

No. CA-22-001

Pascua Yaqui Tribe Court of Appeals

Raymond Trujillo, Appellant,

v.

Pascua Yaqui Tribe, Appellee.

For the Appellant: Stuart de Haan, Deputy Public Defender

For the Appellee: Russell Boatwright, Prosecutor

Opinion

Martinez, Associate Justice

Appellant Raymond Trujillo appeals an exhausted trial court sentence imposed as part of a criminal conviction.

Facts

On July 14, 2021, the Pascua Yaqui Tribe charged Appellant with four criminal counts in CR-21-197.¹ Criminal Compl. CR-21-197. On July 21, 2021, Appellant appeared at the initial hearing where the Court ordered that Appellant be held on bond to run consecutive to his probation revocation matters.² Initial Hr'g Order CR-21-197, Jul. 21, 2021. On August 10, 2021, Appellant admitted to probation violations and later was sentenced on those probation violations with a release date of October 30, 2021. Order CR-19-049/263, Aug. 10, 2021; Order CR-19-049/263, Aug. 30, 2021.

On October 18, 2021, Appellant was convicted in CR-21-197 of Assault/Domestic Violence pursuant to 4 PYTC §1-130(A)(3). On October 27, 2021, Appellant was sentenced to six months in custody to run consecutively with his sentence for his probation violations. Order CR-21-197, Oct. 27, 2021. The trial court awarded Appellant 41 days of credit for time served. Order CR-21-197, Oct. 27, 2021

¹ 4 PYTC §1-130(A)(3), 4 PYTC §1-255(A), 4 PYTC §1-200(C), 4 PYTC §1-240.

² At the time, Appellant was held on bond for probation revocation matters in CR-19-049 and CR-19-263.

In accordance with the trial court's sentencing order, Appellant began serving his sentence in the underlying matter on October 30, 2021 and completed his sentence on March 20, 2022. Appellee's Resp. Br. at 6.

Appellant filed a Notice of Appeal appealing the trial court's sentencing order on November 23, 2021. On January 19, 2022 Appellant filed a Motion for Extension of Time for Filing Opening Brief. This Court granted Appellant's Motion and issued an Order that Appellant file its opening brief by February 18, 2022. Order on Appellant's Mot. for More Time to File Opening Br., Jan. 22, 2022. Appellant filed his Opening Brief on February 18, 2022. Appellee's filed their Response Brief on May 18, 2022.

Appellant seeks appellate review of what he alleges was an error by the trial court in not awarding him more days of credit for time served with his criminal sentence. Appellant's Opening Br. at 4. Appellee argues that Appellant's issue before this Court is moot because Appellant completed his sentence on March 20, 2022 and this Court can no longer grant the Appellant the relief he seeks. Appellant's Resp. Br. at 6.

Discussion

There is no clear provision in the Pascua Yaqui Tribal Code or Constitution addressing the mootness doctrine that limits the jurisdiction of this Court to actual "cases" or "controversies". The Pascua Yaqui Tribal code addressing jurisdiction does provide that the Pascua Yaqui Tribal Courts' jurisdiction may be limited as required by Federal Law. 3 PYTC § 1-1-20(1). Article III Section 2 of the United States Constitution limits federal courts to deciding "cases" and "controversies" and requires an actual controversy to exist not only at the time the action is filed, but through all stages of litigation. *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 170 (2016). It is unclear if this Court has similarly applied U.S. Constitutional limitations on its assessment of its jurisdiction. This Court may however, look to persuasive authority in the absence of controlling authority. *PYT v. Miranda*, CA-08-015 (2009). Other tribal courts have adopted the mootness doctrine, limiting their jurisdiction to actual cases or controversies. *James v. Window Rock Family Court*, 9 Nav. R. 590, 591 (Sup. Ct. 2012), 2012 Navajo Sup. LEXIS 8 at 5-6. We agree with this persuasive authority and find that there must be a live controversy before this Court so that it is actually capable of granting a petitioner the relief they seek. Here, this case is moot, no live controversy exists because the Appellant is no longer incarcerated and this Court cannot grant Appellant credits for days he has already served.

The U.S. Supreme Court has recognized an exception to the mootness doctrine for a controversy that is "capable of repetition, yet evading review." *Spencer v. Kemna*, 523 U.S. 1, 17 (1998). The capable-of-repetition doctrine applies only in exceptional situations, "where the following two circumstances are simultaneously present: (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the complaining party will be subject to the same action again." *Id.* at 17 (quoting *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 481 (1990)). We find that Appellant's case does not satisfy either of these circumstances. Appellant has not shown that the time between the trial court issuing a

sentencing order that includes a granting for credit for time served and the exhaustion of that sentence is always too short to evade appellate review. Nor, has the Appellant shown a reasonable likelihood that he will be convicted of a crime again and receive a similar criminal sentence where he is denied credit for time served on a separate probation violation.

Conclusion

We hold that the Appellant's action is moot as there is no case or controversy on which we can provide the Appellant the relief he seeks. We therefore, decline review of this matter and dismiss this appeal.

So ORDERED this 20th day of September, 2022.


Justice Kendra A. Martinez

We CONCUR:


Interim Chief Justice Robert J. Miller


Hon. Rebecca Plevel

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

RAYMOND TRUJILLO

Appellant

vs.

PASCUA YAQUI TRIBE,

Appellee

APPELLATE CASE NO: CA-22-001

TRIBAL COURT CASE NO: CR-21-197

APPELEE'S RESPONSE BRIEF

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REQUEST FOR ORAL ARGUMENT

Neither of the parties are requesting oral argument in this matter. However, should the Court feel that such arguments are necessary, authority exists under 3 PYTC § 2-3-180, 3 PYTC § 2-3-260(C)(6) and/or (D).

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 generally* *PYT v. Valenzuela*, CA-19-001, p.1 (PYT Ct. App. 2019). The Defendant/Appellant is an enrolled member of the Pascua Yaqui Tribe, and was charged with several offenses that occurred within the physical boundaries of the Pascua Yaqui Reservation. Thus, this Court has jurisdiction over this appeal.

STANDARD OF REVIEW

This Court, and federal courts, have addressed the issue of sentencing decisions applying the “abuse of discretion” standard. *PYT v. Mesquita*, CA-21-001, P.3 (PYT Ct. App. 2021); *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).

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.

ISSUES PRESENTED FOR REVIEW

1. Should the Appeal be denied as moot given that the Appellant has completed his sentence?
2. Did the Trial Court abuse its discretion when it declined to grant the Appellant presentence credit for the period of time spent in custody that he was already serving a sentence on in a separate matter?

STATEMENT OF THE CASE

I. Facts and Proceedings Below:

Appellant was already held on bond in his two probation revocation matters (CR-19-049 and CR-19-263) when he had his initial hearing in CR-21-197 on July 21st, 2021. *See* Tribe's Exhibit A, *PYT v. Trujillo* CR-21-197 Initial Hearing Order. The Court ordered that Appellant be held on bond in the CR-21-197 matter and ordered that bond run consecutive to his probation revocation matters. *Id.* On August 10th, 2021, Appellant entered admissions to probation violations and suspended sentences were imposed in CR-19-049 and CR-19-263 (hereinafter CR-19-049/263). *See* Tribe's Exhibit B, *PYT v. Trujillo* CR-19-049/CR-19-263 Probation Revocation Order.¹ The court further ordered that the parties submit a stipulation as to time credit the Appellant was entitled to in CR-19-049/263. *Id.* The parties then calculated time credit that Appellant was entitled to on his sentences in CR-19-049/263 and filed a stipulation as to that time credit. *See* Tribe's Exhibit C, CR-19-049/CR-19-263 Order. Based on that stipulation, the court ordered Appellant to be released on October 30, 2021 in CR-19-049/263. *Id.*

Appellant was subsequently convicted at trial in CR-21-197 on October 18, 2021. On October 27, 2021 Appellant was sentenced to 6 months incarceration. His sentence in CR-21-197 was ordered to commence on October 30, 2021, after Appellant's sentences in CR-19-049/CR-19-263 concluded. *See* Tribe's Exhibit D, CR-21-197 Sentencing Order. The Court credited Appellant 41 days presentence credit for the time the Appellant had been in custody on CR-21-197. However,

¹ At this time, Appellant would not have been able to bond out in his CR-21-197 matter because he had begun serving active sentences in separate matters.

the court excluded time served credit for the period of time Appellant began serving his sentences in CR-19-049/263. *Id.*²

A. Probation Cases- CR-19-049 and CR-19-263:

Appellant was charged on September 19, 2018, in CR-19-049 for Count 1, Kidnapping, Family Violence; Count 2, Assault, Family Violence; Count 3, Assault, Family Violence; Count 4, Battery, Family Violence; Count 5, Assault, Family Violence; Count 6, Disorderly Conduct and Count 7, Disorderly Conduct. *See* Tribe's Exhibit E, CR-19-049 Criminal Complaint. Appellant accepted a plea agreement in that matter on August 8, 2019 to Counts two through five of the Complaint. *See* Tribe's Exhibit F, CR-19-049 Change of Plea and Sentencing Order. On September 7, 2019, Appellant was charged on a new offense in CR-19-263 for Count 1, Refusal to Obey a Lawful Order and Count 2, Resisting a Lawful Arrest. *See* Tribe's Exhibit G, CR-19-263 Criminal Complaint. Appellant entered into a plea agreement in that matter on December 16, 2019 and was given a concurrent sentence with CR-19-049. *See* Tribe's Exhibit H, CR-19-263, Order Accepting Plea and Order for Probation.

Appellant admitted to probation violations on October 3, 2019 and was offered another chance at probation. *See* Tribe's Exhibit I, Probation Revocation and Disposition Order. Probation ultimately filed another Petition to Revoke Probation and Appellant went into warrant status on March 26, 2021. *See* Tribe's Exhibit J, CR-19-049/CR-19-263 Order Issuing Warrant. Appellant was picked up on that warrant and was held at his Detention Release Hearing for his probation revocation matters in CR-19-049/CR-19-263 on July 7, 2021. *See* Tribe's Exhibit K, CR-19-049/CR-19-263 Detention Release Order. The Tribe filed new charges in CR-21-197 on July 14, 2021. *See* Tribe's Exhibit L, CR-21-197 Criminal Complaint. These allegations included a new

²The court, in error, awarded Appellant than intended because it calculated the time credit from July 21, 2021 to Disposition on August 30, 2021, awarding Appellant to 41 days for CR-21-197. The Disposition occurred on August 10, 2021 and therefore the correct time was 21 days credit. *See* Tribe's Exhibit B and Tribe's Exhibit D.

violent offense alleged to have been committed while Appellant was on warrant status facing a probation revocation for violent offenses.

B. CR-21-197, April 14, 2021:

On July 21, 2021, the court found probable cause in CR-21-197 for an incident that occurred on April 21, 2021. Appellant was held on a \$200 bond that was ordered to run consecutive to his probation matters. Tribe's Exhibit A. Appellant was tried at a bench trial on October 18, 2021. At the onset of trial, the Victim refused to testify. *See* Tribe's Exhibit M, CR-21-197 Trial Order. After being ordered to testify by the court, the Victim went on to provide testimony that significantly differed from what she reported to police officers after the incident. *Id.* Appellant was still convicted for Assault/Domestic Violence and sentenced on October 27th, 2021. *Id.*

The court imposed a sentence of six months detention. Tribe's Exhibit D. In calculating credit for time served, the court gave Appellant credit for presentence incarceration from his initial appearance up to imposition of his suspended sentences in CR-19-049/263. *Id.* The court did not credit Appellant with time spent in custody in CR-21-197 for the period that overlapped with the time he was serving sentences in CR-19-049/263. *Id.* While the court did not explicitly state that the sentences run consecutive, its intent that the sentences were to run consecutive is clear in the court's sentencing order where the court ordered that Appellant begin serving his sentence in CR-21-197 after the conclusion of his sentences in CR-19-049/263 on October 30th, 2021. *Id.*

II. Summary of the Argument

Appellant raises a single issue on appeal. Appellant argues he is entitled to the additional time credit that the trial court excluded from its calculation when Appellant began serving a sentence in separate matters. Appellant argues that because he was held on bond pending trial in CR-21-197, the trial court must afford time credit for the entire time he spent in custody awaiting trial, notwithstanding the fact the Appellant began serving sentences in CR-19-049/263, and

notwithstanding the trial court ultimately ordered that CR-21-197 run consecutive to CR-19-049/263.

