

No. CA-17-007

Pascua Yaqui Tribe Court of Appeals

Pascua Yaqui Tribe, Appellee,

v.

Reyes, Gabriel, Appellant.

No. TR-17-16428.

Interlocutory Appeal of a Tribal Court Order denying Appellant's request for a jury trial in Case No. TR-17-16428, the Honorable Cornelia Cruz presiding.

William R. Soland, Esq., Office of the Public Defender, 4725 W. Calle Tetakusim, Building B, Tucson AZ, 85757 for the Appellant.

Chase Velasquez, Esq., Office of the Prosecutor of the Pascua Yaqui Tribe, 7777 S. Camino Huivisim, Tucson, AZ 85757, for the Appellee.

ORDER SUMMARILY DISMISSING APPEAL CA-17-007

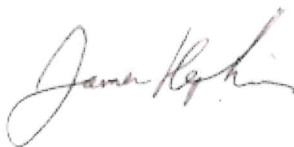
Appellant filed an interlocutory appeal seeking review of a Tribal Court Order denying Appellant's request for jury trial. This Court has reviewed the record and finds that the issue is purely procedural and was correctly decided by the trial Court. The Appellant failed to timely request a jury trial.

Pursuant to 3 PYTC § 2-2-440, a request for jury trial must be made at least 30 days before the date set for trial. In this case, the bench trial was scheduled for August 21, 2017 and the deadline to timely request a jury trial was therefore July 22, 2017. The Appellant failed to timely request a jury trial by the deadline of July 22, 2017. Instead, on August 3, 2017, twelve days after the deadline for requesting a jury trial, the Appellant filed a Motion to Continue the Bench Trial. This request was granted by the trial Court on August 7, 2017, and the bench trial hearing was rescheduled for September 26, 2017. On August 16, 2017, the Appellant filed a Request for Jury Trial, arguing that his request was now timely because it fell within 30 days of the date of the rescheduled bench trial. On August 21, 2017, the trial Court denied this request, and on September 26, 2017, the trial Court denied Appellant's Motion to Reconsider. On September 28, 2017, Appellant filed this Interlocutory Appeal.

This Court finds that the trial Court ruled correctly on procedural grounds to deny Appellant's request for a jury trial because it was untimely filed. There is no provision in 3 PYTC § 2-2-440 or elsewhere, that suggests that rescheduling a trial, after the window to timely request a jury trial has closed, might re-open that window.

Pursuant to 3 PYTC § 2-3-170 (A), the Chief Justice may summarily dismiss an appeal based on, “lack of jurisdiction, frivolity, a party’s failure to prosecute, filing of interlocutory appeal, and other similar reasons.” For the foregoing reasons this interlocutory appeal is summarily dismissed.

So **ORDERED** this 20th day of November, 2017.



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

Sent via electronic mail this 20th day of November, 2017 to:

William R. Soland, Esq., Office of the Public Defender
Counsel for Appellant

William.Soland@pascuayaqui-nsn.gov

Chase Velasquez, Esq., Office of the Prosecutor of the Pascua Yaqui Tribe
Counsel for Appellee

Chase.Velasquez@pascuayaqui-nsn.gov

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

William R. Soland
PYT Bar No. 10266

IN THE PASCUA YAQUI COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,
Appellee,

vs.

REYES, GABRIEL,
Appellant.

) APPELLATE CASE NO. CA-17-007
)
) PASCUA YAQUI TRIBAL COURT NO.
) TR-17-16428

) **UNOPPOSED MOTION FOR**
) **EXTENSION OF OPENING BRIEF AND**
) **MOTION TO APPOINT CONFLICT**
) **COUNSEL**

COMES NOW Appellant, by and through counsel undersigned and, pursuant to 3 PYTC § 2-3-70(B) requests the Honorable Court grant an extension of the deadline for filing Appellant’s opening brief in this matter. A recent review of the issues in this case have indicated that, due to the Trial Court’s finding of ineffective assistance of counsel, and because that issue has been noticed as an issue for appeal, pursuant to Arizona Rule of Professional Conduct 1.7a(2), this office cannot continue representation as “there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.” As the

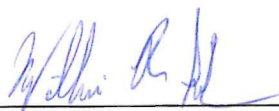
Office of the Public Defender must withdraw, and as conflict counsel must be appointed, a 60 day extension is requested.

