

No. CA-21-001

Pascua Yaqui Tribe Court of Appeals

Michael Mesquita, Appellant,

v.

Pascua Yaqui Tribe, Appellee.

For the Appellant: Annamarie L. Valdivia Senior Staff Attorney, Public Defender

For the Appellee: Malena Acosta Chief Prosecutor & Coleen Thoene Deputy Prosecutor

Opinion

Martinez and Plevel, Associate Justices

Appellant, Michael Mesquita, appeals a trial court's sentencing order that imposed an indefinite restraining order between Appellant and the victims, imposed consecutive sentences for his convictions, and did not award Appellant credit for time served while in the Tribe's custody.

Facts

The Pascua Yaqui Tribe charged Appellant with six criminal counts in one complaint (CR-20-107)¹ and three criminal counts in a second complaint (CR-20-122).² Appellant's Opening Br., at pgs. 5-6.

In CR-20-107, Appellant was arrested on March 11, 2020. Appellee's Attach. A. Appellant posted bond and was released on March 16, 2020. Appellee's Resp. Br., at pg. 5. Appellant did not appear at the arraignment hearing on March 18, 2020 and a warrant

¹ In CR-20-107, Appellant was charged with one count of Assault (4 PYTC § 1-130(A)(3)), one count of Battery (4 PYTC §1-150(A)), one count of Disobedience of Lawful Order of Court (4 PYTC §1-560), Resisting Lawful Arrest (4 PYTC §1-730), Possession or Concealment of Stolen Property (4 PYTC §1-480), and Theft (4 PYTC §1-450) Appellee's Attach. A.

² In CR-20-122, Appellant was charged with one count of Criminal Trespass (4 PYTC §1-440(B)), one count Refusal to Obey a Lawful Order (4 PYTC §1-710), and one count of Possession of Drug Paraphernalia (4 PYTC §1-790(A)) Appellee's Attach. C.

was issued for his arrest. *Id.* The Appellant remained on warrant status until he was arrested on April 21, 2021 that resulted in the additional charges in CR-20-122. *Id.*

At the time of his arrest on April 21, 2021, Appellant had an unresolved Arizona State felony parole violation matter. *Id.* at 6-7. On April 23, 2021, he was extradited by the State of Arizona to address a felony parole violation. *Id.* at 7. Appellant was transferred to the Pascua Yaqui Tribal Court on a temporary basis from Arizona State custody on three dates. First, for his arraignment in CR-20-122 on June 15, 2021. *Id.* at 7-8. Secondly, on September 9, 2021 for the bench trials in CR-20-107 and CR-20-122. *Id.* Lastly, on February 24, 2021 for sentencing on both matters. *Id.*

Bench trials for CR-20-107 and CR-20-122 were held on September 9, 2020. *Id.* at 6. In CR-20-107, Appellant was convicted of one count of Resisting Lawful Arrest, one count of Possession or Concealment of Stolen Property, and one count of Theft. Appellee's Resp. Br., at pg. 6. In CR-20-122, Appellant was convicted of one count of Criminal Trespass and one count of Refusal to Obey a Lawful Order. *Id.* at 8. Both matters were set for sentencing on February 24, 2021. *Id.*

Prior to the sentencing hearing, a pre-sentence report was prepared and submitted to the trial court by the Tribe's probation office. *Id.* at 9. The probation officer concluded that the Appellant would not make a good candidate for probation, due to his history of non-compliance with probation and parole. Appellee's Attach. F., at pg. 4. The probation officer recommended that Appellant be sentenced to 114 days to run concurrently with his State sentence. *Id.* The Tribe submitted a sentencing memorandum which outlined Appellant's felony criminal history,³ parole violations, Appellant's history of non-compliance with court orders, and that Appellant's current convictions were committed while on State parole. Appellee's Attach. E.

At the sentencing hearing on February 24, 2021, Appellant argued that the trial court should impose sentences that run concurrently with the State's parole violation sentence due to various mitigating factors presented.⁴ The Tribe's probation officer recommended concurrent sentences as well. Appellant's Opening Br., at pg. 7. Appellee opposed the imposition of concurrent sentences and argued that Appellant's sentences should run consecutively after he served his sentence on the State parole violations. Appellee's Resp. Br., at pg. 10. Appellee reiterated the arguments in its sentencing memorandum but additionally argued that the offenses committed by Appellant in CR-20-107 and CR-20-122 were committed on the Pascua Yaqui Reservation and are separate and apart from his State parole violations, and that Appellant should not get a "free pass" on sentencing. *Id.*

The trial court sentenced Appellant to 114 days of incarceration in CR-20-107, to run consecutively with his State sentence. Sentencing Order, at pg. 2. In CR-21-122, the trial

³ Appellant's prior criminal history includes a 2003 felony conviction for armed robbery and a 2012 conviction for robbery. Appellee's Resp. Br., at pg. 9.

⁴ Appellant presented that he had obtained his GED while in custody, had experienced in-custody hardships due to COVID-19 restrictions, had lost loved ones to COVID-19, was working as a shower porter while in custody, and had signed up for additional educational classes. Appellant's Opening Br., at pg. 7.

court sentenced the Appellant to 45 days of incarceration, to run consecutively to the sentence imposed in CR-20-107 and to the Appellant's State sentence. *Id.* The trial court also ordered that the Appellant be restrained from contacting any of the named victims in either CR-20-107 or CR 20-122 "indefinitely". *Id.* The issue of credit for time served was not addressed at the sentencing hearing and the trial court did not address the issue in its sentencing order. Therefore, Appellant's days spent in the Tribe's custody were not credited towards his sentences.

The Appellant requests that this Court review the trial court's sentencing order and argues that the trial court's imposition of an indefinite restraining order, the imposition of consecutive sentences, and the court's failure to grant the Appellant credit for time served were abuses of the trial court's discretion. Appellant's Opening Br., at pg. 5.

Standard of Review

We agree with numerous courts that an appellate court's review of sentencing decisions is for an abuse of discretion. *E.g.*, *Gall v. United States*, 552 U.S. 38, 52-53, 128 S. Ct. 586 (2007); *United States v. Autery*, 555 F.3d 864, 872 (9th Cir. 2009); *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008); *United States v. Amezcua-Vasquez*, 567 F.3d 1050, 1053 (9th Cir. 2009). "The court abuses its discretion when it makes an error of law in reaching a discretionary conclusion or when the record, viewed in the light most favorable to upholding the trial court's decision, is devoid of competent evidence to support the decision." *Pascua Yaqui Tribe v. Coleman*, No. CA-15-003, at 2 (PYT Ct. App. Nov. 17, 2015). Only a procedurally erroneous or a substantively unreasonable sentence should be set aside. *Gall*, 552 U.S. at 46; *United States v. Rangel*, 697 F.3d 795, 800 (9th Cir. 2012)

Where a defendant fails to raise a procedural error to the trial court at sentencing, the standard of review is plain error. *U.S. v. Rangel*, at 800; *United States v. Lloyd*, 807 F.3d 1128, 1139-1140 (9th Cir. 2015). Under the plain error standard, relief is warranted where the trial court committed error that is plain and affected substantial rights. *United States v. Olano*, 507 U.S. 725, 732 (1993); *U.S. v. Lloyd*, at 1139.

Discussion

The Appellant raises three issues for appellate review. The first being, the imposition of an indefinite restraining order between Appellant and the named victims in the trial court's sentencing order. The second, whether or not the imposition of consecutive sentences was substantively unreasonable. Lastly, whether or not the trial court erred in failing to award Appellant credit for time served.

a. Imposition of an indefinite restraining order at sentencing.

The Pascua Yaqui Tribal Court is a court of general jurisdiction. *See* 3 PYTC §1-1-20. Criminal jurisdiction is statutorily vested in the tribal court when an individual commits a statutorily enumerated offense within the Tribe's territory. *Id.*; *See* 3 PYTC § 1-1-50. The tribal court can assert personal jurisdiction over the individual and the

subject matter *i.e.* the criminal conduct for the life of the criminal case. Criminal cases have a timeline for resolution, and end with a final judgment and sentence.

The court in this matter issued an indefinite no-contact order as to the victims in both cause numbers. Appellant's Ex. 9; Sentencing Order dated Feb 24, 2021; Appellant's Ex. 11, at pgs. 12-14. In doing so, the sentencing judge simply stated that the defendant was indefinitely restrained from contact with the victims in the two causes. *Id.*

The Pascua Yaqui Tribe uses an indeterminate form of sentencing, wherein there is a set maximum sentence including incarceration and/or a fine for each offense, the judge has discretion within that range to impose the sentence, subject to the code provisions, 4 PYTC §4-20. However, instead of an administrative panel or agency, it is the court who can grant parole, 4 PYTC §4-140, or commute a sentence, 4 PYTC §4-80, but only after at least one-half (1/2) of the sentence imposed has been served. The PYTC also provides for the suspension of sentences for a term of probation or community supervision, wherein reasonable conditions can be imposed on the defendant's conduct (4 PYTC § 4-90). *See generally*, Wayne R. Lafave, *et.al.*, *Criminal Procedure*, §§26.1(c), (d) & (e) (6th ed. 2017)

The Pascua Yaqui Code does not make any provisions for criminal sentencing orders to include no-contact orders as a term of incarceration. 4 PYTC §4-20 and §4-70.

However, our inquiry [should] not stop with the sentencing provision. The court possesses broad powers to "protect the administration of justice from 'abuses, oppression and injustice.'" *Wheeler v. United States*, 640 F.2d 1116, 1123 (9th Cir.1981). The government asks us to use this power to protect a [victim] The power to protect the administration of justice "must be exercised with circumspection. It may be invoked only when ... the defendant's conduct presents ... significant interference with the [administration of justice]." *Id.* at 1124 (quoting *Bitter v. United States*, 389 U.S. 15, 16, 88 S.Ct. 6, 19 L.Ed.2d 15 (1967)).

United States v. Morris, 259 F.3d 894, 900 (7th Cir. 2001).

The PYTC does not provide for the issuance of no-contact orders except in the imposition of a suspended sentence, "[t]he Court may, on such terms and conditions as the Court may impose, suspend the sentence and release a convicted person upon that person's pledge of good conduct for the duration of the sentence." 4 PYTC § 4-90. Also, in the context of civil proceedings a party may request preliminary injunctions and temporary restraining orders. 3 PYTC §2-1-100. Nowhere in the Pascua Yaqui Code is a provision made for a permanent restraining order or an indefinite no-contact order such as was issued here. Further, the court in this matter made no findings other than the commission of the crime itself that the Appellant was a danger to the victims in the future, or that future contact with the victims would result in a "significant interference with the administration of justice." *Morris, supra.*

Therefore, the issuance of an indefinite no-contact order against the Appellant was an abuse of discretion.

b. Imposition of Consecutive Sentences.

The Appellant argues that the trial court erred in failing to properly weigh the mitigating factors he presented at sentencing and thus, the imposition of consecutive rather than concurrent sentences was substantially unreasonable. Appellant's Opening Br., at pgs. 9-11.

The Pascua Yaqui Tribal Code does not provide the weight a trial court must give aggravating or mitigating factors at sentencing. In reviewing the Tribe's Criminal Code related to sentencing (*see* 4 PYTC) the trial court for the most part has a broad range of discretion in sentencing a defendant. As to the crimes Appellant was convicted of, the Pascua Yaqui Tribal Code prescribed a maximum imprisonment sentence of one year for each count he was convicted of.⁵ *See* 4 PYTC 4-20.

In determining whether the imposition of consecutive sentences was reasonable, we turn to federal case law for guidance. The imposed sentence must be "sufficient, but not greater than necessary to reflect the seriousness of the offense, promote respect for the law, and provide just punishment; to afford adequate deterrence; to protect the public; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment." *U.S. v. Carty*, at 991. The court among other things should consider the individual and his or her personal circumstances, the individual's history and characteristics, the nature and circumstances of the offense, the need for the sentence imposed, and kinds of sentences available. *Id. Gall v. U.S.*, at 52-53.

In determining Appellant's consecutive sentences, the trial court did hear from Appellant's counsel and the Appellant regarding his individual circumstances and other mitigating factors. Sentencing Hrg' Tr., at pg. 7-10. The court was also presented with the Appellant's criminal history, which included two prior felony convictions, a history of non-compliance with probation and parole, and argument from the Tribe that awarding Appellant a sentence concurrent with the sentence he was currently serving for his State parole offense, would result in Appellant not serving any time for the crimes he was convicted of in tribal court. Sentencing Hrg' Tr. at 4-6; Appellee's Attach. E.

The trial court was presented with and considered both mitigating and aggravating factors at the sentencing hearing. The trial court had the discretion as to how much weight to give those factors in issuing its sentencing order. The trial court's imposition of consecutive sentences totaling 159 days is far below the statutory prescribed sentencing maximum for the offenses Appellant was convicted of. We find that the trial court's imposition of consecutive sentences was reasonable and was thus, not an abuse of discretion.

⁵ Appellant was convicted of a total of five criminal counts. *See* Sentencing Order.

c. Failure to Award Credit for Time Served

The Appellant argues that the trial court erred when it failed to award Appellant credit for time served while in the Tribe's custody. Appellant's Opening Br., at pg. 5. Appellant did not raise this issue at sentencing, thus, we review for plain error.

The Pascua Yaqui Tribal Code does not address specifically the awarding of credit for time served while in the Tribe's custody. Federal law does provide guidance that generally a defendant is entitled to credit for time served while in the custody of the jurisdiction in which his or her offense occurred. *United States v. Wilson*, 503 U.S. 329, 337 (1992).

Here, the trial court should have awarded the Appellant credit for time served in the Tribe's custody. This error by the court affects a substantial right of the Appellant, which is the right to be free and released from custody earlier than indicated in the sentencing order. The trial court must calculate the number of days Appellant served in the Tribe's custody and award him credit for those days served.

Conclusion

We hold that the trial court did abuse its discretion in imposing an "indefinite" no contact order between the Appellant and the victims in the aforementioned cases.

We hold that the trial court did not abuse its discretion in sentencing Appellant to consecutive sentences to run after his Arizona State sentence, and thus, we affirm the court's decision on this issue.

We additionally hold that the trial court erred in failing to award Appellant credit for time served.

Order

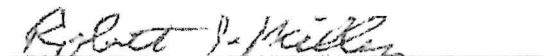
This case is REMANDED to the trial court to continue proceedings consistent with the Pascua Yaqui Tribal Code and this Opinion and Order.

So ORDERED this 9th day of September, 2021.


Justice Kendra A. Martinez


Hon. Rebecca Plevel

I, CONCUR:


Interim Chief Justice Robert J. Miller

IN THE PASCUA YAQUI COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, ARIZONA

MICHAEL MESQUITA

Appellant

vs.

PASCUA YAQUI TRIBE,

Appellee

APPELLATE CASE NO: CA-21-001

TRIBAL COURT CASE NO: CR-20-107,
CR-20-122

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REQUEST FOR ORAL ARGUMENT

The Appellant appears to raise three issues on appeal, each of which are straightforward. Specifically, he asserts that he was denied credit for time he had already served while in Pascua Yaqui custody, that the trial court issued an invalid “indefinite no contact” order, and that the trial court abused its sentencing discretion. The Appellant has not requested that the matter be set for an oral argument pursuant to 3 PYTC § 2-3-180, 3 PYTC § 2-3-260(C)(6) and/or (D).

Given the uncomplicated nature of the Appellant’s arguments, and the information contained in the record, the Tribe believes that oral argument would be unnecessary *unless* the Court determines that such argument would be within the interests of justice.

STATEMENT OF JURISDICTION

The Pascua Yaqui Tribal Rules of Appellate Procedure grant parties the right to appeal in most, but not all, circumstances. *See generally* 3 PYTC § 2-3-30, *et seq.* This includes the right for a Defendant to appeal the conviction and/or sentence imposed as part of a criminal case. *See* 3 PYTC § 2-3-40(C); 3 PYTC § 2-3-90; *see also generally* *PYT v. Valenzuela*, CA-19-001, p.1 (PYT Ct. App. 2019) (defendant’s appeal of trial and sentencing issues.) The Defendant/Appellant is an enrolled member of the Pascua Yaqui Tribe, and was convicted of several offenses that occurred within the physical boundaries of the Pascua Yaqui Reservation. Thus, this Court has jurisdiction over this appeal.

STANDARD OF REVIEW

Based on the Tribe's research, the Pascua Yaqui Court of Appeals has yet to determine how sentencing decisions are to be reviewed on appeal. However, federal courts have addressed this issue. According to those courts, sentencing decisions are reviewed under an "abuse of discretion" standard. *United States v. Amezcua-Vasquez*, 567 F.3d 1050, 1053 (9th Cir. 2009); *United States v. Edwards*, 595 F.3d 1004, 1014 (9th Cir. 2010); *see also* *PYT v. Miranda*, CA-08-015, p.22 (PYT Ct. App. 2009) (holding that this Court may look to Arizona or Federal authority in the absence of controlling Pascua Yaqui law). Accordingly, the trial court's issuance of the indefinite "no contact" order and the sentences imposed upon the Appellant should be reviewed to determine whether the court abused its discretion.

Courts will "not find a clear abuse of discretion unless, after carefully evaluating all the relevant factors, we conclude that the denial was arbitrary or unreasonable." *United States v. Flynt*, 756 F.2d 1352, 1358 (9th Cir.), amended, 764 F.2d 675 (9th Cir. 1985). This analysis depends heavily on the facts and circumstances of a particular case, and the weight the reviewing court gives to "any single factor may vary with the extent of the showings on the other factors." *Id.*; *see also* *PYT v. Coleman*, CA 15-003 (Nov. 2015) (finding that a court "abuses its discretion when it makes an error of law in reaching a discretionary conclusion or when the record, viewed in the light most favorable to upholding the trial court's decision, is devoid of competent evidence to support the decision."); *see also* *Stoof ex. rel. Lopez*, CA-18-001, p.2. As will be discussed, *infra*, the trial court did not abuse its discretion in sentencing the Appellant but did abuse its discretion when it issued the indefinite restraint order.

However, the third issue raised by the Appellant — specifically regarding whether he was entitled to credit for time he served while in the physical custody of the Pascua Yaqui Tribe —

must be reviewed for plain error. The Appellant failed to raise the issue of time credits at the trial court level. Under this standard, the Appellant must show that the trial court committed “an ‘error’ that is plain and that ‘affects substantial rights.’” *United States v. McCaleb*, 552 F.3d 1053, 1057 (9th Cir. 2009) (quoting *United States v. Olano*, 507 U.S. 725, 732, 113 S.Ct. 1770 (1993)). Although the Appellant never raised the issue of time credits at sentencing, failure to grant him the appropriate credit amounted to plain error.

ISSUES PRESENTED FOR REVIEW

1. Did the trial court abuse its discretion when it ordered that the Appellant be subjected to an “indefinite” restraint order with regards to his ability to contact the victims in either of his cases when said order would extend past the expiration of the court’s jurisdiction over the Appellant?
2. Did the trial court commit plain error when it failed to grant the Appellant credit for time he had already served in Tribal custody, even though the Appellant failed to raise the issue at the time of sentencing?
3. Did the trial court abuse its discretion when it sentenced the Appellant to consecutive terms of incarceration in light of his significant criminal history, his history of absconding from parole and pretrial release, the fact that he committed offenses in two separate cases while on parole, and the nature of the crimes for which he had been convicted?

STATEMENT OF THE CASE

I. Facts and Proceedings Below:

a. CR-20-107, Facts and Procedural History:

The offenses charged in CR-20-107 stemmed from events that occurred on March 11, 2020. Officers were initially called to an area located near the intersection of Camino Benem and Calle Torim in response to a report of a robbery. The victim in the case, Monica Godoy,¹ told officers that the Appellant — whom she knew — approached her while she was sitting in the driver’s seat of her vehicle. The victim indicated that the Appellant punched her twice in the face, took her purse and fled. Officers observed injuries consistent with the victim’s account. While officers were interviewing the victim, they saw the Appellant in the area and ordered him to stop. The Appellant ran away, stopping briefly behind a parked vehicle before entering the yard of a nearby residence. When officers were able to catch the Appellant, he balled his hands into fists and resisted the officers’ attempts to place him under arrest. Officers were later able to locate the victim’s purse behind the vehicle that officers had seen the Appellant hiding behind. *See* Tribe’s Exhibit B, Judgment and Setting Sentencing Order, *PYT v. Mesquita*, CR-20-107, p.1-3.

The Defendant was charged on March 12, 2020, with the following offenses: 1) Assault, committed in violation of 4 PYTC § 1-130(A)(3); 2) Battery, committed in violation of 4 PYTC § 1-150(A); 3) Disobedience of Lawful Order of Court, committed in violation of 4 PYTC § 1-560; 4) Resisting a Lawful Arrest, committed in violation of 4 PYTC § 1-730; 5) Possession or Concealment of Stolen Property, committed in violation of 4 PYTC § 1-480; and, 6) Theft, committed in violation of 4 PYTC § 1-450. *See* Tribe’s Exhibit A, Complaint and Affidavit, *PYT v. Mesquita*, CR-20-107.

