for the -- for the period involved in this revocation,  
16 between July 2013 and October 2013, it was three months that weren't paid; is that  
17 correct?

18 A. Yes.

19 Q. Okay and that's where we have the \$60.00?

20 A. Correct.

21 Q. Now, I notice that there's a different amount at the top there.

22 A. Correct.

23 Q. Can you tell me why that amount is different? What -- well, can  
24 you first tell me what the amount is?

25 A. The amount is \$240.00 for the one year originally placed on

1 probation.

2 Q. Yes, sir.

3 A. Twenty dollars a month at 12 months, \$240.00.

4 Q. But in this case you're only asking for the three months for the  
5 extended time of probation?

6 A. Right, the Defendant was found (inaudible) ... suspended  
7 afterwards, three months.

8 Q. I'm sorry, sir?

9 A. The Defendant was previously found in violation of probation and  
10 he was extended three months.

11 Q. Okay. So all that he had due was the \$60.00?

12 A. Correct, because the other conditions he was found in violation  
13 were dismissed.

14 Q. Okay. Great.

15 MS. GUTIERREZ: If I may approach?

16 Your Honor, the Tribe would move to enter Tribe's Exhibit 4 which  
17 is an accounting of the -- the fees --

18 THE COURT: Any objections?

19 MS. LEON-ENRIQUEZ: No, Your Honor.

20 THE COURT: No?

21 Tribe's Exhibit 4 is moved into evidence.

22 MS. GUTIERREZ: Thank you, Your Honor. Shall I give it to the  
23 Clerk, Your Honor?

24 THE COURT: Uh-huh.

25 MS. GUTIERREZ: Pardon me.

1 BY MS. GUTIERREZ:

2 Q. As to Special Condition of Probation Number 18, sir, can you  
3 specify for us what that special condition is?

4 A. Shall obtain a Counseling of Substance Abuse for domestic  
5 violence treatment program and submit it to the probation officer.

6 Q. Between the time period of July 2013 and October 2013, when  
7 you entered the second probation violation revocation, did you receive any paperwork  
8 from this particular probationer that he had entered treatment, gone to appointments,  
9 any sort of verification?

10 A. According to my notes, after review, I did find the Defendant did  
11 enter a Verification of Counseling on August 23<sup>rd</sup>.

12 Q. On August 23<sup>rd</sup>?

13 A. Yes.

14 Q. Okay. Of what year, sir?

15 A. Of 2013.

16 Q. Can you specify that -- and I'm sorry, I don't seem to have that  
17 document in front of me.

18 A. Please give me a second. I believe -- if I noted it that (inaudible)  
19 proof of attending counseling with the (inaudible) program (inaudible) ...

20 Q. And do you have that documentation (inaudible) ...?

21 A. If I can just have second, Your Honor ... yes, I do.

22 Q. Okay. May I see that please?

23 A. Yes.

24 Q. Thank you, sir.

25 MS. GUTIERREZ: Your Honor, may I show him (inaudible) ...

1 BY MS. GUTIERREZ:

2 Q. Thank you, sir.

3 Sir, after you -- you entered the second revocation on October 22  
4 of 2013, was -- what was the -- the procedure followed by the Court, to your knowledge?

5 A. I requested an arrest warrant for the Defendant based on not  
6 having contact for 60 days. An arrest warrant was granted by the Court for the  
7 Defendant's apprehension to be brought before the Court and the matter for (inaudible).

8 Q. And the bench warrant was issued in October of 2013?

9 A. That's correct.

10 Q. And until -- how many months was the bench warrant active?

11 A. I believe nine months. The Defendant was brought before the  
12 Court on an executed warrant on July 17 of 2014.

13 Q. And during those nine months did you have any contact with this  
14 probationer?

15 A. No, I did not.

16 Q. And during those nine months did you receive any information  
17 with this probationer having followed through with any of the other recommendations of  
18 probation?

19 A. No, I did not hear from the Defendant, Freddy Salazar, during that  
20 time.

21 Q. Okay. Subsequently, after he was picked up, did you receive  
22 other materials regarding his trying to subsequently submit to -- to do some of the  
23 requirements of the probation?

24 A. Yes. After that warrant was executed I did receive notification  
25 from Men's PATH that he attempted to complete his community service hours and was

1 attending treatment at Men's PATH.

2 Q. Did you receive any notification that he had perhaps done  
3 community service?

4 A. Prior to that, no.

5 Q. Okay.

6 MS. GUTIERREZ: Your Honor, may I approach?

7 THE COURT: Go ahead.

8 BY MS. GUTIERREZ:

9 Q. Sir, there was some documentation that was subsequent to the  
10 warrant and I believe it, the Defendant, made these available to you. Did you receive  
11 other verification that he -- after the warrant was issued, after he hadn't complied with  
12 other -- after you'd already filed the revocation in October of 2013, that he had  
13 completed some hours, voluntary hours?

14 A. Yes, afterwards.

15 Q. And that's the document right there?

16 A. Yes, it is.

17 Q. Okay. And what were the dates of those -- and what were the  
18 months in which those -- he attempted to sort of do some --

19 A. The date it begins on June 28, 2014, and goes to August 23<sup>rd</sup> of  
20 2014 for community service hours.

21 Q. And he was already on warrant during that time?

22 A. Yes, he wasn't brought before the Court until July 17, 2014.

23 Q. During that time he never had any communication with you?

24 A. No, I was not aware that he was attempting to do his community  
25 service hours. He was not in contact with me.

1 Q. Okay. Thank you, sir.

2 MS. GUTIERREZ: I have no further questions of Mr. Rojas.

3 Your Honor, may I have just a moment to make sure ...

4 BY MS. GUTIERREZ:

5 Q. One last question, Mr. Rojas, at this point do you have any  
6 indication that this probationer would be suitable for probation again?

7 A. Based on the Defendant's history with the Court and non-  
8 compliance and again with the probation officer working extensively with him to try and  
9 get him to comply with the conditions of probation, the probation officer in his  
10 professional opinion does not feel that the candidate -- or the Defendant would be a  
11 suitable candidate for probation, so no.

12 MS. GUTIERREZ: Thank you sir.

13 (Inaudible) ... return these documents to the witness, if Your  
14 Honor, will permit me to?

15 THE COURT: Go head.

16 Then you're done with this witness?

17 MS. GUTIERREZ: Yes, Your Honor.

18 THE COURT: Ms. -- any Cross?

19 MS. LEON-ENRIQUEZ: Thank you, Your Honor.

20 THE COURT: Um-hum.

21

22 CROSS-EXAMINATION

23 BY MS. LEON-ENRIQUEZ:

24 Q. Mr. Rojas, how many cases do you handle in any given period?

25 A. Currently, a case load of a supervisory officer is about 30 or so.

1 Q. About 30 cases?

2 A. About 30 or so.

3 Q. And you would agree that it's important for a probationer to

4 understand all the terms of probation.

5 A. Yes, I would agree with that.

6 Q. And as part of helping the probationer understand, you advise him

7 of the terms, correct?

8 A. That's correct.

9 Q. Okay. When the Court places a person on probation and the

10 individual signs documents with the Court, you go over the documents that were -- that

11 were signed by the probationer in court, also, correct?

12 A. Yes, that is part of the intake process, that's correct.

13 Q. And that's part of the whole thing of making sure that they

14 understand everything.

15 A. That's correct.

16 Q. Okay. Now, you -- you testified that on September 26,

17 Mr. Salazar was placed on probation and the Court issued the probation Order and the

18 Conditions of Probation which I believe are Exhibits -- Tribe's Exhibit 1, correct?

19 A. Yes. The Defendant was placed on probation, CR13-139.

20 Q. And one of the -- there's two parts for the Tribe's Exhibit 1,

21 correct?

22 A. Yes. There is a Probation Order and the Standard Conditions

23 Probation forms.

24 Q. Okay. And the Probation Order is only signed by the judge, not

25 by -- not by Mr. Salazar.

1 A. That is correct.

2 Q. Thank you.

3 Now, Mr. Salazar, did sign the Standard Conditions of Probation, I  
4 believe that's also part of Exhibit 1, Standard Conditions of Probations, signed by  
5 Mr. Salazar and the Judge?

6 A. Yes.

7 Q. Okay. Now, based on those documents in Exhibit 1, you testified  
8 that Mr. Salazar was placed on probation from September 26, 2012, to September 26,  
9 2013, correct?

10 A. Yes, 12 months in that matter.

11 Q. Now, Mr. Rojas, you also keep record of all the activities on a  
12 given case, correct?

13 A. Yes. We have a -- keep notes on supervision logs.

14 Q. Okay. And that's basically to help you with remembering things  
15 whenever you testify in court and keep record of things.

16 A. That's a part of it, yes.

17 Q. And you've made a record in Mr. Salazar's case.

18 A. Yes.

19 Q. All right. Now, you indicated that Mr. Salazar was placed on  
20 probation on the 26<sup>th</sup>, the date that you met with him is actually on October 5<sup>th</sup>, correct?

21 A. That --

22 MS. GUTIERREZ: Excuse me.

23 BY MS. LEON-ENRIQUEZ:

24 Q. -- based on your notes?

25 A. Yes.

1 Q. And you testified that at that time you completed an intake with  
2 him?

3 A. Yes, that's right.

4 Q. Now, as part of the intake that you completed, you indicated that  
5 you had him sign the Acknowledgement of Probation.

6 A. Yes.

7 Q. Okay. And I believe that's Exhibit 2.

8 Now, the Acknowledgement of Probation is actually a probation  
9 form, correct?

10 A. Yes. It's a standard form we use on our intakes.

11 Q. Okay. And on the form it shows the -- it shows the dates that  
12 Mr. Salazar is on probation?

13 A. The dates he's expected to check-in and the dates he is on  
14 probation, yes.

15 Q. Okay. So when you met with Mr. Salazar on, I believe it was  
16 October 5<sup>th</sup>, you gave him -- you had him read this and sign it.