This issue is moot. The Appellant is asking this Court to award him time credit for an exhausted sentence. The Appellant's sentence in CR-21-197 expired on March 20th, 2022. *Id.* This issue is not one that falls within the exception to the mootness doctrine because it is not an issue that would be too short in duration to be fully litigated, and it is not an issue the Appellant should reasonably expect to be subjected to again. Because the issue raised by the Appellant is moot, there is simply no case or controversy that this Court has the ability to weigh in on.

If, however, the Court chooses to address the issue on the merits of the matter, the record in this case clearly demonstrates that the Trial Court did not abuse its discretion, and that sentence was correctly imposed under Pascua Yaqui law. Nothing in the Pascua Yaqui Tribal Code, Pascua Yaqui case law, or Federal case law requires a trial court to award credit to a defendant in a new case for time that he has served in a prior unrelated criminal matter. Under federal guidance, the court correctly calculated Appellant's time credit. Even assuming *arguendo*, that time should be calculated for this period, the imposed sentence was not substantively unreasonable because the court was well within its authority to impose a longer sentence to achieve the sentence it ultimately deemed appropriate.

LAW AND ARGUMENT

I. The Court Should Dismiss Appellant’s Petition Because this Issue is Moot.

This Court should deny the Appellant’s petition because this issue is moot. Appellant seeks to challenge a time credit computation for a sentence that he has already served. Appellant completed his sentence on March 20th, 2022.³ *Id.* Appellant is not challenging the underlying conviction, which would arguably still present a concrete injury due to identifiable collateral consequences associated with a criminal conviction, as will be discussed *infra*, but rather is only seeking adjusted time credit for an expired sentence.

While the Pascua Yaqui Tribal Code does not lay out justiciability rules for a petitioner, this Court has adhered to federally applied justiciability principles in denying review on the grounds that a matter has become moot. *PYT. Pesquiera* CA-08-007 (dismissing appeal because the issue raised in Appellant’s brief had been rendered moot by the lower court’s dismissal of criminal charges against Appellant). Additionally, it is well-settled that Pascua Yaqui Courts may look to federal or state law for guidance in the absence of controlling Pascua Yaqui authority. *Miranda*, CA-08-015 at P.22.

The United States Supreme Court has held that federal courts cannot “give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.” *Church of Scientology of California v. United States*, 506 U.S. 9, 12, 113 S. Ct. 447, 449, (1992); (citing *Mills v. Green*, 159 U.S. 651, 653, 16 S.Ct. 132, 133 (1895)). See also *Preiser v. Newkirk*, 422 U.S. 395, 401, 95 S.Ct. 2330, 2334, (1975); *North Carolina v. Rice*, 404 U.S. 244, 246, 92 S.Ct. 402, 404 (1971). This “mootness doctrine” is grounded in U.S. Const., Art. III, § 2, which limits federal jurisdiction to “cases” and

³ The issue before this Court was not rendered moot by the fact that the Tribe asked for, and was granted, two extensions to file its Response. Those requests were unopposed by Appellant. However, had the Tribe filed its Response as of its initial March 18th, 2022, due date, the issue would still have been rendered moot by the passage of time. Appellant would still have needed to file its Reply brief, and this Court would have needed time to review the record and any pleadings filed, and may possibly have needed to schedule oral argument.

“controversies” that are still “extant at all stages of review, not merely at the time the complaint is filed.” *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160, 136 S. Ct. 663, 669, (2016), *as revised* (Feb. 9, 2016) (emphasis added); *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67, 117 S.Ct. 1055 (1997) (*Preiser v. Newkirk*, 422 U.S. 395, 401, 95 S.Ct. 2330 (1975)). “If an intervening circumstance deprives the plaintiff of a ‘personal stake in the outcome of the lawsuit,’ at any point during litigation, the action can no longer proceed and must be dismissed as moot.” *Campbell-Ewald Co.*, 577 U.S. 153.

There is an exception to the mootness doctrine that allows matters that are otherwise moot to be heard if they are ones that are “capable of repetition, yet evading review.” *Spencer v. Kemna*, 523 U.S. 1, 17, 118 S. Ct. 978, 988 (1998). The United States Supreme Court has stated that the “capable-of-repetition” doctrine applies “only in *exceptional situations*” *Id* (emphasis added); citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 108–09 (1983). The “capable of repetition” exception applies when both of the following circumstances apply: 1) the challenged action is one that its duration is too short to be fully litigated prior to expiration and; 2) there is a reasonable expectation that the party will be subject to the same action again. *Id*. As will be discussed below, neither circumstance applies to this case, and the Appellant’s request should be denied.

A. Appellant’s Petition Should be Dismissed as Moot Because he Only Challenges an Expired Sentence, Not the Underlying Conviction, and Therefore has No Collateral Consequence Sufficient to Establish an Ongoing Injury.

The U.S. Supreme Court has declined to find issues moot simply because a sentence has exhausted. *Carafas v. LaVallee*, 391 U.S. 234, 237, 88 S. Ct. 1556, 1559 (1968). However, when a sentence has expired, a petitioner must show that there is a concrete and continuing injury in order for a suit to be maintained. *Spencer v. Kemna*, 523 U.S. 1, 7, 118 S. Ct. 978, 908 (1998).

In *Carafas*, the Supreme Court overturned its previous decision in *Parker v. Ellis*, 362 U.S. 574, 80 S. Ct. 909 (1960) which had held that courts no longer had jurisdiction in criminal matters once the sentence imposed had expired. *Id*. The petitioner in *Carafas* challenged his conviction

claiming that evidence was illegally obtained against him. *Id* at 235-236. Respondent relied on *Parker v. Ellis* in asserting the Court should reject that matter as moot since the petitioner's sentence had concluded and the court therefore lacked jurisdiction. *Id*. In overturning its previous decision in *Parker*, the Supreme Court determined that the Petitioner's request for relief — by virtue of his challenging the underlying nature of his conviction — was not rendered moot by the expiration of his sentence. This was because the Petitioner was still exposed to ongoing collateral consequences, including loss of his rights to vote, to serve in a union, or to serve as a juror. *Id* at 237. However, while *Carafas* is instructive, the Supreme Court has found cases moot where a sentence has expired and there is no identifiable concrete and continuing injury sufficient to satisfy Article III's injury-in-fact requirement. *Kemna*, 523 U.S. 1, 118 S. Ct. 978.

In *Kenma*, petitioner challenged his parole revocation that resulted in him serving the remainder of his prison sentence. *Id* at 3-6. By the time the matter was heard by the Supreme Court, petitioner's prison sentence had expired. *Id*. Petitioner claimed that, although his sentence had expired, he faced several concrete and ongoing injuries-in-fact as a result of the parole revocation. *Id* at 14-16. Petitioner claimed that the parole revocation could be used against him at future revocation proceedings, that the revocation could be used to increase a future sentence, and that the revocation could be used to impeach him as a witness in a trial. *Id*. The Court rejected these arguments and found that petitioner failed to present any collateral consequences sufficient to establish concrete and ongoing injuries. *Id*. The Court reasoned that these claims were speculative. *Id*. The Court further noted insofar as petitioner facing enhanced future sentences, that claim would require him to break the law and to get caught and convicted. *Id*. The Court discounted that claim, noting that people have a duty to abide by the law thereby preventing that possibility from occurring. *Id*.

The issue raised in Appellant's brief is analogous to *Kenma* and distinguishable from *Carafas*. Appellant has served his sentence, is not challenging the underlying conviction, and

therefore cannot point to any ongoing concrete injuries, as found in *Carafas*. Any injury that could be asserted would be of the same speculative nature as those asserted in *Kenma*.

B. Exception to the Mootness Doctrine Does Not Apply Because This is Not an Action That is Too Short in Duration to be Fully Litigated Prior to Expiration, and Appellant Cannot Expect to be Subjected to the Same Action.

As discussed *supra*, the “capable of repetition, yet evading review” doctrine is limited to the situations where two elements combine: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action again. *Weinstein v. Bradford*, 423 U.S. 147, 149, 96 S. Ct. 347, 349(1975); *see also Kemna*, 523 U.S. at 17, 118 S. Ct. at 988; *City of Los Angeles v. Lyons*, 461 U.S. 95, 108–09, 103 S. Ct. 1660, 1669 (1983). While not addressed in Appellant’s petition, in order for his petition to survive dismissal as moot, it is presumed that Appellant will have to establish that *he* could be subjected to the same issue at a future sentencing, and that this is an issue that is too short in duration to be fully litigated. Appellant fails on both grounds.

The exception requires that there exists “a reasonable expectation that the *same complaining party* would be subjected to the same action again”. *Lane v. Williams*, 455 U.S. 624, 634, 102 S. Ct. 1322, 1328 (1982) (emphasis added); *see also Whitmore v. Arkansas*, 495 U.S. 149, 110 S. Ct. 1717 (1990) (*holding* second death row inmate did not have individual standing to challenge validity of death sentence imposed on capital defendant who elected to forego his right of appeal to Arkansas Supreme Court). As was discussed *supra*, Courts reject such arguments where speculation of future harms rest on a petitioner having to violate the law. *Spencer v. Kemna*, 523 U.S. at 15, 118 S. Ct. at 986.

Insofar as Appellant being subject to this potential issue again – that he would be incarcerated serving a prison sentence while awaiting trial in a separate matter - the U.S. Supreme Court rejected such arguments where petitioners point to a potential harm that would require them

to violate the law to encounter it, on the grounds that it is presumed people will not, or should not, violate the law. *Id* (finding that respondents were required by law to prevent themselves from facing a future order of revocation because it would require them breaking the law, getting caught, and convicted).

We can look to *Kenma* again to analyze whether this is an issue that is too short in duration to be fully litigated. In *Kenma*, the Court rejected petitioner's argument that the matter was too short to be fully litigated, finding that he failed to establish that the time between parole revocation and expiration of sentence is *always* too short to evade review. *Id* (*emphasis added*). That is the case here.

The Pascua Yaqui Tribal Criminal Code allows a trial court to impose a sentence of up to one year per offense. 4 PYTC § 4-20. The trial court has the authority to run sentences consecutive for a total of up to 3 years. *PYT v. Miranda* CA-08-015; citing *Miranda v. Anchondo*, 684 F.3d 844 (9th Cir. 2012) (affirming a Pascua Yaqui Tribal Court sentence of 910 days). A brief look at the timeline of an appeal shows that a matter like this could be resolved before a sentence is exhausted. 3 PYTC § 2-3-100(A) provides that the appellant has 30 days to file a notice of appeal from the judge signing final order of matter being appealed. Tribal court then has 30 days to provide the record. 3 PYTC § 2-3-110(B). The appellant then has 30 days to file his brief after the appellate court clerk mails the notice required by Rule 10(A). 3 PYTC § 2-3-140(A)(1). The appellee then has 30 days to file its brief after service of the appellant's brief. 3 PYTC § 2-3-140(A)(2). Appellant then has 15 days to Reply. 3 PYTC § 2-3-140(A)(3). Given that a sentence could run up to three years, an issue like the matter at-hand could be decided before it becomes moot. Because of this, the issue Appellant raises is not one that fits within the parameters of one that is too short in duration to be fully litigated before expiration.

II. The Trial Court Did Not Abuse Its Discretion at Sentencing and Imposed a Sentence that Was, Both, Procedurally Sound and Substantively Reasonable.

When determining whether a trial court has abused its sentencing discretion, the reviewing court need only determine whether the imposed sentence is “reasonable.” *United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (“[O]nly a procedurally erroneous or substantively unreasonable sentence will be set aside.”); *see also Rita v. United States*, 551 U.S. 338, 351 (2007) (noting that a sentence within local sentencing 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).

A. A Sentencing Court is Not Required to Award a Defendant to “Double Credit” in Calculating Time Credits Where a Prisoner is Serving a Sentence While Simultaneously Awaiting Trial.

The trial court committed no procedural error because there is nothing in the Pascua Yaqui Tribal Code or within Pascua Yaqui case law that requires a sentencing court to award a defendant “double credit” if they are simultaneously serving a sentence while awaiting trial.