¹ Some documents in the trial court record also refer to the victim as Monica “Gadoy.”

The Defendant was tried before a judge on September 9, 2020. At trial, the victim indicated that she had been untruthful when she described having been physically assaulted by the Appellant. *See* Tribe's Ex. B, p.2. However, her testimony regarding the theft of her purse was corroborated by physical evidence and the testimony of a law enforcement officer. *Id.* at 1-3. At trial, the Appellant was convicted of the following counts: Resisting a Lawful Arrest, Possession of Concealment of Stolen Property, and Theft. *Id.* at 3.² Sentencing was set for February 24, 2021, along with the sentencing hearing in CR-20-122. *Id.*³

b. CR-20-107, Time Credits:

In CR-20-107, the Appellant was arrested on March 11, 2020. Ex. A, p.3. His initial hearing was held on March 12, 2021. *See* Initial Hearing Order, *PYT v. Mesquita*, CR-20-107, p.1. At that hearing, the trial court ordered that he be held on a \$700.00 cash bond due to the nature of the charged offenses and the Appellant's criminal history. *Id.* Appellant was also ordered to obey all laws and to attend all court hearings. *Id.* Bond was posted on his behalf on March 16, 2021. *See* Appearance Bond, *PYT v. Mesquita*, CR-20-107, p.2-3. The Appellant failed to appear for his arraignment hearing on March 18, 2021, and a warrant issued for his arrest. As of the time the warrant issued, the Appellant had served a total of six days in custody. The Appellant remained on warrant status until April 21, 2021, when he was arrested on new charges. Tribe's Exhibit C, Complaint and Affidavit, *PYT v. Mesquita*, CR-20-122, p.3.

The Appellant appeared for an arraignment and an order to show cause hearing on April 22, 2020. *See* Show Cause Order; Arraignment Hearing; Order setting Trial, *PYT v. Mesquita*, CR-20-107, p.1. This granted him an additional day of credit, bringing the total to seven days. At the hearing, the Appellant was held on a cash bond of \$3,500.00. *Id.* at 2. During the

² It should be noted that the Tribe moved to dismiss counts one, two, and three after the close of evidence due to the victim's testimony. That motion was granted. *See* Ex. B, p.2.

³ Sentencing was initially set for December 7, 2020, but was continued at the request of the parties due to ongoing Covid-19 concerns.

pendency of this case, the Appellant was extradited to the custody of Arizona — specifically to the physical custody of the Arizona Department of Corrections — to handle matters relating to his felony parole violation case. *See PYT v. Mesquita*, EX-20-003, Order for Arrest Warrant (Extradition Demand). The Appellant was extradited on April 23, 2020. When combined with the additional credit he had earned in March of 2020, this brought the amount of time the Appellant had served in Pascua Yaqui custody to eight days.

While the Appellant was in State custody, the Pascua Yaqui Tribe writtred, or “borrowed” custody of him from the State on a temporary basis for his trial and sentencing dates. The Appellant was returned to State custody after each of these hearings. His bench trial occurred on September 9, 2020. He was sentenced on February 24, 2021. Given the amount he served in custody as to each of these dates, when combined with his previously earned credits, the Appellant had served a total of ten days in custody on CR-21-107 at the time of his sentencing.

c. CR-20-122, Facts and Procedural History:

The offenses charged in CR-20-122 stemmed from events that occurred on April 21, 2020, approximately one month after the charges involved in CR-20-107. Officers were dispatched to a residence located on South Camino Cocom regarding a report of trespassing. The victim, Yolanda Flores, had reported that the Appellant had entered her home and was refusing to leave. Before officers could get to the scene, the victim’s husband was able to get the Appellant to leave the residence. Officers located the Appellant, who, as he did in his first case, ran away despite officers’ orders to stop. After a foot chase, officers were able to apprehend and arrest the Appellant. At least one of the officers involved in this investigation had also been involved in the investigation in CR-20-107. During a search incident to arrest, officers located a glass narcotics pipe in one of the Appellant’s pockets. Tribe’s Ex. C; *see also* Tribe’s Exhibit D, Judgement and Sentencing Order, *PYT v. Mesquita*, CR-20-122. Both Ms. Flores and her

husband were elderly. Tribe's Exhibit E, Sentencing Memorandum, *PYT v. Mesquita*, CR-20-122, p.2.

The Appellant was charged on April 22, 2021, with three offenses: 1) Criminal Trespass, committed in violation of 4 PYTC § 1-440(B); 2) Refusal to Obey a Lawful Order, committed in violation of 4 PYTC §1-710; and 3) Possession of Drug Paraphernalia, committed in violation of 4 PYTC § 1-790(A). A bench trial was heard on September 9, 2020. At trial, he was convicted of Criminal Trespass and Refusal to Obey a Lawful Order. He was acquitted of the paraphernalia count. *See* Ex. D, p.2. Sentencing was also set for February 24, 2021, alongside CR-20-107. *Id.*

d. CR-20-122, Time Credits:

In CR-21-122, the Appellant was arrested on April 21, 2020. His initial hearing was held on April 22, 2020. *See* Initial Hearing Order, *PYT v. Mesquita*, CR-20-122. At that hearing, he was held on a \$3,500.00 bond, which was to run concurrently with the bond imposed in CR-20-177. *Id.* at 2. This granted him two days of time-served credit. An arraignment hearing was set for April 29, 2020, but was continued due to the fact that the Appellant had been extradited to Arizona state custody on April 23, 2020. Because the Appellant was not in Pascua Yaqui custody and unable to attend the April 29th hearing, he earned no credit for the hearing that occurred on that date. Appellant was writted back to the Pascua Yaqui Tribal Court on a temporary basis from State custody for an arraignment that occurred on June 15, 2021. He was returned to the custody of the Arizona Department of Corrections immediately afterwards. This granted him an additional day of credit, bringing his total time-served credits in this case to three days. The Appellant was writted back on a temporary basis for his September 9, 2020, trial date, and for his February 24, 2021, sentencing hearing. With the credit given for each of those days, the Appellant earned a total of five days of time credit as to CR-20-122.

d. Sentencing:

The Appellant was sentenced in both cases on February 24, 2021. A Pre-Sentence Report (PSR) was prepared prior to sentencing. Tribe's Exhibit F, Pre-Sentence Report, *PYT v. Mesquita*, CR-20-122/CR-21-107. According to the presentence writer, the Appellant admitted that he had not "done well on probation in the past" but claimed that he had attempted to better himself while he was in prison. Specifically, he claimed that he had gotten his GED and was working towards obtaining degrees. *Id.* at 2. The PSR included information that the Appellant had absconded from felony parole in August of 2019, and that he committed the offenses in CR-20-107 and CR-20-122 while on absconder status. *Id.* The PSR also detailed the Appellant's criminal history, which included two felony convictions. *Id.* at 4. Ultimately, the PSR writer recommended a total sentence of 114 days of incarceration to be run concurrently with his prison sentence. *Id.* at 5.⁴

Prior to sentencing, the Tribe submitted a sentencing memorandum. Tribe's Ex. E. In it, the Tribe provided brief summaries of the offenses in both cases. The Tribe detailed the Appellant's felony criminal history, which included a 2003 conviction for armed robbery committed in Pima County, Arizona, and a 2012 conviction for robbery committed in Maricopa County, Arizona. *Id.* at 2. The Tribe also noted that the Appellant had committed the offenses in CR-20-107 and CR-20-122 while he was on parole, that he had ultimately absconded from parole supervision, and argued that this demonstrated an unwillingness to abide by court orders. *Id.* Relying on the Appellant's history, the nature of the offenses, and the age of the victim and her husband in CR-20-122, the Tribe asked the Court to order the Appellant to serve sixty days in jail in CR-21-107, to be run consecutively to his State prison sentence.^{5,6} In CR-21-122, the

⁴ The PSR writer additionally recommended that the Appellant be released from custody on his Pascua Yaqui Tribal Court cases on June 18, 2021. Appellant's Ex. 11., p.4

⁵ The Appellant's prison sentence is set to expire on June 18, 2021. *Id.*

⁶ The Tribe also noted that the Appellant had turned down a "lenient" plea offer, and that he had to be writted from State custody multiple times during the pendency of both cases. *Id.* at 2. Based on the sentencing transcript, these

Tribe requested that the Appellant be ordered to serve one year of probation following his release from custody in CR-21-107, with twelve months of jail suspended as a condition of probation. *Id.* at 3.

At the time of sentencing, the Tribe also argued that the fact that elderly victims and witnesses were called to testify in court during a pandemic, as well as the fact that both individuals expressed fear for their safety justified the Tribe's recommended sentence. Appellant's Exhibit 11, p.4-6. The Tribe additionally argued that the court should give weight to the fact that the Appellant had absconded from felony probation in his State case, had failed to appear for his arraignment in CR-20-107, and that the Appellant was "clearly a threat to the community." *Id.* The Tribe also reiterated many of the arguments that had been included in its sentencing memorandum. Additionally, the Tribe pointed out that the Appellant's was "separate and apart from the crimes that he committed" within Pascua Yaqui territory, and argued that the Appellant should not "be awarded a free pass" or "be awarded a windfall" when he committed two new offenses while having absconded from felony parole. *Id.* at p.5-6. Finally, the Tribe argued that a probation sentence following the expiration of the Appellant's in custody sentence would allow the Appellant to be monitored and, thus, promote public safety. *Id.* at 6. The Tribe ultimately recommended that the Appellant be sentenced to sixty days of incarceration in CR-20-107, which was to run consecutively to his State sentence, and that he be ordered to serve one year of probation with 365 days suspended as a condition of said probation in CR-20-122. The probation sentence was recommended to run consecutively to both the State prison sentence and the sentencing imposed in CR-20-107. *Id.* at 9.

Appellant's counsel argued at sentencing that he should not be penalized for the restrictions imposed by the pandemic, or his exercise of his constitutional rights. *Id.* at p. 7. Counsel further argued that the Appellant had obtained his GED and was seeking ways in which

two factors were properly given no consideration by the trial court when imposing sentencing. *See generally* Appellant's Ex. 11.

to better his life, and that he had been affected by the pandemic. *Id.* Counsel pointed out that the Appellant had a job as a shower porter in State prison and that he was “taking steps... to improve himself.” *Id.* Counsel ultimately asked for a jail sentence of 114 days, and requested that the Appellant be released on June 18, 2021.

The Appellant was given an opportunity to address the court at the time of sentencing. He indicated that he had lost relatives to the COVID-19 pandemic. *Id.* at 10. He indicated that he was “constantly getting locked down” in prison due to breakouts. *Id.* He also stated that his eyes had been opened with regards to his relationship with the victim in CR-20-107. He claimed to “respect [his] elders” but said that he had only been asking for water when he entered their home. *Id.* Appellant stated that he had “elders too [that he had] to take care of” and asked for the court to be lenient in sentencing. *Id.*

At his sentencing on February 24, 2021, the trial court indicated that it had received and reviewed the files in CR-20-107 and CR-20-122 prior to the hearing. *Id.*; *see also* Tribe’s Exhibit G, Sentencing Order, *PYT v. Mesquita*, CR-20-122/CR-21-107, p.1 (providing further detail regarding the court’s review of the PSR and Sentencing Memorandum). The court noted the sentences recommended by each of the parties and by the PSR writer. Ex. G., p.1; Appellant’s Exhibit 11, p.3-4. The court noted that the Appellant had been previously found to be in contempt of court for failing to appear and that his bond in the Pascua Yaqui courts had been forfeited. Appellant’s Ex. 11, p. 11. The court expressed concerns that the Appellant may have “an issue with substance abuse or alcohol abuse.” *Id.* The court then stated that the Appellant did not appear to be a good candidate for probation given, in part, his failure to comply with supervision in non-tribal jurisdictions. *Id.* Based on the Appellant’s “substantial” history and other factors presented at sentencing, the court indicated that probation was not appropriate. *Id.* at p. 11-13.

The trial court sentenced the Appellant to 114 days of incarceration in CR-20-107, to be run consecutively to his State sentence. *Id.* at 12. In CR-21-122, the court sentenced the Appellant to 45 days of jail, to run consecutively to the sentence imposed in CR-20-107 and to the Appellant's State sentence. *Id.* The court indicated that this would result in the Appellant serving a total of 159 days of jail following his release from State custody. The trial court also ordered that the Appellant be restrained from contacting any individual in either CR-20-107 or CR-20-177 "indefinitely." Appellant's Ex. 11, p. 14. At no point during the sentencing proceedings did Appellant ask the trial court to address the issue of time credits. No credit for time served was ordered.

SUMMARY OF THE ARGUMENT

The Appellant essentially raises three issues on appeal. He briefly argues that the order of restraint issued against him was unlawful, and that he was entitled to credit for time served. His primary argument is that the trial court abused its discretion by failing to give proper weight to mitigating factors that were presented on his behalf at the time of sentencing. As will be discussed in more detail, *infra*, the Appellant is entitled to relief with regards to the issues involving the order of restraint and time credits. However, the trial court did not abuse its discretion when it imposed sentence in these matters, and relief should be denied as to that issue.

The trial court abused its discretion when it ordered that the Appellant be restrained “indefinitely” from contacting the victims in CR-20-107 and CR-20-122. The court had the power and jurisdiction to issue a “no contact” order in the criminal matters that would last for the pendency of its jurisdiction over the Appellant. That jurisdiction will expire once the Appellant has completed his sentence. Should the victims in either case wish to have a restraint or protective order that extends beyond the Appellant’s sentence, that is something that would have to be pursued civilly.

The Appellant failed to raise the issue of whether he was entitled to credit for time served while he was physically in the custody of the Pascua Yaqui Tribe. Because this issue was not raised at the time of sentencing, the trial court did not address it. While this means that the court’s failure to impose credit for time served is subject to a “plain error” analysis, plain error did occur. The Appellant was entitled to credit for five days already served in CR-20-122, and credit for ten days already served in CR-20-107.

Finally, the Appellant argues that the trial court did not give proper weight to the mitigating evidence he and his counsel presented at the time of sentencing, thus abusing its discretion. The Appellant is incorrect. The trial court reviewed and properly considered the evidence presented by the Appellant at sentencing. The trial court also reviewed and considered

evidence submitted in aggravation by the Tribe. When looking at the totality of the circumstances presented to the trial court—which included, but is not limited to, the fact that the Appellant had absconded from felony parole in another jurisdiction only to pick up two successive criminal cases involving separate victims—the sentence imposed was entirely appropriate. Indeed, and as will be discussed in more detail, *infra*, the sentence imposed was far less than what was requested by the prosecution, and far less than what the court could have imposed. Accordingly, there was no abuse of discretion with regards to this issue, and relief should be denied.

LAW AND ARGUMENT

I. The Trial Court Abused its Discretion in Issuing an Order Restraining the Appellant from Contacting the Victims “Indefinitely.”

While the trial court’s ultimate sentencing decision was not an abuse of discretion, it did abuse its discretion in one important aspect. Specifically, the trial court erred when it ordered that the Appellant have no contact with any of the victims listed in CR-21-107 and CR-21-122 for an “indefinite” period of time. *See* Appellant’s Ex. 11, p. 14. The Appellant claims this to be error, without citing to any legal authority in support. Based on the Tribe’s research, the Appellant is entitled to relief as to this issue.

Typically, a trial court’s jurisdiction terminates at the end of a defendant’s sentence, absent a specific order to the contrary. *See e.g. Petition of Schafer*, 54 F. Supp. 1019, 1021 (E.D. Wash. 1944). In this matter, the trial court possessed the absolute authority to issue an order prohibiting the Appellant from contacting the victims listed in CR-20-107 and CR-20-122 for the duration of his sentence. As his sentence involved consecutive terms of incarceration which themselves were set to run consecutively to his Maricopa County sentence, the court’s jurisdiction over him with regards to the contact order would have expired upon the Appellant’s last date of incarceration.

The Tribe has been unable to find any authority from federal, state, or the Pascua Yaqui Tribal courts that allows a court to issue an indefinite order restraining a defendant from contacting a victim once the person’s sentence has expired. Indeed, victims—and members of the general public who are not involved in a criminal case—are able to obtain orders of restraint or protection that can be renewed periodically through a civil cause of action. *See e.g.* 3 PYTC § 2-1-100(D), (E), (G) (discussing general orders of restraint and protection); *see also* 4 PYTC § 3-60.

Accordingly, the Tribe respectfully submits that the trial court abused its discretion when it issued an order restraining the Appellant permanently from contacting the victims in CR-20-107 and CR-20-122. The trial court had the power to issue a restraint or “no contact” order that would last until the expiration of his jail sentence. Any orders of restraint or protection that would take place after the expiration of his sentence would need to be pursued by the victims civilly under the Pascua Yaqui Tribal code.

II. The Trial Court’s Failure to Grant the Appellant Credit for Time He Served in Tribal Custody is Subject to Fundamental Error Review; However, the Appellant is Legally Entitled to Credit for the Time He Served While In Tribal Custody.

At the time of sentencing, the Appellant failed to request that he be granted credit for time already served in custody. *See generally* Appellant’s Exhibit 11. Nevertheless, the Appellant was entitled to credit for time that he had served in physical Pascua Yaqui custody in each of his cases. Because this issue was not raised before the trial court, it must be reviewed under a plain error analysis.

The Pascua Yaqui Tribal Code does not contain a provision regarding the issuance of credit for time served while a defendant is in the physical custody of the Pascua Yaqui Tribe prior to the imposition of sentence. The only portion of the Pascua Yaqui Tribal Code that refers to the issue of time credits can be found in the Rules of Appellate Procedure. 3 PYTC § 2-2-490(D) (indicating that, on appeal, a defendant shall “receive the same benefits and credits in the computation of the sentence as if no appeal had been taken.”). However, federal authority, again, provides guidance. *United States v. Wilson*, 503 U.S. 329, 337, 112 S. Ct. 1351, 1355 (1992) (noting that, according to federal statute, a defendant was not entitled to “double credit” for time served in multiple jurisdictions for different offenses, although he was entitled to time credit in the jurisdiction in which the offense occurred); *see also Miranda*, CA-08-015, p. 22.

The Appellant, in his brief, does not indicate how much credit he was entitled to based on time already served and, instead, asserts that the trial court failed to give him credit. Based on the Tribe's review of the record and applicable case law and code, and under a plain error analysis, the Appellant is legally entitled to credit in CR-20-122 for five days already served. He is also legally entitled in CR-20-107 to credit for ten days already served.

III. The Trial Court Did Not Abuse Its Discretion When It Sentenced the Appellant to Consecutive Periods of Incarceration, or When the Court Ordered that his Sentences Run Consecutively to the Expiration of his State Felony Sentence.

The primary focus of Appellant's brief concerns whether the Trial court abused its discretion when it imposed sentence in CR-20-107 and CR-20-122. Specifically, the Appellant asserts that the trial court failed to give adequate weight to the mitigating evidence presented by himself and his attorney at the time of sentencing. The Appellant is mistaken. The trial court was provided with an ample amount of both mitigating and aggravating evidence in each of the Appellant's cases. On balance, the aggravating evidence presented outweighed the limited mitigating evidence presented by the Appellant at sentencing. In spite of that, the trial court imposed a sentence that was less harsh than what the Tribe recommended, and a sentence that was far more favorable than what the Appellant was legally exposed to following his conviction. In light of all of the factors presented at sentencing, the trial court did not abuse its discretion in sentencing the Appellant to consecutive terms of incarceration. Thus, relief should be denied.

The Pascua Yaqui Tribal Code does not statutorily enumerate — as the United States Federal Code does — specific aggravating and mitigating factors. *See c.f. United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008). And yet, even though the United States Federal Code has specific statutory provisions regarding mitigating and aggravating factors, federal courts have held that a trial court “need not tick off each” factor in its ruling in order to show that it has considered them. *Id* at 992. Additionally, federal courts, and the United States Supreme Court, have stated that “Trial judges are presumed to know the law and to apply it in making their

decisions.” *Id.* (quoting *Walton v. Arizona*, 497 U.S. 639, 653, 110 S.Ct. 3047 (1990), overruled on other grounds by *Ring v. Arizona*, 536 U.S. 584, 609, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002)).

When determining whether a trial court has abused its sentencing discretion, the reviewing court is tasked only with determining whether the imposed sentence is “reasonable.” *Id.* “[O]nly a *procedurally erroneous or substantively unreasonable sentence* will be set aside.” *Id.* (*emphasis added*); see also *Rita v. United States*, 551 U.S. 338, 351 (2007) (noting that a sentence within local sentence guidelines is considered to be presumptively reasonable); *United States v. Ressam*, 679 F.3d 1069, 1088–89 (9th Cir. 2012) (“The overarching statutory charge for a district court is to impose a sentence sufficient, but not greater than necessary to reflect the seriousness of the offense, promote respect for the law, and provide just punishment; to afford adequate deterrence; to protect the public; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment.”) (quoting *Carty*, 520 F.3d at 992-93).