17 A. Yes. We reviewed his conditions and he acknowledged his  
18 probation terms and conditions and dates.

19 Q. So at that time you thought it was important to write down all the  
20 -- all the dates that he was supposed to report and the term of the probation, correct?

21 A. No, not actually all the dates, but the dates that he was required  
22 to check in because you can --

23 Q. But you actually gave him that in writing?

24 A. Yes.

25 Q. Okay. And you gave him the conditions for this period, correct?

1 A. Yes, for his one year period, yes.

2 Q. Now, you indicated you also gave him a referral for a Center  
3 Spirit?

4 A. Yes, during that intake he was given a referral for Center Spirit.

5 Q. Okay. And you had him sign that form also.

6 A. Yeah.

7 Q. Okay. And on that date, on the August 5<sup>th</sup>, you also gave him a  
8 copy of the conditions that he had signed in for, correct?

9 A. It wasn't August 5<sup>th</sup>, I think it was --

10 Q. I'm sorry, October 5<sup>th</sup>.

11 A. October 5<sup>th</sup>.

12 Q. You gave him a copy of the forms that he had signed --

13 A. Yes, a copy was made of all the forms that we had signed and  
14 reviewed.

15 Q. And based on the Acknowledgement form, he's acknowledging  
16 that he's receiving the copy of the conditions and that he understands them.

17 A. Yes.

18 Q. Now, on April 4<sup>th</sup>, you indicated that you filed the Court's petition,  
19 correct, April 4<sup>th</sup>, 2013?

20 A. Yes, that's correct.

21 Q. And he appeared on July 17<sup>th</sup>, 2013, on the Motion to Revoke.

22 A. Yes.

23 Q. Okay. And on the day you requested a 90-day extension for him.

24 A. That's right, after he was found in violation, he was extended 90  
25 days.

1 Q. So he was given a new termination date from probation that ran  
2 from September 26, 2013, to December 26<sup>th</sup> 2013 (sic).

3 A. No, that matter was closed because he was found in violation. He  
4 was extended from the date of July 2031 to December 2013.

5 Q. The matter was closed?

6 A. Well, he was found in violation so he was extended -- his  
7 probation extended (inaudible) ...

8 Q. Correct, but his probation run up until September 26<sup>th</sup> of 2013 and  
9 the judge extended it 90 days, up until December 26, correct?

10 A. Yes, correct.

11 Q. Now, after the Court had extended the probation period from  
12 September 26 to December 26, '13, you met with him, with Mr. Salazar, correct?

13 A. Yes.

14 Q. Now, at the time that you met with him, after the new period or the  
15 extension period started, you did not have him sign any acknowledgement with regards  
16 to the extension, correct?

17 A. No, no forms were signed.

18 Q. Okay. You didn't have him sign any acknowledgement or  
19 modification regarding the conditions of probation.

20 A. No, not at the extension, no.

21 Q. You also didn't give him any -- any written dates that he was  
22 supposed to report to you.

23 A. No, not after that extension, no.

24 Q. And in looking at your notes, do you find any -- any dates as far  
25 as what you told him the dates he was supposed to report to you?

1 A. No.

2 Q. And in your notes you don't have how often he was supposed to  
3 report to you.

4 A. No.

5 Q. You then filed the second petition, you indicated on October 22<sup>nd</sup>,  
6 correct?

7 A. Of 2013, yes.

8 Q. And you said that as for Number 1, he violated Condition Number  
9 2?

10 A. Yes.

11 Q. And that was that he failed to report once a week or as directed  
12 by probation officer, correct?

13 A. That's correct.

14 Q. But you never gave him any directions as to when he was  
15 supposed to report or how often.

16 A. No, nothing in writing.

17 Q. And you didn't have any notations in your -- in your notes on his  
18 case indicating how often he was supposed to report or that you had talked to him about  
19 how often he was supposed to report.

20 A. No.

21 Q. Now, during the time of probation, you indicated that Mr. Salazar  
22 had been making some payments to probation, correct?

23 A. Yes, three payments.

24 Q. So you understood that he had some difficulty in paying the full  
25 amount.

1           A.     Yes.

2           Q.     Okay. And you were accepting partial payments through --

3 through the term.

4           A.     Yes.

5           Q.     Now, you also testified that during the initial term of probation that

6 Mr. Salazar did, in fact, give you verification of counseling.

7           A.     Yes.

8           Q.     And when you met with Mr. Salazar to discuss the initial terms of

9 probation, there's no notation as to what type of counseling he's supposed to do.

10          A.     No, just the assessment by Center Spirit.

11          Q.     You also testified with regards to Number 2 in the Petition to

12 Revoke that Mr. Salazar failed to notify you of the address change within 72 hours.

13          A.     Correct.

14          Q.     Okay. Now, in the notes you indicated that he had given you a

15 new address on August 15<sup>th</sup>, correct?

16          A.     Yes.

17          Q.     Okay. So you made one attempt to contact him at that address.

18          A.     Yes.

19          Q.     Okay. You never went up to that address again.

20          A.     It's not noted, no.

21          Q.     Okay. At the time that you went out to the address, you just didn't

22 make contact with anyone.

23          A.     At that time I believe there was no one answered the door at the

24 time.

25          Q.     So you don't know, he could still have lived there but --

1 A. There was no contact whatsoever at that address.

2 Q. Also as part of your notes, this would have been in October, you  
3 said that his girlfriend called you, so there wasn't actually a field contact attempt in  
4 October, correct?

5 A. No, she had called me so there wasn't a field contact.

6 Q. Okay. And at that time she told you that she hadn't heard from  
7 him.

8 A. For over a month, yes.

9 Q. Okay. You don't know where she was calling from.

10 A. No, I don't know.

11 Q. And you don't know if she was still at the address.

12 A. No, I don't know where the call came from.

13 Q. Okay. But after speaking to her, you immediately filed a Petition  
14 to Revoke, based on whatever she said.

15 A. No, based on not having recorded contact with the Defendant  
16 after August 15<sup>th</sup>, 2013.

17 Q. Okay. But you never attempted to go back to the home to verify  
18 that he was no longer --

19 A. No. It's not noted.

20 Q. Now, after filing the second Petition to Revoke, you did become  
21 aware that Mr. Salazar had self-reported to Men's PATH, correct?

22 A. Yes. I believe that after -- it was on June 5<sup>th</sup>.

23 Q. And when you appeared in court, I believe it was on July 17<sup>th</sup> on  
24 the Petition to Revoke, you told this Court that you felt that Mr. Salazar should be given  
25 another chance.

1                   A.       (Inaudible) ... that he be placed in Men's PATH and the reason for  
2 that being was that there was complications with his son's birth and I felt it would be  
3 decent for him to be allowed the opportunity to have that chance to (inaudible) ...

4                   Q.       Okay. So you didn't tell the Court that you wanted to give him  
5 another chance.

6                   A.       At that time I don't recall (inaudible) ...

7                   MS. LEON-ENRIQUEZ: May I approach, Your Honor?

8                   THE COURT: Go ahead.

9                   MS. LEON-ENRIQUEZ: This is Defense Exhibit 1.

10                  MS. GUTIERREZ: Can I see that?

11                  Okay. Thank you.

12 BY MS. LEON-ENRIQUEZ:

13                  Q.       Can you tell me what that is?

14                  A.       The highlighted part that says that based on the (inaudible) the  
15 Defendant should be given another chance (inaudible) he did self-admit to treatment, the  
16 (inaudible) counselor work with the Defendant.

17                  Q.       Do you recall that?

18                  A.       I don't recall that that's the statement, no.

19                  MS. GUTIERREZ: Could I please have the date?

20                  Great. Thanks.

21                  MS. LEON-ENRIQUEZ: Your Honor, (inaudible) ... take judicial  
22 notice of the Court Order of July 17, 2013.

23                  THE COURT: Any objections?

24                  MS. GUTIERREZ: Your Honor, my apologies. I have to object. I  
25 have no actual personal knowledge, other than the Order, although I do respectfully

1 understand that it is a -- a -- a document of the Court, and the Court certainly has the  
2 discretion for judicial notice. I don't have the best evidence in terms of a recording to  
3 know exactly what this witness said and as he cannot recall and I was not present, I  
4 (inaudible) ...

5 THE COURT: The court will admit this as Defendant's Exhibit.

6 MS. LEON-ENRIQUEZ: Thank you, Your Honor.

7 THE COURT: I will take judicial notice, I'm sorry.

8 MS. LEON-ENRIQUEZ: Thank you.

9 BY MS. LEON-ENRIQUEZ:

10 Q. And Mr. Rojas, on that same date, on July 17<sup>th</sup>, you read right  
11 now that you told the Court that you wished to work with Mr. Salazar.

12 A. I don't recall.

13 Q. Do you recall reading that just a little while ago, in the Court  
14 Order?

15 A. Yes, the ones you showed me, yes.

16 Q. Now, Officer Rojas, do you recall also on July 17<sup>th</sup> that you met  
17 with Mr. Salazar after court, you also met with Arnie Kahn and with the defense attorney,  
18 Jessica Churk and myself?

19 A. Yes, I remember that.

20 Q. And do you recall advising Mr. Salazar that this was the last  
21 chance that you were going to give him to comply, that you had put your neck on the  
22 line, so he had to make sure he didn't mess up?

23 A. Yes. I recall that.

24 MS. GUTIERREZ: Pardon, Your Honor, may we have for the  
25 record when -- when (inaudible) ...

1 MS. LEON-ENRIQUEZ: (Inaudible) ...

2 MS. GUTIERREZ: Thank you.

3 BY MS. LEON-ENRIQUEZ:

4 Q. Now, since the date of the -- that -- which would have been  
5 July 17<sup>th</sup>, that you told this Court that you wished to work with Mr. Salazar and give him  
6 another chance, he has -- he did continue to stay at Men's PATH, correct?