Appellant relies on *Mesquita* to assert he was entitled to additional presentence incarceration credit. However, *Mesquita* is distinguishable from our case at-hand. In *Mesquita*, the defendant was not afforded any presentence incarceration credit. *PYT v. Mesquita*, CA-21-001, P.1-3, 6, (PYT Ct. App. 2021); *see also* Tribe’s Exhibit N, CR-20-107/CR-20-122 Sentencing Order and Presentence Report. There, the defendant was entitled to credit from when he was arrested and awaiting trial in Pascua Yaqui Tribal custody up to his extradition to the State of Arizona. *Mesquita* at 1-3, 6. Appellant also relies on *Jonah R. v. Carmona*, 446 F.3d 1000 (9th

Cir. 2006), which, like *Mesquita*, deals with the denial of any presentence incarceration credits. These two cases are misapplied here.

In this matter, Appellant was credited with 41 days for time spent in custody. What we have here is the question of whether a court must afford time credit for a defendant awaiting trial while they are already serving a sentence in a separate matter. The federal rules provide some guidance here. The Pascua Yaqui Tribal code does not contain a provision regarding the issuance of time credit for incarcerated persons. In the absence of controlling Pascua Yaqui authority, we may look to the federal rules for guidance. *Miranda*, CA-08-015, at p.22. The federal statute addressing the issue of time calculations expressly states that a defendant is not entitled to double credit in calculating presentence time credit. 18 U.S.C.A. § 3585(b) states that “[a] defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences... that has not been credited against another sentence.” (emphasis added); *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).

In a persuasive opinion out of the Southern District of New York, *United States v. Arroyo* highlights the bright-line rule of denying double credit in federal matters under 18 U.S.C. § 3585(b). *United States v. Arroyo*, 324 F. Supp. 2d 472, 473 (S.D.N.Y. 2004). There, defendant was transferred from state custody, where he was serving a sentence on an unrelated matter, to federal custody on May 21, 2000. *Id.* Defendant continued to accumulate time on his state sentence while awaiting resolution of his federal matter. Defendant ultimately pled guilty in his federal matter and was sentenced on July 20, 2001. *Id.* Defendant’s state sentence concluded on January 8, 2002. *Id.* At sentencing, the district court ordered that his federal sentence run concurrent with any undischarged portion of his state sentence. *Id.* The court later denied defendant’s request for an additional 15 months presentence credit towards his federal case for the time he spent in federal

custody, but while simultaneously serving his state sentence. *Id.* The court rejected defendant's request to "double dip", ruling that 18 U.S.C. § 3585(b) precluded the BOP from awarding presentence credit that was already awarded towards another sentence. *Id.* Arroyo is directly on point with the matter here.

The trial court appropriately credited Appellant with presentence time credits and did so in-line with the federal statute and case law directly addressing this issue. The trial court afforded Appellant with presentence time credit while he was awaiting trial and held on bond. When Appellant began serving a sentence, and could no longer bond out, the trial court was no longer required to credit Appellant with time spent in custody. Had the trial court ultimately ordered that all sentences run concurrently, the Appellant would have received that time credit. However, the Court made it clear that it intended that the Appellant was to serve his sentence in CR-21-197 consecutive to those he was already serving in CR-19-049/263 when it ruled he was not entitled to credit while serving those sentences, and when it ordered that his sentence commence after the conclusion of those sentences. Tribe's Exhibit D.

B. The Trial Court did Not Impose a Sentence that is Substantively Unreasonable Because the Court Reached a Sentence that it Deemed Appropriate, and Could Have Reached that Result Simply by Imposing a Longer Consecutive Sentence.

There is nothing substantively unreasonable about the sentence imposed by the trial court. The court sentenced appellant within a lawful time frame allowable under the Pascua Yaqui Tribal Code sentencing parameters, and it announced the reasons why it imposed the sentence. An appellate court may presume that a sentence is reasonable if it falls within sentencing guidelines. *Rita* at 338.

Here, the court is authorized to impose a sentence of up to one year in prison. 4 PYTC § 4-20. A sentencing judge may also order that sentences run consecutive, up to a period of 3 years. *Mesquita*, at 5 (upholding trial court's imposition of consecutive sentences); *Anchondo* at 844. The court properly awarded Appellant 99 days credit presentence incarceration before sentencing

him to 6 months. Tribe's Exhibit D. The court considered Appellant's history of probation revocations and escalating violent behavior, *inter alia*, in deciding a fair sentence. *See PYT v. Raymond Trujillo* CR-21-197 Sentencing Hearing, Pg. 9-10. The trial court considered these aggravating factors and carved out a sentence in-line with goals laid out in *U.S. v. Carty* that was "sufficient, but not greater than necessary to reflect the seriousness of the offense..." *U.S. v. Carty* at 991.

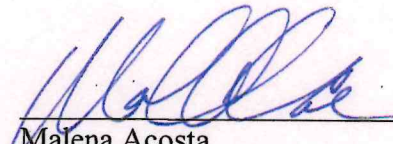
The court ultimately ordered a consecutive sentence and therefore denied Appellant the time he spent in custody awaiting trial that overlapped with a sentence he was already serving in order to impose a sentence it deemed appropriate. *Id.* The trial court was free to sentence Appellant to 9 months, 10 months or even 12 months consecutive to the sentence he was already serving in order to arrive at the sentence it felt was warranted. Even assuming for the sake of arguendo that Appellant was entitled to the time credit he now seeks, there is nothing unreasonable about the imposed sentence because the court could have reached the imposed sentence by simply ordering a sentence that was 41 days longer.

CONCLUSION AND REMEDY SOUGHT

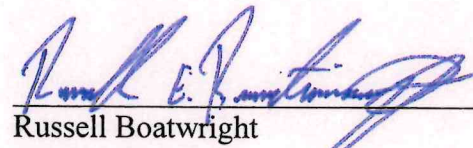
We ask this Court to dismiss Appellant's petition because the matter is moot. Furthermore, this issue cannot survive on the exception to the mootness doctrine as one that is capable of repetition yet evading review, because there is no reasonable expectation that Appellant would face this same issue in the future. Indeed, federal case law states such claims are speculative and presumes Appellant would avoid this situation by not violating the law and thereby facing sentencing again. *Kemna*, 523 at 15. There also are no facts to support this issue is one that is too short in duration to be fully litigated. Given that the Pascua Yaqui Code and case law allows for a sentence that could run up to three years, it is entirely possible that this is the type of issue that could be litigated during the life of the case.

If this Court reaches the merits of the matter, we ask this Court to affirm Appellant's sentence. The trial court imposed a sentence and credited Appellant with presentence incarceration credit that would be in-line with the federal rule and case law. Since the Pascua Yaqui Tribal Code is silent on this issue, the federal rule and case law on this issue should be followed. Policy also implores affirming the trial court's sentence. To hold that a sentencing court is required to award presentence incarceration credits to a defendant who is in custody awaiting trial, while simultaneously serving a sentence in a separate matter, runs the risk of forcing a sentencing court to impose a de facto concurrent sentence where it may deem that a consecutive sentence is warranted.

RESPECTFULLY submitted this 18th day of May, 2022.



Malena Acosta
Chief Prosecutor



Russell Boatwright
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:

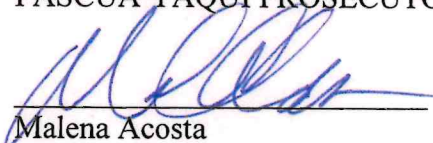
Stuart de Haan
Stuart.deHaan@pascuayaqui-nsn.gov
Pascua Yaqui Office of the Public Defender
7474 S. Camino de Oeste
Tucson, AZ 85757

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

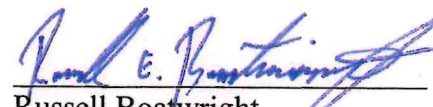
Associate Judge Cornelia Cruz
Pascua Yaqui Tribal Court
7777 S. Camino Huivisim
Tucson, AZ 85757

Dated this 18 day of May, 2022.

PASCUA YAQUI PROSECUTOR



Malena Acosta
Chief Prosecutor



Russell Boatwright
Deputy Prosecutor

Sworn before me this _____ day of _____, 2022

Notary Signature`

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:

Stuart de Haan
Stuart.deHaan@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:

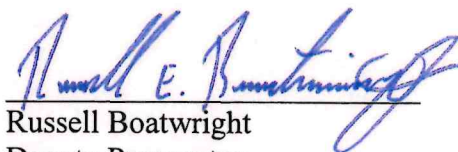
Associate Judge Cornelia Cruz
Pascua Yaqui Tribal Court
7777 S. Camino Huivisim
Tucson, AZ 85757

Dated this 18 day of May, 2022.

PASCUA YAQUI PROSECUTOR



Malena Acosta
Chief Prosecutor



Russell Boatwright
Deputy Prosecutor

Sworn before me this 18th day of May, 2022


Notary Signature

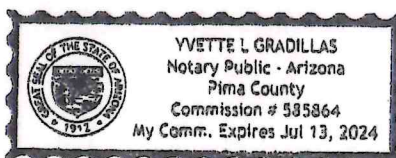


EXHIBIT A

1 IN THE PASCUA YAQUI TRIBAL COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

3 PASCUA YAQUI TRIBE,)
4 Plaintiff,) No. CR-21-197
5 VS.)
6 Trujillo Raymond,) INITIAL HEARING ORDER
7 Defendant)

8 In compliance with 3PYTC R. Crim.P.Rule 16 of the Pascua Yaqui Court and Rules of
9 Court, the defendant appeared before this Court on this 21st day of July, 2021 for the scheduled
10 Initial hearing, in custody.

11 Present were: Russell Boatwright for the Tribe; Stu De Haan, legal counsel for defendant.

12 THE COURT FINDS, that defendant qualifies for appointment of legal counsel and the
13 Pascua Yaqui Public Defender's Office is appointed to represent the defendant;; that after the
14 waiver of the reading of the rights, the Court finds probable cause to believe defendant may have
15 committed the offenses of Assault/Domestic Violence, Threatening or Intimidating/Domestic
16 Violence, Kidnapping/Domestic Violence and Unlawful Imprisonment/Domestic Violence; that
17 defense counsel moves the Court to proceed to the Arraignment hearing and after the waiver of
18 the reading of the rights and of the complaint, not guilty pleas are entered to the four charges;
19 that the Bench Trial hearing will be scheduled; that the Tribe recommends that bond of \$200.00
20 be imposed based on the defendant's history of failures to appear, failures to comply, and history
21 of probation revocations; that defense counsel has no objections and moves the Court to run the
22 bond concurrent to the bonds imposed in unrelated cases pending against the defendant as
23 defendant will be unable to post any of the imposed bonds; that bond will be imposed as
24 recommended and will run consecutive given the defendant's substantial history.

25 **IT IS ORDERED THAT:**

- 26 Defendant shall be released upon posting bond of \$200.00(consecutive)
27 Defendant shall be held without bond.
28 Defendant shall be released on his/her own recognizance.
 Defendant shall be released to the custody of **PRE-TRIAL SERVICES**
 Defendant shall be notified of the Arraignment hearing date.

BENCH TRIAL HEARING is scheduled for MONDAY, SEPTEMBER 27,
2021 AT 9:00 A.M..

THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

Other: the bond shall be posted prior to release and the bond shall run
consecutive to the bond imposed in CR-19-049/163 and CR-21-197 and defendant is restrained
from any contact with Samantha Molina, and defendant shall not possess or consume any
narcotics or dangerous drugs or drug paraphernalia or any alcoholic beverages, shall be subject
to random urinalysis and breathalyzer tests, shall not possess an weapons, shall obey all laws and
appear for all hearings and in the event that the bond is not posted, Transport Order shall issue



PLEADING TITLE - 1

22 JUL 2021 AM 9:18

SCANNED

1 and defendant shall be transported to the hearing from any adult detention facility housing the
2 defendant.

3
4 SO ORDERED THIS 21st DAY OF July, 2001.

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7 
8 Judge, Pascua Yaqui Tribal Court
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9 CC: 07.21.01

10 Date
 Tribe Defendant/Legal Counsel Probation Detention Other
11 [Signature]
Clerk

EXHIBIT B

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE)

Plaintiff,)

VS.)

Trujillo Raymond,)

Defendant)

No. CR-19-049/CR-19-263

ORDER

The above named defendant appeared before this Court in custody for the Formal Trial hearing on the Motion To Revoke Probation held on this 10th day of August, 2021. Chief Probation Officer, Yvette Alvarez appeared for the Probation department; Russell Boatwright appeared for the Tribe; Stu De Haan, legal counsel for defendant appeared.