The Ninth Circuit Court of Appeals has dealt with numerous cases regarding whether a trial court has abused its discretion when it imposes sentence. It has stated:

“One theme runs through the Supreme Court’s recent sentencing decisions: *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), empowered district courts, *not appellate courts* [and] *breathe[d] life into the authority of district court judges* to engage in *individualized* sentencing....” *United States v. Vonner*, 516 F.3d 382, 392 (6th Cir.2008) (en banc) (Sutton, J.). We review sentences for abuse of discretion, and *without presuming* that outside-Guidelines sentences are unreasonable. *United States v. Carty*, 520 F.3d 984, 993 (9th Cir.2008) (en banc). *Even if we are certain that we would have imposed a different sentence had we worn the district judge’s robe, we can’t reverse on that basis.* *Gall v. United States*, — U.S. —, 128 S.Ct. 586, 597, 169 L.Ed.2d 445 (2007).”

United States v. Whitehead, 532 F.3d 991, 993 (9th Cir. 2008) (*emphasis added, internal quotation omitted*); see also *United States v. Tomko*, 562 F.3d 558, 568 (3d Cir. 2009) (“absent any significant procedural error, we must give due

deference to the district court's determination”) *United States v. Tomko*, 562 F.3d 558, 568 (3d Cir. 2009) (internal citations and quotation omitted).

Furthermore, “[t]rial judges are presumed to know the law and to apply it in making their decisions.”), overruled on other grounds by *Ring v. Arizona*, 536 U.S. 584, 609, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002). *United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008).

Here, the Appellant was convicted of three separate offenses in CR-20-107, and two offenses in CR-20-122. *see* Ex. B, p.3; Ex. D, p.2. Under the Pascua Yaqui Tribal Code, the Appellant faced a potential sentence as to each count of the following: 1) up to a year of imprisonment; 2) up to a year of probation, with or without suspended jail time of up to one year; 3) a fine of up to \$5,000; or, 4) any combination thereof. 4 PYTC § 4-20. The sentences for counts in an individual case or between cases can legally run consecutively to one another. *Bustamante v. Valenzuela*, 715 F. Supp. 2d 960, 968 (D. Ariz. 2010). Accordingly, the Appellant was facing a potential maximum sentence of five years of incarceration, five years of probation, and a \$25,000 fine, or any combination thereof.

The PSR writer and Appellant’s counsel recommended a remarkably lenient sentence of only 114 days, to be run concurrently with the Appellant’s sentence in his previous State probation revocation case. The Tribe recommended a much harsher sentence involving 60 days of “up front” incarceration, followed by a probation tail that carried the potential for up to 365 days of suspended incarceration. Had the Tribe’s recommended sentence been imposed, and had the Appellant failed on probation, he would have faced 425 days of incarceration. The trial court had the authority to sentence him up to something far greater. The trial court, contrary to Appellant’s arguments, imposed a sentence that fully took into account the mitigating evidence presented by Appellant, and the aggravating evidence presented by the prosecution. Thus, no abuse of discretion occurred, and relief on this issue should be denied.

The Appellant has previously been convicted of two felony robberies in Arizona, one of which involved the use of a weapon. He was released on parole after the completion of his most recent conviction. He absconded from parole. While on absconder status, he committed the offenses in CR-20-107. He posted bond, and then subsequently failed to appear for his arraignment hearing in that case. He did not appear in court on that matter until *after* he had been arrested for walking into the home of elderly tribal members without their permission, only to then flee from law enforcement and refuse to obey orders to stop. These offenses were the subject of CR-20-122, and were committed even though the court had ordered him to obey all laws as part of the conditions of release ordered in CR-20-107. The Appellant, himself, indicated that he had previously failed on probation. Thus, the Appellant was charged, and convicted, of offenses in two *separate* cases that he was arrested for *while* he was on felony absconder status with the State. Even at the time of sentencing, the Appellant — when given an opportunity to speak — minimized his conduct and argued that he entered the victims' home in CR-20-122, and scared them, simply because he wanted water. Such a request could have been made outside the front door of the elderly victims' residence.

The Tribe has no doubt that the Appellant, like many individuals in the past two years, has lost loved ones due to COVID-19. The Tribe, likewise, has no doubt that the Appellant, like many defendants, has experienced lockdown situations due to said pandemic. However, the offenses he committed occurred *during* the COVID-19 pandemic. But not every defendant who appeared before a court during the pandemic has the criminal history that Appellant has. Not every defendant who appeared before a court during the pandemic had absconded from probation. Not every defendant who appeared before a court during the pandemic invaded the home of elderly tribal members. Not every defendant who appeared before a court during the pandemic had absconded from pretrial release on one case only to commit offenses in a second case a month later. Not every defendant who appeared before a court during the pandemic

committed two new offenses involving multiple victims while having absconded from felony parole in a sister jurisdiction.

Based on the record and the totality of the circumstances, the trial court gave adequate—if not greater—weight to the mitigation presented by Appellant and his counsel. The Appellant committed offenses on two separate dates in two separate cases. Those offenses were committed during the time period in which the Appellant had absconded from parole in previous case from a separate sovereign jurisdiction. The sentence imposed was not an abuse of discretion. Indeed, to find that a trial court abuses its discretion simply because it fails to give a defendant the sentence he desires or which may be the most favorable to him would have a chilling effect on the ability of sentencing courts to adequately consider the mitigating and aggravating circumstances presented in an individual case. Sentencing decisions, based on the case law cited by both the Appellant and the Tribe, clearly require a trial court to balance mitigating and aggravating factors. In this particular instance, the Appellant's history and actions clearly outweighed the mitigation evidence that he and his attorney presented at trial.

Because the trial court did not abuse its discretion with regards to the jail sentences imposed, or with regards to whether those sentences should run consecutively to one another or to the Appellant's state case, the Appellant should be denied relief.

CONCLUSION

The Appellant is entitled to time served credits in CR-20-107, in the amount of ten days, and CR-20-122, in the amount of five days. The trial court erred in ordering that the Appellant be indefinitely and permanently restrained from contacting the victims in either case; however, the victims may pursue civil orders of protection or restraint that would take effect after the expiration of the Appellant's sentence. The Trial Court did not abuse its discretion in sentencing the Appellant to consecutive terms of incarceration for CR-20-107 and CR-20-122, or in ordering that those sentences run consecutively to the Appellant's prior felony case.

RESPECTFULLY submitted this 16th day of June, 2021.



Malena Acosta
Chief Prosecutor



Coleen Thoene
Deputy Prosecutor

CERTIFICATE OF SERVICE

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

Benjamin Casey
Ben.Casey@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 pleading was delivered, this date to:

Annamarie Valdivia
Annamarie.Valdivia@pascuayaqui-nsn.gov
Pascua Yaqui Office of the Public Defender
7474 S. Camino de Oeste
Tucson, AZ 85757

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

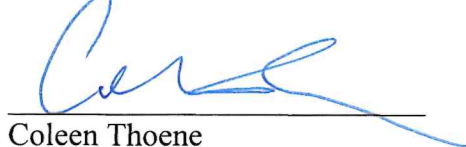
Associate Judge Cornelia Cruz
Pascua Yaqui Tribal Court
7777 S. Camino Huivisim
Tucson, AZ 85757

Dated this 16th day of June, 2021.

PASCUA YAQUI PROSECUTOR




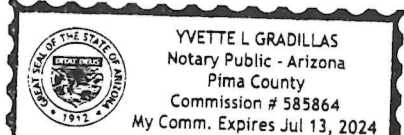
Malena Acosta
Chief Prosecutor



Coleen Thoene
Deputy Prosecutor

Sworn before me this 16th day of June, 2021


Notary Signature



ATTACHMENT A

PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

IN THE PASCUA YAQUI TRIBAL COURT

per
30 MAR 12 AM 10:19

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

DOCKET NO. CR-20-107

~~Pascua Yaqui Tribe~~

Plaintiff,

Case No.

CLERK *per*

vs.

MESQUITA, MICHAEL CASILLAS

CRIMINAL COMPLAINT

Defendant.

The PASCUA YAQUI TRIBE, hereby complains and alleges, upon information and belief, that the above named defendant, an Indian, while on the Pascua Yaqui Reservation, did commit the following offense(s):

COUNT 1: 4 PYTC § 1-130(A) (3) ~ Assault

On or about March 11, 2020 at approximately 7:46 p.m., at or near Camino Benem and Calle Torim, Defendant committed assault by Knowingly touching another person with the intent to injure, insult or provoke such person: *to wit: Defendant punched Monica Gaday in her face.*

COUNT 2: 4 PYTC § 1-150(A) ~ Battery

On or about March 11, 2020 at approximately 7:46 p.m., at or near Camino Benem and Calle Torim, Defendant did willfully strike another person or otherwise inflict bodily injury, or who, by offering violence, caused another to harm him, *to wit: Defendant punched Monica Gaday in the face which cause to become red and swollen.*

COUNT 3: 4 PYTC § 1-560 ~ Disobedience of Lawful Order of Court

On or about March 11, 2020 at approximately 7:46 p.m., at or near Camino Benem and Calle Torim, Defendant willfully disobeyed any order, subpoena, warrant or command duly issued, made or given by the Pascua Yaqui Tribal Court or any officer thereof, *to wit: Officer Tapia gave Defendant commands to stop and refused.*

COUNT 4: 4 PYTC § 1-730 ~ Resisting a Lawful Arrest

On or about March 11, 2020 at approximately 7:46 p.m., at or near Camino Benes and Calle Torim, Defendant did willfully and knowingly by force or violence or means, resist or assist another to resist a lawful arrest, *to wit: Defendant resisted and he was taken to the ground.*

COUNT 5: 4 PYTC § 1-480 ~ Possession or concealment Stolen Property

On or about March 11, 2020 at approximately 7:46 p.m., at or near Camino Benem and Calle Torim, Defendant knowingly possessed, conceaedl or converted for his own use property, which belongs to another and without the permission of the true owner, or property which he or she knows is stolen, *to wit: Defendant was in possession of a*

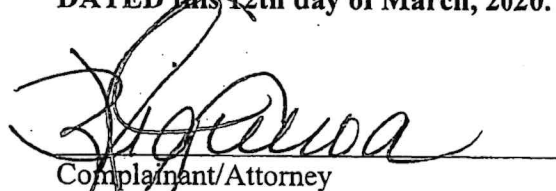
1 *Guess purse, personal belongings, and a Black Samsung Smart phone which are the*
2 *property of Monica Gaday.*

3 **COUNT 6: 4 PYTC § 1-450 ~ Theft**

4 On or about March 11, 2020 at approximately 7:46 p.m., at or near Camino Benem and
5 Calle Torim, Defendant took the property of another person without consent of the
6 owner, *to wit: Defendant took Monica Gaday's guess purse, personal belongings, and a*
Black Samsung Smart phone without her consent.

7 And such violations, upon conviction, are punishable under the Pascua Yaqui Tribal
8 Codes. The undersigned hereby swears or affirms that this complaint is based upon
9 information and belief, and the attached Affidavit and Verification, or signed statement.

10 **DATED this 12th day of March, 2020.**

11 
12 Complainant/Attorney

13 *Pursuant to Article I, § 1(g) of the Pascua Yaqui Constitution, 4 PYTC § 4-20, and 25 U.S.C. § 1302(a)*
14 *(b), If found guilty at sentencing or plea agreement, the Pascua Yaqui Tribe will seek punishment that*
15 *includes imprisonment.*

16 DEFENDANT: Michael Casillas Mesquita
17 ADDRESS:
18 DOB: 10/13/1985 SSN: ORIGIN: #
19 SEX: HT: WT: EYES: HAIR:

20 *Note: Accused persons may obtain disclosure information about their case ten days after arraignment by contacting*
21 *the Prosecutor's Office at 7777 S. Camino Hulvisim, Bldg. A, 2nd Floor, Tucson AZ 85757. [3 PYT R.Crim.P. Rule*
22 *38]*

Handwritten initials

AM 10:19

CR-20-107

IN THE PASCUA YAQUI TRIBAL COURT IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION	
PASCUA YAQUI TRIBE, Plaintiff Vs. Michael Mesquita, Defendant	CLERK _____ COURT USE ONLY CASE NUMBER P20031138
PROBABLE CAUSE STATEMENT	

AFFIRMATION

1. I, Christopher Tapia, being a duly authorized law enforcement officer of the Pascua Yaqui Indian Tribe and for the Pascua Yaqui Indian Reservation, declare under penalty of perjury, the following is true and correct:

- A. I am the arresting officer in this case; OR
 I am a law enforcement officer and make this statement on information and belief derived from Officer Christopher Tapia

2. SUSPECTED PARTY (Defendant)

Name: Michael Mesquita
 Driver's License Number: _____
 Tribal Enrollment Number: 694U012647
 Non-Tribal Member (VAWA)
 Date Of Birth: 10/13/1985

- Michael Mesquita is an enrolled member of the Pascua Yaqui Tribe.
 is an Indian subject to the jurisdiction of the Pascua Yaqui Tribe.
 is subject to the Tribal Jurisdiction of the Pascua Yaqui Tribe under the Violence Against Women Reauthorization Act of 2013 (VAWA).

3. The Defendant was Arrested

on 3/11/2020 at 7:46:00 PM

4. I have probable cause to believe that the defendant committed the following offense(s) at or near, Calle Torim and Camino Benem which is within the exterior boundaries of the Pascua Yaqui Indian Reservation.

<u>PYTC</u>	<u>4-1-130</u>	<u>- assault</u>
<u>PYTC</u>	<u>4-1-150</u>	<u>- battery</u>
<u>PYTC</u>	<u>4-1-710</u>	<u>- disobey lawful order</u>
<u>PYTC</u>	<u>4-1-730</u>	<u>- resisting arrest</u>
<u>PYTC</u>	<u>4-1-450</u>	<u>- theft</u>
<u>PYTC</u>	<u>4-1-410</u>	<u>- trafficking stolen property</u>
<u>PYTC</u>	<u>4-1-480</u>	<u>- possession of stolen property</u>
<u>PYTC</u>	<u>4-1-300</u>	<u>- disorderly conduct</u>

5. Statement Of Probable Cause:

On 03/11/2020 at approximately 1946 hours I was dispatched to the area of Camino Benem and Calle Torim reference to a strong-arm robbery. Per PYPD, the RP stated she was at the four way stop and a male punched her in the face and took her phone and white purse.

I arrived at Calle Torim and Camino Benem and met with the RP that identified herself as Monica Gadoy (DOB 01/29/1982). Monica stated she was driving her vehicle when she made a stop at the intersection of Calle Torim and Camin Benem. A male suspect that she knew, approached her open driver side window, punched her twice on the face and took her purse that contained her personal belongings (makeup, phone, wallet, driver license). Monica identified the suspect as Michael Mesquita (DOB 10/13/1985). Monica said Michael was wearing black shorts and black shirt. He was last seen running east on Calle Torim towards the Potarn Park. After Michael robbed her, she drove to her sisters house (7840 S. Camino Tetaviecti) and used her sister's phone to call police. She then drove around looking for Michael and later met with police at the intersection of Calle Torim and Camino Benem.

Monica purse was described as a white Guess purse.

Monica said she has known Michael for some time. Unknown years/months

I observed the right side of Monica's face was red and swollen. Her injuries were consistent

with her statement. Monica refused Victim services, medical attention and wished to be a victim.

While I was speaking with Monica, she saw Michael walk around the corner to Vai Sevoi from Camino Benem. I radioed the other officer to the area. I told Monica to stay put and got into my police unit and attempted to locate Michael as I drove west on Tarook.

I approached 4911 W. Tarook and I saw two dogs barking at the back of a parked vehicle (northeast side of 4911 W. Tarook). I exited my unit and began walking to the vehicle. I then saw a male, wearing black shorts and black shirt pop out from the rear side of the parked vehicle and start running west crossing the front door of 4911 W. Tarook. I yelled commands to stop and identified myself as police but the male ignored my commands and continued to run. It was later confirmed that this male was Michael Mesquita. Michael ran next door (4921 W. Tarook) and appeared he was going to try to run into the that residence through the front door. Michael then turned around and put his hands up with balled fists. I told Michael to get on the ground and he ignored my commands. I grabbed Michaels right wrist and told him repeatedly to get on the ground. He refused. Michael then began to resist as I attempted to take him tot the ground. Michael was finally taken to the ground and placed in handcuffs.

I responded back to where Monica was and I placed her in the rear cab of my vehicle for a suspect identification. Michael was with other officers in front of the arrest location when I passed by with Monica in my vehicle. With Monica hidden from Michaels view, she positively identified Michael as the individual that assaulted her and robbed her.

The purse was located behind the parked vehicle where I initially saw Michael before the foot pursuit. Monica later confirmed that all her belongings/money was accounted for except for her black Samsung smart phone. Value for the smart phone : Approximately \$180.00.

Ofc. Pallanes advised me of a witness (Sandra Higuera/ wished to remain anonymous) that observed Michael eluding police with the white purse in his possession and the events leading up to his arrest.

Recorded statements were obtained from Monica and Sandra. Photographs of the purse, its discovered location and Monica's person/injuries were taken. These items were submitted into PYPD evidence locker number 3.

Michael was transported and booked PYPD Detention Center where he was booked for PYT charges:


The information contained herein is true an accurate to the best of my knowledge and belief.

6. I request that the Court make a probable cause determination and, if the defendant is in custody, that he/she be continued in custody, pending further proceedings.

EXECUTED ON:

Signature of Officer

Date


3/11/20

ATTACHMENT B

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

PASCUA YAQUI TRIBE,)
 PLAINTIFF,)
vs.)
MESQUITA, MICHAEL, CASILLAS,)
 DEFENDANT.)

CASE NO. CR-20-107
JUDGMENT AND
SETTING SENTENCING
ORDER

The defendant, Michael Mesquita, appeared for trial on September 9, 2020, with his legal counsel, Senior Public Defender, Annamarie Valdivia. Appearing for the Tribe was Deputy Prosecutor, Russell Boatwright. Also appearing was Pascua Yaqui Police Officer, Christopher Tapia, and the victim, Monica Godoy. The court grants the Tribe's unopposed request to amend the complaint, Counts One (1), Two, (2), Five, (5), and Six (6) to read "Godoy" instead of the current last name of "Gaday," and Count Four to Refusal to Obey a Lawful Order, from the current, "Disobedience of a Lawful Order of Court."

On June 24, 2020, the court denied the Tribe's motion to stay the bench trial hearing in this matter for six (6) months, vacated the bench trial hearing in CR-20-107., set for June 29, 2020, and rescheduled the bench trial on September 9, 2020, the same date and time as CR-20-122, a second matter that the defendant had pending trial disposition. A continuance of CR-20-107 balanced the defendant's right to a speedy trial and addressed concerns raised regarding his potential exposure to the COVID-19 virus in a State congregate jail setting. A six-month stay would have amounted to an unnecessary delay, impaired the fundamental rights of the defendant, and delayed justice to the victim.

The court held a bench trial in this matter after holding a bench trial hearing in CR-20-122, heard testimony, reviewed documentary evidence, and it finds the defendant guilty beyond a reasonable doubt to Count Four, (4), Resisting a Lawful Arrest, Count Five, (5), Possession or Concealment Stolen Property, and Count Six, (6), Theft.

The Court finds the defendant not guilty of Count One (1) Assault, Count Two (2), Battery, and Count Three (3), Refusal to Obey a Lawful Order, as the Prosecutor motioned to dismiss those counts based on the testimony of the victim, who recanted her statements given to the police.

The Tribe introduced into evidence, as Exhibit One, a document entitled "Certificate Degree of Indian Blood" (CDIB). However, the Tribe could not locate the original CDIB and requested to use the CDIB record submitted as an exhibit in CR-20-122. The defense counsel objected, and the court allowed the used of the CDIB belonging to Michael Mesquita by the

1 Prosecutor.¹ Pascua Yaqui rules of evidence provides that the requirement of authentication or
2 identification as a condition precedent to admissibility is satisfied by "evidence sufficient to
3 support a finding that the item is what the proponent claims it is." 3 PYT R.Evid. Rule 47(A).
4 Here, the CDIB is a public record that is self-authenticating. Also, the court finds that the
5 foundation laid for the CDIB record satisfies the requirements that the document is admissible
6 because the publication satisfied 3 PYT R.Evid.Rule 47(B)(1), testimony of a witness with
7 knowledge, or 3 PYT R.Evid. Rule 47 (B)(5), public records or reports. The disclosed document
8 bore an "official seal" and stated that Michael Mesquita was "an enrolled member of the Pascua
9 Yaqui Tribe." The Tribe's Exhibit One, is a self-authenticating public document from the Pascua
10 Yaqui Tribal Enrollment department and was admitted pursuant to 3 PYT R.Evid. Rule 48 (A).
11 The Tribal Enrollment Certificate was published to the court through the testimony of Officer
12 Tapia, who confirmed that the defendant was an enrolled member. The Court finds that the
13 Tribal Enrollment Certificate, CDIB, was properly admitted into evidence. Through the
14 certificate, the Tribe has proven that the defendant is an Indian.