7 A. Yes.

8 Q. And to your knowledge he attended counseling at Men's PATH?

9 A. Yes.

10 Q. Now, on the following day, on the 18<sup>th</sup>, you met with Mr. Salazar  
11 again, correct?

12 A. Yes, I believe so.

13 Q. When you were testifying earlier, you -- and I believe it would  
14 have been the Tribe's Exhibit -- I believe it's Exhibit 2, I believe it was Tribe's Exhibit 2,  
15 the Modification of Conditions of Probation, Column 1.

16 A. Yes.

17 Q. Now, when you met with Mr. Salazar, this would have been the  
18 following day after you told the Court that you wished to work with Mr. Salazar, he -- you  
19 had him sign the form, correct?

20 A. Yes.

21 Q. Okay. And the form that he signed was for a Modification on the  
22 Conditions of Probation, correct?

23 A. Yes.

24 Q. And the Modification was that he remained at Men's PATH.

25 A. Until the next hearing July 23<sup>rd</sup>, yes.

1 Q. Okay. So at that time did you have him sign the -- those  
2 conditions of probation, you thought it was important for him to sign changes in his  
3 conditions, correct?

4 A. Yes.

5 Q. And you gave him a copy of the form.

6 A. Yes.

7 Q. So you also thought it was important that he receive something in  
8 writing.

9 A. Yes.

10 Q. Now, since the time that you told this Court that you wanted to  
11 work with Mr. Salazar he also submitted community service hours, correct?

12 A. Yes.

13 Q. And those weren't part of the allegation.

14 A. The most revocation, I don't believe that they were.

15 Q. And he also submitted other counseling information, correct?

16 A. Yes.

17 MS. LEON-ENRIQUEZ: May I approach, Your Honor?

18 THE COURT: Go ahead.

19 BY MS. LEON-ENRIQUEZ:

20 Q. Mr. Rojas, can you tell me what these forms are?

21 A. These are our community service forms.

22 Q. Okay. Were those the forms that were submitted (inaudible) ...?

23 A. Yes.

24 MS. LEON-ENRIQUEZ: (Inaudible) ... I'd like to submit those into  
25 the record, the community service forms.

1 THE COURT: Okay. Are you going to submit them as Exhibits

2 or --

3 MS. LEON-ENRIQUEZ: Yes, (inaudible) ...

4 THE COURT: Any objections?

5 MS. GUTIERREZ: No, Your Honor.

6 THE COURT: Tribe -- or rather -- did you mark it? Okay. Thank  
7 you.

8 The Court will admit -- rather Defense Exhibit 2.

9 BY MS. LEON-ENRIQUEZ:

10 Q. Mr. Rojas, Mr. Salazar also submitted his comprehensive  
11 Assessment and Service (inaudible) Center Spirit, correct?

12 A. Yes.

13 Q. And you have a record of that.

14 A. Yes, I do.

15 Q. Okay. He also submitted the groups that he was attending.

16 A. I believe there's an attendance sheet, yes.

17 MS. LEON-ENRIQUEZ: May I?

18 THE COURT: Go ahead.

19 MS. GUTIERREZ: May I see that? Can I just take a moment  
20 (inaudible) these forms with signatures, take a quick look.

21 BY MS. LEON-ENRIQUEZ:

22 Q. What was the section that you received?

23 A. Yes.

24 Q. What are those for?

25 A. Verification of counseling attendance sheets, a number of hours

1 and times and signatures verifying counseling.

2 Q. Okay.

3 MS. LEON-ENRIQUEZ: (Inaudible) ... Exhibit -- Defense  
4 Exhibit ...

5 THE COURT: Any objections?

6 MS. GUTIERREZ: Yes, Your Honor. I'd just like to lay a little  
7 more foundation as to who they're from, what dates, the nature of the -- the actual  
8 documentation, just a little more --

9 THE COURT: Go ahead and provide more foundation.

10 MS. LEON-ENRIQUEZ: Your Honor, with regards to the -- the  
11 evidence, I believe Rule 1 of the Rules of Evidence (inaudible) ... states that the  
12 evidence Rules don't apply in probation hearing matters. I have a copy of the  
13 (inaudible) ...

14 THE COURT: Okay.

15 MS. GUTIERREZ: Which rule?

16 MS. LEON-ENRIQUEZ: One.

17 MS. GUTIERREZ: Of which?

18 MS. LEON-ENRIQUEZ: Of the Rules of Evidence.

19 MS. GUTIERREZ: Just what I need, thank you. Go ahead.

20 MS. LEON-ENRIQUEZ: Thank you.

21 THE COURT: The Court will allow the -- the Defense Exhibit 3 to  
22 evidence. There, sir.

23 THE WITNESS: Oh.

24 BY MS. LEON-ENRIQUEZ:

25 Q. Officer Rojas, do you recall also Mr. Salazar attempting to make

1 probation payments during the period that he was at Men's PATH?

2 A. I don't recall.

3 Q. You don't recall him talking to you about making payments.

4 A. I don't recall.

5 Q. During the time that Mr. Salazar was at Men's PATH, did you  
6 have contact with him?

7 A. Yes, modified condition of probation that he (inaudible) ...

8 Q. Did you go to Men's PATH to make contact with him, also?

9 A. Yes.

10 Q. Okay. Do you recall how many times?

11 A. To recall on me, twice.

12 Q. During the time that Mr. Salazar was at Men's PATH, was there  
13 any cause for you to think that he would not comply or ... ?

14 A. At that time, um, just based on the history I believe that he was  
15 going to comply.

16 Q. But based on what he had been doing at that point, not based on  
17 the history.

18 A. Based on what he was doing at that point, no, just based on the  
19 history.

20 MS. LEON-ENRIQUEZ: May I approach, Your Honor?

21 THE COURT: Go ahead.

22 BY MS. LEON-ENRIQUEZ:

23 Q. Mr. Rojas, (inaudible) ...

24 MS. GUTIERREZ: Excuse me.

25 THE WITNESS: Behavioral health assessment and (inaudible) ...

1 BY MS. LEON-ENRIQUEZ:

2 Q. And you did receive that form?

3 A. Yes.

4 MS. LEON-ENRIQUEZ: (Inaudible) ...

5 THE COURT: Any objections?

6 MS. GUTIERREZ: Oh, I'm sorry. No -- no objection, Your Honor.

7 THE COURT: Then Defense Counsel's Exhibit 4 is moved into  
8 evidence.

9 BY MS. LEON-ENRIQUEZ:

10 Q. So, Officer Rojas, based on Mr. Salazar's actions after July 17<sup>th</sup>,  
11 when you told this Court that you wished to work with him, was there any reason -- did  
12 he give you any reason that made you feel that he would not comply, just based on his  
13 actions after --

14 A. No.

15 MS. LEON-ENRIQUEZ: Thanks, Your Honor.

16 THE COURT: Any Redirect?

17 MS. GUTIERREZ: Yes, just a few questions.

18

19 REDIRECT EXAMINATION

20 BY MS. GUTIERREZ:

21 Q. Officer Rojas, (inaudible) ... questions, defense showed you a  
22 couple of different items, the first of them was I believe a list of community service hours.

23 A. Yes.

24 Q. And I believe it's the same (inaudible) ...

25 MS. GUTIERREZ: Your Honor, may I approach?

1 BY MS. GUTIERREZ:

2 Q. This is the same as the exhibit that the defense showed you; is  
3 this correct?

4 A. Yes.

5 Q. And what are the dates?

6 A. (Inaudible) ... form the dates that community service begins ...  
7 (Whereupon the digital recording terminated at 1:00:44:9.)

8 BY MS. GUTIERREZ:

9 Q. -- a list of community service hours?

10 A. Yes.

11 Q. Yes. And I believe it's Exhibit -- I'm not sure what Exhibit Number  
12 it is.

13 MS. GUTIERREZ: Your Honor, may I approach?

14 BY MS. GUTIERREZ:

15 Q. This is the same Exhibit that the Defense showed you; is this  
16 correct?

17 A. Yes.

18 Q. And what are the dates?

19 A. (Inaudible) ... form -- the dates where it starts to begin on  
20 June 20<sup>th</sup>, 2014, and the last entry is on August 23<sup>rd</sup>, 2014.

21 Q. And how many months after the revocation -- when your  
22 revocation was filed did he begin this --

23 A. Almost 10 months.

24 Q. Thank you, sir.

25 MS. GUTIERREZ: May I approach?

1 BY MS. GUTIERREZ:

2 Q. Sir, the defense also showed you a verification sheet for  
3 behavioral health. Do you recall that?

4 A. Yes.

5 MS. GUTIERREZ: Your Honor, may I approach?

6 BY MS. GUTIERREZ:

7 Q. Sir, in that case, (inaudible) are these same documents that the  
8 Defense showed you?

9 A. Yes.

10 Q. Can you give me the dates that they reflect in terms of seeking  
11 out behavioral health services?

12 A. The first form is dated on December 5<sup>th</sup>, 2013, and the last entry  
13 on the first form is February 27<sup>th</sup>, 2014. On the second form the first date is July 16<sup>th</sup>,  
14 2014, and the last entry is on August 20<sup>th</sup>, 2014.

15 Q. You've been given those dates, how many months after the  
16 revocation was filed that this defendant show any interest in receiving treatment?

17 A. Maybe 10 months.

18 Q. In December 2013 (inaudible)?

19 A. I'm sorry. The first entry December 2013, the revocation was  
20 filed in October 22, 2013, two months.

21 Q. During that entire month between December and when you  
22 thought -- when he was taken into custody, did he at any time offer this information to  
23 you?

