

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

In the Matter of Alvarez,

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) Case No. CA-17-008
) (TC JD-17-038)
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)
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)
)

OPINION AND ORDER

Oscar J. Flores, Chief Prosecutor, argued by Deputy Prosecutor Kendrick Wilson for the Appellant Tribe.

Melissa L. Acosta, Pascua Yaqui Public Defendant, for the Appellee.

Justice Rebecca Plevel delivered the opinion of the Court, in which Chief Justice Robert Miller and Justice Robert Blaeser joined.

I. Procedural Posture

On May 27, 2017, the Minor Alvarez was arrested and taken into the Tribal Detention Facility. He was released to his parent later that same day. A juvenile offender petition was timely filed on June 2, 2017, pursuant to 5 PYTC § 7-110 (B)(4). At the Initial Hearing on June 5, 2017, the petition was dismissed by the Court without prejudice, due to the minor’s Tribal Enrollment number being inconsistent on the Petition and the Probable Cause Affidavit.

On September 15, 2017 the Tribe filed a new petition with the Tribal Court, with no arrest warrant requested – a “long-form complaint.” The minor filed a Motion to Dismiss claiming this new petition was not timely pursuant to 5 PYTC § 7-110 (B)(4), and the Court granted the dismissal, with prejudice.

II. Dismissal of the subsequent Juvenile Offender Petition.

In this matter, the real question is - when the first petition against the minor was dismissed without prejudice, does any new petition for the same charges relate back to that arrest and release to parent, or does the clock start over?

The Pascua Yaqui Court of Appeals has clearly stated that a petition must be filed within 10 days of a juvenile’s arrest and release to parent, or detention and release to parent. *In the Matter of E.E.*, CA-05-004 (PTY Ct. App. Sept. 28, 2006); *Pascua Yaqui Tribe v. A Juvenile*, CA-05-005 (PYT Ct. App. Aug. 25, 2006). The Court of Appeals also clarified “the meaning of the phrase ‘taking into custody,’ stating that these words, when applied to a juvenile, require the **equivalent of an adult arrest**...(CA-05-005, at 3).” *PYT v. Juvenile (Consolidated)* CA-06-000 (PYT Ct.


App., Jan 26, 2010) (emphasis added). Further, “[t]he Court of Appeals has already examined, and rejected, the argument that a citation or long-form complaint constitutes a “constructive arrest” for purposes of triggering 5 PYTC 7-110’s ten day limit, holding, in CA-05-005, that the statute says nothing about “constructive arrest” or “constructive detention,” and that, had the legislature wished to trigger the limit with such abstractions, it would have provided for them.” *Id.*

When the first petition was dismissed without prejudice, the minor was no longer in custody, under arrest, or detained and released. If he were an adult, any bond or release terms would be exonerated and lifted – and thus the accused would be back in the position as if he had been never arrested/detained/released. *See*, 3 PYT §2-2-220(B) & 2-2-300(D); Ariz. R.Crim.P, Rule 16.4(d) & (e). Thus, when the new juvenile offender petition was filed on September 15, 2017, the juvenile had not been arrested or detained at all as to the charges in that petition. In *PYT v. A.S.*, this Court found that the 10 day limit for filing a Juvenile Offender Petition did not apply; “the Appellee Juvenile was not arrested and then released to a parent; neither was she placed in a secure detention facility and then released to a parent. Thus, the ten-days filing requirement of Section 3.9(B)(4) does not apply to this case. Furthermore, the Juvenile Court’s ruling that the Juvenile Offender Petition must be filed against the Appellee Juvenile within ten days of the alleged crime does not have a basis in 2 PYTC § 3.9 [now 5 PYTC 7-110].” CA-06-007 (PYT Ct. App., Oct. 20, 2006)

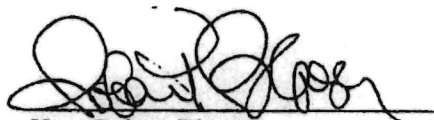
The dismissal without prejudice of the prior matter results in the arrest and/or detention essentially being voided, and the minor no longer being subject to any release conditions or order. The minor was not “arrested or detained and released” as to the new petition, and thus the new petition is not subject to the 10-day time limit.

We thereby reverse the Trial Court’s dismissal with prejudice and this matter is remanded. The Tribal Court shall reinstate the Tribe’s Petition, Docket No. JD-17-038, for appropriate further proceedings consistent with this decision.

Filed this 19th day of June, 2018.