15
16 The defendant moved for a directed verdict as to all counts, and the Tribe moved to
17 dismiss Counts One, Two, and Three. The Court should grant the Tribe's motion to dismiss
18 Counts One, Two, and Three, based on the testimony of the victim, who recanted her statements
19 given to the police, and deny the defendant's motion for a directed verdict for the remaining
20 counts, because although the victim admitted to being untruthful, the testimony of Godoy and
21 Officer Tapia were consistent in important and significant details. Independent evidence in the
22 record corroborates that a theft did occur, such as, the purse being found at the site where the
23 defendant was hiding after he fled.

24
25 As to the Counts above, the Tribe has proven beyond a reasonable doubt, that the
26 defendant, Michael Mesquita, on the night of March 11, 2020, at about 7:46 p.m. committed
27 Count Four, (4), Resisting a Lawful Arrest. Officer Tapia testified that when he responded to the
28 call near Camino Benem and Calle Torim, he found the defendant near a residence on Tarook,
located on the Pascua Yaqui Reservation. When he approached, the defendant, who was hiding
behind a car, he "left running," after being commanded to stop, and when Officer Tapia caught
up to him, he resisted arrest and had to be taken to the ground to be arrested.

29
30 As to Count Five, (5), Possession or Concealment Stolen Property, and Count Six, (6),
31 Theft, the victim, Monica Godoy testified that the defendant got out of her car and took her purse
32 and cell phone. She stated that she drove to her sister's home to call the police and said that the
33 defendant hit her. She testified that the defendant did not give her purse back. On cross-
34 examination, she admitted that she knew the defendant, that they had been in a relationship, and
35 that she had lied to the police about the defendant hitting her. She was admonished by the court
36 that she was testifying under oath. Officer Tapia testified that he responded to the scene for a
37 reported, "strong armed robbery," that a male had taken the victim's property and assaulted her.
38 He identified the defendant in court and said after he arrested the defendant, he found the
victim's purse and property located where the defendant was hiding. The prosecutor, through

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¹ Pursuant to 3 PYT R.Evid. Rule 52, an original is not required and other evidence is admissible if the original is lost or destroyed, unless such loss or destruction has been done by the proponent in bad faith.

1 Office Tapia, published the Tribe's Exhibit #5, a photo of a purse on the ground, near the bumper
2 of a car.

3 The defendant argued that the victim, Monica Godoy, lied to the police and that the
4 defendant should be acquitted. The court notes discrepancies between what the victim
5 represented to the court at the time of trial and what she had initially told law enforcement
6 officers, and her subsequent recantations of the accusations she had made. Here, the defense
7 counsel elicited evidence of Godoy's inconsistent statements on cross-examination and Godoy
8 admitted that she lied to the police about the assault and battery. However, a prosecutor is
9 permitted to call witnesses that have made prior inconsistent statements. Although the victim
10 admitted to being untruthful, putting her credibility at issue, the testimony of Ms. Godoy and
11 Officer Tapia were consistent, and independent evidence in the record corroborates that a theft
12 did occur, such as, the purse being found at the site where the defendant was hiding after he fled,
13 and Officer Tapia's testimony.

14 **IT IS ORDERED** that the defendant, Michael Mesquita, is guilty beyond a reasonable
15 doubt to Count Four, (4), Resisting a Lawful Arrest, Count Five, (5), Possession or Concealment
16 Stolen Property, and Count Six, (6), Theft. The court shall set the matter for a sentencing
17 hearing and the defendant, Michael Mesquita, shall be released on a cash bond of \$3,500.00, in
18 the event he cannot post the cash bond, then the defendant shall be transported to attend his
19 future scheduled court hearings. He shall appear at all future hearings and obey all laws, and
20 shall not consume or possess any alcoholic beverages, drugs, or drug paraphernalia, and shall be
21 subject to random breath alcohol or urinalysis testing by law enforcement or Pretrial Services.
22 The defendant shall report to Pre-trial Services within twenty-four hours of release, and follow
23 any and all recommendations from the program, and shall be monitored by GPS tracking or
24 monitoring bracelets. He is restrained from any contact whatsoever with the victim, Monica
25 Godoy, including telephone contact or third-party contact, including any contact with her
26 residence or anywhere else. The defendant is also restrained from the future use, attempted use,
27 or threatened use of physical force against the victim.

19 **IT IS FURTHER ORDERED** that this matter shall be set for a sentencing hearing on
20 **December 7, 2020, at 10:00 a.m..**

21 **IT IS FURTHER ORDERED** that pursuant to 4 PYTC § 5-110, the Prosecutor's Office
22 shall advise the victims of the defendant's sentencing hearing and provide a copy of the terms
23 and conditions of release, and on request, give the victim notice of the right to make a statement
24 as provided by 4 PYTC § 5-210.

24 **IT IS FURTHER ORDERED** that the Court shall dismiss with prejudice, Count One
25 (1) Assault, Count Two (2), Battery, and Count Three (3), Refusal to Obey a Lawful Order.

26 **IT IS FURTHER ORDERED** that the court grants the Tribe's unopposed motion to
27 amend the complaint, Counts One (1), Two, (2), Five, (5), and Six (6) to read "Godoy" instead of
28 the current last name of "Gaday," and Count Four to Refusal to Obey a Lawful Order, from the
current, "Disobedience of a Lawful Order of Court."

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THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

IT IS FURTHER ORDERED that the Probation Department shall provide the court with a pre-sentence report no later than November 30, 2020. 3 PYTC § 2-2-450(d).

SO ORDERED THIS 9TH DAY OF SEPTEMBER 2020.



Associate Judge, Pascua Yaqui Tribal Court

Cc:

Date Sept 28, 2020

Tribe Defendant/Counsel Detention Probation



Clerk

ATTACHMENT C

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2 Pursuant to Article I, § 1(g) of the Pascua Yaqui Constitution, 4 PYTC § 4-20, and 25 U.S.C. § 1302(a)(b), If
3 found guilty at sentencing or plea agreement, the Pascua Yaqui Tribe will seek punishment that includes
4 imprisonment.

5 DEFENDANT: Michael Casillas Mesquita
6 ADDRESS: 5435 E. Calle Magdalena, Guadalupe, AZ 85283
7 DOB: 10/13/1985 SSN: 600-30-1922 ORIGIN: Pascua Yaqui Tribe #694U012647
8 SEX: Male HT: 5' 8" WT: 125 EYES: Brown HAIR: Black

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*Note: Accused persons may obtain disclosure information about their case ten days after arraignment by contacting the
Prosecutor's Office at 7777 S. Camino Huivisim, Bldg A, 2nd Floor, Tucson AZ 85757. [3 PYT R.Crim.P. Rule 38]*

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

Plaintiff: The Pascua Yaqui Tribe vs. Defendant: Michael Mesquita	Court Use Only Case Number P20042122
PROBABLE CAUSE STATEMENT	
<u>AFFIRMATION</u>	

1. I J. Pallanes 3L54 being a duly authorized law enforcement officer of the Pascua Yaqui Indian Tribe and for the Pascua Yaqui Indian Reservation, declare under penalty of perjury, the following is true and correct:
 - A. I am the arresting officer in this case; OR
 I am a law enforcement officer and make this statement on information and belief derived from Officer .
2. Suspected Party (Defendant)

Name: Michael Mesquita

Driver's license number: D02598762

Tribal Enrollment number: 694U012647

Date of Birth: 10/13/1985

Michael Mesquita

- is an enrolled member of the Pascua Yaqui Tribe.
- is an Indian subject to the jurisdiction of the Pascua Yaqui Tribe.
- is a non-Indian subject to the Jurisdiction of the Pascua Yaqui Tribe under the V.A.W.A of 1994.

3. The defendant was arrested on 04/21/2020 at 16:04.
4. I have probable cause to believe that the defendant committed the following offense(s) at or near 7810 S Camino Cocoim which is within the external boundaries of the Pascua Yaqui Indian Reservation.

PYTC 4-1-440 B	Criminal Trespassing
PYTC 4-1-710	Refusal to obey a lawful order
PYTC 4-1-730	Resisting a lawful arrest.
PYTC 4-1-790	Possession of drug paraphernalia
PYTC	

5. Statement of Probable Cause:

On April 21, 2020 at 16:04 I responded to the area of 7810 S Camino Cocoim(within the external boundaries of the Pascua Yaqui Reservation) in reference to trespassing. Yolanda Flores was reporting that a male subject wearing a black tank top had just entered her residence unlawfully and was refusing to leave.

Prior to my arrival, Ms. Flores advised communications that the male subject had finally left the residence and was now hiding in the bushes at 7801 S Camino Cocoim.

I then responded to 7801 S Camino Cocoim. When I arrived in front of the residence I observed a male subject running up the driveway towards the back fence. I then pursued the male on foot and began giving verbal stop commands. When the male subject failed to make it over the back fence he turned and began running back towards me. I then cornered him and continued to give him verbal commands to stop. However the male subject continued to try and run passed me. At this time I grabbed the male subject by the arm and placed him on the ground to safely and effectively control him. I advised him that he was now under arrest and handcuffed him. The male subject was identified as Michael Mesquita(an enrolled member of the Pascua Yaqui Tribe). At this time I was able to positively identify Mr. Mesquita as the male subject that had previously evaded me, reference PYPD case # P20042121.

During a search incident to arrest, I located a small glass pipe in Mr. Mesquita's front left pant pocket. The pipe contained a burnt white residue on the inside, consistant with the consumption of illegal drugs. I then seized the pipe and advised Mr. Mesquita that he was being charged with possession of paraphernalia.

I then made contact with the victim Yolanda Flores(01/01/1963). Ms. Flores advised that she was doing laundry and that her back door had been unlocked. She stated that while she was sitting in her living room, a male subject wearing a black tank top ran in though her back door and was standing in her living

room. Ms. Flores stated that she was afraid of the male subject and began yelling at him to get out. Eventually her husband was alerted and was able to force the male subject out of the front door. Ms. Flores advised that she was the home owner and that she was willing to be a victim of criminal trespassing.

Based on this information I believe there is casue to charge Michael Mesquita with an offense.

The information contained herein is true and accurate to the best of my knowledge and belief.

6. I request that the Court make a probable cause determination and, if the defendant is in custody, that he/she continue to be in custody, pending further proceedings.


Signature of Officer

Executed On: 4-21-2020
Date

ATTACHMENT D

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,)
 PLAINTIFF,)
vs.)
MESQUITA, MICHAEL, CASILLAS,)
 DEFENDANT.)

CASE NO. CR-20-122
JUDGMENT AND
SETTING SENTENCING
ORDER

The defendant, Michael Mesquita, appeared for trial on September 9, 2020, with his legal counsel, Senior Public Defender, Annamarie Valdivia. Appearing for the Tribe was Deputy Prosecutor, Russell Boatwright. Also appearing was Pascua Yaqui Police Officer, Juan Pallanes, the victim, Yolanda Flores, and witness, Richard Wilson.

The court held a bench trial, heard testimony, reviewed documentary evidence, and it finds the defendant guilty beyond a reasonable doubt to Count One, Criminal Trespass and Count Two, Refusal to Obey a Lawful Order.

The Court finds the defendant not guilty to Count Three, Possession, Manufacture, Delivery, and Advertisement, Drug Paraphernalia.

The Tribe introduced into evidence, as Exhibit One, a document entitled "Certificate Degree of Indian Blood." The document bore an "official seal" and stated that Michael Mesquita was "an enrolled member of the Pascua Yaqui Tribe." The Tribe's Exhibit One, is a self-authenticating public document from the Pascua Yaqui Tribal Enrollment department and was admitted pursuant to 3 PYT R.Evid. Rule 48 (A), without objection. The Tribal Enrollment Certificate was published to the court through the testimony of Officer Pallanes, who confirmed that the defendant was an enrolled member. Through the certificate, the Tribe has proven that the defendant is an Indian.

As to the three Counts above, the Tribe has proven beyond a reasonable doubt, that the defendant, Michael Mesquita, on the afternoon of April 21, 2020, at about 4:04 p.m. committed Count One Criminal Trespass by entering their residence and yard located at 7810 S. Camino Cocoim, located on the Pascua Yaqui Reservation, without permission or lawful authority. The homeowner, Yolanda Flores testified that she saw the defendant hiding and "ducking down," in her carport while she was washing dishes. She stated, he then entered her kitchen and refused to leave when told multiple times to "get out." She said she was scared. She also testified that she could hear the defendant speaking while outside to who she thought was Richard Wilson, and the defendant asked for water. Richard Wilson testified that he was in the living room and saw the defendant in the carport, saw him go around the back of the house, and then walk into the home's kitchen. He told the defendant to leave and he had to threaten the defendant before he finally forced the defendant from the home. Mr. Wilson testified that he did not see the defendant talking to his son or asking his son for water while in the carport.

1 He also committed Refusal to Obey a Lawful Order. Officer Pallanes testified that when
2 he responded to the call, he approached the defendant and the defendant started running, and
3 Officer Pallanes ordered him to stop, but the defendant did not stop and continued to flee.

4 The court finds that the Tribe has not met their burden for Count Three, Possession,
5 Manufacture, Delivery, and Advertisement, Drug Paraphernalia. Officer Pallanes testified that he
6 found a glass pipe with residue when searching the defendant. The court finds that proof of the
7 pipe being used for illegal drugs can be circumstantial and proved by experienced law
8 enforcement officers. An officer's familiarity with illegal drugs based on past experience coupled
9 with present observation or identification may be sufficient to establish the identity of drug
10 paraphernalia. Officer Pallanes testified about the pipe and testified about his experience and
11 attendance at the police academy that emphasized drug recognition and identification. Defense
12 counsel challenged this count and argued that there was never any type of tests performed on the
13 pipe or residue. Officer Pallanes did not conduct either a field test or a subsequent lab test to
14 establish that the pipe contained illegal drugs, did not obtain statements or an admission about
15 the use of the pipe from the Defendant, did not testify that the pipe was found with or near illegal
16 drugs, and the pipe was not introduced in court as an exhibit or through a chain of custody. Had
17 these factors been more adequately developed during trial, the court might have considered
18 ruling differently. The court finds that the Officer's testimony based on personal observation,
19 education, and experience was insufficient to sustain a conviction.

20 **IT IS ORDERED** that the defendant, Michael Mesquita, is guilty beyond a reasonable
21 doubt to Count One, Criminal Trespass and Count Two, Refusal to Obey a Lawful Order. The
22 court shall set the matter for a sentencing hearing and the defendant, Michael Mesquita, shall be
23 released on a cash bond of \$3,500.00. In the event he cannot post the cash bond, then the
24 defendant shall be transported to attend his future scheduled court hearings. He shall appear at
25 all future hearings and obey all laws, and shall not consume or possess any alcoholic beverages,
26 drugs, or drug paraphernalia, and shall be subject to random breath alcohol or urinalysis testing
27 by law enforcement or Pretrial Services. The defendant shall report to Pre-trial Services within
28 twenty-four hours of release, and follow any and all recommendations from the program,
including being monitored by GPS tracking or monitoring bracelets. He is restrained from any
contact whatsoever with the victim, Yolanda Flores, including telephone contact or third party
contact, including any contact with her residence or anywhere else. The defendant is also
restrained from the future use, attempted use, or threatened use of physical force against the
victims and shall not possess any weapons, guns, or dangerous instruments.

IT IS FURTHER ORDERED that this matter shall be set for a sentencing hearing on
December 7, 2020, at 10:00 a.m..

IT IS FURTHER ORDERED that pursuant to 4 PYTC § 5-110, the Prosecutor's Office
shall advise the victims of the defendant's sentencing hearing and provide a copy of the terms
and conditions of release, and on request, give the victim notice of the right to make a statement
as provided by 4 PYTC § 5-210.

ATTACHMENT E

PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME
23 FEB 2021
DOCKET NO.
TIME: 4:41 PM SLERK: [Signature]

1 PASCUA YAQUI TRIBE
7474 S. Camino de Oeste
2 Tucson, Arizona 85757
(520) 879-6251

3
4 Russell Boatwright
Deputy Prosecutor

5
6 IN THE PASCUA YAQUI TRIBAL COURT
7 IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA

8
9 PASCUA YAQUI TRIBE,
Plaintiff,

10 Vs.

11 MESQUITA, MICHAEL CASILLAS
12 Defendant

NO. CR-20-107/CR-20-122

SENTENCING MEMORANDUM

13
14 COMES NOW The Pascua Yaqui Tribe, by and through undersigned counsel, hereby submits
15 this Sentencing Memorandum and asks this Court to impose, in CR-20-122, a 12 month term of
16 probation with 1 year suspended consecutive to 60 days detention in CR-20-107. The Tribe further
17 asks that these sentences run consecutive the term of imprisonment the Defendant is currently
18 serving in the Arizona Department of Corrections. The Tribe requests this sentence for the following
19 reasons:

20 **Background:**

21 *CR-20-107*

22 On March 11th, 2020, around 7:46 p.m., Pascua Yaqui Police officers responded to a call
23 reporting a strong arm robbery. The reporting party, Monica Godoy, called 911 and told officers that
24 a suspect that she knew approached her window, punched her in the face, and took her purse. While
25 taking her statement Ms. Godoy spotted the suspect and officers gave chase and ultimately
26 apprehended Michael Mesquita. Ofc. Chris Tapia drove Ms. Godoy to where Mr. Mesquita was
27 located and she identified him as the person who punched her and took her purse. At trial, Ms.
28

1 Godoy recanted that Mr. Mesquita had punched her. However, she testified that he did take her purse
2 without her permission, but did not assault her.

3 *CR-20-122*

4 While on the run for the incident that occurred in CR-20-122 (and on absconder status for a
5 parole violation), the Defendant was apprehended a little over a month later on April 21st, 2020 at
6 around 4:04 P.M. In this incident, officers responded to a 911 call reporting an unwanted person at a
7 residence. The suspect had fled the area but officers identified the suspect shortly after. Officers gave
8 verbal commands for Michael Mesquita to show his hands and stay where he was. Mr. Mesquita
9 responded by ignoring these commands and leading officer on a chase.

10 At trial, Yolanda Flores and her husband, Richard Wilson, described seeing Mr. Mesquita on
11 their carport. After asking him if he wanted water and subsequently observing odd behavior by Mr.
12 Mesquita, they asked him to leave their property. Mr. Mesquita did not comply with their requests
13 and eventually entered their home, causing distress to Ms. Flores and Mr. Wilson.

14 **Criminal History**

15 The Defendant has a lengthy criminal history, including convictions for armed robbery out of
16 Pima County in CR20030979 and Robbery out of Maricopa County in CR2012149177001. The
17 Defendant committed these two offense while on release from prison for robbery. Furthermore, he
18 was currently in absconder status for his parole.

19 This history suggests that the Defendant poses a risk to the community. He has also
20 demonstrated he is unwilling to abide by court orders and disregards lawful orders, as evidenced by
21 his actions in CR-2020-122 and his absconder status for a parole violation.

22 **Acceptance of Responsibility**

23 The Defendant also displays no interest in accepting responsibility. The Tribe offered a plea
24 in this matter and the Tribe was informed Mr. Mesquita had no interest in accepting a rather lenient
25 plea for what turned out to be straightforward facts. Instead, the Tribe had to coordinate multiple
26 transports to accommodate the Defendant's trial, as well as call two elderly victims in to testify in the
27 middle of a pandemic. Because of this, the Defendant should not be awarded a windfall and get the
28 benefit of a 'two-for-one' for his crimes.

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Original of the foregoing delivered/mailed
This date to:

Clerk of the Court, Pascua Yaqui Tribal Court

A copy delivered to:

Annamarie Valdivia
Office of Public Defender

By:

ATTACHMENT F

PASCUA YAQUI TRIBAL COURT
FILED DATE AND TIME

09 FEB 2021
DOCKET NO. CR-20-107 / CR-20-122
TIME: 1040 CLERK: *AM*

PASCUA YAQUI TRIBAL COURT
OFFICE OF PROBATION AND PAROLE

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4 Pascua Yaqui Tribe,)
5 Plaintiff,) Docket No.: CR-20-107 / CR-20-122
6 vs.) **PRE-SENTENCE INVESTIGATION**
7 **MESQUITA, MICHAEL CASILLAS**) **REPORT**
8 Defendant)
9

10 **PERSONAL DATA**

11 **Name: MICHAEL CASILLAS MESQUITA**

12 **Address: Currently with ADC but once released his mailing address is 5435 D East Calle**
13 **Magdalena**

14 **City, State, Zip: Guadalupe, AZ 85283**

15 **Phone:**

16 **Tattoos/Scars: Tattoos all over stomach, chest and arms. Scar and a tattoo on left hand.**

17 **Last name on his upper back.**

18 **D.O.B. 10/13/1985 AGE: 35**

19 **Enrollment: Pascua Yaqui 2694U012647**

20 **Employer: Unemployed**

21 **Address: N/A**

22 **City, State, Zip: N/A**

23 **Occupation:**

24 **Marital Status: Single**

25 **Children: Mr. Mesquita advised he has an 18 year old daughter**

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Probation Officer Dominic M. Duran of the Pascua Yaqui Tribe Office of Probation & Parole hereby respectfully submits the attached investigation:

PRESENT SITUATION:

On September 09th, 2019 Mr. Mesquita was found guilty on two separate cases CR-20-107 Ct. 4- Resisting Lawful Arrest, Ct. 5- Possession or Concealment of stolen property, Ct. 6- Theft and CR-20-122 Ct. 1- Criminal Trespass and Ct. 2- Refusal to obey a lawful order. It should be noted that the defendant, Mr. Mesquita, had absconded from Maricopa County Parole around August 2nd, 2019 and was a wanted fugitive until an Extradition was issued for Mr. Mesquita on April 22nd, 2020. While he was on fugitive status he committed the crimes listed in CR-20-107 and CR-20-122.