24 A. I was not in contact with the Defendant at that time, I was not  
25 aware (Inaudible) ...

1 Q. Did he call you?

2 A. No, he was -- there was no contact; that's why the arrest warrant  
3 was filed.

4 Q. Sir, who's obligation is it to inform you of any change in address?

5 A. The Probationer, as he did prior notification -- excuse me, on  
6 August 15<sup>th</sup>, 2013, so he was aware to keep his address updated while on probation.

7 Q. And whose obligation was it to check in with you once a week?

8 A. The probationer's obligation.

9 Q. Probationer's obligation?

10 A. Yes.

11 Q. So is it my understanding that you all tend to be -- that you as  
12 probation officers try to be pretty flexible as --

13 A. Depending on the client's needs, yes.

14 Q. And in this case did you offer some flexibility?

15 A. Yes.

16 Q. And what was the minimum requirement?

17 A. To check in at least and comply with the terms of probation.  
18 Again, if it's struggling making payment to maybe write the Court for extension or --

19 Q. As far as -- I apologize, as far as checking in, what was the  
20 minimum obligation?

21 A. At least once a month (inaudible) ...

22 Q. And in this particular case, how many times was he supposed to  
23 check in?

24 A. At least twice a month, every two weeks.

25 Q. Every two weeks.

1                                 Did he comply with that between July 2013 and October of 2013?

2                                 A.         No. I stated on record.

3                                 Q.         Now, sir, let's talk about this statement that's reflected, just briefly,  
4 in the Order. I just caught up with you where -- so my apologies. It says that you  
5 indicated he should be given another chance and be allowed to go to Men's PATH. You  
6 tried to explain why that was and how could -- first of all, tell me why that was?

7                                 A.         Well, it's a decent gesture. Again, from my understanding that his  
8 son was having complications at birth and that way he could be allowed to be present  
9 during that.

10                                Q.         Now, can you please explain to me, to the Court, to Defense, how  
11 that statement is or is not contradictory with your revocation?

12                                A.         Basically just that to allow him to have the opportunity to be there  
13 and not be incarcerated, to be with his family.

14                                Q.         And how is that not contradictory to your -- your wanting to revoke  
15 him now?

16                                A.         Well, based on that and during the time that I was not in contact  
17 with the Defendant and other charges that were really significant in my way to proceed  
18 with the revocation.

19                                Q.         Do you believe that -- you answered previously when you were on  
20 Direct that you do not believe that he would be compliant. Given that he has been at  
21 Men's PATH and given your response to Defense, I believe the question that you  
22 responded to was whether he's given you any indication that he would --

23                                A.         Prior to -- prior to we established contact, no.

24                                Q.         Has your opinion changed?

25                                A.         At this time, no.

1 Q. And why hasn't it not changed?

2 A. Reflective on the Defendant's history with the Court and non-  
3 compliance and a non-effort to meet his terms of conditions of probation.

4 Q. Do you have doubts that he would comply even now?

5 A. I do have doubts.

6 Q. Given that this is his second time around, what is your established  
7 opinion, having dealt with him and even met with him a couple times, that he wants to  
8 take responsibility?

9 A. I do not believe that it's genuine and that he will not abide by the  
10 conditions of probation, based on his history.

11 Q. Thank you, sir.

12 THE COURT: Any other witnesses?

13 MS. GUTIERREZ: No. Thank you.

14 THE COURT: Do you have a witness, Ms. Enriquez?

15 MS. LEON-ENRIQUEZ: Yes, Your Honor.

16 THE COURT: Okay.

17 MS. LEON-ENRIQUEZ: May (inaudible) the witness.

18 THE COURT: I'm sorry. Thank you.

19 THE WITNESS: Thank you.

20 THE COURT: And your witness' name, Ms. --

21 MS. LEON-ENRIQUEZ: Arnie Kahn.

22 THE COURT: Mr. Kahn, come forward and raise your right hand.

23

24 ARNIE KAHN,

25 Having been duly sworn, testified as follows:

1

2

THE WITNESS: Yes.

3

THE COURT: Go ahead and be seated.

4

Are you chewing gum, Mr. Kahn?

5

THE WITNESS: No. Just finishing a candy bar.

6

THE COURT: Okay.

7

Ms. Leon?

8

MS. LEON-ENRIQUEZ: Thank you, Your Honor.

9

10

#### DIRECT EXAMINATION

11

BY MS. LEON-ENRIQUEZ:

12

Q. Mr. Kahn, will please state your full name for the record.

13

A. Arnie Kahn.

14

Q. What is your occupation, Mr. Kahn?

15

A. I'm a residential substance abuse therapist.

16

Q. Okay. What is your educational background?

17

A. I have a bachelor's of Arts in Sociology and I'm a licensed

18

substance abuse counselor.

19

Q. And how long have you been doing that?

20

A. Twenty-seven years.

21

Q. Are you currently employed?

22

A. Yes.

23

Q. Who are you employed with?

24

A. Pascua Yaqui Tribe.

25

Q. And in what capacity?

1           A.       I'm the residential therapist for the Men's PATH Program, under  
2 Behavioral Health.

3           Q.       And how long have you been there?

4           A.       About three years.

5           Q.       What did you do prior to that?

6           A.       I've been working with a trial and family team in the adult team for  
7 the Center Spirit for two years prior to that.

8           Q.       Now, as a residential therapist, what do you -- what does that  
9 encompass, what is your job?

10          A.       Screening potential clients, and then bringing them in and doing a  
11 comprehensive assessment, diagnosing them, doing a treatment plan with them and  
12 then once they've been admitted, I work with them doing groups and individual therapy,  
13 trying to work on core issues as to why they abused.

14          Q.       Now, Mr. Kahn, have you had the occasion to work with  
15 Mr. Salazar?

16          A.       With Mr. Salazar, yes.

17          Q.       And when did you start working with him?

18          A.       Let's see, I believe he came in the latter part of June of this year.

19          Q.       That was when he first admitted into Men's PATH?

20          A.       Yes.

21          Q.       And in what capacity have you worked with him?

22          A.       As his therapist.

23          Q.       How much contact do you have with him?

24          A.       Well, I'm there 40 hours a week, and because of all the  
25 circumstances that he's had, I've had a lot of contact with him. He's need to talk a lot

1 about some of the things that he's been going through since he first came in with us right  
2 out of detention, I believe.

3 Q. Now, you've had the chance to work with several people, I  
4 imagine people going in and out of Men's PATH, correct?

5 A. Hundreds, yeah.

6 Q. And in the time that you've been working with Mr. Salazar, what  
7 has been your impression as far as his potential for success or ...?

8 A. He came in initially and appeared to be very forthright and sincere  
9 about his recovery, strongly motivated, that he wanted to get treatment as well and  
10 wanted to better his life not only for himself but for his new family.

11 Q. Now, is Men's PATH a facility where people can come and go or  
12 is it a lock-down facility?

13 A. It's not a locked down facility. They do have the freedom to leave  
14 if they want and that's frequently been used by others.

15 Q. Was that ever used by Mr. Salazar?

16 A. No.

17 Q. So during the time that he was at Men's PATH he could have left?

18 A. Yes.

19 Q. Do you, as a therapist or any staff at Men's PATH, help them with  
20 other issues such as appointments, scheduling and so on?

21 A. Yes, everything. We try to be a holistic approach type of therapy.  
22 We engage them in their physical needs, as well as try and work with them spiritually,  
23 emotionally, we help them with any appointments, generally try and get them in touch  
24 with doctors for if they need eye glasses, dental work, physicals, medications,  
25 everything, we try to meet all their needs.

1 Q. Do you provide the transport whenever they have appointments?

2 A. Normally, I personally don't because as a therapist we do a  
3 residential counsel aides that are employed to do that.

4 Q. Now, based on your profession as a therapist, do you feel that  
5 Mr. Salazar is a candidate for therapy? Do you feel that he would be successful in your  
6 program?

7 A. Yeah. He's been highly motivated, despite he's had a lot of  
8 different circumstances coming up both with his child's health and with his girlfriend and  
9 his legal things that he's had come up. There's been a lot of challenges and he's stayed  
10 focused on his treatment, as well. It's been difficult. We're looking forward to working  
11 more with him when we can have him on more of a pretty regular basis without hospital  
12 visits or anything else.

13 MS. LEON-ENRIQUEZ: No further questions, Your Honor.

14 THE COURT: Cross?

15 MS. GUTIERREZ: Yes, Your Honor. Thank you.

16

17 CROSS-EXAMINATION

18 BY MS. GUTIERREZ:

19 Q. Hello, Mr. Kahn, how are you? Pardon me if my voice is not  
20 functioning very well today. If any part of this is unclear, just please tell me.

21 A. Okay.

22 Q. Mr. Kahn, you have many, many years experience, 27 years, did I  
23 get that?

24 A. Yes.

25 Q. Correct, sir?



1 Q. Because it's not relevant to --

2 A. Yeah, but he did bring things up in advance of -- of when they

3 came to him.

4 Q. And I'm just trying to protect --

5 A. Right.

6 Q. -- Mr. Salazar from those proceedings that we don't want to raise

7 that issue for his -- for his own rights.

8 Mr. Kahn, you did write a letter, we received a copy of that letter;

9 is that correct?

10 A. Uh-huh.

11 Q. Okay. Do you recall that letter, sir?

12 A. Yes.

13 Q. And in that letter you indicated that the -- or at least it seems in

14 the letter, which was also addressed to the Court, it seems that the preferred program

15 there at Men's PATH is a 12-step friends (inaudible) ... kind of approach?

16 A. Yes, we have used rational recovery or any other programs that

17 work best for the individual.