The Court finds that, after the waiver of the reading of the rights and defense counsel informs the Court that the defendant will be entering a change of plea to allegation 2 with the allegations 1,3 and 4 being dismissed by the Probation Officer and the Tribe; that the Probation Officer and the Tribe concur; that the Court is satisfied that the defendant understands the rights that will be waived and the consequences of changing his plea from denial to admittance as explained to him by legal counsel; that the defendant enters an admittance plea to allegation 2 and does so of his own free will and with full knowledge of the rights waived; that the Court accepts the admittance plea as defendant states this is the plea he wishes entered in his behalf and that he understands the stipulation of factual basis as explained to him by defense counsel; that the parties inform the Court that they are working on determining the amount of jail days the defendant has served to allow for credit for time served, however, that defendant will be transported back to the outside detention facility after the hearing and would have to be transported back for the disposition hearing; that after discussion of the options, the parties agree to having sentence imposed, then after they work out the details they will file a stipulation as to the credit for time served days to allow the Court to set a release due date; that the Probation Officer moves the Court to find the defendant in violation of his conditions of probation, to impose the 120 jail days to be served immediately; that there are no objections; that the Court will impose disposition as recommended pending the parties filing the stipulation as to any credit for time served jail days.

IT IS ORDERED THAT, the defendant is found in violation of her conditions of probation and defendant's probation term is revoked and the 120 suspended jail days are imposed and are to be served immediately and the parties shall file the stipulation as to the credit for time serve jail day on or by August 13, 2021 and upon receipt of the stipulation, the Court shall set the release date and further, the Court cost and probation fees are commuted and further, allegations 1,3 and 4 are dismissed with prejudice.

SO ORDERED THIS 10th DAY OF August, 2021.

PLEADING TITLE - 1

SCANNED

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EXHIBIT C

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IN PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE)
Plaintiff,)
Vs.)
Trujillo Raymond,)
Defendant)

No. CR-19-049/263


ORDER

The defendant through legal counsel filed a Stipulation For Release Date in the above matter.

The Court finds that, on August 10, 2021, disposition was entered scheduled in this matter and the parties were going to research as to how may jail days defendant may have serve and they were going to submit a release date; that the parties have filed the stipulation and inform the Court that the due date for release is October 30, 2021; that the Court will issue it's order with the release date for the defendant to be released from custody.

IT IS ORDERED THAT, the defendant shall be released from custody to the streets on October 30, 2021 at 8:00 a.m., and in the event that the defendant is serving his sentence in a detention facility located outside this jurisdiction, Transport Order shall issue and the defendant shall be transported to the Pascua Yaqui Detention Facility to be released to the streets as ordered above.

SO ORDERED THIS 30th DAY OF August, 2021.


Judge, Pascua Yaqui Tribal Court

cc: 08.30.21
Date
 Tribe Defendant/Counsel Probation Pre-trial Services
[Signature]
Clerk

SCANNED

2021 AUG 30 10:10 AM

EXHIBIT D

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IN THE PASCUA YAQUI TRIBA COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE)
Plaintiff,)
VS.)
Trujillo Raymond,)
Defendant)

No. CR-21-197

ORDER

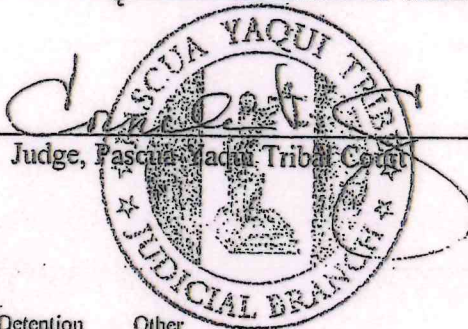
The defendant appeared before this Court in custody for the Sentencing hearing held on this 27th day of October, 2021 in custody. Russell Boatwright appeared for the Tribe; Yvette Alvarez, Chief Probation Officer appeared; Stu De Haan, legal counsel for defendant appeared.

The Court finds that, the Pre-sentence has been and that the Court has also received the Tribe's and defendant's Sentencing Memorandums; that defense counsel states that they object to the recording filed with the Tribe's memorandum as they do not know what it consists of; that the Court informs the parties that the Court did not hear the recording due to time constraints as the memorandum was filed in a time manner to allow the Court time to listen to the recording prior to the hearing; that the Probation Officer is recommending 90 days in jail with no credit for time served and no probation term given the defendant's history of non-compliance with the probation terms and history of escalating behavior including new charges while the defendant was absconded from probation; that the Tribe recommends one year probation term with a substantial amount of suspended jail days given the defendant's history of charges and probation violations and escalating violent behaviors as the Tribe does not believe defendant is remorseful and has not learned based on his behaviors and the victim is also contributing to the defendant's behavior and further that in the alternative, that a 6 month jail sentence is appropriate; that defense counsel states no restitution or retribution is being sought, that there were no sustained injuries, that under Arizona Law defendant would be receiving a 30 day sentence, that the defendant's grandmother passed away while he was incarcerated, that defendant was allowed to attend the funeral, that the defendant is remorseful and that defendant has obtained alcohol and substance abuse counseling while incarcerated, and feels that he would benefit from probation as he is now willing to comply and defense counsel recommends defendant be credited with time served of 99 days; that after reviewing the sentencing recommendations and hearing from the parties, the Court finds that the defendant is not a good candidate for probation given his escalating violent behavior, given his history of failures to comply with probation conditions after having been granted extensions of the probation conditions, having obtained additional charges which were violent in nature while being absconded from his probation terms, that the defendant will not comply with any probation conditions imposed by the Court and the Court further finds that the defendant has been incarcerated in this matter beginning on July 21, 2021 when the Court held the Initial hearing and imposed bond of \$200.00 and further, that the Court will grant credit for time served of 41 days beginning on August 30, 2021 as on this date, the Probation Disposition hearing was held in CR-19-049/263 and the suspended 120 jail days were impose and defendant was ordered to begin serving the sentence immediately and further,

1 defendant will be ordered to pay cost of \$50.00 and the Court will impose six months of jail; that
2 defendant's release date in the Probation matter is set for October 30, 2021.

3 **IT IS ORDERED THAT**, defendant shall serve 6 months in jail beginning on October
4 30, 2021 and defendant is credited with time served of 41 days and defendant shall serve the
5 balance of 139 in jail beginning on October 30, 2021 and defendant shall pay Court cost of
6 \$50.00 due on or by April 19, 2022 and defendant shall be released from custody to the streets
7 on MARCH 20, 2022 AT 8:00 A.M., and further, in the event that the defendant is serving his
8 sentence in a detention facility located off the Pascua Yaqui Reservation, Transport Order shall
9 issue and defendant shall be transported to the Pascua Yaqui Detention facility to be released to
10 the streets on the above date from this facility.

11 SO ORDERED THIS 27th DAY OF October, 2021.



14 Cc: 16107/21

15 Tribe Defendant/Legal Counsel Probation Detention Other
16 [Signature]
17 Clerk

EXHIBIT E

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION, ARIZONA

2018 DEC -3 PM 1:41

DOCKET NO. CR-19-049

Pascua Yaqui Tribe,
Plaintiff,

Case No.

vs.

CLERK *Mr*

TRUJILLO, RAYMOND

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 § 1-200(D) ~ Kidnapping / 3-10(B) ~ Family Violence

On or about September 19, 2018 at approximately 7:05 p.m., at or near 5071 W. Calle Tarook, Defendant knowingly restrained another person with the intent to place the victim or a third person in reasonable apprehension of imminent physical injury to the victim or such third person, to wit: *Restrained his mother, Maria Trujillo, with the intent to place her in reasonable apprehension of imminent physical injury.*

COUNT 2: 4 PYTC § 1-130(A)(3) ~ Assault / 3-10(B) ~ Family Violence

On or about September 19, 2018 at approximately 7:05 p.m., at or near 5071 W. Calle Tarook, Defendant committed assault by knowingly touching another person with the intent to injure, insult or provoke such person, to wit: *Punched his mother, Maria Trujillo, in the face.*

COUNT 3: 4 PYTC § 1-130(A)(3) ~ Assault / 3-10(B) ~ Family Violence

On or about September 19, 2018 at approximately 7:05 p.m., at or near 5071 W. Calle Tarook, Defendant committed assault by knowingly touching another person with the intent to injure, insult or provoke such person, to wit: *Spit on his mother, Maria Trujillo.*

COUNT 4: 4 PYTC § 1-150(A) ~ Battery / 3-10(B) ~ Family Violence

On or about September 19, 2018 at approximately 7:05 p.m., at or near 5071 W. Calle Tarook, Defendant did willfully strike another person or otherwise inflict bodily injury, or who, by offering violence, caused another to harm him, to wit: *Punched his grandfather, Emilio Trujillo, in the face.*

COUNT 5: 4 PYTC § 1-130(A)(1) ~ Assault / 3-10(B) ~ Family Violence

On or about September 19, 2018 at approximately 7:05 p.m., at or near 5071 W. Calle Tarook, Defendant committed assault by intentionally, knowingly or recklessly causing any physical injury to another person, to wit: *Injured the left ear of his grandfather, Emilio Trujillo.*

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COUNT 6: 4 PYTC § 1-300(A) ~ Disorderly Conduct

On or about September 19, 2018 at approximately 7:05 p.m., at or near 5071 W. Calle Tarook, Defendant, with the intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, engaged in fighting, violent or seriously disruptive behavior, to wit: *Fought with Emilio Trujillo, disturbing the peace and quiet of Suzie Trujillo.*

COUNT 7: 4 PYTC § 1-300(A) ~ Disorderly Conduct

On or about September 19, 2018 at approximately 7:05 p.m., at or near 5071 W. Calle Tarook, Defendant, with the intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, engaged in fighting, violent or seriously disruptive behavior, to wit: *Fought with Emilio Trujillo, disturbing the peace and quiet of D.T. (DOB 8/14/2007).*

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

DATED this 3rd day of December, 2018.


Complainant/Attorney

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

DEFENDANT: Raymond Trujillo
ADDRESS: ~~5071 W. Calle Tarook, Tucson, AZ 85757~~ 4930 Vai Sevoi, T/A 85757
DOB: 09/04/1992 SSN: 601-23-1289 ORIGIN: Pascua Yaqui Tribe #2694U09530
SEX: Male HT: 5'7" WT: 180 EYES: Brown HAIR: Brown

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]

EXHIBIT F

1 **IN THE PASCUA YAQUI TRIBAL COURT**

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

3 PASCUA YAQUI TRIBE,)
4 Plaintiff,)
5 vs.)
6 TRUJILLO, RAYMOND,)
7 Defendant.)

Case No.: CR-19-049

**CHANGE OF PLEA AND
SENTENCING ORDER**

8 On August 8, 2019, the defendant, Raymond Trujillo, appeared before this Court with
9 Court-Appointed Counsel, Annamarie Valdivia, for a scheduled Change of Plea hearing in this
10 matter. Madelynn Franklin appeared for the Tribe.

11 The Court FINDS that: defense counsel waived the reading of the defendant's rights. The
12 Tribe moved the Court to amend the plea to change the no contact with Suzie Trujillo to a no harm
13 and harass based upon the request of Ms. Trujillo. The Tribe presented the plea and informed the
14 Court that the Tribe is not aware of any objections to the proposed plea from any of the victims.
15 Good cause appears to grant the Tribe's unopposed motion. Defense counsel waived the reading
16 of the complaint. The defendant entered a guilty plea as to CR-19-049, Count 2, Count 3, Count 4
17 and Count 5. The defendant, through counsel, stipulated as to the facts. The Court is satisfied that
18 the defendant's guilty plea for Counts 2, 3, 4 and 5 are knowingly and voluntarily given without
19 any threats or promises made to the defendant and that the defendant has knowledge of his rights
waived and understands the consequences of entering into the guilty plea for each count. Good
cause appears to accept the defendant's guilty plea for counts 2, 3, 4 and 5 and grants the
sentencing recommendations pursuant to the amended signed plea agreement.

20 **THE COURT ORDERS** that the Tribe's motion to amend the plea regarding the no
21 contact with Suzie Trujillo to a no harm and harass order is granted.