DEFENDANT'S STATEMENT:

I conducted an interview on this defendant with his attorney present via telephone due to him being in custody with the Arizona Department of Corrections. The defendant stated that he hasn't done well while on probation in the past. Defendant has also stated that has done well and bettered himself while he has been in prison. He has got his GED and is working on going back to school to get degrees in Sociology and Business Management.

VICTIM IMPACT STATEMENT:

I reached out to Yolanda Flores who is the victim in CR-20-112 but after leaving 2 voicemails on her phone I got no response. Therefore, no victim statement applies in this matter.

I also reached out to Monica Godoy and was able to speak with her. She advised me that she

1 was not a victim in this case and did not wish to make any statements towards the case or
2 sentencing of Mr. Mesquita.

3
4 **FAMILY DATA:**

5 Mr. Mesquita advises that he does not have family around and is on his own.

6 **EDUCATION HISTORY:**

7 Mr. Mesquita went to Hohokam Middle School and Cholla High school before moving to
8 Guadalupe, Az and dropping out of school. However, since being in prison he has earned his
9 GED and is working to get back into school to get his degrees in Sociology and Business
10 Management. It should be noted that while he has been in prison he has completed parenting
11 and substance abuse classes.

12 **FINANCIAL STATEMENT:**

13 Mr. Mesquita has been doing jobs in the prison, such as Porter, Kit Worker and Maintenance
14 Work. Once out of Prison Mr. Mesquita feels that he will be able to do warehouse jobs.

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19 **CRIMINAL HISTORY:**

20 The Office of Probation and Parole conducted a background check with Pima County, Pascua
21 Yaqui Tribal Court and Surrounding State Jurisdictions:

1	<u>DATE</u>	<u>CASE #</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
2	08/06/2009	S-0700-CR-2008		
3		148749	Agg. Assault	Dismissed
4				
5	06/25/2009	S-1100-CR-2009		
6		01100	Agg. Robbery	Dismissed
7	07/07/2009	S-0700-CR-2009		
8		14377	Agg. Robbery	Plea to other charges
9	09/18/2012	S-0700-CR-2012	Robbery X2	9 years in Prison
10		149177	Threat-Intimidation	(Currently serving)
11	03/12/2020	CR-20-107	Resisting Arrest	
12			Possession stolen prop	
13			Theft	Pending Disposition
14	04/21/2020	CR-20-122	Trespass	
15			Refusal to obey	
16			lawful order	Pending Disposition

18 **PRIOR PROBATION HISTORY:**

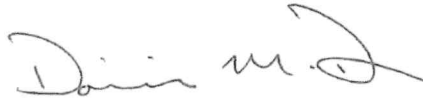
19 Mr. Mesquita has not been on probation in this Jurisdiction but has failed while on Parole in
 20 Maricopa County.

1 **PROBATION OFFICER ASSESSMENT:**

2
3 The office of Probation and Parole recommends as follows:

4 Defendant does not make a good candidate for Probation as he has self-admitted that he has had
5 trouble while on Probation. It should be noted as mentioned above he never checked in with his
6 parole office while he was out on Parole which led to him acquiring a warrant and being placed
7 back into prison to finish off his sentence. Probation is going to recommend that the defendant
8 serve a term of imprisonment of 114 days to run concurrently with his prison sentence to be
9 released on June 18, 2021.

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11 **RESPECTFULLY SUBMITTED** on this 9th day of February 2021.

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14 Dominic M. Duran
15 Probation & Parole Officer
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IN THE PASCUA YAQUI COURT OF APPEALS
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

MICHAEL MESQUITA,)	APPELLATE CASE NO. CA-21-001
)	
Appellant,)	PASCUA YAQUI TRIBAL COURT NO.
)	
v.)	CR-20-107/20-122
)	
PASCUA YAQUI TRIBE)	
)	
Appellee.)	
)	
)	

APPELLANT OPENING BRIEF
EXCERPTS OF RECORD

PASCUA YAQUI PUBLIC DEFENDER
 Annamarie L. Valdivia
 Senior Staff Attorney
 PYT Bar #10267
 4725 W. Calle Tetakusim, Building B
 Tucson, AZ 85757
 (520) 883-5012

Attorney for Appellee Michael Mesquita

Certificate of Service

On May 17, 2021 Appellants Opening Brief – Exceptrts of Record were filed in Pascua Yaqui Apellate Court and copies were provided to:

Honorable Judge Cruz
Pascua Yaqui Tribal Court

Ben Casey
Pascua Yaqui Tribe Court Administrator

Russell Boatwright
Deputy Prosecutor

Michael Mesquita
Appellant

Table of Contents

1. Exhibit 1: CR-20-107, Order dated March 12, 2020
2. Exhibit 2: CR-20-107, Order of Release and Appearance Bond dated March 20, 2020
3. Exhibit 3: CR-20-107, Order for Show Cause Hearing and Order for Bench Warrant
4. Exhibit 4: CR-20-107, Show Cause Order; Arraignment Hearing
5. Exhibit 5: CR-20-122, Initial Hearing
6. Exhibit 6: CR-20-122, Order for Continuance
7. Exhibit 7: CR-20-107/CR-20-122, Order Denying Motion to Stay/Continue Bench Trial
8. Exhibit 8: CR-20-107/CR-20-122, Judgement and Setting Sentencing Order
9. Exhibit 9: CR-20-107/CR-20-122, Sentencing Order
10. Exhibit 10: CR-20-107/CR-20-122, Notice of Appeal
11. Exhibit 11: CR-20-107/CR-20-122, Transcripts of Sentencing Hearing

Exhibit 1

1 based on the defendant's criminal history, that he is currently wanted in Arizona and alleged to
2 have absconded from the Department of Corrections, the defendant poses a credible threat to the
3 physical safety of the victim and may pose a threat to the community, he is a flight risk, poses a
4 risk of non-appearance, and a risk to reoffend. The Court should set a \$700.00 cash bond, and
5 require that the Defendant be monitored by Pretrial Services if he posts bond. He should be
6 restrained from any contact whatsoever with the victim, Monica Gadoy, including no telephone
7 contact or third party contact, including any contact with her residence or anywhere else, the
8 address shall be confidential pursuant to 4 PYTC § 5-280. He should appear at all future
9 hearings, and obey all laws.

10 **IT IS ORDERED** that the defendant, Michael Mesquita, shall be released on a cash bond
11 of \$700.00, in the event he cannot post the cash bond, then the defendant shall be transported to
12 attend his future scheduled court hearings. He shall appear at all future hearings and obey all
13 laws, and shall not consume or possess any alcoholic beverages, drugs, or drug paraphernalia,
14 and shall be subject to random breath alcohol or urinalysis testing by law enforcement or Pretrial
15 Services. The defendant shall report to Pre-trial Services within twenty-four hours of release, and
16 follow any and all recommendations from the program, and shall be monitored by GPS tracking
17 or monitoring bracelets. He is restrained from any contact whatsoever with the victim, Monica
18 Gadoy, including telephone contact or third party contact, including any contact with her
19 residence or anywhere else. The defendant is also restrained from the future use, attempted use,
20 or threatened use of physical force against the victim.

21 **IT IS FURTHER ORDERED** that the Public Defenders' Office shall be appointed to
22 assist the defendant.

23 **IT IS FURTHER ORDERED** that pursuant to 4 PYTC § 5-80, the Prosecutor's Office
24 shall advise the victims of the defendant's Initial hearing and provide a copy of the terms and
25 conditions of release.

26 **IT IS FURTHER ORDERED** that the Tribe file an amended complaint to reflect the
27 Defendant's updated address.
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An Arraignment shall be scheduled for March 18, 2020 at 1:30 p.m. Failure to appear or to follow any condition of release, could result in a show cause order, a bench warrant, a modification of conditions, or being found in contempt of court. 3 PYTC § 2-2-210.

THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

SO ORDERED THIS 12th DAY OF MARCH, 2020.

Judge, Pascua Yaqui Tribal Court

Cc:

03-12-20
Date

Tribe Defendant/Counsel Pre-Trial Services Detention Victim Advocate

Clerk

Exhibit 2

1 IN THE PASCUA YAQUI TRIBAL COURT
2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION
3

4 PASCUA YAQUI TRIBE,

5 Plaintiff,

6 vs.

7 MESQUITA, MICHAEL

8 Defendant

) NO. CR-20-107

) ORDER OF RELEASE

9 The Detention Officers of P.Y.T. Law Enforcement are directed to release the defendant,
10 MICHAEL MESQUITA, as bond has been made in the amount of \$ 700.00
11 as required by the Court.

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13 SO ORDERED THIS 16TH DAY OF MARCH, 2020.

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16 JUDGE, PASCUA YAQUI TRIBAL COURT

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24 Cc:
25 Date: 03/16/20
26 Faxed to PYT Detention
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THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

THE PASCUA YAQUI TRIBE)
Plaintiff,)
VS.) APPEARANCE BOND
)
) CASE NO. CR-20-107
)
MESQUITA, MICHAEL)
Defendant.)

The above named defendant is hereby released on a \$ 700.00 cash bond and is to appear before the Pascua Yaqui Tribal Court on MARCH 18, 20 20, at 1:30 P.M. for ARRAIGNMENT.

Defendant's Agreement

I, MICHAEL MESQUITA (defendant), pursuant to 3 PYTC § 2-2-200, agree to:

- (1) Appear to answer and submit to the orders and process of the court;
(2) Refrain from committing any criminal offense;
(3) Not depart from the reservation without permission of the court;
(4) If released after judgment and sentence pending appeal, shall diligently prosecute the appeal.

As the defendant, I also agree to follow every order of this court, or any court that considers this case, and I further agree that this bond may be forfeited if I fail:

- (X) to appear for court proceedings;
(X) if convicted, to surrender to serve a sentence that the court may impose; or
(X) to comply with all conditions set forth in the Standard Conditions of Bond Release or Other Conditions of Release outlined below.

STANDARD CONDITIONS OF BOND RELEASE:

Not possess or consume any illegal narcotics or dangerous drugs without a doctor's prescription and is subject to random urinalysis checks by law enforcement and not use or possess any drug paraphernalia and subject to random urinalysis testing by law enforcement.

The Defendant shall obey all laws of the Pascua Yaqui Tribe, the State of Arizona, and the United States during the term of this bond.

OTHER CONDITIONS OF RELEASE:

- [X] No Contact with the following Person(s): MONICA GADOY
[] Not to harm or harass following Person(s):
[] Restrained from the following Residence(s)/Address(es):
[X] The Defendant shall not consume nor possess any alcoholic beverages and shall be subject to random breath alcohol testing.
[X] Report to Pretrial Services within 24 hours of release.
[] Other:

- Charges: Ct 1- ASSAULT
Ct 2- BATTERY
Ct 3- DISOBEDIENCE OF LAWFUL ORDER OF COURT
Ct 4- RESISTING A LAWFUL ARREST
Ct 5- POSSESSION OR CONCEALMENT OF STOLEN PROPERTY
Ct 6- THEFT
Ct 7-

The Defendant shall appear for all hearings scheduled in this matter. If you fail to appear or it is determined by this Court that you have violated a provision of this bond, you will be subject to further prosecution and a warrant for your arrest will be issued by this Court.

Forfeiture or Release of the Bond 3 PYTC § 2-2-220(A)(B)

Forfeiture of the Bond. If at any time it appears to the court that a condition of an appearance bond has been violated, it shall require the parties and any surety to show cause why the bond should not be forfeited, setting a hearing thereon within ten days. If at the hearing the violation is not explained or excused, the court may enter an appropriate order of judgment forfeiting all or part of the amount of the bond, which shall be enforceable by the prosecutor as any civil judgment.

Release of the Bond. At any time that the court finds that there is no further need for an appearance bond, it shall exonerate the appearance bond and order the return of any security deposited. This bond will be satisfied and the security will be released when either: (1) the defendant is found not guilty on all charges, or (2) the defendant is sentenced, or (3) the defendant reports to serve a sentence.

Declarations

Acceptance. I, the defendant – and the surety – have read this appearance bond and have either read all the conditions of release set by the court or had them explained to me. I agree to this Appearance Bond.

I, the defendant – and the surety – declare under penalty of perjury that this information is true. (See 3 PYTC § 2-2-220(A))

Date: _____

Defendant's signature

Billbert P. Curran
Surety – printed name

Billbert P. Curran
Surety – signature and date

Dated this 16th day of March 2020.

[Signature]
Judge, Pascua Yaqui Tribal Court

Cc: _____
Date: _____

[X] Prosecutor [X] Defendant/Counsel [X] Surety [] PT
Clerk: _____

BOND INFORMATION

All defendants are bailable as a matter of right before conviction, or after conviction if an appeal is pending.

Persons posting bond must understand that the following conditions apply.

1. By posting bond, you guarantee that the person will appear for all court proceedings.
2. You guarantee that the defendant will not flee the jurisdiction of the court.
3. If the defendant violates the bond release, the bond money is subject to forfeiture and YOU WILL NOT GET YOUR MONEY BACK. The Court will also issue a warrant for the defendant.
4. If the defendant fails to appear for proceedings you may be subject to contempt of court.
5. When the bond money is released it will be returned to the person who posted the bond. The bond will not be released to anyone else or transferred to anyone who did not sign the money order or the appearance bond.
6. I AGREE TO BRING THE DEFENDANT BACK TO THE COURT HOUSE TO SIGN THE ORIGINAL APPEARANCE BOND.

I have read and understand the foregoing information.

3-16-20
Date

Gilbert Casillas 8/25/66
Sign Name D.O.B.

Gilbert Casillas
Print Name

Street Address (include apt, lot or space no.)

TUCSON AZ 85757
City State Zip

Cc: _____
Date: _____
Surety _____

Receipt # _____

please keep the court advised of any changes to your address

Exhibit 3

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,)
PLAINTIFF,)
vs.)
MESQUITA, MICHAEL,)
DEFENDANT.)

CASE NO. CR-20-107

ORDER FOR SHOW CAUSE HEARING
AND ORDER FOR BENCH WARRANT

The defendant was ordered to appear for an arraignment hearing on March 18, 2020, and the defendant failed to do so. Appearing for the Tribe was Deputy Prosecutor Russell Boatwright and appearing for the defendant, was Senior Staff Attorney, Annamarie Valdivia.


The Pretrial officer, Tracy Nielsen reported that the defendant was non-compliant with his conditions of release by failing to report to pretrial when he was released after his bond was posted. The Tribe recommended and requested that the court issue a bench warrant and that the defendant be held on a \$3,500.00 bond, because Mr. Mesquita has established a pattern of failures to follow court orders, he was notified of the date and time of hearing, and he was wanted on a Arizona Department of Corrections warrant. Defense counsel requested that the court reschedule the arraignment hearing, that she has not had an opportunity to talk to her client, and that he has a local address that he may be staying at. The court should grant the Tribe's request to issue a bench warrant against the defendant, for good cause shown, and because the allegations in this matter are serious and involve a victim. The Defendant should be ordered held on a \$3,500.00 cash bond to ensure Mr. Mesquita's timely appearance for a detention hearing to re-set his arraignment. Time limits should be deemed waived.

IT IS ORDERED that the court shall issue a bench warrant for the arrest and detention of the above named defendant, Michael Mesquita, who shall be held on a \$3,500.00 cash bond, and he shall be detained, until he is brought before the court for a detention hearing to re-set the arraignment hearing. Time limits shall be waived. The Court shall issue a separate order setting a bond forfeiture hearing.

IT IS FURTHER ORDERED that pursuant to 4 PYTC §§5-80, and 100, the Prosecutor's Office shall advise the victim of the defendant's arraignment hearing, bond release, and bench warrant status.

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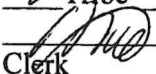
SO ORDERED THIS 18th DAY OF March, 2020.



Associate Judge, Pascua Yaqui Tribal Court

Cc:

Date 03/19/20

Tribe Defendant/Counsel Law Enforcement/Detention Pretrial

Clerk

ORIGINAL

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

PASCUA YAQUI TRIBE Plaintiff, Vs. MESQUITA, MICHAEL CASILLAS Aka: DEFENDANT,	COURT USE ONLY BW-20-119 TRIBAL COURT APR 22 2020
BENCH WARRANT	Case Number: CR-20-107

TO: ANY TRIBAL POLICE OFFICER OR OTHER AUTHORIZED LAW ENFORCEMENT OFFICER

The court has found probable cause to believe that such offense (s) were committed and that the accused committed them, and there is reason to believe that the accused will not appear in response to a summons, or that a warrant is otherwise appropriate.

WHEREAS, The Pascua Yaqui Tribal Court has made an order for a Bench Warrant for the defendant, charging accused defendant with the offenses of:

- FAILURE TO APPEAR FOR ARRAIGNMENT ON 03.18.20.

ACCUSED DESCRIBED AS:

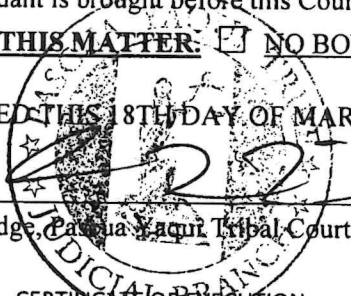
NON-INDIAN AMERICAN INDIAN TRIBAL REGISTER: YAQUI
 MALE FEMALE SSN ? CIB NO: FBI NO:
 DOB: 10/13/1985 HGT: 5' 08" WGT: 165 lbs. HAIR: BLACK EYES: BROWN
 STATE ID: AZ LICENSE/ID NO -- CLASS: ID
 LAST KNOWN ADDRESS: 5435 E CALLE MAGDALENA GUADALUPE, AZ 85283
 ALTERNATE ADDRESS:

YOU ARE HEREBY COMMANDED to apprehend and bring the said defendant before the judge of this court to answer to the charges above. A hearing shall be held on an OSC Arraignment

Detention Release when the defendant is brought before this Court.

BOND IS SET AT \$3,500.00 IN THIS MATTER. NO BOND HOLD.

SO ORDERED THIS 18TH DAY OF MARCH 2020.



Judge, Pascua Yaqui Tribal Court

CERTIFICATE OF EXECUTION

I hereby certify that I arrested Michael Mesquita on the 21st day of April in the month of April at the hour of 16:09 A.M. P.M. 2020 and presented (him) (her) before a Tribal Court Judge.

Badge, J. Pallanps # 3L 54
Arresting Officer

Exhibit 4

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,)
PLAINTIFF,)
vs.)
MESQUITA, MICHAEL,)
DEFENDANT.)

CASE NO. CR-20-107

SHOW CAUSE ORDER;
ARRAIGNMENT HEARING;
ORDER SETTING TRIAL

On Wednesday, April 22, 2020, the above matter came before the Court for an unscheduled detention hearing on an executed bench warrant, BW#20-119, issued on March 18, 2020, for an order to show cause for a failure to appear for a scheduled arraignment on March 18, 2020. Deputy Prosecutor Antonio Solorzano and Chief Prosecutor Oscar Flores appeared for the Tribe. The Defendant, Michael Mesquita, appeared in custody, with Deputy Public Defender, Stuart Du-Hann. The Defendant was read his rights.

During the hearing, the court employed precautionary safety measures, due to the COVID-19 crisis, including temperature checks, limited access, the use of personal protective masks, and social distancing within the courtroom.

Show Cause: The Defendant was served with notice of the time and date of the hearing for March 18, 2020. The Defendant advised that he thought his arraignment hearing was postponed due to the Coronavirus crisis. Based on the Defendant's explanation, that he made a mistake regarding the hearing, the Tribe stated that the excuse was not legally sufficient, and the court finds that the Defendant should be held in contempt for failure to appear and should be ordered to pay \$100.00 after the resolution of this court matter.

Arraignment: The Defendant was advised of the maximum penalties he is facing and pled not guilty to all counts. The Court requested motions from the parties on the conditions of release. The Tribe recommended and requested that the defendant be held on a \$3,500.00 cash bond, because Mr. Mesquita has established a pattern of failures to follow court orders and he is wanted on an Arizona Department of Corrections warrant. Defense Counsel requested that the defendant be released on a lower bond because he had other matters with the court and had a pending Extradition matter. The Court noted that the defendant was also non-compliant with his conditions of release by failing to report to pretrial services when he was released after his \$700.00 appearance bond was posted. The Court finds, after receiving input from the parties and

1 the presentation of no new relevant information, that the Court should maintain all previously
2 ordered release conditions and maintain the \$3,500.00 appearance bond imposed through the
3 warrant in this matter.