Hon. Rebecca Plevel


Hon. Robert Miller


Hon. Robert Blaeser

No. CA-17-008

Pascua Yaqui Tribe Court of Appeals

In the Matter of Alvarez.

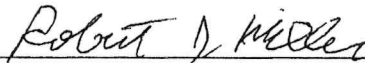
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For the Public Defender: Melissa L. Acosta, 7474 S. Camino de Oeste
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Order Regarding Oral Argument

Thirty (30) minutes of oral argument will be held in this appeal at 2:30 p.m. on May 10, 2018 in Courtroom 3.

So **ORDERED** this 3rd day of April, 2018.



Robert J. Miller
Interim Chief Justice
Pascua Yaqui Court of Appeals

1 PASCUA YAQUI TRIBE
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4 Kendrick Wilson
5 Deputy Prosecutor

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

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

8 IN THE MATTER OF:

9
10
11 ALVAREZ, ANTONIO
12 DOB: 06/10/2000
13 Minor

APPEALS CASE NO: CA-17-008

TRIBAL COURT NO: JD-17-038

**APPELLANT'S REPLY TO APPELLEE'S
RESPONSE BRIEF**

14
15 COMES NOW, the Pascua Yaqui Tribe by and through the Pascua Yaqui Chief
16 Prosecutor, OSCAR J. FLORES, and the undersigned Deputy Prosecutor, KENDRICK
17 WILSON, and hereby respectfully submits the following Reply to Appellee's Response
18 Brief.

19 Respectfully submitted this 29th day of December, 2017.

20
21 

22 **KENDRICK WILSON**
Deputy Prosecutor
Kendrick.Wilson@pascuayaqui-nsn.gov

23
24 Original filed with the
Clerk of the Pascua Yaqui Court of Appeals

25 On:

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Honorable Judge Melvin Stoof
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Melissa Acosta
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Attorney for Minor/Appellee

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1 **ARGUMENT:**

2 **I. MINOR'S CHARGES WERE PROPERLY REFILED.**

3 Minor's counsel misreads *In the Matter of E.E. CA-05-004, In the Matter of L.M.*
4 *CA-06-009* and *PYT v. Juvenile (Consolidated) CA-06-000* to stand for the principle that
5 if a petition is timely filed and then dismissed without prejudice, that re-filing of such a
6 petition must also occur within ten days of the arrest. None of these cases involve
7 charges that were timely filed, dismissed without prejudice and subsequently re-filed.
8 As previously discussed in Appellant's Opening Brief, the Tribe concedes that had
9 Minor been arrested *again* and *again* released to his parent, the ten day time limit
10 imposed by 5 PYTC § 7-110 (B) (4) would apply. In this case, Minor's counsel ignores
11 the fact that a petition *was* timely filed. The fact that the probable cause affidavit
12 contained the incorrect enrollment number for minor is immaterial. The Tribe not only
13 met the ten day time limit, but actually filed the petition five days *earlier* than mandated
14 by the Juvenile Code. Nothing in 5 PYTC § 7-110 (B) (4) precludes a petition from
15 being re-filed after being dismissed without prejudice. Once charges are dismissed,
16 time limits other than the statute of limitations no longer apply. *See e.g. United States*
17 *v. MacDonald*, 456 U.S. 1, 8 (1982).
18

19 **CONCLUSION**

20 For the foregoing reasons, the Tribe respectfully requests that the Juvenile Tribal
21 Court's dismissal be reversed and that the case be remanded to the Juvenile Tribal
22 Court for further proceedings.
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24
25

RESPECTFULLY submitted this 29th day of December, 2017.



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

PASCUA YAQUI TRIBE,

Appellant,

vs.

ALVAREZ, Antonio,

Minor, d.o.b. 6/10/2000

Appellee.

) APPELLATE CASE NO. CA-17-008
)
) PASCUA YAQUI TRIBAL COURT NO.:
) JD-17-038
)
)
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RESPONSE BRIEF

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STATEMENT OF THE FACTS AND PROCEEDINGS

Minor A. Alvarez provides his own recitation of the facts, in order to clarify some relevant details for this Court.

On May 27, 2017, at approximately 12:18pm, Minor Antonio Alvarez was arrested and taken into custody at the Pascua Yaqui detention facility. (Please see Index to Record for '*In the Matter of Pascua Yaqui Tribe v. Antonio Alvarez, Minor*', item 13, hereinafter referred to as 'Record at item "x"; please also note: There are multiple discrepancies of fact in the probable cause statement, including the fatal flaw of Minor's Tribal enrollment number being incorrect. Additionally, the date listed in the probable cause statement is 5/27/15, in paragraph 1, page 2 of 5; on page 3 of 5, paragraph 5, the names of both minors taken into custody are interchangeable and it is difficult to determine the course of events.)