Appellant has contacted Lay Advocate Patricia Castro and Deputy Prosecutor Chase Velasquez, counsel for Appellee, who states Appellee has no objection to this extension. Pursuant to 3 PYTC § 2-3-70(B), “[t]he time for doing any act provided for in these rules, or by order of the appellate court, or by any applicable law, may be shortened or extended upon stipulation of the parties and filed with the appellate court, or upon written motion for good cause shown....” As the parties have agreed to the extension, Appellant respectfully requests that the Court grant the extension as stipulated.

Additionally, due to the conflict of interest discussed above, the Office of the Public Defender requests that conflict counsel be appointed to represent Mr. Reyes in this appeal pursuant to Pascua Yaqui Tribal Constitution Article I, section 1(f), 25 U.S.C. 1302(a)(6), 3 PYTC § 2-2-240(A), 3 PYTC § 2-2-309(B)(2), and 3 PYTC § 2-2-310(A).

RESPECTFULLY REQUESTED this 17 day of Nov, 2017.

PASCUA YAQUI PUBLIC DEFENDER



William R. Soland

Deputy Public Defender

CERTIFICATE OF SERVICE

I hereby certify that Mr. Reyes' Request was delivered electronically this date to:

Simon Stanley
Simon.Stanley@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. Reyes' Request was delivered this date to:

Chase Velasquez
Chase.Velasquez@pascuayaqui-nsn.gov
Deputy Prosecutor
Office of the Prosecutor of the Pascua Yaqui Tribe
7474 South Camino de Oeste
Tucson, AZ 85757

Patricia Castro
Patricia.Castro@pascuayaqui-nsn.gov
Lay Advocate
Office of the Prosecutor of the Pascua Yaqui Tribe
7474 South Camino de Oeste
Tucson, AZ 85757

DATED this 17 day of Nov, 2017.

PASCUA YAQUI PUBLIC DEFENDER



William R. Soland
Deputy Public Defender

No. CA-17-007

Pascua Yaqui Tribe Court of Appeals

Gabriel Reyes, Appellant

vs.

Pascua Yaqui Tribe, Appellee,

Notice

Appeal of a decision of the Pascua Yaqui Trial Court in Case No. TR-17-16428, the Honorable Cornelia Cruz presiding.

William R. Soland, Esq., Office of the Public Defender, 4725 W. Calle Tetakusim, Building B, Tucson AZ, 85757 for the Appellant.

Chase Velasquez, Esq., Office of the Prosecutor of the Pascua Yaqui Tribe, 7777 S. Camino Huivisim, Tucson, AZ 85757, for the Appellee.

Pursuant to 3 PYTRAP Rule 120(a) the Clerk of the Pascua Yaqui Court of Appeals hereby gives notice that the record in the above captioned case has been received and is complete. The appellant shall submit his brief thirty (30) days from the 26th day of October, 2017.



Simon Stanley, Clerk

Sent via electronic mail this 26th day of October, 2017 to:

William R. Soland
William.Soland@pascuayaqui-nsn.com

Chase Velasquez
Chase.Velasquez@pascuayaqui-nsn.gov

1 PASCUA YAQUI PUBLIC DEFENDER
4725 W. Calle Tetakusim, Building B
2 Tucson, AZ 85757
3 (520) 883-5013

4 William R. Soland
Office of the Public Defender
Attorney for Appellant
5 PYT Bar No. 10266

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

9	PASCUA YAQUI TRIBE,)	Court of Appeals Case No.:
10)	
11	Plaintiff/Appellee,)	Tribal Court Case No.: TR-17-16428
12	vs.)	
13	REYES, GABRIEL,)	NOTICE OF INTERLOCUTORY
14	Defendant/Appellant.)	APPEAL
15)	
16)	