18 Q. Yes, sir. Thank you.

19 And is it fair to say that in the 12 steps that an AA model and all

20 models based on that principle kinds of --

21 A. Uh-huh.

22 Q. -- philosophy if you will, that it is really important not only to be

23 forthright but to take responsibility?

24 A. Yes.

25 Q. Is it fair to say that you encourage your clients to take

1 responsibility for their acts?

2 A. Yes. Generally I try and have them feel comfortable with the  
3 program and fitting in with the other peers in the first months, to two months --

4 Q. Yes.

5 A. Before I really work --

6 Q. I'm asking specifically about the steps, sir, is that an important  
7 part of 12 steps?

8 A. It's a part, yes.

9 Q. Thank you, sir.

10 And is it true -- I think it's often in all literature one of the beauty --  
11 one of the pieces of the 12-step philosophy when you're in AA sort of philosophy is that it  
12 can be worked anywhere; is that correct?

13 A. Yeah.

14 Q. Thank you, sir.

15 MS. GUTIERREZ: No further questions.

16 THE COURT: Any Redirect?

17

18 REDIRECT EXAMINATION

19 BY MS. LEON-ENRIQUEZ:

20 Q. Mr. Kahn, you had mentioned your interaction with Mr. Salazar at  
21 the beginning of the program?

22 A. Uh-huh.

23 Q. When a person first enters into the program, are they pretty  
24 forthcoming, right from the start?

25 A. No.

1 Q. So it's a process?

2 A. Yeah, there's trust that needs to be built up over time.

3 Q. Now, Mr. Kahn, do you recall at one point coming in to court with  
4 Mr. Salazar?

5 A. Yes.

6 Q. Do you recall meeting with Mr. Salazar and probation after court?

7 A. Yeah.

8 Q. Okay. Do you remember the conversation that took place during  
9 that meeting?

10 A. Yes.

11 Q. Can you tell us what that was?

12 A. There were serious concerns expressed by the probation officer  
13 as to his past, as far as concerns of him potentially running, but he was acknowledged  
14 for the time that he was there that he had been doing well and it was reinforced by the  
15 probation officer for him to continue doing well and to do whatever was recommended by  
16 the program. It was brought up that he was going to be offered compensatory time, that  
17 whatever time that he was at Men's PATH would go in conjunct -- would count towards  
18 his jail time of whatever length of time he was supposed to be serving.

19 Q. Was it -- was it your impression at that meeting that Mr. Salazar  
20 was being given another opportunity to continue on probation?

21 A. Yes. Yeah.

22 MS. LEON-ENRIQUEZ: No further questions, Your Honor.

23 THE COURT: Okay. Thank you, Mr. Kahn.

24 Any other witness?

25 MS. GUTIERREZ: No, Your Honor.

1 THE COURT: No?

2 Any closing from the Tribe?

3 MS. GUTIERREZ: Yes, Your Honor. If I may have one moment,  
4 please?

5 Thank you, Your Honor.

6 Your Honor, the Tribe stands before you and we ask that the --  
7 the Court consider this case for revocation and to impose the -- the time that has been  
8 suspended on this -- this defendant and it seems a unique and peculiar hearing in light  
9 of that recommendation of the charges just made. Your Honor, presenting this with full  
10 disclosure and honesty.

11 The Tribe understands that there have been four specific  
12 allegations made for revocation. The Tribe would first like to discuss those and then  
13 discuss the issues that arise -- arose during the course of the testimony.

14 Your Honor, historically and procedurally the lay out of this case is  
15 that this particular defendant began probation -- excuse me, Your Honor -- in September  
16 of -- September 26<sup>th</sup>, of 2012. At that time he was given the opportunity to do a full year  
17 in lieu of serving 90 days. Shortly after that, at the beginning of probation, he was  
18 initially revoked. He was given a second opportunity and that second opportunity is what  
19 we're looking at here. That second opportunity he began on or about July 17, of 2013.  
20 He had an opportunity to -- for another six months to just follow probation for another six  
21 months until December 26<sup>th</sup> of 2013. That didn't happen and this is where our  
22 allegations come in to play.

23 The first allegation asked to the reporting to probation officer once  
24 a week. Your Honor, this was not Mr. Salazar's first rodeo. He knew the conditions that  
25 he was to abide by. He had all of the documentation from the first time around. He

1 clearly had some experience with probation, had had some contact with the probation  
2 officer the first time around, he knew what the expectations were and still did not meet  
3 them. He was revoked but given a second opportunity, and yet again, he did not comply  
4 by even the standard of conditionings of checking in once a week or even as directed by  
5 the probation officer twice a week.

6 Now, it may not be that he was given specific dates or a specific  
7 hour at which he had to check in or present himself in probation. Nevertheless, the fact  
8 of the matter is, is he's an adult. Probation is a privilege, not a right, Your Honor. It was  
9 privilege that this unfortunate -- unfortunately that this probationer did not take seriously.  
10 In fact, he found (inaudible) ... and did not comply.

11 He also did not comply by the second allegation by not complying  
12 with the Standard of Conditions of Probation Number 8, of notifying the probation officer  
13 of permanent address. And when they say, well, he did notify initially, and yes, he did.  
14 He did make one notification and then was completely unavailable to in any way, shape  
15 or form show or confirm that that was his actual address. Subsequently, after his then  
16 girlfriend calls the probation officer, the girlfriend says: I haven't heard from him, don't  
17 know where he is, have no idea. It was never Mr. Salazar and it was solely his  
18 obligation, his contract with this Court to check in and make sure that this Court and this  
19 probation officer were always aware of his whereabouts.

20 Along those same lines he did not pay for his probation fees  
21 between August and October of 2013. Now, as the testimony indicated he was originally  
22 supposed to be at \$240.00, and though he did make some initial payments, they were  
23 then -- they were then discontinued and actually in this second phase of revocation, they  
24 were forgiven. And even then, even though he had been forgiven a huge chunk of that  
25 responsibly, he still failed to make any attempt to pay for the last three months which

1 were a courtesy extension by this Court to allow him one more opportunity to follow  
2 through with the Orders.

3 In all fairness, Your Honor, as to allegation Number 4, Special  
4 Condition of Probation Number 18, shall obtain counseling and verification. As it turns  
5 out (inaudible) ... there was documentation that he had turned in, back in 2012 I believe  
6 or 2013, the -- in good -- in all fairness and good faith we have to -- the Tribe would have  
7 to ask that the fourth allegation be dismissed at this time, Your Honor.

8 Now, Your Honor, I would like to discuss briefly some of the  
9 complications and contradictions that arose. Your Honor, there was a private  
10 conversation apparently that occurred at -- or statements that were made when counsel  
11 was not present. Specifically there were statements that occurred between parties  
12 specifically the probation officer, the probationer and perhaps even his counselor that  
13 occurred that, one, the Tribe has no verification, cannot confirm or deny in any way, but  
14 would also like to address those. The issue before the Court is very narrow. That issue  
15 is that as of the filing of the document, the revocation, on October 22<sup>nd</sup>, 2013, where all  
16 of these conditions, the allegations, he was not in compliance.

17 I believe that the testimony and documentation has shown that in  
18 deed, this Defendant was not in compliance. In fact, he didn't decide to abide by any of  
19 the contract that he made with this Court and with this probation officer. He actually  
20 didn't decide -- decide to start complying until he felt he wanted to. That's not the plan;  
21 that's not the agreement. This is a privilege granted to him for not having to serve his  
22 time and now he -- he decides after nine months of being on a warrant, knowing that  
23 he's on a warrant, to come forth and say, hey, now it's on my terms; I'm going to -- I'm  
24 going to abide by all these things and just forgive me because now I want to abide by the  
25 terms of this contract.

1                   It is unfortunate but nevertheless it is an Order of the Court that  
2 he has not complied with. We cannot have confidence that given another opportunity  
3 that he will decide, well, I'll comply now. He'll continue to comply because it behooves  
4 him to or one day he may decide, oh, well it's not convenient to me so um, I'm out of  
5 here; I don't have to really comply by this contract. It's an agreement, and even though I  
6 signed it and I dated it and I was in court and I agree to it, it doesn't really apply to me.  
7 Nevertheless, here we are and we've shown by a preponderance of the evidence that he  
8 hasn't met the original -- the original probationary conditions.

9                   And then we have Mr. Kahn, who with all due respect comes in  
10 and says honestly that what he believes to be the -- his understanding of his probationer,  
11 and with all due respect, I think he wants this probationer to do well, and I think he has  
12 the probationer's -- he wants the probationer to (inaudible) to follow through in way that  
13 he imagines the probationer wants to do it. However, it comes down to the bottom line  
14 which is part of any of these treatments as Mr. Kahn even conceded is to take  
15 responsibility. And although Mr. Salazar may have been forthcoming in terms of other  
16 facts of his life, he was not forthcoming in one of the biggest facts of his life, that he had  
17 a revocation out there, he had broken the law, he had broken the contract with the Court  
18 and he had a warrant out for his arrest. It wasn't until after the warrant was executed  
19 that he admitted it.

20                   This is a huge area of truth that just didn't come into his treatment  
21 and that's unfortunate, but it's part of him following through with all of his obligations and  
22 getting along, he also must take responsibility. And this is part of growing up and being  
23 responsible for what you've done and the promises that you've made, including a  
24 contract with the Court. So with all due respect, Mr. Salazar was not as forthright as  
25 perhaps one would like to believe in terms of all aspects of his life, especially having

1 broken the law.

2                   Second of all, his being in treatment does not preclude, nor does  
3 it excuse his responsibility in following the orders of the Court and the contract that he  
4 made and agreed to be on probation and then not following through on any of it.