22 **THE COURT FURTHER ORDERS** that the defendant's guilty plea to CR-19-049,
23 Count 2, 3, 4, and Count 5 are accepted and Raymond Trujillo is sentenced as follows:

24 **CR-19-049,**

25 **Count 2: 4 PYTC § 1-130(A)(3) ~ Assault / 3-10(B) ~ Family Violence**

26 **Count 3: 4 PYTC § 1-130(A)(3) ~ Assault / 3-10(B) ~ Family Violence**

27 **Count 4: 4 PYTC § 1-150(A) ~ Battery / 3-10(B) ~ Family Violence**

28 **Count 5: 4 PYTC § 1-130(A)(1) ~ Assault / 3-10(B) ~ Family Violence**

a. 120 days detention suspended for 12 months of supervised probation.

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- b. Defendant shall obtain a Comprehensive Evaluation for mental health, at a licensed provider and complete any recommended treatment and provide any proof of scheduling the evaluation within 30 days.
- c. Defendant shall complete an Anger Management course at a licensed provider.
- d. Defendant shall complete an alcohol and drug assessment at a licensed provider and provide proof to the probation officer within 30 days. Defendant is to complete any recommended alcohol drug treatment.
- e. Defendant may not use or possess alcohol or illegal drugs while on probation, subject to testing by the probation department.
- f. Probation fees due the first of each month to be determined by the Probation Department.
- g. Follow standard conditions of probation. Report to the Probation Officer either telephonically or in person within two working days and comply with all requirements of the Probation Officer.
- h. 25 hours of community service or volunteer work, at the direction of the probation officer.
- i. Defendant shall have no contact with Maria Trujillo, Emilio Trujillo, and the minor with initial D.T.. The defendant shall not harm or harass Suzie Trujillo.

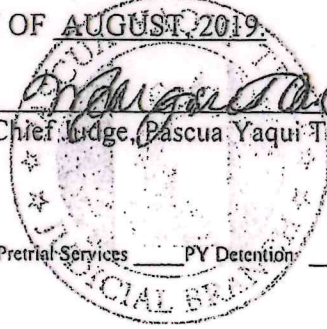
The defendant shall pay a court cost of \$50.00 within 30 days. The Court cost may be paid through community service, a total of 10 hours of community service

THE COURT FURTHER ORDERS that the Tribe shall not file any charges arising out of this incident which could have been filed but have not yet been filed. The following charges are dismissed with prejudice: CR-19-049, Count 1: Kidnapping, Count 6: Disorderly Conduct, and Count 7: Disorderly Conduct.

THE COURT FURTHER ORDERS that the posted bond of \$250.00 shall be returned to the surety, Samantha Figueroa.

SO ORDERED THIS 8TH DAY OF AUGUST, 2019.


 Chief Judge, Pascua Yaqui Tribal Court



Cc: Date 08 09 19
 Tribe Defendant Defense Counsel Pretrial Services PY Detention B.I.A. Contracted Detention Facility
 Clerk: [Signature]

EXHIBIT G

1 IN THE PASCUA YAQUI TRIBAL COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION 8 PM 3 55

3 Pascua Yaqui Tribe,
4 Plaintiff,

vs.

5 TRUJILLO, RAYMOND

6
7 Defendant.

Case No.

10969-8
CLERK 0219-263

CRIMINAL COMPLAINT

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

11 **COUNT 1: 4 PYTC § 1-710 ~ Refusal to Obey a Lawful Order**


12 On or about September 07, 2019 at approximately 10:12 p.m., at or near Vai Sevoi and
13 Camino Cocoim, Defendant did refuse to obey a lawful order of the police or fire
14 department, to wit: *Defendant refused to turn around and place his hands behind is
back when told by Officer Adame.*

15 **COUNT 2: 4 PYTC § 1-730 ~ Resisting a Lawful Arrest**

16 On or about September 07, 2019 at approximately 10:12 p.m., at or near Vai Sevoi and
17 Camino Cocoim, Defendant did willfully and knowingly by force or violence or means,
18 resist or assist another to resist a lawful arrest, to wit: *Defendant pulled his hands
away from Officer Adame, when Officer Adame tried to place handcuffs on the
defendant.*

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

21 DATED this 8th day of September, 2019.

22
23 
24 Complainant/Attorney

25 Pursuant to Article I, § 1(g) of the Pascua Yaqui Constitution, 4 PYTC § 4-20, and 25 U.S.C. §
26 1302(a)(b), If found guilty at sentencing or plea agreement, the Pascua Yaqui Tribe will seek
27 punishment that includes imprisonment.

28 DEFENDANT: Raymond Trujillo
ADDRESS: 5071 W. Tarook Tucson, AZ 85757
DOB: 09/04/1992 SSN: 601-23-1289 ORIGIN: Pascua Yaqui Tribe #2694U09530

SCANNED

1 SEX: Male HT: 5'7" WT: 180 EYES: Brown HAIR: Brown

2 *Note: Accused persons may obtain disclosure information about their case ten days after arraignment by contacting*
3 *the Prosecutor's Office at 7777 S. Camino Huivisim, Bldg A, 2nd Floor, Tucson AZ 85757. [3 P.Y.T R.Crim.P. Rule*
4 *38]*

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EXHIBIT H

1 IN THE PASCUA YAQUI TRIBAL COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

3 PASCUA YAQUI TRIBE,) Case No. CR-19-263
4 PLAINTIFF,)
5 vs.) ORDER ACCEPTING PLEA
6 TRUJILLO, RAYMOND) AND ORDER FOR PROBATION
7 DEFENDANT.)

8 The defendant, Raymond Trujillo, appeared, for a change of plea hearing on December
9 16, 2019, with his legal counsel, Annamarie Valdivia, and appearing for the Tribe was
10 prosecutor Russell Boatwright.

11 The defendant waived reading of his rights, waived reading of the criminal complaint
12 and entered a change of plea of guilty to Count Two, Resisting Lawful Arrest, and he
13 stipulated to the facts alleged. The Court is satisfied that the defendant fully understands the
14 nature of the charges, the terms and conditions and consequences of his entry of a guilty plea.
15 His plea was entered freely and voluntarily, without force, threat, or special promises made to
16 him to enter the plea, and he knowingly waived his rights in entering the plea. The Court
17 should accept the defendant's plea to Count Two, Resisting Lawful Arrest. The Court should
18 issue an order sentencing the defendant as recommended by the Tribe. The court adopts all
19 other conditions for assessments and evaluations in the plea and makes them part of this order.
20 The victim does not object to the recommendations. The Court should grant dismissal of
21 Count One, Refusal to Obey a Lawful Order.

22 **IT IS ORDERED** that the defendant's plea of guilty is accepted as to Count Two,
23 Resisting Lawful Arrest, and Raymond Trujillo shall be sentenced as follows: 60 days of jail,
24 suspended for 12 months of supervised probation, to run concurrently with his sentence in
25 case no. CR-19-049. He shall pay \$50.00 court costs, by money order, no later than January
26 16, 2020. He shall report to the probation office within 48 hours, he shall follow all standards
27 condition of probation and special conditions as follows: he shall pay probation fees on the
28 first of each and every month as probation fees, to be determined by probation, he shall make
an appointment to obtain an intake with Centered Spirit, no later than December 20, 2019,
take a comprehensive assessment from the Pascua Yaqui Centered Spirit Program, no later
than January 16, 2020, provide proof of same to his probation officer, and he must follow all
recommendations for treatment. He shall complete 25 hours of community service or
volunteer work at the direction of probation, with a completion date to be determine by his
probation officer.

IT IS FURTHER ORDERED that the Court shall grant the Tribe's motion to dismiss
Count One, Refusal to Obey a Lawful Order, as part of the plea.

SCANNED

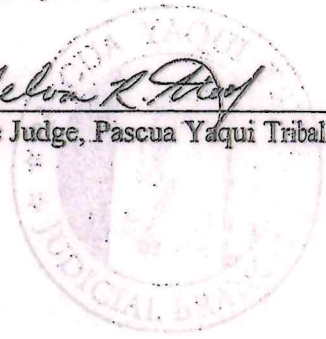
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SO ORDERED THIS 16th DAY OF DECEMBER, 2019.

Melvin R. Hood
Associate Judge, Pascua Yaqui Tribal Court

cc: Date 12/16/19
 Tribe / Defendant/Counsel Probation

AL
Clerk



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

Pascua Yaqui Tribe

Vs.

Defendant: Trujillo, Raymond

STANDARD CONDITIONS OF PROBATION/PAROLE

Docket No: CR-19-263

1. Obey all laws and court orders. Notify the probation officer within 24 hours of contact with any law enforcement agency.
2. Report to the probation officer as directed by the Tribal Court or probation officer. Obey the lawful orders of the probation officer.
3. To participate in education, training, treatment and/or counseling programs as directed by the court or probation officer. Sign any release of information forms required by the agency and/or probation officer.
4. Not associate with any person who is in violation of the law or any convicted felon or any person on probation or parole in any jurisdiction
5. Not possess or control any firearm(s), ammunition and/or prohibited weapons. Shall report all and any types of weapons located at their given address to the probation officer.
6. To grant the probation officer safe access to your residence and property, to submit to search and seizure as directed by the probation officer.
7. Be subject to arrest without a warrant, by the probation officer or law enforcement officer, if there is reason to believe I may have violated any condition(s) of probation. Waive extradition for any probation revocation proceedings.
8. Notify the probation officer of current address or change of address within 72 hours. Not leave the State of Arizona without first securing approval of the court and/or probation officer.
9. Not possess or use marijuana, dangerous drugs, narcotics, or drug paraphernalia, except as prescribed for you by a physician or dentist in accordance with the laws of the Pascua Yaqui Tribe. Shall be subject to random urinalysis or oral fluid collection testing by the DT Lab Services or any certified lab facility or lab technician as directed by the probation officer or law enforcement.
10. Shall not indulge in the use of intoxicating liquor. Shall be subject to random breathalyzer testing as directed by the probation officer.
11. I understand the probation officer will be preparing monthly reports as to my compliance with these conditions and these conditions and that those reports will be submitted to both the tribal court and the prosecutor's office.
12. I understand that the probation officer can modify any condition of probation at any stage during the probation term.
13. I will provide a valid state or tribal I.D. within two weeks to the probation officer
14. I have personally read, understand, and agree to abide by all of the proceedings terms and conditions of standard probation as of today's date. I understand that my failure to comply with one or more of the above conditions could result in my arrest and/or return to tribal court. I also understand that my continued violation of any one or more of the above conditions while on probation may result in an unsatisfactory discharge from probation at the conclusion of my Court ordered probation period.

[Signature]
Defendant's signature

12/16/19
Date

[Signature]
Judge's signature

12/16/19
Date

EXHIBIT I

1 IN THE PASCUA YAQUI TRIBAL COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

3 PASCUA YAQUI TRIBE,)

4 Plaintiff,)

5 vs.)

6 TRUJILLO, RAYMOND,)

7 Defendant.)

Case No.: CR-19-049

ARRAIGNMENT ON MOTION TO REVOKE
PROBATION AND DISPOSITION ORDER
MAINTAINING SUPERVISED PROBATION

8
9 On October 3, 2019, the defendant, Raymond Trujillo, appeared for his rescheduled
10 Arraignment hearing on the Motion to Revoke Probation. Defense counsel, Annamarie Valdivia
11 appeared. Chief Probation Officer, Yvette Alvarez, was present. The Tribe was represented by
12 Veronica Escobar.

13 The Court finds that the defendant was read his rights. Defense counsel waived the
14 reading of the Motion and entered an admit plea to allegations 1 and 2. The Court further finds
15 that the defendant, by and through counsel, stipulated as to the facts for allegations 1 and 2 in the
16 motion for revocation of probation. The Court accepts the defendant's pleas of admittance as
17 being freely given and voluntary given, without any threat to admit, and without any force or
18 promises made to the defendant to enter the admissions, and with full knowledge of his rights
19 waived. The parties agreed to proceed with Disposition today. The Court proceeded with
20 Disposition and the Probation Officer moved the Court to withdraw allegations 3, 4, and 5. There
21 were no objections from the defendant nor from the Tribe and the Court finds good cause to grant
22 the Probation Officer's motion to withdraw allegations 3, 4 and 5. The Chief Probation Officer
23 recommended that the defendant be found in violation of his supervised probation and that the
24 probation be maintained until the expiration date of August 8, 2020. The Chief Probation Officer
25 stated that the defendant made a payment of \$30.00 for his probation fees, and he provided proof
26 of CSP Evaluation. The defendant should be ordered to continue to abide by all standard and
27 special conditions of probation. The Tribe agreed with the Chief Probation Officer's
28 recommendations. Upon hearing from defense counsel, the Court finds good cause to grant the
Probation Officer's recommendations in full.