Later that day, on May 27, 2017, at around 6:20 pm, Minor's parent, Cruz Alvarez arrived at the Pascua Yaqui detention facility to retrieve his son after acknowledging the charges against his son and stating that he did not have any questions about the citation. (*Id.*) Despite the numerous errors in the report, there is no dispute that Minor was indeed arrested and taken into custody at the detention facility and held until he was released to his Parent.

On June 5th, 2017, an initial appearance was held, and Minor and Parent appeared with counsel; the complaint was dismissed based on Minor's tribal enrollment number not being consistent between the complaint and the probable cause affidavit. This Complaint that was dismissed for errors was dated and stamped by the Court Clerk on June 2nd, 2017.

On September 15th, 2017, the identical complaint was filed again, still dated June 2nd, but date stamped by the Court Clerk's for September 15th, 2017, three and a half months after the dismissal. (See Record at item 12)

An initial hearing on the newly filed complaint was held on October 12th, 2017. At this time, jurisdiction was challenged by Minor, as the ten days from being taken into custody, mandated by tribal code to file a petition, had long expired.

ARGUMENT

In its Opening Brief, the Tribe fails to clearly designate an articulated issue on appeal. Tribe proceeds directly to an argument as to the application of proper statute of limitations guidelines, completely disregarding the well settled Pascua Yaqui appellate court rulings that are directly on point.

For the reasons set forth below, Minor A. Alvarez argues that the juvenile trial court properly dismissed the underlying case for untimely filing and the clear violation of 5 PYTC § 7-110(B). This Court should not disturb the juvenile trial court's order of dismissal with prejudice.

I. Minor's Case Was Improperly Re-filed in Violation of Settled Tribal Law.

A. Tribal Code clearly mandates that a petition must be filed within ten days of a minor being taken into custody, once he is released.

The Tribal Code is clear, that "If the child has been previously released to his parents, guardian or custodian, the petition shall be filed within ten days." (5 PYTC § 7-110(B)(4), formerly Juvenile Code, Section 3.9(B)(4)) This mandate is within the context of a child being taken into custody, as the rules are much stricter for children being held in custody, where a petition must be filed within seventy-two (72) hours. (*Id.*)

- B. Tribal Appellate Case Law clearly mandates that a petition must be filed within ten days of a minor being taken into custody, once he is released.

The Tribal Appellate Court has consistently addressed this issue numerous times, holding that any child taken into actual custody (as opposed to constructive custody), must be charged in accordance to the mandated time restrictions in the Tribal code.

1. **CA-05-004:** In this ruling dated September 28, 2006, the Pascua Yaqui Court of Appeals held that the time for filing a petition is clear in the code – and in this case it was ten days, and the petition had not been filed, so the lower court had properly dismissed the petition for lack of timely filing. The undisputed facts in this case according to the transcripts, were that child had been taken into actual custody, and then released to his mother. Tribe claimed that there had been “paperwork problems” processing the paperwork and communications between the prosecutor’s office and the police department, causing the petition to be later than ten days in being filed. The Appellate Court upheld the dismissal with prejudice, based on the code being clear.
2. **CA-06-009:** In this ruling dated October 8, 2007, The Appellate Court upheld the denial of Tribe’s request to dismiss without prejudice was denied based on the child having been taken into custody, and the mandated 72 hours had long lapsed (it had actually been 4 days, by the time the child was seen in court). The Court of Appeals adopted the findings of the lower court, including that the petition had several defects (lacked a proper address for alleged incident location; lack of attached probable cause affidavit; incorrect date of birth for accused child; lack of identifying

tribal affiliation of child; lack of indication as to whether child had been taken into custody or not, and if so, the place of detention and time taken into custody. Note: in this matter, the child was taken into custody, and remained in custody from March 12, 2006 until the initial hearing on March 16, 2006) The Court ultimately upheld the statute of limitations set forth in the code (Juv. Code.Sec. 3.9(B)(4) now 5 PYTC § 7-110(B)(4), that mandates when a petition must be filed in the context of children being taken into physical custody.