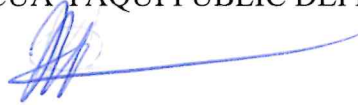
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17 COMES NOW the Appellant, GABRIEL REYES, by and through counsel, pursuant to 3
18 PYTC § 2-3-90(A), 3 PYTC § 2-3-90(B), 3 PYTC § 2-3-100(B)(1) and 3 PYTC § 2-3-100(B)(4)
19 of the Pascua Yaqui Tribe Rules of Appellate Procedure, and respectfully files a Notice of
20 Appeal in the Pascua Yaqui Tribal Appellate Court from the Order entered in this matter by the
21 Pascua Yaqui Tribal Court on August 21st, 2017 denying Defendant's request for Jury Trial. This
22 order was re-affirmed by the Court on September 26, 2017 when the Court denied Defendant's
23 Motion to Reconsider the previous order.

24 A copy of the Pascua Yaqui Tribal Court's Orders are attached hereto as required by 3
25 PYTC § 2-3-90(A)(1), Pascua Yaqui Rules of Appellate Procedure.

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

4 RESPECTFULLY SUBMITTED this 28 day of Sept, 2017.

6 PASCUA YAQUI PUBLIC DEFENDER

7 

8 _____
9 William R. Soland
10 Deputy Public Defender

11
12 Original of the foregoing delivered to PYT
13 Court and filed:

14 Copy of the foregoing provided to PYT
15 Prosecutor by:

1 **CERTIFICATE OF SERVICE**

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

3 Clerk of the Court of Appeals
4 Pascua Yaqui Court of Appeals
5 7777 S. Camino Huivism
6 Tucson, AZ 85757

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

8 Pascua Yaqui Tribal Court
9 7777 S. Camino Huivism
10 Tucson, AZ 85757

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

12 Deputy Prosecutor Chase Velasquez
13 Office of the Prosecutor of the Pascua Yaqui Tribe
14 7777 S. Camino Huivism
15 Tucson, AZ 85757

16 Lay Advocate Patricia Castro
17 Office of the Prosecutor of the Pascua Yaqui Tribe
18 7777 S. Camino Huivism
19 Tucson, AZ 85757

20 RESPECTFULLY SUBMITTED this 28 day of Sept, 2017.

21 PASCUA YAQUI PUBLIC DEFENDER

22 
23 _____
24 William R. Soland
25 Deputy Public Defender

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

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

NO. TR-17-16428

ORDER

The above matter came before the Court for the hearing on the defendant Motion To Reconsider. Chase Velasquez appeared for the Tribe; William Soland, legal counsel for defendant appeared; the defendant's presence was waived by legal counsel.