25 THE COURT ORDERS that the Probation Officer's motion to withdraw allegations 3, 4,
26 and 5 is granted. The defendant's admittance plea to allegations 1 and 2 are accepted and the
27 defendant is found in violation of his supervised probation. Disposition is entered as follows:

1. The defendant's probation shall be maintained until the date of August 8, 2020.
2. 120 days of detention shall remain suspended pending the defendant's compliance with his supervised probation until August 8, 2020.

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3. The defendant shall comply with all standard and special conditions of probation.

SO ORDERED THIS 3RD DAY OF OCTOBER, 2019.



Chief Judge, Pascua Yaqui Tribal Court

Cc: Date 10/16/19
 Tribe Defendant Defense Counsel ___ Pretrial Services P.Y. Probation ___ P.Y. Detention ___ B.I.A. Contracted Detention Facility
Clerk: SM

EXHIBIT J

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE)
Plaintiff)
VS.)
Trujillo Raymond,)
Defendant)

No. CR-19-049/063

ORDER

The defendant failed to appear before this Court on this day 26th day of March, 2021 for the Arraignment hearing on the Motion To Revoke Probation. Milissa Mace appeared in behalf of the Probation department ; Madelyn Franklin appeared for the Tribe; Annamarie Valdivia, legal counsel for defendant appeared.

The Court finds that, defendant was served notice of today's date and time of hearing on March 9, 2021; that defense counsel states she has not had any communication with the defendant; that the Tribe with Probation concurring recommends that a Bench Warrant be issued with bond of \$250.00 as the defendant has failed to appear for today's hearing as well as for other hearings and moves the Court to scheduled Forfeiture hearing on the posted bond; that defense counsel moves the Court to suspend any bond; that it appears to the Court that the defendant has an established history of failures to appear and failures to comply and will not appear voluntarily for hearing if summoned as his whereabouts appear to be unknown and the Court will issue the Bench Warrant, will issue an Order To Show Cause for today's failure to appear and will summons the Surety for the Forfeiture hearing as good cause is shown.

IT IS ORDERED THAT, Bench Warrant shall issue and bond is set at \$250.00 and time limits are deemed waived and the defendant shall be brought before the Court when apprehended for the Detention Release hearing and for Order To Show Cause hearing and the defendant is HEREBY ORDERED TO SHOW CAUSE IF ANY AS TO WHY HE SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR FAILING TO APPEAR FOR THE ARRAIGNMENT HEARING ON THE MOTION TO REVOKE PROBATION IN THE ABOVE CASES AFTER BEING DUL SERVED NOTICE OF THE HEARING DATE AND TIME.

SO ORDERED THIS 26th DAY OF March, 2021.

Cornelia
Judge, Pascua Yaqui Tribal Court



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cc: 03/31/21

Date
 Tribe Defendant/Counsel Probation Pre-trial Services Detention Other
Columbelle
Clerk

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

PASCUA YAQUI TRIBE Plaintiff, Vs. TRUJILLO, RAYMOND DEFENDANT,	COURT USE ONLY BW-21-041
BENCH WARRANT	Case Number: CR-19-049 & CR-19-263

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 charging accused defendant with the offenses of:

- FAILURE TO APPEAR FOR HEARING ON MOTION TO REVOKE ON 03.26.20.
- FAILURE TO COMPLY WITH TERMS AND CONDITIONS OF PROBATION.

ACCUSED DESCRIBED AS:

NON-INDIAN AMERICAN INDIAN TRIBAL REGISTER: YAQUI
 MALE FEMALE SSN: 601-23-1289 CIB NO: 2694U09530 FBI NO: 7KJM2VIWX
 DOB: 09/04/1992 HGT: 5' 07" WGT: 190 lbs. HAIR: BLACK EYES: BROWN
 STATE ID: AZ LICENSE/ID NO: D09674829 CLASS: ID
 LAST KNOWN ADDRESS: 5071 W TAROOK TUCSON, AZ 85757
 ALTERNATE ADDRESS: 5477 W MAASO VOO D TUCSON, AZ 85757

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/ Motion to Revoke Probation Detention Release when the defendant is brought before this Court.

CONCURRENT BONDS SET IN THE AMOUNT OF \$250.00.

SO ORDERED THIS 26TH DAY OF MARCH 2021.

[Signature]
 Judge, Pascua Yaqui Tribal Court

CERTIFICATE OF EXECUTION

I hereby certify that I, arrested _____ on the _____ day of _____ in the month of _____ at the hour of _____ : _____ A.M. P.M. 20____ and presented (him) (her) before a Tribal Court Judge.

Badge, _____ # 3L
 Arresting Officer .

EXHIBIT K

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE,)	
Plaintiff	)	No. <u>CR-19-049/263</u>
Vs.)	
Trujillo Raymond,	)	ORDER
Defendant)	

The Detention Release hearing on the Motion To Revoke Probation was held on July 7, 2021.

Present were: Chief Probation Officer, Yvette Alvarez; Russell Boatwright for the Tribe; the defendant in custody and with legal counsel Annamarie Valdivia.

The Court find that,; that after the reading of the rights and consequences, the defendant through legal counsel moves the Court to set the Arraignment hearing on the Motion To Revoke Probation at the same date and time of the Arraignment hearing as the Initial hearing in CR-21-096; that there are no objections from the Probation Officer or the Tribe as long as time limits are waived; that defense counsel waives time limits; that the Probation Officer recommends that defendant post bond of \$250.00 given the defendant's history of failures to comply, history of Warrants and history of probation revocations and that based on this history defendant poses a flight risk; that the Tribe concurs; that the defense counsel recommends that the bond be suspended as defendant is not financially able to post any bond; that the Court informs the parties that a \$250.00 bond was forfeited in this matter based on the defendant's failure to appear; that the moves the Court to set bond at \$1,200.00 based on the defendant's history and defense counsel objects; that given the defendant's substantial history bond will be set at \$800.00 and other conditions of release will be imposed.

IT IS ORDERED THAT, the defendant shall post bond of \$800.00 prior to release and if the bond is posted, defendant shall report to the Probation Officer within 24 hours of release, shall comply with all the previously imposed probation conditions, shall obey all laws and appear for all hearing and defendant shall appear before this Court on WEDNESDAY, JULY 21, 2021 AT 10:00 A.M., for the Arraignment hearing on the Motion To Revoke Probation and in the event that the bond is not posted, Transport Order shall issue and defendant shall be transported to the hearing from any adult detention facility housing the defendant and Further, time limits are waived by defense counsel.

THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

SO ORDERED THIS 14th DAY OF July, 2021.

15 JUL 2021 AM 9:26



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Judge, Pasaena Yaqui Tribal Court

CC: 07.14.21

Tribe Defendant/Counsel Probation Detention Pre-trial Services Other
Clerk

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

THE PASCUA YAQUI TRIBE
Plaintiff

v

TRUJILLO, RAYMOND
Defendant


ORDER TO TRANSPORT

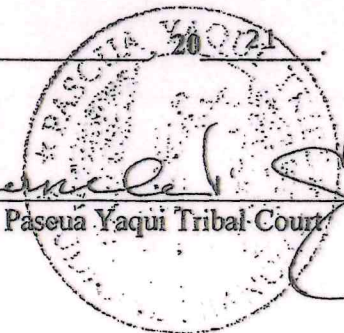
CASE NO. CR-19-049/263
CR-21-096

The above-entitled matter having come to the attention of this Court; and the above named defendant is scheduled for TRIAL/HEARING on the 21ST day of JULY, 20 21 AT 10:00 A M

IT IS ORDERED that the PASCUA YAQUI DETENTION AND/OR BUREAU OF INDIAN AFFAIRS DETENTION transport the defendant from A BIA CONTRACTED FACILITY to the PASCUA YAQUI TRIBAL COURT.

Dated this 14TH Day of JULY


Judge, Pascua Yaqui Tribal Court



Cc:
DETENTION/PROSECUTOR
DATE: 07/14/21
CLERK: RC

EXHIBIT L

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

Pascua Yaqui Tribe,

Plaintiff,

vs.

TRUJILLO, RAYMOND

Defendant.

Case No. *CR-21-197*

CRIMINAL COMPLAINT

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 / 3-10(A) ~ Domestic Violence

On or about April 14, 2021 at approximately 9:16 p.m., at or near 5071 W. Calle Tarook, Defendant committed assault by knowingly touching another person with the intent to injure, insult or provoke such person, to wit: *slapped his girlfriend, Samantha Molina.*

COUNT 2: 4 PYTC § 1-255(A) ~ Threatening or Intimidating / 3-10(A) ~ Domestic Violence

On or about April 14, 2021 at approximately 9:16 p.m., at or near 5071 W. Calle Tarook, Defendant, with the intent to scare or terrify, threatened or intimidated another person by word or conduct so as to cause physical injury to another person or serious damage to property of another person, or caused another person to reasonably believe that she was in danger of receiving physical injury or damage to property, to wit: *threatened his girlfriend, Samantha Molina, that he was going to "beat her ass".*

COUNT 3: 4 PYTC § 1-200(C) ~ Kidnapping / 3-10(A) ~ Domestic Violence

On or about April 14, 2021 at approximately 9:16 p.m., at or near 5071 W. Calle Tarook, Defendant knowingly restrained another person with the intent to inflict death, physical injury or a sexual offense on the victim, or to otherwise aid in the commission of a felony, to wit: *Locked his girlfriend, Samantha Molina, in a washroom with the intent to continue to assault her.*

COUNT 4: 4 PYTC § 1-240 ~ Unlawful Imprisonment / 3-10(A) ~ Domestic Violence

On or about April 14, 2021 at approximately 9:16 p.m., at or near 5071 W. Calle Tarook, Defendant knowingly restrained another person, to wit: *pinned his girlfriend, Samantha Molina, on the ground against her will.*

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

3
4 DATED this 14th day of July, 2021.

5
6 
7 Complainant/Attorney

8 *Pursuant to Article I, § 1(g) of the Pascua Yaqui Constitution, 4 PYTC § 4-20, and 25 U.S.C. §*
9 *1302(a)(b), if found guilty at sentencing or plea agreement, the Pascua Yaqui Tribe will seek*
punishment that includes imprisonment.

10 DEFENDANT: Raymond Trujillo
11 ADDRESS: 5071 W. Tarook Tucson, AZ 85757
12 DOB: 09/04/1992 SSN: 601-23-1289 ORIGIN: Pascua Yaqui Tribe #2694U09530
13 SEX: Male HT: 5'7" WT: 180 EYES: Brown HAIR: Brown

14 *Note: Accused persons may obtain disclosure information about their case ten days after arraignment by contacting*
15 *the Prosecutor's Office at 7777 S. Camino Huivisim, Bldg A, 2nd Floor, Tucson AZ 85757. [3 PYT R.Crim.P. Rule*
16 *38]*

EXHIBIT M

1 IN THE PASCUA YAQUI TRIBAL COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

3 PASCUA YAQUI TRIBE)
4 Plaintiff,)
5 VS.)
6 Trujillo Raymond,)
7 Defendant)

No. CR-21-197

ORDER

8 The Court held the Bench Trial hearing on this 18th day of October, 2021. Russell
9 Boatwright appeared for the Tribe; the defendant appeared in custody and with legal counsel Stu
De Haan. Order To Show Cause hearing was also scheduled to be heard today.

