

No. CA-16-002
Pascua Yaqui Court of Appeals

Pascua Yaqui Tribe, Appellee,

vs.

Gabriel Encinas, Appellant,

Appeal of a decision of the Pascua Yaqui Trial Court Order in Case No. TR 16-15448, the Honorable Cornelia Cruz presiding.

Guadalupe Gutierrez, Office of the Prosecutor of the Pascua Yaqui Tribe, 7777 Camino Huivisim, Tucson, AZ for the Appellant.

Thomas Wilson, 177 North Church, Suite 1000, Tucson AZ 85701 for the Appellant.

Order Summarily Dismissing Appeal CA-16-002

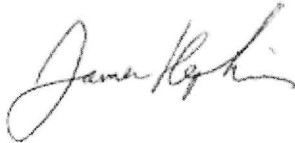
The Administrative Attorney for the Tribal Court filed the Index & Transmittal as per 3 PYTC § 2-3-110 (B) on July 15, 2016. Pursuant to 3 PYTC § 2-3-110 (F)(2) if Appellant “intends to argue on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such a finding or conclusion.” Appellant had 30 days from the date the notice of appeals was filed to submit a transcript to complete the record, meaning that the transcript was due on July 18, 2016. Appellant failed to submit a transcript within the time frame allowed by the Code.

Pursuant to 3 PYTC § 2-3-120 (B), the Chief Justice may summarily dismiss the appeal if the appellant fails to timely file the record. Part of the record includes a transcript or electronic recording of Tribal Court proceedings relevant to the appeal.

As such, I summarily dismiss this appeal.

So **ORDERED** this 27th day of July 2016__.

Issued by PYCA July 27, 2016



Chief Justice Hopkins

Sent via electronic mail this 27th day of July 2016 to:

Guadalupe Gutierrez
Office of the Prosecutor, Pascua Yaqui Tribe

Thomas Wilson
Counsel for Appellant

1 PASCUA YAQUI TRIBE
2 OFFICE OF THE PROSECUTOR
3 7777 S. Camino Huivisim
4 Bldg. A, 2nd Fl.
5 Tucson, AZ 85757
6 (520) 879-6251

7
8 Guadalupe Gutierrez
9 Deputy Prosecutor

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

11 **IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, ARIZONA**

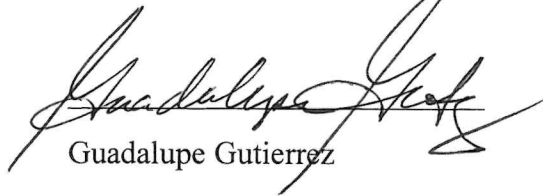
12	GABRIEL ENCINAS)	Trial Court Case No.: TR-16-15448
13	Appellant,)	
14	vs.)	Appeals Court Case No. CA-16-002
15)	NOTICE: APPELLEE'S
16)	REQUEST FOR ORAL
17	PASCUA YAQUI TRIBE)	ARGUMENT BEFORE PANEL
18	Appellee)	
19)	
20)	

21 COMES NOW the Pascua Yaqui Tribe, by and through counsel
22 undersigned, respectfully requests oral argument pursuant to 3 PYTC 2-3-180 if the
23 appellate court determines that the Appellant's claims constitute a proper basis for
24 appeal. In accordance with 3 PYTC 2-3-180(B) the Tribe respectfully requests that oral
25 arguments occur in open court and be heard "before a panel consisting of the chief justice
26 and two associate justices." *Id.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESPECTFULLY SUBMITTED this 22nd day of July, 2016.