3. **CA-06-000:** This Court of Appeals ruling, dated January 26, 2010 is a consolidated appeal of five cases that were dismissed for lack of timely filing, and delineates the distinction between actual custody of a child, and constructive custody of a child. In this consolidated case, the Court reiterated that it has “consistently held that an actual arrest, or short term detention, with subsequent release is required to trigger the 10-day time limit (see findings in *PYT v. A Juvenile*, CA 05-005, subsequently affirmed in *PYT v. AS*, CA-05-004 and CA-06-005)” (See CA-06-000, pg2, paragraph 3) The Court went on to clarify what being taken into actual custody meant, as well as what being released meant, for purposes of triggering that ten day requirement for filing a petition. (*Id* at pg 2, paragraphs 3-5) The Appellate Court also clearly reiterated and defined it’s rejection of ‘constructive custody’ as triggering this statute of limitations, and that physically being arrested and taken into custody is required. Merely being “handed a traffic citation” (CA—06-012, 018) or being “long formed without a warrant” (CA-06-016, 017) was not sufficient to trigger the statute of limitations on filing a petition.

In applying the procedural facts in this case, it is clear that the mandated ten days had lapsed since the May 27, 2017 physical detention of Minor, and his subsequent release to his Parent. The Tribe had until June 6, 2017 to refile, and remain in compliance with Tribal law. Regardless of whether the Tribe was having personnel or paperwork issues, they were required to abide by the ten day deadline to file the petition, and failed to do so. There is no question that Minor was arrested and physically taken into custody, and stayed there for hours while waiting for his father to sign for his citation and court appearance, and pick him up.

The Tribe waited until September 15, 2017, to refile the identical complaint with a new date stamp. This is simply not in conformity with the controlling law. In no way can this late refiled complaint constitute an erasure of the fact that Minor was in fact physically held in this matter, and negate the application of 5 PYTC § 7-110, or the already settled appellate cases that directly address this very issue.

II. Conclusion

The Tribe's argument as to the issue of whether the statute of limitations has run, is missing the point. Tribe had every opportunity to amend its defective complaint within the mandated statute of limitations and failed to do so. For the reasons stated above, Appellee Minor A. Alvarez requests this Court to leave the order of dismissal with prejudice by the juvenile trial court undisturbed.

DATED this 26th day of December, 2017



PASCUA YAQUI PUBLIC DEFENDER



Melissa L. Acosta
Chief Public Defender
Attorney for Appellee

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

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

8 IN THE MATTER OF:

9
10
11 ALVAREZ, ANTONIO
12 DOB: 06/10/2000
13 Minor

APPEALS CASE NO: CA-17-008

TRIBAL COURT NO: JD-17-038

APPELLANT'S OPENING BRIEF

14
15 COMES NOW, the Pascua Yaqui Tribe by and through the Pascua Yaqui Chief
16 Prosecutor, OSCAR J. FLORES, and the undersigned Deputy Prosecutor, KENDRICK
17 WILSON, and hereby respectfully submits the following Opening Brief.

18 Respectfully submitted this 29th day of November, 2017.

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1 **FACTS:**

2 On May 27, 2017, Minor Antonio Alvarez was arrested and taken to the Pascua
3 Yaqui Detention Facility. *In the Matter of Antonio Alvarez Pascua Yaqui Juvenile Tribal*
4 *Court Record*, hereinafter "Record," p. 35-38. Later that day, the Minor's parent, Cruz
5 Alvarez retrieved his son from the detention facility after acknowledging the charges
6 against him. *Id.* A juvenile offender petition was timely filed on June 2, 2017, five days
7 after the juvenile was arrested, in compliance with 5 PYTC § 7-110 (B)(4). *Id.* at p. 16.
8 At an Initial Hearing on June 5, 2017 (also within ten days of the juvenile's arrest), the
9 Juvenile Court dismissed the petition *without* prejudice to re-filing because the Minor's
10 Tribal Enrollment Number was inconsistent on the Juvenile Offender Petition and the
11 Probable Cause Affidavit. *Id.*

12
13 In re-charging the case, the Tribe long-formed the Juvenile Offender Petition with
14 a corrected Probable Cause Affidavit **without a warrant** on September 15, 2017. *Id.* at
15 p. 32-38. Minor then filed a Motion to Dismiss, arguing that the Petition was untimely.
16 *Id.* at p. 18-23. The Juvenile Tribal Court granted his Motion on October 20, 2017 and
17 dismissed the case with prejudice, citing an untimely filing pursuant to 5 PYTC § 7-110.
18 *Id.* at p. 3-4. For the following reasons, the Juvenile Tribal Court's dismissal should be
19 reversed.