5                   And last but not least, Your Honor, the Tribe's intent is not to  
6 create discourse with this young man; that doesn't allow him to get on a better path.  
7 However, the discourse here is about making him responsible and accountable for his  
8 actions in this community and for having broken the law. Given that, Your Honor, we do  
9 believe that revocation inappropriate and we also believe that 90 days does not preclude  
10 him from continuing to do the steps, from continuing to do his program and continuing on  
11 his path to make the things in his life correct, to correct those things which produced  
12 wrongs in the past and to be able to be accountable and understand what accountability  
13 means in the larger picture. We do believe that revocation is in order here, Your Honor,  
14 and we do ask that he serve all his suspended days.

15                   THE COURT: Okay. And Ms. Leon-Enriquez?

16                   MS. LEON-ENRIQUEZ: Thank you, Your Honor.

17                   Your Honor, there are several issues and problems with this case  
18 and I'll start by discussing just some of the issues and then going into the different  
19 allegations, Your Honor. First of all, Your Honor, as to conditions -- as to the first two  
20 allegations in the Petition to Revoke. First of all, Your Honor, the Petition to Revoke is  
21 not in proper form. By that, I mean that the Petition fails to indicate the efforts made by  
22 the proba -- by the probationer and fails to provide the probationer's last address. If the  
23 Court looks at the initial -- or the first Petition that was filed in this case, it indicates in  
24 that Petition what the probationer's last known address was and the attempts made by  
25 probation. These are requirements within the Tribal Code, under 4PYTC Section 4-

1 130(e), Subsection (a)3 and 4PYTC 130(e), Subsection A and Subsection 4.

2 The second issue with the -- with the at least the -- actually with  
3 all the allegations in this case, Your Honor, is that the probation failed to give probationer  
4 a written copy of the conditions as required under 4PYTC 130 Subsection C 2(b) which  
5 states that probation shall not be revoked for violation of condition or regulation of which  
6 the probationer has not received a copy. Although the Tribal Code doesn't go into  
7 explaining what this section means, there is Arizona law that's instructive on this issue,  
8 Your Honor, and that would be State versus Arizona, 177 Ariz. 543. In that case, Your  
9 Honor, the facts were similar where the probationer was placed on probation, the Court  
10 issued the standard conditions of probation, however as to the conditions for which the  
11 Petition was revoked, there were conditions that he was required to do, a certain amount  
12 of counseling. In that case this person was supposed to attend Doves but there was no  
13 written order to that effect. And although the Defendant acknowledged that he had been  
14 told about it, the Court found that he was required to give notice of that specific -- of that  
15 specific allegation.

16 In this case, Your Honor, Mr. Salazar was placed on probation as  
17 I indicated on September 26<sup>th</sup>, 2012. The Court did issue the written Probation Order.  
18 In the Probation Order it states that probation begins on September 26<sup>th</sup>, 2012, and  
19 terminates on September 26<sup>th</sup>, 2013. At that time, Your Honor, Mr. Salazar did sign the  
20 Standard Conditions of Probation in court on the 26<sup>th</sup> and in the Order it said that he was  
21 to -- the condition in both the Order and the Standard Conditions were general directives  
22 that the probation report to probation as directed by probation.

23 At that time, Mr. Salazar met with the probation officer on  
24 October 5<sup>th</sup>. At that time he signed the intake forms, he signed the -- I believe there was  
25 the acknowledgement forms showing that the was on probation, the terms of the

1 probation, the dates that he was supposed to go to probation, the counseling form --  
2 release form, and he was -- and he signed the form acknowledging all of these  
3 conditions, so he actually received something in writing at that time. He was also  
4 provided the dates as I mentioned that he was supposed to check in with probation from  
5 October 22<sup>nd</sup> to April 29, 2013, so he actually received a copy on that -- for those dates.

6                   While, once again, the Tribe talks about this being a contract  
7 between the probationer and the Court or probation. Well, the form that Mr. Salazar  
8 signed was an acknowledgement that he was on probation for the term of  
9 September 26<sup>th</sup>, 2012, terminating September 26, 2013. Those were the conditions that  
10 he acknowledged with probation. Probation never indicated that when this Court  
11 entered the extension of the probation, probation officer indicated he -- he met with  
12 Mr. Salazar after that date, he never went over the new conditions for the new period of  
13 probation, the extension of probation from September 26 through December 26 of 2013,  
14 so he received nothing in writing regarding that part of the contract.

15                   And although the Court did issue the Order saying in the case of  
16 State v. Robinson that he was extended on probation, probation should have met with  
17 him and had him sign the new conditions the way they did when the probation officer  
18 met with him when he came in on the second revocation and he signed the Modification  
19 of Conditions, and I believe that's when (inaudible) that's before the Court.

20                   So in this case, Mr. Salazar was not given notice of these  
21 changes in writing and he didn't sign any paperwork showing that he understood the  
22 terms of -- of those new conditions as stated by the Tribe, (inaudible) contract between  
23 probation and the probationer.

24                   With the Condition Number 2, Your Honor, that one also is not in  
25 proper form, basically for the same issues, that the Petition does require that the last

1 known address and the attempts to locate be on there.

2                   Additionally, with regards to the reports, Your Honor, the  
3 probation stated -- probation officer stated that he attempted contact at the girlfriend's  
4 home on October 18<sup>th</sup>. He says that he -- I believe he made a physical contact but no  
5 one was there. He didn't know whether probationer still lived in the home or not. He -- it  
6 wasn't until he received a call back from Defendant's girlfriend saying that she hadn't  
7 heard from him in over a month, that the same day he filed a Petition to Revoke. Now,  
8 in the conversation there's no indication whether he was still at the address or whether  
9 there was an actual change of address. There was nothing in probationer's testimony or  
10 in his notes that he had actually gone to the home to verify that Mr. Salazar no longer  
11 lived at that address, because based on the conversation that he had by phone, he filed  
12 a Petitioner to Revoke.

13                   With the third condition, Your Honor, the one with the payment to  
14 probation, the probation officer did testify that Mr. Salazar had made attempts to pay  
15 probation, so probation officer was aware of the limitations on Mr. Salazar's income and  
16 the fact that he was attempting to make some effort to pay his probation fees. As a  
17 matter of fact, I believe there was the last payment on August according to the notes  
18 from the probation officer's files.

19                   And with the last condition, Your Honor, the -- I believe the Tribe  
20 has indicated that even though this was a violation or an allegation in the Petition to  
21 Revoke as far as Mr. Salazar not completing his counseling, testimony and evidence did  
22 come up that he, in fact, did submit to the verification back in August of 2013 and the  
23 Tribe has petitioned this Court to dismiss that allegation. Your Honor, based on just  
24 those issues, I would say -- I would ask what other information might be missing from --  
25 from the notes in this case.

1                   Your Honor, other mitigating factors in this case, I know that  
2 Mr. Arnie Kahn testified with regards to how Mr. Salazar has been doing since he's  
3 entered Men's PATH and I believe the Court has a copy of that letter. But the other --  
4 the other important thing in this matter, Your Honor, is that on July 17<sup>th</sup> of this year, after  
5 probation had filed the second Petition to Revoke, Probation Officer Rojas presented  
6 himself before this Court and told this Court that he wished to work with Mr. Salazar, that  
7 Mr. Salazar should be given another opportunity. The testimony from Mr. Rojas was  
8 also that there -- from the date that he told Mr. Salazar that he wished to work with him  
9 and told this Court that he wanted to give him another opportunity, there was no reason  
10 after that for -- for probation to think that Mr. Salazar would not comply.

11                   Also, Your Honor, I know that probation officer indicated that the  
12 reason that he told the Court that he wanted to work with Mr. Salazar, that he thought  
13 Mr. Salazar should be given another chance was so that he could go to Men's PATH  
14 and be with his family. However, as testified by actually both Probation Officer Rojas  
15 and Mr. Kahn, there was a conversation after the hearing on the 17<sup>th</sup> where Probation  
16 Officer Rojas met with Mr. Salazar, with Mr. Kahn, with Mr. -- and with myself where he  
17 indicated that he was giving him another chance and this would be his last chance on  
18 probation. This was after the second petition was filed.

19                   Your Honor, as stated by the Tribe, when -- when promises are  
20 made -- my apologies -- when promises are made, the promises have to go both ways,  
21 Your Honor. The Tribe is indicating that Mr. Salazar made promises that he would  
22 comply, but in this case, probation officer Rojas also told this Court and told Mr. Salazar  
23 and the other persons that were present that he was giving Mr. Salazar another chance,  
24 and since that time, Probation Officer Rojas indicated there was nothing in the record to  
25 show that Mr. Salazar hadn't been complying with that or that he wouldn't comply.

1                    Since the time that the officer -- Officer Rojas told this Court that  
2 he was giving Mr. Sal -- wanting to give Mr. Salazar another chance, Mr. Salazar  
3 remained at Men's PATH and this was since June of this year. Since that time he also  
4 provided counseling, the extra counseling sessions that he attended, he provided the  
5 community service hours which were -- are not even an allegation in the Petition to  
6 Revoke, he -- he had already provided the intake and assessment.

7                    One of the other things that the Tribe brought up was the fact that  
8 Mr. Salazar was not forthcoming with -- with his therapist when he first entered into  
9 treatment; however, it was stated by the therapist when people first go in to treatment,  
10 they don't come off being forthcoming. It's a process that they go through and  
11 Mr. Salazar dealing with whatever issues he had is part of that process now.

12                    Finally, Your Honor, this court prosecutors, our office, probation's  
13 office, everyone works very hard to try and get persons that are in the system to try to  
14 work on bettering themselves so that they get out of the system so they don't become  
15 part of that revolving door. Many of the people that go through the system aren't ready  
16 to make the changes and it's very evident because they do nothing once given another  
17 chance. Here, Mr. Salazar has shown that he's willing to comply. It was very easy for --  
18 it would have been very easy for Mr. Salazar, being at Men's PATH, to have left the  
19 facility. If he wasn't going to comply, he had every opportunity, he just leaves the  
20 reservation, doesn't return and that's done, but he did not do that in this case, Your  
21 Honor. He's had several opportunities in which he could have left but he didn't do that  
22 because he's showing the Court that he's willing to comply.