4 **IT IS ORDERED** that the defendant, Michael Mesquita, shall be released on a cash bond
5 of \$3,500.00, in the event he cannot post the cash bond, then the defendant shall be transported
6 to attend his future scheduled court hearings. He shall appear at all future hearings and obey all
7 laws, and shall not consume or possess any alcoholic beverages, drugs, or drug paraphernalia,
8 and shall be subject to random breath alcohol or urinalysis testing by law enforcement or Pretrial
9 Services. The defendant shall report to Pre-trial Services within twenty-four hours of release,
10 and follow any and all recommendations from the program, and shall be monitored by GPS
11 tracking or monitoring bracelets. He is restrained from any contact whatsoever with the victim,
12 Monica Gadoy, including telephone contact or third party contact, including any contact with her
13 residence or anywhere else. The defendant is also restrained from the future use, attempted use,
14 or threatened use of physical force against the victim. **A Bench Trial shall be scheduled for
June 29, 2020 at 9:00 a.m..**

15 **IT IS FURTHER ORDERED** that pursuant to 4 PYTC §§5-80, and 100, the
16 Prosecutor's Office shall advise the victim of the defendant's arraignment hearing, bond, and
17 bench warrant status.

18 SO ORDERED THIS 22ND DAY OF APRIL 2020.

19 

20 Associate Judge, Pascua Yaqui Tribal Court

21 Cc:

22 Date 04/24/20

23 Tribe Defendant/Counsel ___ Detention ___ Pretrial ___ Victim

24  Clerk

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Exhibit 5

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+IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE)
Plaintiff,)
vs.)
MESQUITA, MICHAEL)
AKA Michael Casillas Mesquita)
Defendant.)

NO. CR-20-122

**INITIAL HEARING
ORDER**

On Wednesday, April 22, 2020, the above matter came before the Court for an unscheduled Initial hearing pursuant to 3 PYTC § 2-2-180. Deputy Prosecutor Antonio Solorzano and Chief Prosecutor Oscar Flores appeared for the Tribe. The Defendant, Michael Mesquita, appeared in custody, with Deputy Public Defender, Stuart Du-Hann. The Defendant was appointed counsel, pursuant to the provisions of 3 PYTC § 2-2-310, because the Tribe may seek the loss of liberty as punishment. The Defendant waived the reading of his rights.

During the hearing, the court employed precautionary safety measures, due to the COVID-19 crisis, including temperature checks, limited access, the use of personal protective masks, and social distancing within the courtroom.

Probable Cause determination:

The Pascua Yaqui Criminal Code requires that “a complaint, together with other sworn statements, shall be filed with the court for review as to whether probable cause exists...” 3 PYTC § 2-2-90 (G). No tribal law enforcement officer shall arrest any person for a criminal offense set out in the Tribal Code except when the officer has probable cause to believe that the person to be arrested has committed an offense. 3 PYTC § 2-2-100(3). The Court finds that sufficient probable cause exists to believe that the defendant may have committed the offenses of Counts One (1) through Count Three (3). The Tribe recommended that the defendant be released on a cash bond of \$3,500.00 and advised that the Defendant was released on a bond in a separate matter and was arrested pursuant to a bench warrant. The Defense counsel agreed with the recommendations made and advised the court that the Defendant should be released on a concurrent bond with Case No. CR-20-107. The Court finds, after weighing the input from the parties, the pretrial report, the case documents filed, and the Defendant’s criminal history, that

1 due to the the allegations, and based on the defendant's recent criminal history, warrants and
2 failures to appear, and that he is currently wanted in Arizona, that the defendant poses a high risk
3 of non-appearance and a risk to reoffend. The Court should set a \$3,500.00 cash bond, and
4 require that the Defendant be monitored by Pretrial Services. He should be restrained from any
5 contact whatsoever with the victim, including no telephone contact or third party contact,
6 including any contact with their residences or anywhere else.

7 **IT IS ORDERED** that the defendant, Michael Mesquita, shall be released on a cash bond
8 of \$3,500.00. In the event he cannot post the cash bond, then the defendant shall be transported
9 to attend his future scheduled court hearings. He shall appear at all future hearings and obey all
10 laws, and shall not consume or possess any alcoholic beverages, drugs, or drug paraphernalia,
11 and shall be subject to random breath alcohol or urinalysis testing by law enforcement or Pretrial
12 Services. The defendant shall report to Pre-trial Services within twenty-four hours of release, and
13 follow any and all recommendations from the program, including being monitored by GPS
14 tracking or monitoring bracelets. He is restrained from any contact whatsoever with the victim,
15 Yolanda Flores, including telephone contact or third party contact, including any contact with
16 her residence or anywhere else. The defendant is also restrained from the future use, attempted
17 use, or threatened use of physical force against the victims and shall not possess any weapons,
18 guns, or dangerous instruments.

19 **IT IS FURTHER ORDERED** that the Public Defenders' Office shall be appointed to
20 assist the defendant.

21 **IT IS FURTHER ORDERED** that pursuant to 4 PYTC § 5-80, the Prosecutor's Office
22 shall advise the victims of the defendant's Initial hearing and provide a copy of the terms and
23 conditions of release.

24 **An Arraignment shall be scheduled for April 29, 2020 at 11:00 a.m..** Failure to
25 appear or to follow any condition of release could result in a show cause order, a bench warrant,
26 a modification of conditions, or being found in contempt of court. 3 PYTC § 2-2-210.

27 **THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.**

28 **SO ORDERED THIS 22ND DAY OF APRIL, 2020.**



Judge, Pascua Yaqui Tribal Court

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Cc:

4/24/20
Date

Tribe Defendant/Counsel Pre-Trial Services Detention Victims

Clerk

Exhibit 6

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE)
Plaintiff,)
vs.)
MESQUITA, MICHAEL)
AKA Michael Casillas Mesquita)
Defendant.)

CASE NO. CR-20-122

ORDER FOR CONTINUANCE

On Tuesday, April 28, 2020, the above matter came before the court when Deputy Prosecutor, Russell Boatwright, filed an opposed motion to continue the arraignment hearing scheduled for April 29, 2020 at 11:00 a.m., because the Defendant, Michael Mesquita, has been extradited and transferred by Pascua Yaqui detention officers into the custody and control of the Arizona Department of Corrections, in Arizona case, CR20121149177-001 and Warrant No. 2019W2184, *The State of Arizona v. Michael Casillas Mesquita*, pursuant to Pascua Yaqui extradition case, EX-20-003, and warrant #WA-20-030. The Public Defender opposed the motion.

In compliance with 3 PYTC Sec. 2-2-500-570, the defendant, Michael Mesquita, appeared with his legal counsel, Stuart Du Hann, on Wednesday April 22, 2020, for a hearing on a request for extradition filed by the Tribal Prosecutor's office and the Initial hearing in this matter. Present for the Tribe was Deputy Prosecutor Antonio Solorzano and Chief Prosecutor Oscar Flores. After being advised of his right to contest the extradition request and right to an extradition hearing with the Pascua Yaqui Tribal Court, he knowingly and intelligently waived his right to an extradition hearing and consented to the waiver of extradition proceedings. The court ordered that the Defendant, Michael Mesquita, be transferred into the custody and control of the Arizona Department of Corrections, for delivery of the defendant to an appropriate State of Arizona detention facility so that the defendant may appear before a court or administrative agency of Arizona or Maricopa County. The court found that the tribal chairman provided the requisite consent for the extradition request by the State of Arizona and the court reviewed the written demand for extradition and state warrant. Pursuant to 3 PYTC § 2-2-510, "if a person is imprisoned or is held under criminal proceedings pending against him, the Tribe may agree to the extradition of such person before the conclusion of such proceedings or term of sentence, upon condition that such person be returned to the Tribe after the prosecution in the State [...] is

1 terminated, unless the Tribal Prosecutor determines that further prosecution is not necessary.”
2 The calculation of time limits does not include any delays caused by or on behalf of the
3 defendant, including, but not limited to, the defendant’s absence or his inability to be arrested or
4 taken into custody on the reservation. 3 PYTC § 2-2-330(E).

5 On Wednesday, April 29, 2020, Deputy Public Defender Stuart DuHann appeared in
6 place of Mrs. Annamarie Valdivia on behalf of Mr. Mesquita and Chief Prosecutor Oscar Flores
7 appeared on behalf of the Tribe. Mr. DuHann stated that the Office of the Public Defender
8 opposed the motion to continue and wanted the Defendant’s speedy trial time limits to continue
9 to run if the court granted the motion to continue. Mr. Flores opposed the defendant’s response
10 and requested that any time limits be tolled because of the COVID-19 crisis, and because the
11 defendant was absent from the jurisdiction pursuant to a warrant and extradition. For good cause
12 shown, pursuant to 3 PYTC § 2-2-510 and 3 PYTC § 2-2-330(E), the Court will grant the Tribe’s
13 motion, vacate the arraignment and reschedule the hearings as requested.

14 **IT IS ORDERED THAT** the Motion to Continue is granted, time limits are deemed
15 waived, the arraignment hearing scheduled for April 29, 2020 is vacated, and all parties shall
16 appear before the court, on JUNE 15, 2020 AT 9:00 AM for the rescheduled hearing.

17 **THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.**

18 SO ORDERED THIS 29TH DAY OF APRIL 2020.

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21 _____
22 JUDGE, PASCUA YAQUI TRIBAL COURT

23 Cc:
24 Date 05-01-20


25 Tribe Defendant/Counsel _____
26  Clerk

Exhibit 7

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE)	
Plaintiff,)	CASE NO. CR-20-107/CR-20-122
vs.)	
MESQUITA, MICHAEL)	
AKA Michael Casillas Mesquita)	ORDER DENYING MOTION TO STAY
Defendant.)	CONTINUE BENCH TRIAL HEARING

On June 17, 2020, the above matter came before the court when Deputy Prosecutor, Russell Boatwright, filed an opposed motion to stay the bench trial hearings scheduled in CR-20-107 and CR-20-122 for six (6) months, because the Defendant, Michael Mesquita, is in the custody and control of the Arizona Department of Corrections, in Arizona case, CR20121149177-001, *The State of Arizona v. Michael Casillas Mesquita*, was recently extradited pursuant to Pascua Yaqui extradition case, EX-20-003, and multiple transports would increase the Defendant's exposure to the COVID-19 virus. The Public Defender responded, and opposed the Tribe's motion, citing the speedy trial provisions of the code. The court reviewed the Tribe's request to stay the matters for six (6) months and the defense counsel's response.

The Pascua Yaqui Constitution provides that the court cannot deny to any person the right to a speedy trial, PYTC Art. I, Sec. 1(f), the court "shall set all criminal cases for trial as soon as possible after the date of entry of the plea of the defendant." The Pascua Yaqui speedy trial act provides that trials of defendants whose pretrial liberty may present unusual risks shall be given priority over other criminal matters. 3 PYTC § 2-2-320(B). All defendants must be tried within 150 days of the arrest or service of summons or notice to appear, and if a defendant is in custody, then he must be tried within 120 days of his initial appearance or within 90 days from the date of the arraignment, whichever is the greater. 3 PYTC § 2-2-330 (A)(B). The statutory time frames may be tolled however, based on delays caused by the defendant. For example, if a defendant is absent or incompetent, or where he or she may not be arrested or taken into custody on the reservation, calculations of the time limits prescribed by the speedy trial act shall not include such delays.

The Defendant was extradited to the State of Arizona on April 22, 2020, in EX-20-003 for a parole matter. He knowingly and intelligently waived his right to an extradition hearing and consented to the waiver of an extradition proceeding. The tribal code states, "when it is

1 desired to have returned to the State... and such person is imprisoned or is held under criminal
2 proceedings pending against him, the Tribe may agree to the extradition of such person before
3 the conclusion of such proceedings or term of sentence, upon condition that such person be
4 returned to the Tribe after the prosecution in the State...is terminated, unless the Tribal
5 Prosecutor determines that further prosecution is not necessary. 3 PYTC § 2-2-510.

6 The Pascua Yaqui Rules of Criminal Procedure provides in pertinent part as follows:

7 These provisions are intended to provide for the just, **speedy determination**
8 of every criminal proceeding. They shall be construed to secure simplicity
9 in procedure, fairness in administration, and the elimination of unnecessary
10 delay and expense, and to protect the fundamental rights of the individual
11 while preserving the public welfare.

12 **3 PYTC § 2-2-20, Purpose and Construction.**

13 3 PYTC § 2-2-330 was recently amended to read that “[t]he court **may grant a**
14 **continuance where good cause has been established.**” *Id.*, at (E). (emphasis added). Granting a
15 continuance is discretionary.

16 Generally, under the speedy trial priorities, a defendant in custody shall be given
17 preference over other criminal cases, and the defendant in custody shall be provided a trial
18 setting earlier than a defendant who is released. 3 PYTC §§ 2-2-320(B); 330(B)(C). Mr.
19 Mesquita has been jailed in two separate matters, CR-20-107 and CR-20-122, since April 22,
20 2020. He was picked up on an executed bench warrant in CR-20-107, BW#20-119, after he
21 failed to appear at his arraignment hearing on March 18, 2020, he was out on bond after being
22 released on a \$700.00 posted cash bond. He was absent for a total of thirty-five days and
23 arrested on new charges in CR-20-122 that occurred on April 21, 2020. He was extradited to the
24 State of Arizona on April 22, 2020, and time limits in CR-20-107 and CR-20-122 have been
25 tolled. His bench trial in CR-20-122 is scheduled for September 9, 2020 and his bench trial in
26 CR-20-107 is scheduled for June 29, 2020.

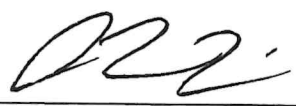
27 The Court denies the motion to stay for six (6) months for lack of good cause shown.
28 Additionally, the Court vacates the bench trial in CR-20-107 and reschedules the matter for the
same date and time as CR-20-122, September 9, 2020. A continuance of CR-20-107 balances
the defendant’s right to a speedy trial and also addresses concerns regarding his potential
exposure to the COVID-19 virus in a State congregate jail setting. A six-month stay will amount

1 to an unnecessary delay, may impair the fundamental rights of the defendant, and delay justice to
2 the victims.

3 **IT IS ORDERED** that the court denies the Tribe's opposed motion to stay the bench trial
4 hearings in these matters for six (6) months, for lack of good cause shown. The court shall
5 vacated the bench trial hearing in CR-20-107 set for June 29, 2020, and reschedules the bench
6 trial on September 9, 2020 at 3:00 p.m..

7 **THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.**

8 SO ORDERED THIS 24th DAY OF JUNE, 2020.

9 

10 Associate Judge, Pascua Yaqui Tribal Court

11 Date 6/24/20

12 cc: Tribe Defendant Counsel Detention
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15 Clerk

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Exhibit 8

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

PASCUA YAQUI TRIBE,)
 PLAINTIFF,)
vs.)
MESQUITA, MICHAEL, CASILLAS,)
 DEFENDANT.)

CASE NO. CR-20-107
JUDGMENT AND
SETTING SENTENCING
ORDER

The defendant, Michael Mesquita, appeared for trial on September 9, 2020, with his legal counsel, Senior Public Defender, Annamarie Valdivia. Appearing for the Tribe was Deputy Prosecutor, Russell Boatwright. Also appearing was Pascua Yaqui Police Officer, Christopher Tapia, and the victim, Monica Godoy. The court grants the Tribe’s unopposed request to amend the complaint, Counts One (1), Two, (2), Five, (5), and Six (6) to read “Godoy” instead of the current last name of “Gaday,” and Count Four to Refusal to Obey a Lawful Order, from the current, “Disobedience of a Lawful Order of Court.”

On June 24, 2020, the court denied the Tribe’s motion to stay the bench trial hearing in this matter for six (6) months, vacated the bench trial hearing in CR-20-107., set for June 29, 2020, and rescheduled the bench trial on September 9, 2020, the same date and time as CR-20-122, a second matter that the defendant had pending trial disposition. A continuance of CR-20-107 balanced the defendant’s right to a speedy trial and addressed concerns raised regarding his potential exposure to the COVID-19 virus in a State congregate jail setting. A six-month stay would have amounted to an unnecessary delay, impaired the fundamental rights of the defendant, and delayed justice to the victim.

The court held a bench trial in this matter after holding a bench trial hearing in CR-20-122, heard testimony, reviewed documentary evidence, and it finds the defendant guilty beyond a reasonable doubt to Count Four, (4), Resisting a Lawful Arrest, Count Five, (5), Possession or Concealment Stolen Property, and Count Six, (6), Theft.

The Court finds the defendant not guilty of Count One (1) Assault, Count Two (2), Battery, and Count Three (3), Refusal to Obey a Lawful Order, as the Prosecutor motioned to dismiss those counts based on the testimony of the victim, who recanted her statements given to the police.

The Tribe introduced into evidence, as Exhibit One, a document entitled “Certificate Degree of Indian Blood” (CDIB). However, the Tribe could not locate the original CDIB and requested to use the CDIB record submitted as an exhibit in CR-20-122. The defense counsel objected, and the court allowed the used of the CDIB belonging to Michael Mesquita by the

1 Prosecutor.¹ Pascua Yaqui rules of evidence provides that the requirement of authentication or
2 identification as a condition precedent to admissibility is satisfied by "evidence sufficient to
3 support a finding that the item is what the proponent claims it is." 3 PYT R.Evid. Rule 47(A).
4 Here, the CDIB is a public record that is self-authenticating. Also, the court finds that the
5 foundation laid for the CDIB record satisfies the requirements that the document is admissible
6 because the publication satisfied 3 PYT R.Evid.Rule 47(B)(1), testimony of a witness with
7 knowledge, or 3 PYT R.Evid. Rule 47 (B)(5), public records or reports. The disclosed document
8 bore an "official seal" and stated that Michael Mesquita was "an enrolled member of the Pascua
9 Yaqui Tribe." The Tribe's Exhibit One, is a self-authenticating public document from the Pascua
10 Yaqui Tribal Enrollment department and was admitted pursuant to 3 PYT R.Evid. Rule 48 (A).
11 The Tribal Enrollment Certificate was published to the court through the testimony of Officer
12 Tapia, who confirmed that the defendant was an enrolled member. The Court finds that the
13 Tribal Enrollment Certificate, CDIB, was properly admitted into evidence. Through the
14 certificate, the Tribe has proven that the defendant is an Indian.

15
16 The defendant moved for a directed verdict as to all counts, and the Tribe moved to
17 dismiss Counts One, Two, and Three. The Court should grant the Tribe's motion to dismiss
18 Counts One, Two, and Three, based on the testimony of the victim, who recanted her statements
19 given to the police, and deny the defendant's motion for a directed verdict for the remaining
20 counts, because although the victim admitted to being untruthful, the testimony of Godoy and
21 Officer Tapia were consistent in important and significant details. Independent evidence in the
22 record corroborates that a theft did occur, such as, the purse being found at the site where the
23 defendant was hiding after he fled.

24
25 As to the Counts above, the Tribe has proven beyond a reasonable doubt, that the
26 defendant, Michael Mesquita, on the night of March 11, 2020, at about 7:46 p.m. committed
27 Count Four, (4), Resisting a Lawful Arrest. Officer Tapia testified that when he responded to the
28 call near Camino Benem and Calle Torim, he found the defendant near a residence on Tarook,
located on the Pascua Yaqui Reservation. When he approached, the defendant, who was hiding
behind a car, he "left running," after being commanded to stop, and when Officer Tapia caught
up to him, he resisted arrest and had to be taken to the ground to be arrested.

As to Count Five, (5), Possession or Concealment Stolen Property, and Count Six, (6),
Theft, the victim, Monica Godoy testified that the defendant got out of her car and took her purse
and cell phone. She stated that she drove to her sister's home to call the police and said that the
defendant hit her. She testified that the defendant did not give her purse back. On cross-
examination, she admitted that she knew the defendant, that they had been in a relationship, and
that she had lied to the police about the defendant hitting her. She was admonished by the court
that she was testifying under oath. Officer Tapia testified that he responded to the scene for a
reported, "strong armed robbery," that a male had taken the victim's property and assaulted her.
He identified the defendant in court and said after he arrested the defendant, he found the
victim's purse and property located where the defendant was hiding. The prosecutor, through

¹ Pursuant to 3 PYT R.Evid. Rule 52, an original is not required and other evidence is admissible if the original is
lost or destroyed, unless such loss or destruction has been done by the proponent in bad faith.