20 **STANDARD OF REVIEW:**

21 The Juvenile Tribal Court's dismissal was based on an interpretation of 5 PYTC §
22 7-110 and, consequently, is a question of law. Questions of law are reviewed *de novo*.
23 *United States v. D.M.*, 869 F.3d 1133, 1138 (9th Cir. 2017).
24
25

1 **ARGUMENT:**

2 **I. MINOR'S CHARGES WERE PROPERLY REFILED.**

3 A. Minor's case was properly re-filed

4 Minor's case was properly re-filed within the statute of limitations. Federal law is
5 well settled that time limits restart upon re-filing of charges that were previously
6 dismissed without prejudice. *United States v. Barraza-Lopez*, 659 F.3d 1216, 1219 (9th
7 Cir. 2011) (When a case is re-filed with the same charges after dismissal without
8 prejudice, speedy trial clock restarts and runs from the second filing of the case); *PYT*
9 *v. Miranda*, CA-08-015, p.22 (Ct. App. 2009) (“[W]hile decisions of the Arizona and
10 United States District Courts are not controlling authority in this Court, they are highly
11 persuasive”).
12

13 In this case, the original Juvenile Offender Petition was timely filed and was
14 actually filed within only five days of the Minor's arrest. The Juvenile Court's order
15 dated June 5, 2017 clearly states that the charges were dismissed *without* prejudice.
16 See Record, p. 16.

17 This Court has addressed the provisions of 5 PYTC § 7-110 in several cases. *In*
18 *the Matter of E.E.* CA-05-004, this Court upheld a dismissal of charges against a
19 juvenile when the juvenile had been taken into custody and more than ten days passed
20 before a petition had been filed. In that case, the Tribe cited paperwork problems and
21 no petition had been filed before the ten day window had expired. *In the Matter of L.M.*
22 CA-06-009, this Court upheld the Juvenile Tribal Court's refusal to allow charges to be
23 dismissed without prejudice when a juvenile was held in court for more than 72 hours
24 before being seen in court. Finally, in *PYT v. Juvenile (Consolidated)* CA-06-000, this
25

1 Court clarified the meaning of taking a juvenile into custody and reaffirmed its prior
2 rulings that if a juvenile has been taken into custody and subsequently released to a
3 parent, a petition must be filed within ten days.

4 None of the cases previously decided by this Court involve charges that were
5 timely filed, dismissed without prejudice and subsequently re-filed. Dismissal of
6 charges against a juvenile without prejudice would be rendered meaningless if the
7 Juvenile Tribal Court's ruling were to be applied to applicable time limits. The Tribe
8 concedes that had Minor been arrested *again* for the same offense and *again* released
9 to his parent, the ten day time limit imposed by 5 PYTC § 7-110 (B) (4) would apply.
10 Because Minor's charges were dismissed without prejudice and re-filed, all time limits
11 are reset. Indeed:
12

13 Once charges are dismissed, the speedy trial guarantee is no longer applicable.
14 At that point, the formerly accused is, at most, in the same position as any other
15 subject of a criminal investigation. Certainly the knowledge of an ongoing criminal
16 investigation will cause stress, discomfort, and perhaps a certain disruption in
normal life. This is true whether or not charges have been filed and then
dismissed.

17 *United States v. MacDonald*, 456 U.S. 1, 8-9 (1982).

18 Furthermore, statutes of limitation are the appropriate mechanism by which the accused
19 is protected against overly stale prosecutions. See *United States v. Marion*, 404 U.S.
20 307, 323 (1971) ("It is unnecessary to press the Sixth Amendment into service guard
21 against the mere possibility that pre-accusation delays will prejudice the defense in a
22 criminal case since statutes of limitation already perform that function"). Here, the re-
23 filing of charges was well within the established statute of limitations.¹
24

25 ¹ 4 PYTC § 1-40 (Statute of limitations for prosecutions is one year from the time of
commission of the offense).

1 **CONCLUSION**

2 For the foregoing reasons, the Tribe respectfully requests that the Juvenile Tribal
3 Court's dismissal be reversed and that the case be remanded to the Juvenile Tribal
4 Court for further proceedings.