23                    When -- when Mr. Salazar knew that he had a warrant, that didn't  
24 stop him from presenting himself before the Court, either, Your Honor. He presented  
25 himself despite knowing that he had -- that he ran the possibility of being taken into

1 custody.

2                   Your Honor, for the reasons given above we would ask the Court  
3 to continue Mr. Salazar on probation, to let him continue to show this Court that he will  
4 comply. This Court does have the power revoke, modify or continue probation pursuant  
5 to 4PYTC 4-130(c)2V. Officer Rojas told Mr. -- told this Court and told Mr. Salazar that  
6 he should be given another chance and nothing has changed since that time. In fact,  
7 Mr. Salazar has been showing this Court that he is complying and even facing jail, he  
8 continues to comply, Your Honor, over the 12 -- over the past 12 months he has  
9 successfully completed counseling, he's done his community service hours, he's had  
10 many issues to deal with as testified to by Mr. Kahn and he's been working very hard to  
11 work with these issues, Your Honor, and he wants to be a productive member of this  
12 community and he's asking the Court to give him that opportunity. Thank you.

13                   THE COURT: Any rebuttal?

14                   MS. GUTIERREZ: Just briefly to --

15                   THE COURT: Very briefly, please.

16                   MS. GUTIERREZ: Yes, just a (inaudible) out the record, Your  
17 Honor.

18                   The Defendant did appear on July 17<sup>th</sup> of 2013 before the Court  
19 and that was the original modification on which the second revocation was based and  
20 that was in the contract with the Defendant. The Defendant was well aware of the  
21 (inaudible) requirement and just according to the -- just briefly, Your Honor, the  
22 argument as to whether there were technical problems with the Petition. The Petition  
23 does fulfill the requirements under 4PYTC 4-130, Motion to Revoke by probation officer  
24 which just needs to state that he reasonably has cause to believe that probationer has  
25 violated a written condition or revocation of probation. The violation was a written one

1 and the condition was made aware -- the probationer was made aware of that condition  
2 -- all of these conditions, Your Honor. So just to address those issues on the record.  
3 Thank you.

4 THE COURT: Having heard the testimony, closing arguments,  
5 the Court finds that the Court is only required to consider whether the defendant did or  
6 not did abide by the conditions of probation as imposed by the Court, whether there  
7 were promises made, whether there was other conversations, whether defendant  
8 (inaudible) ... now, I just have to consider if defendant or the defendant not comply with  
9 the conditions of probation.

10 In this matter the Court extended, as all parties have made the  
11 Court aware and the Court has been aware that the Court did extend Defendant's  
12 probation on July 17, 2013, and it's -- and it's the Court's Order on that day the Court  
13 ordered Defendant's probation term extended to December 26, 2013 and defendant  
14 shall comply with all previously imposed conditions of probation.

15 I don't find any cause to dismiss the Motion for Revocation of  
16 Probation. Defendant was directed by the Court to comply with any and all conditions of  
17 probation that the Court had previously imposed and the Court had previously imposed  
18 the condition -- the original conditions of probation which the defendants also signed.  
19 The Court imposed that original conditions of probation on April 4<sup>th</sup>, 2013 -- I'm sorry, I'm  
20 reading that wrong -- per the agreement, the Court did impose the -- on September 25<sup>th</sup>,  
21 2012, the Court did impose, per the agreement, the conditions of probation, extended  
22 the modification on July 7<sup>th</sup> -- granted the modification on July 17, 2013, and in its Order  
23 again the Court ordered defendant to comply with the original conditions of probation.

24 Court finds that the Defendant has violated the conditions of  
25 probation by preponderance of evidence and clear and convincing evidence defendant's

1 probation will be revoked. Let me hear recommendations.

2 A VOICE: Thank you, Your Honor, good afternoon. The  
3 Defendant in custody has a September (inaudible) in this matter, calendar day of 245  
4 days of the year, we'd ask the Court to impose the original suspended days of 90 days in  
5 this matter and that setting a release date on or about December 1<sup>st</sup>, 2014. Thanks,  
6 Your Honor.

7 THE COURT: Tribe?

8 MS. GUTIERREZ: We would agree with that, Your Honor, this is  
9 at your discretion. My understanding is that after the first revocation in -- on April 4<sup>th</sup> of  
10 2013 the -- Mr. Salazar dispensed six days in custody when he was picked up on  
11 warrant. Again that's to give a credit for those days it's at your discretion, Your Honor,  
12 I'm just trying to be forthcoming in terms of the actual days. Also, when he was picked  
13 up on the second warrant, believe July 14<sup>th</sup>, he was seen before the Court on July 17  
14 and then subsequently released, so that's three days I believe he was in custody. And  
15 now, I believe there are between September 2<sup>nd</sup> and September 10<sup>th</sup>, there are eight  
16 days in custody, Your Honor, so we just -- we concur with all of the recommendations  
17 that the 90 days being posed we would leave it at the Court's discretion to give credit or  
18 not for the days that this probationer has -- did spend in custody for the prior warrants,  
19 Your Honor.

20 THE COURT: Mr. Rojas?

21 OFFICER ROJAS: We concur, Your Honor.

22 THE COURT: Ms. Leon-Enriquez?

23 MS. LEON-ENRIQUEZ: Your Honor, just kind of going back with  
24 -- with regards to the change of plea in this case, back in -- I think back in April of 2012,  
25 Mr. Salazar was taken into custody. At that time, I believe it was in June of 2012, the

1 prosecutor had extended a plea for the 180 days, 90 days to be served and 90  
2 suspended for 12 months of probation, he had a court date of July 18<sup>th</sup> -- on July 18<sup>th</sup>  
3 which would have been the 83 days that he had already served as of that date, or  
4 thereabouts. At that time, back in June, I received an email from prosecutor saying that  
5 there was a writ from Mr. Salazar to go on to -- being picked up by the County, so as  
6 part of the conversation the prosecutor had agreed to give him Mr. Salazar credit for the  
7 time served; he would have already served it in July, back when this was all being  
8 agreed on.

9                   When Mr. Salazar took the plea in September he continued in  
10 custody in County at that time, Your Honor, but Mr. Salazar took the plea in September  
11 of 2012. At that time he had already served 152 days, Your Honor, including the -- he  
12 continued under bond when he was taken up to Pima County and I believe in the -- in  
13 the plea the Tribe had indicated that they would leave it to the Court if the Court agreed  
14 to accept the plea to give him credit for the time that he had served up to that time. I  
15 believe that was part of the plea agreement, Your Honor.

16                   THE COURT: It was in the plea agreement?

17                   MS. GUTIERREZ: I don't see it in the pleas agreement.

18                   MS. LEON-ENRIQUEZ: I believe it's on Page 3, Number 6.

19                   THE COURT: Number 6, okay.

20                   MS. LEON-ENRIQUEZ: It says the Tribe has not -- has no  
21 (inaudible) ... for Defendant, pending approval by discretion of the Court, so that would  
22 have been part of the plea agreement.

23                   MS. GUTIERREZ: Your Honor, and I believe that's in -- I'd have  
24 to look at the actual document, but I believe that's in terms of the time served here.

25                   MS. LEON-ENRIQUEZ: That was not the -- he had already

1 served the time at the time the plea offer was made then.

2 THE COURT: I can only go by what was in the plea agreement at  
3 the time.

4 MS. LEON-ENRIQUEZ: Right, and that is part of the plea  
5 agreement.

6 THE COURT: It doesn't specify dates or anything. I don't know  
7 what agreements you had or what telephone conversations were made. It's not in the  
8 plea agreement.

9 MS. LEON-ENRIQUEZ: But it does state on the (inaudible) that  
10 he would -- in Number 6, the Tribe wouldn't object to time already served, well he served  
11 152 days at that time. He was in custody and on bond for this court from April 26  
12 through the change of plea date of September 12<sup>th</sup>, that's a 152 days.

13 THE COURT: And that's at the discretion of the Court.

14 MS. LEON-ENRIQUEZ: Right, but the Court had accepted plea  
15 agreement so I would imagine that the Court would have accepted that portion of the  
16 plea also.

17 THE COURT: If the Court had accepted it, it would be the Court's  
18 Order and it's not in the Court's Order. If the Court had accepted that --

19 MS. LEON-ENRIQUEZ: (Inaudible) days.

20 THE COURT: I had no -- no knowledge of any -- any days, other  
21 than what the -- what's in the plea agreement. I -- I didn't know about these dates. I  
22 read the discretion part of the -- of what you're pointing out to the Court but that's not  
23 under the -- under the terms and conditions of the plea agreement.

24 MS. LEON-ENRIQUEZ: Right, Your Honor, --

25 THE COURT: The only terms and conditions are the ones that

1 are spelled out and that's consistent with the following additional terms but nobody  
2 explained that to the Court. That -- that's what the Court would be agreeing to. I -- I  
3 don't recall that.

4 MS. GUTIERREZ: And honestly, Your Honor, I don't think that  
5 was the intent. The intent was as it was agreed at that time, the order that the 90 days  
6 was credit for time served and the balance would be suspended, 90 days would be  
7 suspended and that was the agreement at the time of the issue of the Order. As far as  
8 Mr. Salazar being riddled over, the only agreement I would have ever made at that time  
9 was for there to be a motion made but no motion was ever made to my -- to my  
10 knowledge.

11 THE COURT: I'm sorry, Ms. Leon-Enriquez, but I don't agree  
12 with your -- your explanation. If the Court was going to give the Defendant credit for time  
13 served, at the discretion of the Court that would have been included in the Court's Order  
14 or the Court would have ordered the plea agreement to be modified to include those  
15 terms and conditions.