PASCUA YAQUI TRIBE
OFFICE OF THE PROSECUTOR



Guadalupe Gutierrez

Deputy Prosecutor

CERTIFICATE OF SERVICE

I hereby certify that the Tribe's Motion was delivered (by electronic mail) this date to:

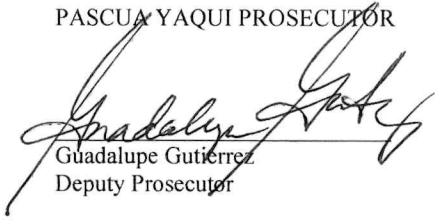
Linda Imonode-Skemer
linda.imonode-skemer@pascuayaqui-nsn.gov
Clerk of the Court of Appeals
Pascua Yaqui Court of Appeals
7777 S. Camino Huivisim
Tucson, AZ 85757

And that one (1) copy of the Tribe's Motion was served by certified mail and electronic mail this date to

Mr. Thomas Wilson
Counsel for Appellee
Thomaswilsonlawfirm@gmail.com
177 N. Church Ave.
Tucson, AZ 85701

Dated this 22nd day of July, 2016

PASCUA YAQUI PROSECUTOR


Guadalupe Gutierrez
Deputy Prosecutor

1 **Thomas Wilson, Attorney At Law**
177 North Church, Suite 1000
2 Tucson, AZ 85701
3 (520) 624-2728
4 (520) 623-7692 (fax)
Admitted Pascua Yaqui Bar
Attorney for Defendant

PASCUA YAQUI TRIBE COURT OF APPEALS
IN THE PASCUA YAQUI TRIBAL COURT
PASCUA YAQUI INDIAN RESERVATION

7 THE PASCUA YAQUI TRIBE,

8 Plaintiff,

9 vs.

10 GABRIEL F. ENCINAS,

11 Defendant.

) Trial Case No. TR1615448


) Appeal Case No. CA-

) **Notice of Appeal**

12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
"Notice is hereby given that the above named Defendant appeals to the Appellate Court of the Pascua Yaqui Nation from the Judgment and Sentencing entered in this action by the Trial Court on May 17, 2016 and June 6, 2016.

RESPECTFULLY SUBMITTED: June 6, 2016

THOMAS WILSON

By: 
Attorney for Defendant

A copy of the foregoing
mailed: June 6, 2016, to:

Pascua Yaqui Tribe Prosecutor's Office
7777 S. Camino Huivisim
Tucson, Arizona 85737

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I, Thomas Wilson, hereby certify that a copy of the foregoing document was hand delivered this 16th day of June, 2016 to:

Pascua Yaqui Tribal Court, 7474 S. Camino de Oeste, Tucson AZ 85757

Pascua Yaqui Office of the Prosecutor, 7474 S. Camino de Oeste, Tucson AZ 85757



Thomas Wilson
Attorney to Defendant/Appellant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE PASCUA YAQUI TRIBAL

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE)
Plaintiff,)
VS.)
Encinas Gabriel,)
Defendant)
_____)

No. TR-16-15448

ORDER

The above named defendant appeared before the Court for the Bench Trial hearing with defense counsel Thomas Wilson. Guadalupe Gutierrez appeared for the Tribe.

The Court finds that, after hearing the sworn testimony, ruling on objections, viewing the evidence presented and after hearing opening and closing statements, the Tribe has proven beyond a reasonable doubt that defendant committed the offenses of Driving Under The Influence-Actual Physical Control and Driving On A Suspended/Revoked/Cancelled License as the testimony of Police Officer Eutimio Molina clearly showed that the defendant was properly stopped for speeding which is a violation of the Law, that the defendant was the only person in the car, that the defendant admitted to drinking one beer, that the other cans of beer were within the reach and control of the defendant, that the defendant appeared to be slow in his motor skills, that the defendant had the odor of alcohol emitting from his breath and person, and that the defendant admitted to the Officer that he had a suspended license and further testimony provided by Detention Sergeant Reymundo McKenna, clearly showed that upon booking, he observed the defendant to exhibit signs of intoxication which included swaying from side to side, slow motor skills and the odor of alcoholic beverages emitting from the defendant's person and breath and that based on these observations he did not feel comfortable in providing the defendant with a pen for signature of the form given his experience with intoxicated individuals due to safety concern for all involved and the Court finds the defendant guilty of the two charges beyond a reasonable doubt; that defense counsel moves the Court to set the Sentencing hearing for another date and time; that the Tribe recommends that the same conditions of release apply and there are no objections to the release recommendations.