10 The Court finds that, the after the waiver of the reading of the rights, the Court is informed
11 that the parties are ready to proceed; that the parties ask the Court to approach the Bench where
12 the Court is informed that the alleged victim does not wish to testify as she is concerned with any
13 charges that may arise against her due to her testimony and that the Tribe will be offering
14 immunity to the alleged victim as her testimony is essential to the Tribe's case; that that the
15 alleged victim is placed under oath and informs the Court of her concerns over providing
16 testimony and states she still does not wish to testify even if given immunity by the Tribe; that
17 the Court will order the alleged victim to testify as her testimony is crucial to the Tribe's case;
18 that the Tribe states they will address the Order To Show Cause after the trial hearing; that Tribe
19 states that they will move to impeach the victim/witness; that defense counsel after the Tribe rest
20 moves the Court for directive verdict of the four charges as the Tribe has failed to prove the
21 elements beyond a reasonable doubt for all charges; that the Tribe has no objections to directive
22 verdict for the charges in Counts Two and Four and further states the alleged victim's testimony
23 is sufficient to continue with the trial hearings for Counts One and Three; that the Court on
24 directive verdict dismisses Count Two and Four and will continue with the trial hearing on
25 Counts One and Three; that defense counsel rest; that the Court after hearing the sworn testimony,
26 reviewing and listening to the testimony finds that the Tribe has proven beyond a reasonable
27 doubt the charge in Count One as the testimony clearly showed that the defendant was the
28 aggressor as he did strike first by slapping the alleged victim and the Court further finds that the
Tribe has failed to prove beyond a reasonable doubt that the defendant intentionally locked the
washroom as the testimony did showed that the door knob or lock was not functioning properly
as it was broken, had been broken and was only able to be opened using a tool; that the Tribe
moves the Court for a separate Sentencing hearing to allow for a Pre-Sentence Report to be
completed and recommends that the release conditions remain the same; that there are no
objections; that the Tribe did not address the Order To Show Cause and the Court will vacate the
Order To Show Cause.

26 **IT IS ORDERED THAT,** the defendant's motion for directive verdict as to Courts Two
27 and Four is granted and are dismissed with prejudice and the defendant is found guilty of Count
28 One, Assault Domestic Violence and is found not guilty in Count Three, Kidnapping-Domestic
Violence and the defendant pending the Sentencing hearing shall post bond of \$200.00
PLEADING TITLE - I


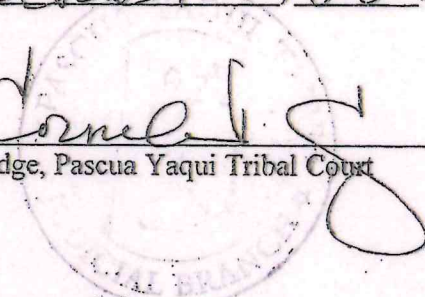
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19 OCT 2021 AM 8:44

1 consecutive prior to release and defendant is restrained from any contact with Samantha Molina,
2 shall not possess or consume any narcotics or dangerous drugs or drug paraphernalia or any
3 alcoholic beverages, shall be subject to random urinalysis and breathalyzer tests, shall not possess
4 any weapons, shall obey all laws and appear for all hearing and defendant shall appear before
5 this Court on **WEDNESDAY, OCTOBER 27, 2021 A 10:00 A.M.**, for the Sentencing hearing
6 and the Probation Department shall complete Pre-Sentence Investigation Report and shall submit
7 the Report to the Court on or by **October 25, 2021**, and in the event that the bond is not posted,
8 Transport Order shall issue and defendant shall be transported to the hearing from any contracted
9 adult detention facility housing the defendant and the Order To Show Cause is vacated.

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

9 SO ORDERED THIS 18th DAY OF October, 2021.

11
12 
13 Judge, Pascua Yaqui Tribal Court
14
15 

14 CC: 10118121

15 Tribe Defendant/Counsel Probation Pre-trial Services Detention Other
16 AT
Clerk

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

THE PASCUA YAQUI TRIBE
Plaintiff

v

RAMIREZ, THOMAS
Defendant

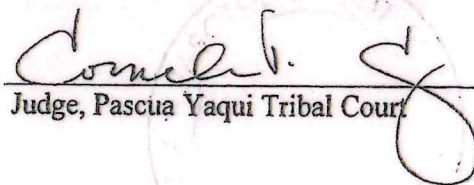
ORDER TO TRANSPORT

CASE NO. CR-21-197

The above-entitled matter having come to the attention of this Court; and the above named defendant is scheduled for TRIAL/HEARING on the 27TH day of OCTOBER, 2021 AT 10:00 AM

IT IS ORDERED that the PASCUA YAQUI DETENTION AND/OR BUREAU OF INDIAN AFFAIRS DETENTION transport the defendant from A BIA CONTRACTED FACILITY to the PASCUA YAQUI TRIBAL COURT.

Dated this 18TH Day of OCTOBER, 2021.


Judge, Pascua Yaqui Tribal Court

Cc:
DETENTION/PROSECUTOR
DATE: 10/18/21
CLERK: RG

EXHIBIT N

1 **IN THE PASCUA YAQUI TRIBAL COURT**

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

3 PASCUA YAQUI TRIBE)
4 Plaintiff)
5 VS.)
6 Mesquita Michael Casillas)
7 Defendant)

No. CR-20-107/CR-20-122

SENTENCING ORDER

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

10 The Court finds that, the Court has received and reviewed the Pre-Sentence Investigation
11 report filed by Probation Officer Dominic Duran and the Sentencing Memorandum filed by the
12 Tribe.; that the Probation Officer recommends that the defendant not be put on probation as he
13 has indicated that he does not do well on Probation/Parole and that he never checked in with his
14 Parole Officer and a Warrant was issued for his arrest and the Probation Officer is recommending
15 114 days in jail to run concurrent to each case and to the term is he is serving in Maricopa County;
16 that the Tribe objects and states that a plea agreement was offered to the defendant which he
17 refused to take resulting in the defendant having to be transported to and from the hearing due to
18 the Covid Virus, that the defendant should not be rewarded with concurrent days as these cases
19 are separate from the cases he is currently serving, that the defendant's has a substantial history,
20 and the Tribe recommends in CR-107 that the defendant serve 60 days in jail consecutive to the
21 term he is currently serving in Maricopa County, and in CR-20-122 the Tribe is recommending
22 365 days in jail suspended for 12 month of supervised probation and further recommends that
23 restraining orders be issued for all the victims in these cases; that defense counsel informs the
24 Court that the defendant has gone through hardship being transported to and from the hearings,
25 has had to quarantine each time he is transported, that the defendant is working while serving his
26 Maricopa sentence and has also obtained his GED, that the defendant has changed and that
27 defendant concurs with the Probation Officer's recommendations; that the defendant is allowed
28 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

SCANNED

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 Count 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.**

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

15 Cornelia G.
16 Judge, Pascua Yaqui Tribal Court

18 cc: February 24, 2021
19 Date

20 Tribe Defendant Legal Counsel Probation Pre-trial Detention Other
[Signature]
21 Clerk

09 FEB 2021

DOCKET NO. *CR-20-107 / CR-20-122*
TIME: *10:40* CLERK: *[Signature]*

PASCUA YAQUI TRIBAL COURT
OFFICE OF PROBATION AND PAROLE

1
2
3
4 Pascua Yaqui Tribe,)
5 Plaintiff,) Docket No.: CR-20-107 / CR-20-122
6 vs.)
7 MESQUITA, MICHAEL CASILLAS)
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

BANNED
RE

1
2
3 Probation Officer Dominic M. Duran of the Pascua Yaqui Tribe Office of Probation & Parole
4 hereby respectfully submits the attached investigation:
5

6 **PRESENT SITUATION:**

7 On September 09th, 2019 Mr. Mesquita was found guilty on two separate cases CR-20-107
8 Ct. 4- Resisting Lawful Arrest, Ct. 5- Possession or Concealment of stolen property, Ct. 6-
9 Theft and CR-20-122 Ct. 1- Criminal Trespass and Ct. 2- Refusal to obey a lawful order. It
10 should be noted that the defendant, Mr. Mesquita, had absconded from Maricopa County
11 Parole around August 2nd, 2019 and was a wanted fugitive until an Extradition was issued for
12 Mr. Mesquita on April 22nd, 2020. While he was on fugitive status he committed the crimes
13 listed in CR-20-107 and CR-20-122.
14

15 **DEFENDANT'S STATEMENT:**

16 I conducted an interview on this defendant with his attorney present via telephone due to him
17 being in custody with the Arizona Department of Corrections. The defendant stated that he
18 hasn't done well while on probation in the past. Defendant has also stated that has done well
19 and bettered himself while he has been in prison. He has got his GED and is working on going
20 back to school to get degrees in Sociology and Business Management.
21

22 **VICTIM IMPACT STATEMENT:**

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

25 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.

15
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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	DATE	CASE #	OFFENSE	DISPOSITION
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.

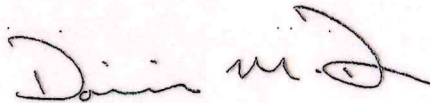
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11

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

13

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Dominic M. Duran
Probation & Parole Officer

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EXHIBIT 0

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IN THE PASCUA YAQUI TRIBA COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE)
Plaintiff,)
VS.)
Mesquita Michael,)
Defendant)

No. CR-20-107/122

ORDER

The above matter came before this Court for the resentencing hearing held on this 29th day of September, 2021. The defendant appeared in custody with legal counsel Glauca Brannock; Russell Boatwright appeared telephonically for the Tribe.

The Court finds that, after the waiver of the reading of the rights, the Court informs the parties that the Pascua Yaqui Court of Appeals remanded this matter back to the Trial Court on the issues of credit for time served and for the indefinite restraining order imposed at sentencing; that defense counsel moves the Court to award the defendant credit for time served including the sentence the defendant served in Maricopa County for parole violation as the defendant would have been serving the jail days imposed in this jurisdiction if he had not been extradited to Maricopa County and is recommending that defendant be credited with time served of 312 day in CR-20-107 and that defendant be credited with time served of 307 days in CR-20-122; that the Tribe objects and states that the Court of Appeal order is very clear that credit for time served should be given for any time served in the jurisdiction where the offenses occurred, nowhere does it allow for credit for time serve while a defendant is serving sentence in another, and the Tribe further recommends that the defendant be credited with time served of 10 days the defendant was in the custody of jurisdiction in CR-20-107 and that defendant be credited with time served of 5 days in CR-20-122 and further informs the Court that the defendant has one jail day to served in CR-20-107 and should begin serving the second sentence which will be reduced to 40 days to serve if the Tribe's recommendations are granted; that after hearing the arguments and after reviewing the defendant's Notice Of Credit For Time Served Calculation RE: Resentence, the Court finds that the Court of Appeals order is very clear that defendant should have been awarded credit for time served while in the custody of this jurisdiction where the offenses occurred, and Federal Law provides guidance to support the Court of Appeals findings, that the state proceeding regarding the parole violation did not occur within this jurisdiction and occurred prior to the offenses committed in this jurisdiction, that there is no connection between these two proceeding that would allow the Court to include any credit for time served in the Maricopa jurisdiction as this cases are totally separate from each other, and that the Court will granted credit for time serve as calculated by the Tribe; that as to the issue of the indefinite restraining Order, the Tribe states they have no objections if the restraining order is lifted as the victims can file for their own civil restraining order; that the Court will vacate it's order regarding the indefinite restraining order.

IT IS ORDERED THAT, the defendant is credited with time served of 10 days in CR-20-107 and is credited for time served of 5 days in CR-21-122 and defendant shall be released


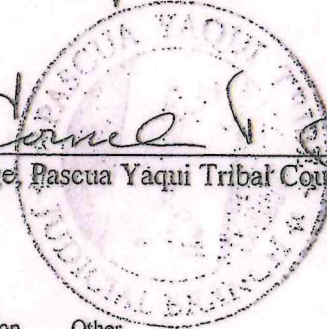
PLEADING TITLE - 1

1 OCT 2021 PM 3:43

SCANNED

1 from custody to the streets on November 9, 2021 at 8:00 a.m., and in the event that the defendant
2 is serving his sentence in a detention facility located outside Pascua Yaqui Detention Facility a
3 Transport Order shall be issued and defendant shall be transported to the Pascua Yaqui Detention
4 Facility located on the Pascua Yaqui Indian Reservation to be released to the streets from this
5 facility and the Court vacates it order as to the indefinite restraining order.

6 SO ORDERED THIS 30th DAY OF September, 2021.

7
8 
9 Judge, Pascua Yaqui Tribal Court
10 

11 Cc: 09.30.21
12 Date

13 Tribe Defendant/Legal Counsel Probation Detention Other
14 DeVane
15 Clerk

EXHIBIT P

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

PASCUA YAQUI TRIBE,	)	Case No. CR-21-197
)	
Plaintiff,)	
	)	SENTENCING HEARING
vs.)	
)	
RAYMOND TRUJILLO,	)	October 27, 2021
)	
<u>Defendant.</u>)	

APPEARANCES:

RUSSELL BOATWRIGHT, ESQ.
Appearing for Plaintiff

STUART DE HAAN, ESQ.
Appearing for Defendant

YVETTE ALVAREZ
Appearing for Adult Probation Department

Pascua Yaqui Tribe vs. Raymond Trujillo
Pascua Yaqui Tribal Court Case No. CR-21-197
Sentencing Hearing: October 27, 2021

1 COURT: Please be seated. The Pascua Yaqui Tribal Court
2 is now in session in the matter of the *Pascua Yaqui Tribe*
3 *versus Raymond Trujillo*, docket number CR-21-197. Today's date
4 is October 27th 2021. Russell Boatwright appears for the Tribe;
5 Yvette Alvarez, Probation Department; defendant appears in
6 custody with legal counsel, Stu de Haan. And this is the
7 sentencing hearing in this matter. And Mr. de Haan, do you
8 waive reading of your client's rights?