5 RESPECTFULLY submitted this 29th day of November, 2017.

6 
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7 **IN THE PASCUA YAQUI COURT OF APPEALS**
8 **IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, ARIZONA**

9 IN THE MATTER OF:

APPEALS CASE NO.:

10 ALVAREZ, Antonio
11 DOB: 06/10/2000
12 Minor

(Tribal Court No. JD-17-038)
NOTICE OF APPEAL
(Oral argument requested)

13 Notice is hereby given that the Pascua Yaqui Tribe appeals to
14 the Appellate Court of the Pascua Yaqui Tribe from the judgment
15 entered in this action by the Pascua Yaqui Tribal Court on October
16 20, 2017 by order of Associate Judge Melvin Stoof. [see attached]


17 The Trial Court erred in finding that the Tribe had not timely
18 filed a Juvenile Offender Petition when the Tribe had, in fact,
19 timely filed a petition that was dismissed without prejudice and
20 subsequently re-filed without a warrant before expiration of the
21 statute of limitations.

22 The Tribe appeals the Court's decision for the aforementioned
23 reasons. The Pascua Yaqui Tribe respectfully requests oral
24 argument and a three-Justice appellate proceeding. The Tribe
25 further requests an order for the Tribal Court to prepare and
26 submit the record to the Court of Appeals.

1 **Respectfully submitted this 23rd day of October, 2017**

2 OFFICE OF THE PROSECUTOR
3 PASCUA YAQUI TRIBE

4 
5 _____
6 Oscar J. Flores
7 Chief Prosecutor

4 
5 _____
6 Kendrick Wilson
7 Deputy Prosecutor

8 Original delivered/mailed
9 This **date** to:

10 Clerk of the Court, Pascua Yaqui Tribe Court of Appeals

11 Copy delivered/mailed to:
12 Pascua Yaqui Tribal Court

13 Pascua Yaqui Appellate Court

14 Melissa Acosta
15 Public Defender's Ofc.
16 Attorney for Defendant

17 By:

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IN THE PASCUA YAQUI JUVENILE COURT
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

IN THE MATTER OF:)	CASE NO. JD-17-038
ALVAREZ, ANTONIO CRUZ)	ORDER GRANTING MOTION TO
DOB: 06/10/00,)	DISMISS PETITION
A minor.)	

On October 20, 2017, the child appeared with his parent, Cruz Acuna Alvarez. This matter came before the court on the minor's motion to dismiss, filed by Melissa Acosta. The Tribe's Rebecca Figueroa argued that because the original petition had been dismissed, and this matter was a re-filing, the 10 day rule did not apply, and the Tribe could re-file charges, even after 10 days from the date the child was released to his parent, so long as the petition was filed within one year of the date of the incident.

The minor's counsel has cited to several Pascua Yaqui Court of Appeals decisions that require the Tribe to file a juvenile offender petition in a timely fashion from the date when a child is released from detention. After an investigation is completed within 48 hours of a juvenile being detained or subsequent release of a juvenile, the presenting officer must decide what further actions, if any, should be taken. 5 PYTC § 7-110, **Initiation of Proceedings**. The presenting officer, under 5 PYTC §7-110(B), upon completion of the investigation may:

- (4) File a petition under rules of Juvenile Court. . .The petition shall be filed within 72 hours if the child is in custody. **If the child has been previously released to his parents, guardian or custodian, then petition shall be filed within 10 days.** (Emphasis added).

In this matter, the minor was taken into custody on May 27, 2017, and then released to his parent on the same day. The Tribe would have until June 6, 2017 to file within the statutory deadline, and they did so, by filing the juvenile offender petition on June 2, 2017. On June 5, 2017, the juvenile offender petition was dismissed without prejudice to re-filing, and the Tribe could have re-filed on the same day, or the next day, but failed to do so.

The Tribe filed its second juvenile offender petition, still dated June 2, 2017, but actually filed on September 15, 2017, a date well past the 10 days required by the statute.

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Based on the authorities cited by the minor, including 3 separate Pascua Yaqui Court of Appeals rulings that uphold the validity of the "10 day rule," the court should dismiss the matter, because the second juvenile offender petition filed on September 15, 2017 was filed beyond the mandated 10 days after the child's release from detention, as required by 5 PYTC § 7-110, **Initiation of Proceedings**.

IT IS ORDERED that the court grants the minor's motion to dismiss, based on untimely filing under the "10 day rule," in 5 PYTC § 7-110, **Initiation of Proceedings**, and the dismissal is made with prejudice to re-filing.

SO ORDERED THIS 20th DAY OF OCTOBER, 2017.



Judge, Pascua Yaqui Juvenile Court

cc: Date 10/23/17
 Tribe Minor/ parent Counsel



Clerk