1 Office Tapia, published the Tribe's Exhibit #5, a photo of a purse on the ground, near the bumper
2 of a car.

3 The defendant argued that the victim, Monica Godoy, lied to the police and that the
4 defendant should be acquitted. The court notes discrepancies between what the victim
5 represented to the court at the time of trial and what she had initially told law enforcement
6 officers, and her subsequent recantations of the accusations she had made. Here, the defense
7 counsel elicited evidence of Godoy's inconsistent statements on cross-examination and Godoy
8 admitted that she lied to the police about the assault and battery. However, a prosecutor is
9 permitted to call witnesses that have made prior inconsistent statements. Although the victim
10 admitted to being untruthful, putting her credibility at issue, the testimony of Ms. Godoy and
11 Officer Tapia were consistent, and independent evidence in the record corroborates that a theft
12 did occur, such as, the purse being found at the site where the defendant was hiding after he fled,
13 and Officer Tapia's testimony.

14 **IT IS ORDERED** that the defendant, Michael Mesquita, is guilty beyond a reasonable
15 doubt to Count Four, (4), Resisting a Lawful Arrest, Count Five, (5), Possession or Concealment
16 Stolen Property, and Count Six, (6), Theft. The court shall set the matter for a sentencing
17 hearing and the defendant, Michael Mesquita, shall be released on a cash bond of \$3,500.00, in
18 the event he cannot post the cash bond, then the defendant shall be transported to attend his
19 future scheduled court hearings. He shall appear at all future hearings and obey all laws, and
20 shall not consume or possess any alcoholic beverages, drugs, or drug paraphernalia, and shall be
21 subject to random breath alcohol or urinalysis testing by law enforcement or Pretrial Services.
22 The defendant shall report to Pre-trial Services within twenty-four hours of release, and follow
23 any and all recommendations from the program, and shall be monitored by GPS tracking or
24 monitoring bracelets. He is restrained from any contact whatsoever with the victim, Monica
25 Godoy, including telephone contact or third-party contact, including any contact with her
26 residence or anywhere else. The defendant is also restrained from the future use, attempted use,
27 or threatened use of physical force against the victim.

19 **IT IS FURTHER ORDERED** that this matter shall be set for a sentencing hearing on
20 **December 7, 2020, at 10:00 a.m..**

21 **IT IS FURTHER ORDERED** that pursuant to 4 PYTC § 5-110, the Prosecutor's Office
22 shall advise the victims of the defendant's sentencing hearing and provide a copy of the terms
23 and conditions of release, and on request, give the victim notice of the right to make a statement
24 as provided by 4 PYTC § 5-210.

24 **IT IS FURTHER ORDERED** that the Court shall dismiss with prejudice, Count One
25 (1) Assault, Count Two (2), Battery, and Count Three (3), Refusal to Obey a Lawful Order.

26 **IT IS FURTHER ORDERED** that the court grants the Tribe's unopposed motion to
27 amend the complaint, Counts One (1), Two, (2), Five, (5), and Six (6) to read "Godoy" instead of
28 the current last name of "Gaday," and Count Four to Refusal to Obey a Lawful Order, from the
current, "Disobedience of a Lawful Order of Court."

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THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

IT IS FURTHER ORDERED that the Probation Department shall provide the court with a pre-sentence report no later than November 30, 2020. 3 PYTC § 2-2-450(d).

SO ORDERED THIS 9TH DAY OF SEPTEMBER 2020.

Associate Judge, Pascua Yaqui Tribal Court

Cc:

Date Sept 28, 2020

Tribe Defendant/Counsel Detention Probation

Clerk

Vertical text on the right edge of the page, likely a scanning artifact or page number.

Exhibit 9

1 **IN THE PASCUA YAQUI TRIBAL COURT**

2 **IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION**

3 PASCUA YAQUI TRIBE)
4 Plaintiff) No. CR-20-107/CR-20-122
5 VS.)
6 Mesquita Michael Casillas)
7 Defendant)
8)
9)

SENTENCING ORDER

10 The defendant on this 24th day of February, 2021 appeared before this Court in custody
11 and with legal counsel Annamarie Valdivia for the Sentencing hearing in the above cases.
12 Russell Boatwright appeared for the Tribe; Yvette Alvarez appeared for the Probation department.

13 The Court finds that, the Court has received and reviewed the Pre-Sentence Investigation
14 report filed by Probation Officer Dominic Duran and the Sentencing Memorandum filed by the
15 Tribe.; that the Probation Officer recommends that the defendant not be put on probation as he
16 has indicated that he does not do well on Probation,/Parole and that he never checked in with his
17 Parole Officer and a Warrant was issued for his arrest and the Probation Officer is recommending
18 114 days in jail to run concurrent to each case and to the term is he is serving in Maricopa County;
19 that the Tribe objects and states that a plea agreement was offered to the defendant which he
20 refused to take resulting in the defendant having to be transported to and from the hearing due to
21 the Covid Virus, that the defendant should not be rewarded with concurrent days as these cases
22 are separate from the cases he is currently serving, that the defendant's has a substantial history,
23 and the Tribe recommends in CR-107 that the defendant serve 60 days in jail consecutive to the
24 term he is currently serving in Maricopa County, and in CR-20-122 the Tribe is recommending
25 365 days in jail suspended for 12 month of supervised probation and further recommends that
26 restraining orders be issued for all the victims in these cases; that defense counsel informs the
27 Court that the defendant has gone through hardship being transported to and from the hearings,
28 has had to quarantine each time he is transported, that the defendant is working while serving his
Maricopa sentence and has also obtained his GED, that the defendant has changed and that
defendant concurs with the Probation Officer's recommendations; that the defendant is allowed
to address the Court and informs the Court that he has family, that he has been doing well while
incarcerated, has been working, and has gotten his GED and that he wishes to continue to do well,
that after having reviewed the two files and all other filed documents including defendant's
history, it appears to the Court that the defendant while never being placed on probation in this
jurisdiction will not do well if put on a probation term given the fact that the defendant absconded
from the parole term imposed in Maricopa County, that he failed to comply with the terms and
conditions imposed by the Maricopa Court, that he continued to incur charges while being
absconded, and that while the more serious charges in this jurisdiction were dismissed the
remaining charges do involve victims, two of whom are elderly, and the Court having taken all
this into consideration believes that the defendant will not comply with any Probation terms and
conditions imposed by this Court; that the defendant will be sentence to consecutive jail days in
these two cases as these cases are totally separate from any cases in the outside jurisdiction and

1 the Court will not impose Court cost as it was not recommended by the Probation Officer or the
2 Tribe.

3 **IT IS ORDERED THAT**, sentence is imposed as follows: in **CR-20-107,-Count Four-**
4 **Resisting Lawful Arrest, Count 5-Possession Or Concealment Of Stolen Property and**
5 **Count 6-Theft** , defendant shall serve 114 days consecutive to the incarceration term defendant
6 is current serving in Maricopa County and this sentence shall begin on **June 18, 2021** and
7 defendant with a release date of **OCTOBER 11, 2021, however, the defendant shall not be**
8 **released** as he will be serving a consecutive term in an unrelated case and defendant is
9 indefinitely restrained from any contact with **MONICA GODOY** and in **CR-20-122, Count 1-**
10 **Criminal Trespass, Count 2-Refusal To Obey Lawful Order** defendant shall serve 45 days in
11 jail consecutive to the jail days imposed in CR-20-107 and defendant is indefinitely restrained
12 from any contact with **RICHARD WILSON AND YOLANDA FLORES** and is indefinitely
13 restrained from their residence located at **7810 SOUTH CAMINO COCOIM** and no Court Cost
14 is ordered in this matter and defendant shall be released from custody on **NOVEMBER 25, 2021**
15 **AT 8:00 A.M..**

16 **SO ORDERED THIS** 24th **DAY OF** February, 2021.

17
18 Cornelia G.
19 Judge, Pascua Yaqui Tribal Court

20 cc: February 24, 2021
21 Date

22 Tribe Defendant Legal Counsel Probation Pre-trial Detention Other

23 [Signature]
24 Clerk

Exhibit 10

1 PASCUA YAQUI PUBLIC DEFENDER
2 Annamarie L. Valdivia
3 4725 W. Calle Tetakusim, Bldg. B
4 Tucson, AZ 85757
5 (520) 883-5013
6 AZ State Bar No. 026555
7 PYT Bar No. 10267
8 annamarie.valdivia@pascuayaqui-nsn.gov

9 THE PASCUA YAQUI APPELLATE COURT
10 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

11 PASCUA YAQUI TRIBE,

12 Plaintiff,

13 vs.

14 MICHAEL MESQUITA,

15 Defendant.

) Appellate Case No.:

) Case No.: CR-20-122
) CR-20-107

) **NOTICE OF APPEAL**

) ORAL ARGUMENT REQUESTED

16 Appellant, MICHAEL MESQUITA, by and through counsel, pursuant to 3 PYTC § 2-3-
17 90(A), 3 PYTC § 2-3-90(B), 3 PYTC § 2-3-100(B)(1) and 3 PYTC § 2-3-100(B) of the Pascua Yaqui
18 Tribe Rules of Appellate Procedure, respectfully files a Notice of Appeal in the Pascua Yaqui Tribal
19 Appellate Court from the Sentencing Order entered in this action by the Pascua Yaqui Tribal Court
20 on February 24, 2021. (Exhibit One: Sentencing Order) The Appellant is appealing the Trial Court's
21 Judgment of Sentencing as it is unconstitutional under the Constitution of the Pascua Yaqui Tribe
22 and because it violates the Pascua Yaqui Tribal Code and the Indian Civil Rights Act.

23 The Appellant will be requesting remand for resentencing as a remedy to this violation of his
24 constitutional rights.
25

RESPECTFULLY SUBMITTED this 25th day of March 2021.

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Annamarie L. Valdivia
Annamarie L. Valdivia
Senior Staff Attorney
Attorney for MICHAEL MESQUITA

The original of foregoing was filed in Pascua Yaqui Appellate Court on March 25, 2021 and copy of was delivered this same date to:

The Honorable Judge Cornelius Cruz

Pascua Yaqui Office of the Prosecutor
Oscar Flores
Chief Prosecutor
7777 S. Camino Huivisim, Bldg. A
Tucson, AZ 85757

Ben Casey
Pascua Yaqui Tribe Court of Appeals

Conforming copy to MICHAEL MESQUITA, Defendant

Exhibit 11

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

PASCUA YAQUI TRIBE,)
)
 Plaintiff,) No. CR-20-107/CR-20-122
)
 vs.)
)
 MICHAEL MESQUITA,)
)
 Defendant.)
 _____)

SENTENCING HEARING

FEBRUARY 24, 2021

BEFORE THE HONORABLE CORNELIA CRUZ
CHIEF JUDGE

Transcribed by:

KATHY FINK & ASSOCIATES, INC.
Certified Court Reporters
2819 East 22nd Street
Tucson, Arizona 85713
(520) 624-8644 Fax (520) 624-9336

APPEARANCES:

Russell Boatwright, Esq.
Deputy Prosecutor
Pascua Yaqui Office of the Prosecutor
7777 South Camino Huivisim, Building A
Tucson, Arizona 85757
Appearing on behalf of the Pascua Yaqui Tribe

Annamarie L. Valdivia, Esq.
4725 West Calle Tetakusim, Building B
Tucson, Arizona 85757
Appearing on behalf of the Defendant

ALSO PRESENT:

Yvette Alvarez
Chief Probation Officer
Pascua Yaqui Tribe

1 Defendant's noncompliance history with parole from Maricopa
2 County, Your Honor, Probation feels he does not pose as a good
3 candidate for -- for probation, So, therefore, Probation is
4 requesting that the Defendant serve 114 days in this matter, Your
5 Honor, to also run concurrently with the sentence in the other
6 matter through --

7 THE COURT: Okay. So is Defendant on proba- --
8 which case is Defendant on probation on?

9 MS. ALVAREZ: The Defendant isn't on probation
10 with us. I believe the Court just ordered a PSI report to be
11 done on the Defendant in the CR2- -- 20107 and 20122.

12 THE COURT: Okay. So you're recommending again
13 how many --

14 MS. ALVAREZ: A hundred and fourteen days to be
15 served, Your Honor.

16 THE COURT: On both cases?

17 MS. ALVAREZ: Let's see. Yes, Your Honor, to run
18 concurrently and to be released on June 18th of 2021. Thank you,
19 Your Honor.

20 THE COURT: Mm-hmm. So that -- the Probation
21 Department does not feel that he's a good candidate for
22 probation?

23 MS. ALVAREZ: Correct, Your Honor.

24 THE COURT: Okay. And Mr. Boatwright?

25 MR. BOATWRIGHT: Yes, thank you, Your Honor. So

1 the Tribe is going to be asking for something that's going to be
2 consecutive to his release date of June 18th of this year, the
3 reason being is that has to do with what he has with the State of
4 Arizona; that is separate and apart from the crimes that he
5 committed in this jurisdiction. I don't believe the Defendant
6 should be awarded a free pass for -- as the record states, free
7 is free, that he just gets a raffle.

8 We kind of offered a plea to that, a pretty lenient
9 plea where he was just going to serve what is concurrent time
10 when he's done with the State of Arizona in the other case, Your
11 Honor. That was a rather lenient plea. But, given the pandemic,
12 not wanting to call elderly witnesses in, I thought it was
13 something that was going to resolve. So I don't think he should
14 be awarded that now, a concurrent sentence, to where he just gets
15 out when he's done with his Arizona matter and then also be
16 awarded just the time for this matter.

17 So we're asking for 60 days that will run consecutive
18 to when he's released on June 18th. We're asking for a
19 consecutive term of incarceration for that, for the CR20107
20 matter, in which Monica Godoy was the victim in that matter. And
21 then, when he's released from that, we're asking for a
22 consecutive term of probation, with a year hanging over his head,
23 and hopefully that can incentivize him.

24 As Your Honor can see from his history, he has a rather
25 violent history and a very concerning history. And these matters

1 also concern allegations of violence and going into somebody's
2 home; so we were very concerned about that. So we -- we would
3 not want him to catch a windfall. He -- he chose not to accept a
4 plea and accept responsibility in this matter. He chose to -- to
5 bring everybody in, in the middle of a pandemic, and not accept
6 responsibility. His history is concerning. For those reasons,
7 we're not asking that he be awarded a windfall and just get
8 essentially time credit for his other matter. So the --
9 Probation is -- is also in hopes to keep an eye on him once he
10 gets out and -- and that we can monitor him.

11 In speaking with previous -- I haven't been able to get
12 in contact with Mr. Wilson and Yolanda Flores prior to this, but
13 in speaking with them before, they had concerns for their safety.
14 They didn't want to testify because they were afraid of this
15 individual. So we -- we do think he needs some oversight and --
16 and again that year hanging over his head to encourage him or
17 incentivize him to -- to end this behavior that's clearly a
18 threat to the community.

19 So, based on his very concerning criminal history -- he
20 failed to appear in this matter and had -- there was a bond
21 forfeited, he was absconding from parole at the time these
22 incidents occurred, so the Defendant has -- has very little room
23 for mitigation, so we are asking for consecutive terms to all.
24 Thank you, Your Honor.

25 THE COURT: And Ms. Valdivia?

1 MS. VALDIVIA: Thank you, Your Honor. First of
2 all, he is earning credit for the time that he's serving
3 currently here regardless of whether or not he's in the State
4 prison.

5 And I would object to this Court for punishing my
6 client excessively just for the fact of him exercising his
7 constitutional rights. He has no control over this pandemic and
8 he's been affected as -- by it as well, so it's not just that
9 he's serving time and relaxing in some Arizona State Prison like
10 it's a resort, he's having to travel back and forth between the
11 facilities; quarantine multiple times for those hearings. And I
12 know this Judge wasn't present at the time of the trial, but the
13 victim stated on the stand that she lied to officers, and that
14 she had done it multiple times, in an attempt to try to control
15 his behavior. So I don't know if the Court was able to read
16 that. The charges -- the very serious charges in this case were
17 actually dismissed. So I'm -- it's not a raffle here.

18 He is currently working as a shower porter at the jail,
19 so that shows that he is -- his conduct is well there. Sorry.
20 This mask is kind of getting to me. And then he signed up to
21 take some classes with Ashland, so he's waiting for that. So he
22 is taking steps while incarcerated to try to improve himself.

23 A hundred and fourteen days is a significant sentence
24 for the crimes that he was actually convicted of, which was the
25 Theft and -- sorry, let me just grab that really quick --

1 Criminal Trespass, Refusal to Obey a Lawful Order. The property
2 -- for the cases for the -- for the actual crimes that he was
3 convicted of, they were a lot lesser than the crimes that he was
4 accused of at the end of the trial.

5 So we would just like the Court to take into
6 consideration the one case where the victim did lie and said she
7 lied multiple times on the stand. And then we'd ask you to take
8 into consideration that he does have a GED; that he is working to
9 improve himself while incarcerated. And we would ask that you
10 would adopt the recommendations of the Probation Office, as they
11 have more experience dealing with whether or not a person is
12 capable of completing probation. So we would ask for that 114
13 days, that he be released on June 18th of 2021. Thank you.

14 THE COURT: Anything else from -- from the
15 parties?

16 THE DEFENDANT: I kind of want to talk.

17 MR. BOATWRIGHT: I -- I just -- I disagree that he
18 is. In fact, the Court can order upon -- nunc pro tunc, but he
19 -- he had lost his bond on this matter so I -- I don't believe
20 that he does receive credit, but that's --

21 THE COURT: Okay. So let me see if I get this
22 straight. Probation is recommending 114 days in jail for --
23 concurrent in both cases, so that's -- and that would -- and
24 they're recommending that it be served concurrent with the term
25 that the Defendant is serving from an outside jurisdiction, Ms.

1 Alvarez?

2 MS. ALVAREZ: Yes, Your Honor, that's exactly what
3 I'm reading from Mr. Duran's report, Your Honor. Those are his
4 -- his recommendations, Your Honor, which --

5 THE COURT: Okay. So he's recommending 114 days
6 in jail in both -- in both cases and that is to run con- --
7 concurrently to the term he's already serving.

8 And the Tribe is recommending in CR20122 -- 60 days in
9 jail?

10 MR. BOATWRIGHT: In CR20107, 60 days in jail
11 consecutive to what he's serving. And then in CR20122,
12 consecutive to the Arizona sentence and the 2010177 (sic) --
13 20107 sentence of consecutive term of probation with a year
14 suspended.

15 THE COURT: So you want one year of jail suspended
16 for one year of supervised probation?

17 MR. BOATWRIGHT: Yes, Your Honor, consecutive to
18 the 60 days in 20107.

19 MS. VALDIVIA: And I -- my client just wanted to
20 know if he could address the Court as well?

21 THE COURT: Sure.

22 MS. VALDIVIA: Thank you.

23 THE DEFENDANT: Your Honor, you can hear me?

24 THE COURT: Yes, I can.

25 THE DEFENDANT: I just -- I don't know what he

1 means by a windfall, man, 'cause, like everybody else, it took --
2 it's taken its toll on me and I've lost a lot of relatives to
3 this COVID -- and not just this COVID, but what's going on in
4 Texas. I'm only asking that I get home as soon as possible. And
5 if you guys choose to do or go with what they're saying, I
6 understand it. But I got family, too, you know? It ain't -- it
7 ain't easy just on people who are out there. In there, the -- my
8 mother's right, we've been constantly getting locked down for
9 breakouts and I suspect everywhere. So the way things are going
10 now, it's just that -- it ain't like before, you know?

11 I can honestly say that, yeah, it opened my eyes to a
12 lot of things. And the thing with Monica that happened, that
13 relationship. But as far as the other one with my elders, hey, I
14 don't -- I respect my elders, man, and -- I respect 'em and I was
15 only asking for water and that's -- that's all I was asking for.
16 I wasn't trying to cause no harm. That wasn't my intentions at
17 all. I just ask for water. That's it.

18 I never got a chance to talk, but maybe I should've
19 said something sooner, but I'm just asking for some leniency this
20 time. I've never asked for that before. But I do got elders too
21 I got to take care of. So I just want to ask that you show me
22 some kind of leniency on that and I appreciate it. Thank you.

23 THE COURT: I reviewed these -- this file prior to
24 -- prior to the hearing -- the two files, and I did see, Ms.
25 Valdivia, that the Defendant was found guilty of some -- some

1 charges and --

2 MS. VALDIVIA: Yes.

3 THE COURT: -- and not guilty of other charges.
4 So, at this time, even though they were separate incidents, you
5 all are now recommending, more or less -- at the same time you're
6 recommending -- that Probation is recommending no probation, with
7 114 days to be served consecutive to the jail (unintelligible)
8 the -- whatever the Defendant is serving in the outside matter.

9 MS. ALVAREZ: Concurrent.

10 THE COURT: Yet, on the other hand, the Tribe is
11 asking for probation, but the Probation Officer does not feel
12 that the proba- -- Defendant will do well on probation. He -- he
13 did -- he has been found in contempt of court and also has lost a
14 bond in here for his failure to appear.

15 In reviewing both documents the Court finds that
16 Defendant has a problem with compliance with Court orders or may
17 have an issue with substance abuse or alcohol abuse. At this
18 time, the Court does not believe that Defendant will do well on
19 probation at all, given -- well, he's not -- hasn't been on
20 probation in this jurisdiction, the Court does note that the
21 Probation Officer has stated that the Defendant himself has
22 stated that he does not do well on probation. He did not do well
23 outside -- in outside probation. I do not believe Defendant will
24 do well in this jurisdiction on probation.