The Court finds that, both parties agree that the defendant has a fundamental right to jury trial; that defense counsel argues that, the Court has discretion to hear a Motion To Reconsider; the defendant did not waive his right to a jury trial, that the Pascua Yaqui Law and Order Code as well as the Federal Codes are not specific as to whether a jury trial request can be made after a bench trial has been continued, as the Pascua Yaqui Tribal Code only specifies that a jury request must be made within 30 days of a scheduled bench trial hearing, that the Tribe has not suffered any prejudice by the defendant's motion as time limits were waived by defense counsel and that if an error was committed by defense counsel, defendant should not be punished for the error and should be granted a jury trial; that the Tribe argues that the defense counsel did not meet the deadline for requesting the jury trial as the request for jury trial should have been filed on or by July 22, 2017 as the bench trial was originally scheduled for August 21, 2017, that defense counsel filed a Motion To Continue the bench trial hearing which the Court granted, and further adds that defense counsel then filed his request for jury trial which the Court denied on August 21, 2017 and that defense counsel's error should not be considered an excusable neglect, and further adds that, should the Court find that defense counsel erred, that this matter should be set to begin new with the setting of the Initial hearing to allow defendant his right to a jury trial in the event that legal counsel for the defendant wishes to file a jury trial request; that the Court after hearing the arguments, and after reviewing the briefs filed by the parties, and after reviewing the file, finds that when a defendant appears before this Court unrepresented by legal counsel, the Court informs the defendant of his rights, including the right to a jury trial with the jury request having to be made within 30 days prior to the scheduled bench trial hearing, otherwise this right will be deemed waived, that in this matter defense counsel waived the reading of the rights and of the complaint, that in this matter the Court set the bench trial hearing date and time and informed all parties at the hearing date and time, that defense counsel failed to request a jury trial by the deadline of July 22, 2017, that defendant counsel did file a Motion To Continue the Bench Trial hearing which the Court granted on August 7, 2017, that defense counsel then filed the Request For Jury Trial based on the new date the Court set on the defendant's motion, that the Court denied the defendant's Request For Jury Trial on August 21, 2017 due to being untimely filed as it appeared to the Court that defense counsel did not keep track of the time limits and defense counsel appeared to be attempting to resolve this error by

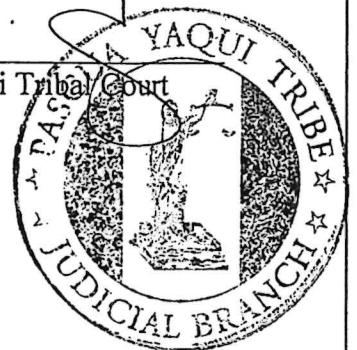
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requesting a jury trial in place of the continued bench trial hearing; and further, the Court believes that defense counsel's actions constitute unexcusable neglect and also constitutes ineffective assistance of counsel; that the Court stands by its order denying the defendant's request issued on August 21, 2017 and the defendant's motion will be denied; that defense counsel moves the Court to stay the proceeding in this matter pending a decision from the Court of Appeals and the Tribe has no objections.

IT IS ORDERED THAT, the defendant's motion is denied and further proceedings in this matter are stayed based on defense counsel's motion and pending a decision by the Court of Appeals and time limits are waived by defense counsel.

SO ORDERED THIS 26th DAY OF September, 2017.

Cornel V. ...
Judge, Pascua Yaqui Tribal Court



Cc:
Date: September 26, 2017
 Tribe Defendant/Counsel Probation Detention Other
[Signature] Clerk

IN THE PASCUA YAQUI TRIBAL

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE)
Plaintiff,)
VS.)
Reyes Gabriel,)
Defendant)

No. TR-17-16428

ORDER

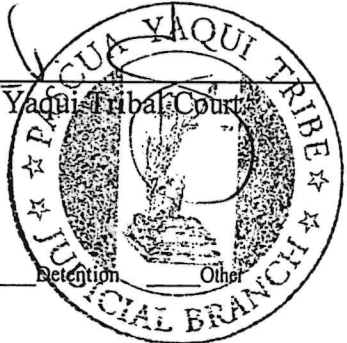
The defendant through legal counsel filed a Request For Jury Trial in the above matter.

The Court finds, that the Court will deny the request as defense counsel did not request a Jury Trial when this matter was originally scheduled for Bench Trial, and further that defense counsel requested a continuance of the original Bench Trial for the reasons that counsel would not be available on the scheduled hearing date and also to allow time for the parties to explore an non-trial disposition and further, that it appears to the Court that defense counsel did not keep track of time limits in this matter and appears to be attempting to resolve this issue by requesting the Jury trial.

IT IS ORDERED THAT, based on the above stated grounds the defendant's request is denied and Bench Trial hearing will be held as scheduled.

SO ORDERED THIS 21st DAY OF August, 2017.

Donela
Judge, Pascua Yaqui Tribal Court



Cc: 08/21/17
Date
Tribe Defendant/Counsel Probation Pre-trial Services Detention Other
[Signature]
Clerk