16 MS. LEON-ENRIQUEZ: (Inaudible) my argument, Your Honor, is  
17 the fact that that was one of the terms in the -- in the -- in the plea and the Court didn't  
18 reject the plea as written.

19 THE COURT: I'm not going to give credit for time served for the  
20 Defendant other than the 17 days that -- that -- that I feel that apply in this matter, and  
21 that was 90 days, am I correct?

22 MS. GUTIERREZ: Correct.

23 OFFICER ROJAS: Correct, Your Honor.

24 THE COURT: At this time the defendant will serve the 90 days  
25 suspended in jail with credit for time served, the 17 days, leaving the balance of 73 days,

1 and those will be served immediately, and (inaudible) for is dismissed, allegation for  
2 (inaudible) is dismissed.

3 Is there anything further?

4 MS. LEON-ENRIQUEZ: No, Your Honor.

5 MS. GUTIERREZ: No, Your Honor.

6 THE COURT: The Court's adjourned.

7 THE BAILIFF: All rise.

8 (Whereupon the digital recording was terminated.)

9 \* \* \* \* \*

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1 PASCUA YAQUI PUBLIC DEFENDER  
7474 S. Camino de Oeste  
2 Tucson, Arizona 85757

3 Patricia Leon-Enriquez, Esq.  
4 PYT Bar No. 10186  
Attorney for Appellant

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

8 PASCUA YAQUI TRIBE,

9 Appellee,

10 vs.

11 SALAZAR, FREDDY JOSE,

12 Appellant.  
13

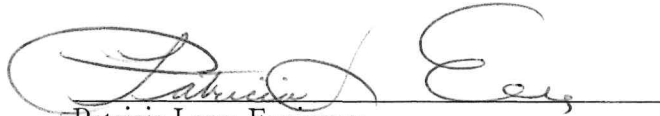
Case No. CA-14-006  
Tribal Court No. CR-12-139

14 NOTICE OF ARRANGEMENTS  
15 REGARDING TRANSCRIPTS

16 Appellant Freddy Jose Salazar, through counsel and pursuant to Section 3 PYTC §2-3-110(F)(4),  
17 Pascua Yaqui Rules of Appellate Procedure, respectfully gives notice of the arrangements made with Kathy  
18 Fink & Associates, Certified Court Reporters for payment of transcripts at a price of \$296.00. The record is  
19 currently being transcribed therefore the exact number of pages is still unknown. It is anticipated that the  
20 transcripts will be received and filed by October 6<sup>th</sup>, 2014.

21 DATED this 2<sup>nd</sup> day of October, 2014.

22 PASCUA YAQUI PUBLIC DEFENDER

23 

24 Patricia Leon-Enriquez  
Senior Staff Attorney

25 ORIGINAL e-mailed this date  
26 PYT Court of Appeals:

27 COPY of the foregoing hand-delivered this date  
28 PY Prosecutor's In-Box by:

1 PASCUA YAQUI PUBLIC DEFENDER  
7474 S. Camino de Oeste  
2 Tucson, Arizona 85757

3 Patricia Leon-Enriquez, Esq.  
4 PYT Bar No. 10186  
Attorney for Appellant

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

8 PASCUA YAQUI TRIBE,  
9

10 Appellee,

11 vs.

12 SALAZAR, FREDDY JOSE,

13 Appellant.

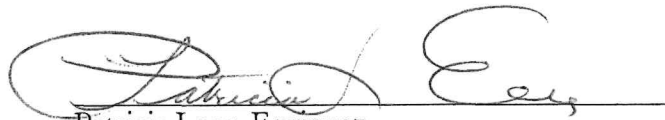
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23 Patricia Leon-Enriquez  
24 Senior Staff Attorney

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28 PY Prosecutor's In-Box by:

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

3  
4 Patricia Leon-Enriquez,  
Counsel for Appellant

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

8 PASCUA YAQUI TRIBE,

9 Plaintiff/Appellee,

10 vs.

11 SALAZAR, Freddy Jose,

12 Defendant/Appellant.

) Court of Appeals Case No:

) Trial Court Case No.: CR-12-139

) NOTICE OF APPEAL

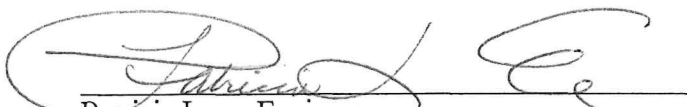
) (EXPEDITED)

13  
14 Pursuant to 3 PYTC §2-3-90, Pascua Yaqui Tribe Rules of Appellate Procedure, counsel for  
15 Appellant Freddy Jose Salazar, respectfully files a Notice of Appeal in the Appellate Court from the  
16 Judgment and Order finding Defendant in Violation of his Probation in the Pascua Yaqui Tribal Court on  
17 September 10, 2014. A Copy of the Court's Order is attached hereto as required by Section 90, Pascua  
18 Yaqui Rules of Appellate Procedure.

19 The Appellant further requests that this appeal be expedited as Mr. Salazar is currently in custody.  
20 Additionally, Appellant requests that the Court enter an order directing the Clerk of the Pascua Yaqui Tribal  
21 Court to prepare and submit the records in an expedited manner and that the briefing schedule be expedited  
22 for the same reason.

23 DATED this 12<sup>th</sup> day of September, 2014.

24 PASCUA YAQUI PUBLIC DEFENDER

25  
26   
27 Patricia Leon-Enriquez  
28 Counsel for Defendant

PYTC 14/09/12 AM 09:21

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2 ///  
3 ///

4 CERTIFICATE OF SERVICE

5 I hereby certify that the original copy of the Notice of Appeal was delivered this date to:

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

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

11 Pascua Yaqui Tribal Court  
12 7474 South Camino de Oeste  
13 Tucson, AZ 85757

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

15 Guadalupe Gutierrez  
16 Deputy Prosecutor  
17 Office of the Prosecutor of the Pascua Yaqui Tribe  
18 7474 South Camino de Oeste  
19 Tucson, AZ 85757

20 DATED this 12<sup>th</sup> day of September, 2014.

21 PASCUA YAQUI PUBLIC DEFENDER

22   
23 \_\_\_\_\_  
24 Monique Ramsey  
25 Office Manager  
26  
27  
28

1  
2  
3 IN THE PASCUA YAQUI TRIBAL COURT

4 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

5 PASCUA YAQUI TRIBE )  
6 Plaintiff )  
7 VS. )  
8 Salazar Freddie, )  
9 Defendant )  
10 \_\_\_\_\_ )

NO. CR-12-139

ORDER

11 The Trial hearing on the Motion To Revoke Probation was held on September 10,  
12 2014.

13 Present were: Probation Officer Gerardo Rojas; Guadalupe Gutierrez for the Tribe;  
14 the defendant in custody and with legal counsel Patricia Leon-Enriquez.

15 The Court finds that, after hearing testimony from the Tribe and defendant witness,  
16 after reviewing evidence, after ruling on objections and on motions and after hearing closing  
17 arguments, that the Tribe and the Probation Officer have proven by preponderance of evidence  
18 and clear and convincing evidence, that the defendant violated his conditions of probation by  
19 not reporting in to the Probation Officer, by not paying the probation fees and by not  
20 providing a current address to probation; that the Court findings in reaching this decision  
21 were that the defendant was aware of what the terms and condition of probation were as the  
22 Court in it's order of July 17, 2013 clearly ordered the defendant to comply with all previously  
23 imposed conditions of probation when the Court found the defendant in violation of his  
24 probation conditions and extended the probation term, and further that the Court can only  
25 consider whether the defendant violated the conditions of probation at the time the Motion To  
26 Revoke was filed, and the Court cannot consider anything that happened, what was said  
27 between the parties or what the defendant has done after the defendant appeared before the  
28 Court on the executed Bench Warrant; that the Probation Officer and the Tribe make  
disposition recommendations which include revoking the probation term and impose the 90  
suspended jail days and the Tribe recommends credit for time served of 17 days and Probation  
has no objections; that defendant counsel moves the Court for additional time served as  
pursuant to the terms and conditions of the plea agreement the Court was going to give credit  
for time served for any days defendant served in custody and that the served more that 90  
some days prior to the plea agreement hearing; that the Tribe objects that specific terms was  
not meant for that particular reason; that the Court will deny the motion for additional credit  
for time served as the Court did not include that specific conditions in it's order of September  
25, 2012 and credit for time served of 17 days will be granted; that the Court will grant the  
Tribe and Probation Officer's motion to dismiss allegation four.

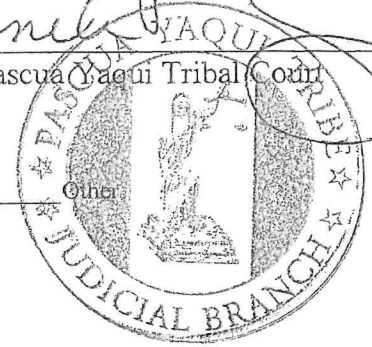
29 IT IS ORDERED THAT, allegation Four is dismissed with prejudice and the  
30 defendant is found in violation of his conditions of probation and defendant's probation term  
is revoked and the suspended 90 days are reinstated with credit for time served of 17 days and

1 the balance of 73 days shall be served immediately and defendant shall be released from  
2 custody to the streets on NOVEMBER 22, 2014 AT 8:00 A.M.

3 SO ORDERED THIS 10<sup>th</sup> DAY OF September, 2014.

4  
5 Cornelia Yaqui  
6 Judge, Pascua Yaqui Tribal Court

7 Date: Sept. 11, 2014  
8 Ccl. Tribe ✓ Defendant/Counsel ✓ Probation ✓ Detention ✓ Other \_\_\_\_\_  
9 D. Cebal  
Clerk



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