25 So what I am going to do is I will impose the 114 days

1 in jail, and Defendant will serve those consecutive to the days
2 he's serving for the -- in the outside jurisdiction. That
3 sentence will begin being served on June 18th, 2021.

4 MS. VALDIVIA: Your Honor?

5 THE COURT: I'm -- I'm still trying to make my
6 order.

7 MS. VALDIVIA: Sure.

8 THE COURT: That is the sentence in CR20017 (sic).
9 In CR20122, Defendant is sentenced to 45 days in jail,
10 consecutive. That is, of course, 159 days total for these two
11 matters, consecutive.

12 The Defendant is restrained from any contact whatsoever
13 with the alleged victims, the -- that -- that was Monica Godoy;
14 also from Richard Wilson and his wife, Yolanda Flores, and their
15 residence. Their residence is located at 7810 South Camino
16 Cocoim. Again, Defendant is not being placed on probation
17 because the Court does not feel that the Defendant will do well
18 on probation given his substantial history -- the outside
19 jurisdiction. I believe it would be a waste of time putting the
20 Defendant on probation.

21 THE COURT: I'm sorry. You were going to say some
22 --

23 MS. VALDIVIA: Yes, just that the Court had
24 stated before rendering its sentence that Probation's
25 recommendation was that it run consecutive to the State -- to the

1 State sentence, but the recommendation was that it ran
2 concurrent, and I don't know if that would change the Court's
3 sentencing.

4 THE COURT: No, I read that.

5 MS. VALDIVIA: Okay.

6 THE COURT: I -- I read that and I'm ordering
7 consecutive.

8 MS. VALDIVIA: Okay. Thank you, Your Honor.

9 THE COURT: I was aware that -- that they're
10 running it concurrent --

11 MS. VALDIVIA: Okay.

12 THE COURT: -- but I -- given the fact that
13 Defendant -- the Court does not believe Defendant will do well on
14 probation, the Court is running -- running it consecutive --

15 MS. VALDIVIA: Okay.

16 THE COURT: -- based on the nature of the charges.
17 While the more serious charges were dismissed, he does have a
18 history of violence and the Court does not believe he will abide
19 by any of the conditions set by -- by -- by the Court for
20 probation.

21 MS. VALDIVIA: Thank you.

22 THE COURT: And was there any -- anything else in
23 regards to the -- the Defendant being restrained from -- from the
24 three alleged victims in this matter?

25 MR. BOATWRIGHT: No, no, Your Honor, I don't

1 believe there's anything further then. I will probably instruct
2 them if they want to pursue that, they would have to go the route
3 of an Order of Protection, which is --

4 THE COURT: Defendant is restrained from them.

5 MR. BOATWRIGHT: Okay. Right. I -- I'm just a
6 little clear of the jurisdiction once the sentence is completed,
7 unless they take another step, but if -- if the Court can order
8 that, then -- then we're okay with that.

9 THE COURT: Defendant is restrained indefinitely
10 from these victims.

11 MR. BOATWRIGHT: Okay.

12 THE COURT: But then it's up to them if they wish
13 to file something in the civil -- in the civil arena. They can
14 also do that in regards to any Restraining Orders, Orders of
15 Protection or whatever they --

16 MR. BOATWRIGHT: Right.

17 THE COURT: -- they feel. But the Defendant is
18 restrained indefinitely from all the victims in both matters.

19 MR. BOATWRIGHT: Thank you, Your Honor.

20 THE COURT: That is the order of the Court. And
21 is there anything further?

22 MS. ALVAREZ: No, Your Honor. Thank you.

23 MR. BOATWRIGHT: No, Your Honor. Thank you.

24 MS. ALVAREZ: No, Your Honor. Thank you.

25 THE COURT: Court's adjourned.

1 (Conclusion of the proceedings.)

2 * * * * *

CERTIFICATE

1
2 I hereby certify that, to the best of my ability, the
3 foregoing is a true and accurate transcription of the digitally-
4 recorded Sentencing Hearing in the matter referenced above.

5 Transcription completed: May 3rd, 2021.

6
7 _____
8 DANIELLE L. KRASSOW
Legal Transcriptionist

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

MICHAEL MESQUITA,)	APPELLATE CASE NO. CA-21-001
)	
Appellant,)	PASCUA YAQUI TRIBAL COURT NO.
)	
v.)	CR-20-107/20-122
)	
PASCUA YAQUI TRIBE)	
)	
Appellee.)	
)	
_____)	

APPELLANT OPENING BRIEF

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I. STATEMENT OF THE CASE

Appellant is Michael Casillas Mesquita (Mr. Mesquita), and Appellee is the Pascua Yaqui Tribe Office of the Prosecutor (Tribe). The Pascua Yaqui Tribe Court held bench trials in both referenced matters on September 9, 2020. The trial court found Mr. Mesquita guilty in CR-20-107 of count four, Resisting a Lawful Arrest, count five, Possession or Concealment of Stolen Property, and count six, theft. In CR-20-122, the trial court found Mr. Mesquita guilty of count one, Criminal Trespass and count two, Refusal to Obey a Lawful Order. The trial court then set these matters for sentencing. The trial matters were heard by the Honorable Judge Alfred Urbina.

On February 24, 2021, the trial court, under the Honorable Judge Cornelius Cruz, sentenced Mr. Mesquita in CR-20-107 to serve a term of incarceration of 114 days to run consecutively to the term of incarceration Mr. Mesquita is serving in Maricopa County. In CR-20-122, Mr. Mesquita was ordered to serve a term of incarceration of 45 days to run consecutively to CR-20-107. The trial court also ordered that Mr. Mesquita be indefinitely restrained from any contact with Richard Wilson and Yolanda Flores. This appeal followed.

II. JURISDICTION OF THE CASE

A. Tribe's Jurisdiction

The Pascua Yaqui Tribe Court had jurisdiction under 3 PYTC § 1-1-10 because the Tribe charged Mr. Mesquita, an enrolled Indian, with an offense enumerated in the Tribe's Code. The charges allegedly occurred within the exterior boundaries of the Pascua Yaqui Reservation. *See* 3 PYTC § 1-1-10 (B).

B. Court of Appeals Jurisdiction

Pursuant to the Rules of Appellate Procedure, “[t]he Pascua Yaqui Tribe or prosecutor shall not appeal a judgment acquitting a defendant in a criminal case.” 3 PYTC § 2-3-90(F). The plain language of the statute indicates that appeals in criminal matters by defendants is permitted.

III. ISSUE PRESENTED FOR REVIEW

Did the Pascua Yaqui Tribe Court abuse its discretion in its sentencing when it sentenced Mr. Mesquita to consecutive terms of imprisonment, thus ignoring mitigating factors and actual time served under the custody of the Pascua Yaqui Tribe, presented by probation officer and defense attorney?

IV. RELEVANT FACTS

On March 12, 2020, the Tribe Charged Mr. Mesquita in CR-20-107 of count one, Assault, count two, Battery, count three, Disobedience of Lawful Order of Court, count four, Resisting a Lawful Arrest, count five, Possession or Concealment Stolen Property, and count six, Theft. Mr. Mesquita was initialed this same date and was held on a \$700 cash bond. Exhibit (“Ex.”) 1. At the time of his arrest and detention, Mr. Mesquita was not receiving credit for incarceration in any other jurisdiction. Mr. Mesquita bonded out on March 16, 2020 on a \$700 cash bond with a promise to appear for Arraignment on March 18, 2020 at 1:30 p.m. Ex. 2. Mr. Mesquita did not appear to court on that date and a bench warrant was issued for his arrest and detention and requiring that Mr. Mesquita be held on a \$3,500 bond upon arrest. Ex. 3.

On April 21, 2020, the bench warrant in CR-20-107 was executed and Mr. Mesquita was held on a \$3,500 bond. He appeared before the trial court on an Order to Show Cause and

arraignment where he pled not guilty to the alleged charges. The trial court maintained the \$3,500 cash bond in this matter. Ex. 4. A bench trial was set for June 29, 2020. *Id.*

On April 22, 2020, the Tribe further charged Mr. Mesquita in CR-20-122 of count one, Criminal Trespass, count two, Refusal to Obey a Lawful Order, count three, Possession, Manufacture, Delivery and Advertisement Drug Paraphernalia. He was held on a \$3,500 bond to run concurrent to the bond imposed in CR-20-107. Ex. 5. Arraignment was set for April 29, 2020 at 11:00 a.m. *Id.*

On April 28, 2020, the Tribe filed an opposed motion to continue the arraignment, as Mr. Mesquita was extradited on April 22, 2020 and transferred by the Pascua Yaqui Detention officers to the custody and control of the Arizona Department of Corrections in Arizona case number CR2021149177-01. Ex. 6. The tribe then petitioned the Court for a 6-month stay of proceedings in both matters due to COVID and the difficulties in transporting Mr. Mesquita between two facilities during the pandemic over defense counsel's objection. This motion was denied and both matters were set for trial on September 9, 2020 before the Honorable Judge Alfred Urbina. Ex. 7.

On September 9, 2020, both matters proceeded to trial on what is referred to in the trial court as a "trailer docket," meaning that the trials happened back-to-back. At trial, Mr. Mesquita was found guilty in CR-20-107 of count one, Criminal Trespass and count two, Refusal to Obey a Lawful Order, and in CR-20-122, he was found guilty of count four, Resisting a Lawful Arrest, count five, Possession or Concealment of Stolen Property, and count six, Theft. Ex. 8. The trial court set these matters for sentencing.

The initial trial judge who ruled over this matter was elected as the Attorney General for the Pascua Yaqui Tribe in early December 2020 and he still is employed by the Pascua Yaqui

Tribe. These matters were set for sentencing February 24, 2021 before the Honorable Judge Cornelius Cruz. During the hearing, probation officer, Yvette Alvarez, requested the Court to sentence Mr. Mesquita to a term of incarceration of 114 in each case, to be served concurrently in each case and concurrent to the term of incarceration Mr. Mesquita is currently serving in Maricopa County. Ms. Alvarez requested Mr. Mesquita's release date to be June 18, 2021. Ex.11, p. 4, 10-19.

The Tribe requested that Mr. Mesquita's sentence be served consecutively to his prison sentence in the Maricopa County case. The Tribe did not have a position from the victims in either matter as to a possible sentence after Mr. Mesquita's bench trials. The Tribe indicated in its oral argument that Mr. Mesquita was offered a decent plea agreement that was rejected. He also indicated that the plea called for concurrent sentencing and that the victims had been consulted prior to proposal of the plea. Ex. 11, p.5, 8-16. It appeared the reason for the prosecutor's request to the trial court for a harsher sentence was Mr. Mesquita elected to reject the plea offer and exercise his constitutional right to have a trial on the matter.

Defense counsel highlighted mitigators in this case – witness' admission to lying in this case during investigations to control Mr. Mesquita's behavior, COVID, Mr. Mesquita earning his GED while in prison, and that he was working as a shower potter at the Arizona Department of Corrections Lewis complex, and he had signed up for classes with Ashland through the department of corrections. Ex. 11, p.7, 18-22; p.8, 5-13.

Mr. Mesquita was sentenced in CR-20-107 to serve a term of incarceration of 114 days to run consecutively to the term of incarceration Mr. Mesquita is serving in Maricopa County. In CR-20-122, Mr. Mesquita was ordered to serve a term of incarceration of 45 days to run consecutively to CR-20-107. The trial court also ordered that Mr. Mesquita be indefinitely

restrained from any contact with Richard Wilson and Yolanda Flores. The trial court did not consider any mitigating factors in its rendering of the sentence. Ex. 11, p.11, 15-24. A Notice of Appeal was filed by defense counsel on March 25, 2021. Ex. 10.

V. ARGUMENT

A. The sentence imposed on Mr. Mesquita was procedurally and substantively unreasonable.

Sentencing decisions are reviewed for abuse of discretion. *United States v. Carthy*, 520 F.3d 984, 993 (9th Cir. 2008)(en banc). “[A]ppellate review of sentencing decisions is limited to determining whether they are ‘reasonable.’” *Gall v. United States*, 552 U.S. 38, 46 (2007). The substantive reasonableness of a sentence is reviewed for abuse of discretion, even without an objection below. *United States v. Autery*, 555 F.3d 864, 871 (9th Cir. 2009).

The United States Ninth Circuit has found that abuse of discretion is “a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found.” *Robkin v. Oregon Health Sciences Univ.*, 350 F.3d 967, 977 (9th Cir. 2003). Despite the appellate review being deferential, the Supreme court of the United States has made it clear that it still expects and anticipates “meaningful” review of sentences on appeal. *Gall* at 597.

In the United States, appellate review of a sentence has two parts. *United States v. Booker*, 543 U.S. 220 (2005); *See also United States v. Carthy*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc). First, the Court must determine whether the trial court committed significant procedural error. Next, the Court must then consider whether the sentence is substantively reasonable. *Carthy* at 993 (citing *Gall v. United States*, 128 S. Ct. 586, 597 (2007)). A procedurally erroneous or substantively unreasonable sentence should be set aside. *See Gall*, 552 U.S. at 46; *Rita v. United*

States, 551 U.S. 338, 351 (2007). In considering the substantive reasonableness of a sentence, the totality of the circumstances is considered. *Carty* at 993.

The Pascua Yaqui Tribal Code gives little guidance to parties on the factors to considered at the time of sentencing. *See generally*, 4 PYTC § 4. Nevertheless, the trial court routinely looks towards mitigating and aggravating factors when determining a sentence of a convicted person. The trial court and this Court routinely looks towards State and Federal law to help fill gaps in the tribal code to ensure that individuals facing punishment in this jurisdiction are afforded the same safeties and protections as afforded defendants in our neighboring jurisdictions.

Mr. Mesquita's sentence was procedurally unreasonable because the trial court failed to adequately explain its reasoning behind the chosen sentence; failed to consider mitigating factors, failed to give *any* credit for pretrial detention despite the defendant had served some time under the sole care and custody of the Pascua Yaqui Detention Facility. In particular, the trial court failed to elaborate on how the specific sentence it imposed reflected the seriousness of the offense, provided just punishment for the offense, deterred criminal conduct, or protected the public; and failed to explain why it rejected probation's recommendation sentence. Furthermore, no tribal provision permits the trial court to impose an indefinite sentence.

Additionally, the sentence was substantively unreasonable because the trial court failed entirely to consider Mr. Mesquita's unique position in custody, in that he was required to spend most of his time in solitary confinement due to COVID-19 and quarantine related issues. The Court further failed to consider Mr. Mesquita's own statements to the Court that he had lost family members to the pandemic. A sentence is not reasonable where the trial court assigns excessive weight to some sentencing factors, that is, trial courts are generally required to weigh

mitigating and aggravating factors. *See, eg. United States v. Ressam*, 679 F.3d 1069, 1089; *United States v. Tomko*, 562 F.3d 558, 568 (3rd Cir. 2009); and *United States v. Paul*, 561 F.3d 970, 973 (9th Cir, 2009). Procedural errors can lead to substantive errors as it was the case in the lower matters. The criminal court has no power to impose an indefinite sentencing term and in doing so it further rendered the sentences unreasonable.

When a defendant raises an argument “in support of a requested sentence, then the judge should normally explain why he accepts or rejects the party’s position.” *Carty* at 992-93; *see also United States v. Morris*, 775 F.3d 882, 887 (7th Cir. 2015) (sentencing court must address a defendant’s principal arguments in mitigation unless they are too weak to merit discussion). The trial court did not address any of defendant’s arguments, including his own statements relating to the family he lost during his incarceration due to the pandemic. Ex. 11, p.11, 15-24.

In some cases, federal courts have found that when the sentence is within the recommended sentencing range, the explanation of its decision making may be brief. *United States v. Carter*, 560 F.3d 1107 (9th Cir. 2009). This is the case when it is established that the judge was familiar with the defendant’s case, personal situation and arguments made at sentencing. *Id.* However, it is not clear from the sentencing transcript that the sentencing judge was familiar with Mr. Mesquita’s trial case.

“[S]entencing is an art, not to be performed as a mechanical process but as a sensitive response to a particular person who has a particular personal history and has committed a particular crime.” *United States v. Harris*, 679 F.3d 1179, 1183 (9th Cir. 2012). There must be some guidelines assigned to sentencing judges in order to ensure that all defendants are being treated fairly under the Pascua Yaqui Tribal Code, the Indian Civil Rights act and to avoid disparate sentencing. Here, the failure to properly consider any of Mr. Mesquita’s sentencing

arguments lead to a clearly unreasonable sentence; as did the trial court's failure to consider the relevant facts of Mr. Mesquita's case, or his arguments in support of a lesser sentence.

The sentences imposed in these matters, combined were excessively punitive, rather than rehabilitative. Because of the aforementioned factors, the sentence imposed in two trial matters on appeal before this Court was substantively unreasonable.

VI. CONCLUSION

For the foregoing reasons, Mr. Mesquita respectfully asks this Court to vacate Mr. Mesquita's sentence and to remand the case to the trial court for resentencing.

Certificate of Service

On May 17, 2021 Appellants Opening Brief were filed in Pascua Yaqui Appellate Court and copies were provided to:

Honorable Judge Cruz
Pascua Yaqui Tribal Court

Ben Casey
Pascua Yaqui Tribe Court Administrator

Russell Boatwright
Deputy Prosecutor

Michael Mesquita
Appellant

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6 THE PASCUA YAQUI APPELLATE COURT

7 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION
8

9 PASCUA YAQUI TRIBE,)
10)
Plaintiff,)
11)
vs.)
12)
MICHAEL MESQUITA,)
13)
Defendant.)
14)

Appellate Case No.:

Case No.: CR-20-122
CR-20-107

15 **NOTICE OF APPEAL**

ORAL ARGUMENT REQUESTED

16 Appellant, MICHAEL MESQUITA, by and through counsel, pursuant to 3 PYTC § 2-3-
17 90(A), 3 PYTC § 2-3-90(B), 3 PYTC § 2-3-100(B)(1) and 3 PYTC § 2-3-100(B) of the Pascua Yaqui
18 Tribe Rules of Appellate Procedure, respectfully files a Notice of Appeal in the Pascua Yaqui Tribal
19 Appellate Court from the Sentencing Order entered in this action by the Pascua Yaqui Tribal Court
20 on February 24, 2021. (Exhibit One: Sentencing Order) The Appellant is appealing the Trial Court's
21 Judgment of Sentencing as it is unconstitutional under the Constitution of the Pascua Yaqui Tribe
22 and because it violates the Pascua Yaqui Tribal Code and the Indian Civil Rights Act.

23 The Appellant will be requesting remand for resentencing as a remedy to this violation of his
24 constitutional rights.
25

RESPECTFULLY SUBMITTED this 25th day of March 2021.

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Annamarie L. Valdivia
Annamarie L. Valdivia
Senior Staff Attorney
Attorney for MICHAEL MESQUITA

The original of foregoing was filed in Pascua Yaqui Appellate Court on March 25, 2021 and copy of was delivered this same date to:

The Honorable Judge Cornelius Cruz
Pascua Yaqui Office of the Prosecutor
Oscar Flores
Chief Prosecutor
7777 S. Camino Huivisim, Bldg. A
Tucson, AZ 85757

Ben Casey
Pascua Yaqui Tribe Court of Appeals

Conforming copy to MICHAEL MESQUITA, Defendant

1 the Court will not impose Court cost as it was not recommended by the Probation Officer or the
2 Tribe.

3 **IT IS ORDERED THAT**, sentence is imposed as follows: in **CR-20-107,-Count Four-**
4 **Resisting Lawful Arrest, Count 5-Possession Or Concealment Of Stolen Property and**
5 **Count 6-Theft** , defendant shall serve 114 days consecutive to the incarceration term defendant
6 is current serving in Maricopa County and this sentence shall begin on **June 18, 2021** and
7 defendant with a release date of **OCTOBER 11, 2021**, however, the defendant shall not be
8 released as he will be serving a consecutive term in an unrelated case and defendant is
9 indefinitely restrained from any contact with **MONICA GODOY** and in **CR-20-122, Count 1-**
10 **Criminal Trespass, Count 2-Refusal To Obey Lawful Order** defendant shall serve 45 days in
11 jail consecutive to the jail days imposed in CR-20-107 and defendant is indefinitely restrained
12 from any contact with **RICHARD WILSON AND YOLANDA FLORES** and is indefinitely
13 restrained from their residence located at **7810 SOUTH CAMINO COCOIM** and no Court Cost
14 is ordered in this matter and defendant shall be released from custody on **NOVEMBER 25, 2021**
15 **AT 8:00 A.M..**

16 SO ORDERED THIS 24th DAY OF February, 2021.

17
18 Cornelia S.
19 Judge, Pascua Yaqui Tribal Court

20 cc: February 24, 2021
21 Date

22 Tribe Defendant Legal Counsel Probation Pre-trial Detention Other

23 [Signature]
24 Clerk