IT IS ORDERED THAT, the defendant is found guilty of Driving Under The Influence-Actual Physical Control and Driving On A Suspended/Revoked/Cancelled License and the defendant shall continue being released on his own recognizance, shall not possess nor consume alcoholic beverages, shall be subject to random breathalyzer tests, shall not operate a motor vehicle without a valid driver's license, shall obey all laws and appear for all hearings and defendant shall appear before this Court on **MONDAY, JUNE 6, 2016 AT 11:30A.M.**, for the Sentencing hearing.

THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

SO ORDERED THIS 17th DAY OF May, 2016.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Donald S.
Judge, Pascola Yaqui Tribal Court



Cc: 5/18/16
Date
Tribe *[Signature]* Defendant/Counsel _____ Probation _____ Pre-trial Services _____ Detention _____ Other _____
Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE)
Plaintiff)
Vs.)
Encinas Gabriel,)
Defendant)
_____)

NO. TR-16-15448

ORDER

The defendant appeared before the Court with defense counsel Thomas Wilson for the Sentencing hearing. Guadalupe Gutierrez appeared for the Tribe.

The Court finds that, defense counsel has submitted a Motion To Strike Illegal Sentencing Memorandum at the beginning of the hearing; that the Court hears arguments on the motion which include defense counsel's statement that his office just received the memorandum by mail, that the sentencing memorandum is illegal as the memorandum should be heard at a prior's hearing, and that the Tribal Code requires a Prior's Trial; that the Tribe states that in addition to the mail copy of the memorandum, the Tribe faxed the memorandum to defense counsel's office and received confirmation from his office that the memorandum had been received in full, that the Tribe further argues that due process has not been denied as the prior conviction had been disclosed previously to defense counsel making them aware that it may be used for consideration if and when necessary and that the memorandum is not prejudicial; that the Court asked both parties if they wanted the Court to rule on the motion immediately and neither party requested a hearing; that after hearing the arguments, the Court finds that the memorandum has not prejudice the Court or the defendant as the prior conviction was duly disclosed and the Court has the discretion to consider it along with the sentencing recommendation in the memorandum and the Court will deny the defendant's motion; that the Tribe makes sentencing recommendations which include the recommendations in the Tribe's memorandum and defense counsel objects to the recommendations as the memorandum is illegal; that the Court has ruled on the issue of the memorandum and will impose sentence; that defense counsel moves the Court to stay the sentencing terms as he has given the Tribe a Notice Of Appeal; that the Tribe states that the appeal has to be filed with the Court of Appeals first in order for the sentence to be stayed.

IT IS ORDERED THAT, sentence is entered as follows: in **Count One-Driving Under The Influence/Actual Physical Control**, 90 days in jail, suspended for 12 months of supervised probation and defendant shall initiate contact with the Probation Officer on or by **June 8, 2016** and thereafter shall report to the Probation Officer at the Officer's discretion and defendant shall obtain a substance abuse Intake and Comprehensive Assessment with the Pascua Yaqui Centered Spirit program and shall submit written proof of both to the Probation Officer on or by **July 6, 2016** and defendant shall comply with all treatment recommendations and defendant shall at his own cost, enroll in a MADD Impact Panel and shall submit written proof of completion to the Probation Officer on or by **July 6, 2016** and defendant shall not possess or consume any alcoholic beverages or any illegal

1 substances and shall be subject to random and scheduled drugs and alcohol tests and any
2 fails or refusals to submit to testing shall result in positive reports or in a violation of the
3 probation terms and defendant shall follow all special and standard conditions of probation
4 and defendant shall pay a monthly probation fee due the 1st day of each month in an
5 amount to be determined by the Probation Officer and in **Count Two-Driving On A**
6 **Suspended License**, defendant shall pay a fine of \$250.00 due in full on or by **July 21,**
7 **2016** and defendant shall not operate a motor vehicle without a valid driver's license and
8 defendant shall pay Court cost of \$100.00 due in full on or by **July 6, 2016** and Further, the
9 defendant's motions are denied based on the above stated grounds.

10 SO ORDERED THIS 6th DAY OF June, 2016.

11 Cornelia B. S.
12 Judge, Pascua Yaqui Tribal Court

13 Cr. June 07, 2016
14 Date: June 07, 2016
15 Me Defendant/Counsel Probation Detention Other
16 Clerk