9 MR. DE HAAN: Waive reading.

10 COURT: And the Court has received the pre-sentencing
11 investigation report, also the sentencing memorandum from the
12 Tribe and also defendant's sentencing memorandum. And are the
13 parties ready to proceed?

14 MR. BOATWRIGHT: Your Honor, I believe counsel will have
15 a motion, but also we just received a letter from the victim,
16 Miss Molina, in this matter. May I approach? It's-, it's
17 brief, Your Honor.

18 COURT: All right, okay.

19 MR. DE HAAN: And I also have a letter from the defendant,
20 if I may approach.

21 COURT: Sure. And you both disclosed?

1 MR. DE HAAN: I have not shown this. I just received this
2 right now. Did you want to take a look at it?

3 MR. BOATWRIGHT: That's fine.

4 MR. DE HAAN: Okay.

5 COURT: Okay.

6 MR. DE HAAN: And then one more matter, Your Honor. I was
7 informed just this morning that Mr. Boatwright had submitted
8 an audio that is...

9 COURT: Oh, yeah, ah-ah.

10 MR. DE HAAN: Did the Court review that?

11 COURT: No. I-, I didn't have time. I mean, I kind of
12 reviewed it last minute.

13 MR. DE HAAN: Okay.

14 COURT: Yeah.

15 MR. DE HAAN: And the reason I bring it up is I had an
16 objection to that, but if the Court hasn't considered it, I-,
17 I will not.

18 COURT: No. It's...

19 MR. DE HAAN: I'll withdraw the objection.

20 COURT: I didn't, I'm sorry, I didn't have-, I didn't
21 have time to review it. Last minute, I'm back there doing
22 oth-, other things. So no, I haven't had time.

1 MR. BOATWRIGHT: Yeah, that's fine, Your Honor.

2 COURT: I haven't reviewed it.

3 MR. BOATWRIGHT: That's fine, Your Honor.

4 COURT: Okay. And-, okay. And again, let me hear
5 sentencing recommendations. I have review-, reviewed the two
6 letters just submitted and also on record that I have not had
7 time to review the, or hear the, the recording that was filed
8 by the Tribe. Let me hear sentencing recommendations.

9 MS. ALVAREZ: Thank you, Your Honor. At this time, due to
10 my investigation in this matter, Probation is requesting for
11 count one, assault/domestic violence, nine days of detention
12 to be served immediately, Your Honor. Thank you.

13 COURT: Anything from the Tribe?

14 MR. BOATWRIGHT: Yes, Your Honor. So the, the Tribe is
15 requesting something different. Basically, that we do feel Mr.
16 Trujillo is a-, is a threat. He's-, we do believe that his
17 behavior is increasing and very much in severity. The-, the
18 audio we were going to submit was not to re-try the case or to
19 detail what you said, but rather, to point out that she did
20 highlight that this isn't an isolated act, that there is an
21 ongoing power and control dynamic with Mr. Trujillo-,
22 Trujillo.

1 And it does sound like he has a drinking problem as she
2 did state in that that he drinks about an 18-pack a day and
3 that he kind of insists on it being provided to him. So Mr.
4 Trujillo really needs to get that under control, which is-, is
5 why we're requesting probation. I know probation, and probably
6 the Court, and probably any reasonable person would think that
7 that's going to be pointless, but we would like to see Mr.
8 Trujillo really turn things around. Because if he doesn't,
9 it's almost assured we're going to be back here again, and who
10 knows how severe next time.

11 So we submitted the-, the prior that he had, not to
12 again, to re-try that case, but to show that he's not being
13 dissuaded. That was, he was very fortunate, I think, to get
14 that plea offer to have probation and only four months hanging
15 over his head for a very severely violent act. And then to
16 say, "I don't care about the opportunity I got in spite of
17 what I did," to turn around and commit another domestic
18 violence while on probation that he's not taking advantage of,
19 and in warrant status, just shows the reckless, careless
20 behavior.

21 So I-, I didn't read the defendant's letter, but as far
22 as accepting responsibility, I don't think there's any

1 evidence defendant's accepting any responsibility other than
2 him saying it after the fact that he's convicted in order for
3 the Court to show leniency. So we are requesting he's on
4 probation with a big time hanging over his head because I
5 think that's the only thing that's going to get Mr. Trujillo
6 to change. You know, otherwise, we'll just have another case.

7 And, and I'm going to point out the victim, too. I think
8 she's enabling him in this. She-, she'll at first report and
9 cooperate but then misses him and then wants to back off and
10 then the only thing we can do to get her in here to cooperate
11 is threaten her with a warrant. By her doing that, it's going
12 to cause this again and we're going to be back here. So we
13 need something to get these two to stop. We need something to
14 persuade Mr. Trujillo to stop harming people to get his way.

15 So I think with him on probation, with him knowing that
16 the next time it's going to be a year if he steps out of line
17 and doesn't do what he needs to, then, then that may be enough
18 encouragement because positive reinforcement hasn't done it,
19 so maybe negative reinforcement will be enough to get him to
20 stop hurting people.

21 If the Court feels that the resources are a waste of time
22 on Mr. Trujillo, then we are asking for six months. We're

1 asking to send a message that violence isn't going to be
2 tolerated and we're asking that be consecutive to his matter
3 that he's serving on now. Thank you.

4 COURT: Okay. Mr. de Haan?

5 MR. DE HAAN: Thank you, Your Honor. My additional
6 request, based on the conviction that Mr. Trujillo had in this
7 case, was that he get time served. I would like first to point
8 out that he's been in custody for 99 days, held on bond in
9 this case. And it was along with other matters, that is true,
10 but he's been in custody for a significant amount of time for
11 what ended up being a non-injury assault conviction.

12 Now in this case there's no restitution being requested.
13 Additionally, there's no retribution being requested. We have
14 a letter from the victim in this case saying that he's been in
15 long enough. And as far as any deterrent factor, Your Honor,
16 some significant life event occurred while he was in custody
17 and he had to go to his grandmother's funeral in shackles. I
18 do believe this was a legitimate wake-up call and a sobering
19 experience for Mr. Trujillo that he can't be going in and out
20 of custody like this, and he's got more, now and more
21 important responsibilities with his family, now that somebody

1 very important in his family is deceased and this all happened
2 while he was sitting here in custody on this.

3 As far as how much time he should get, if he's given any
4 additional time, again, I'm asking for time served on this.
5 One of the reasons why, and I am going to compare this to
6 Arizona state law, which the Code provides is that, that we
7 can do that in this jurisdiction, is the assault statute is
8 word for word verbatim the same as the Arizona state statute
9 under 13-1203. The reason I bring this up is the difference
10 between a class one and a class three assault is twelve times
11 the maximum sentence. So in the state of Arizona, you can get
12 a six-month sentence on this same statute, you can get a
13 maximum of thirty days on the class three, which is what he
14 was convicted of.

15 Now numbers aside, I just would like to point out that
16 what this was modeled at has significant departure from the A1
17 to the A3 based on the fact that there was no injury in this
18 event. Now based on all these factors, and I won't reiterate
19 everything that I put in the sentencing memorandum, but based
20 on all these factors I would ask that he, the time he has in
21 custody be considered.

1 Also, if the Court is not inclined to give him time
2 served on this, I have spoken to him and I think that he is a
3 much more better candidate for probation now than he has been
4 in the past. First of all, he's-, he's completely sober as
5 he's been in custody for a significant amount of time, which
6 also gave him time to think about the situation. And he knows,
7 based on what the Tribe is saying here today, what's going to
8 happen if he picks up any more of these types of charges. He
9 is well-aware.

10 He also has been amenable to treatment. He's got a
11 certificate in his hand right here of a class that he took
12 while in custody on his own volition. This was a certificate
13 of completion of an alcohol and drug education. He is very
14 much willing to continue going to that, he believes it's
15 beneficial to him. And I think, Judge, being having gone to
16 trial, having heard what-, what the Tribe is recommending, his
17 life events and everything else that I've stated here today,
18 Your Honor, I just would ask the Court to take those in
19 consideration for mitigation.

20 COURT: Anything else from either Probation or the
21 Tribe? I'm sorry.

1 MR. BOATWRIGHT: Nothing from the Tribe, Your Honor.

2 Thank you.

3 COURT: Having reviewed the, the documents filed in this
4 matter with the exception of the-, the (inaudible) that was
5 filed, again, I didn't have time to review that or hear it, I
6 have reviewed the defendant's history. The Court does find the
7 defendant does have a history of revocations of probation,
8 histories of extension, histories of violent charges, and that
9 based on that history, the Court will sentence defendant and
10 will not impose probation in this matter.

11 The Court does not believe that probation, that he will
12 benefit from probation given this history that he has. He
13 committed crimes while absconding from probation. He absconded
14 from probation, committed other crimes, violent crimes, so the
15 Court will impose just jail days and the Court will-, has
16 taken into consideration that the defendant in this matter
17 came before the Court on July 14th 2021 for the Initial Hearing
18 and a two hundred dollar consecutive bond was imposed.

19 However, defendant did not post that bond and the Court
20 will give him credit for time served of forty-one days because
21 as of August 30th 2021, defendant's probation was revoked and
22 he started serving sentence in that matter.

1 So from July 14th to August 30th 2021, the defendant in
2 this matter up to the probation-, the probation revocation and
3 imposition of the suspended sentence, has served forty-one
4 days and the Court will credit defendant with forty-one days
5 time served in this matter.

6 And the Court, having reviewed this matter, will impose
7 six months in jail. Again, given the defendant's history, the
8 nature of the charge, the violence involved in this matter,
9 the fact that the defendant has been given the opportunity to
10 serve under probation, to abide by probation and he has failed
11 to do so, the Court will impose the six months in jail with
12 credit for time served of forty-one days.

13 Was there a request for Court costs or anything like
14 that?

15 MR. BOATWRIGHT: Yes, Your Honor. We would request the
16 fifty dollar Court cost.

17 COURT: And that would be due after defendant is
18 released from custody?

19 MR. BOATWRIGHT: Yes, Your Honor. We request thirty days
20 after release from sentencing-, or yeah, release from
21 detention.

1 COURT: Okay. Defendant will pay Court costs of fifty
2 dollars due within thirty days after release. That is the
3 order of the Court. And is there anything further?

4 MR. BOATWRIGHT: No, Your Honor.

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

6 MR. DE HAAN: No, Your Honor.

7 COURT: A Transport Order will issue. If the defendant
8 is housed off the reservation, then he will be transported to
9 be released from, to the streets in this matter. Court's
10 adjourned.

11 BAILIFF: All rise.

12 [END OF SENTENCING HEARING]

13 [Transcriber's Certification Follows:]
14

Pascua Yaqui Tribe vs. Raymond Trujillo
Pascua Yaqui Tribal Court Case No. CR-21-197
Sentencing Hearing: October 27, 2021

1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF APACHE)

4 BE IT KNOWN that the foregoing transcript was typed before
5 me, MICHAELE MCKENZIE, transcriptionist; that the
6 witness/witnesses before testifying were sworn by the Court to
7 testify to the whole truth; that the questions propounded to
8 the witness/witnesses and the answers of the witness/witnesses
9 thereto was/were typed by me and printed under my direction;
10 that the foregoing pages are a true and correct transcript of
11 all proceedings, all done to the best of my skill and ability.

12 I further certify that I am in no way related to any of the
13 parties hereto nor am I in any way interested in the outcome
14 hereof.

15 Dated in Nutrioso, Arizona, this 11th day of January, 2022.

16
17
18
19

Michael McKenzie
Michael McKenzie, Transcriptionist

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 OF APPEALS**
7 **IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA**

8
9 PASCUA YAQUI TRIBE,
Appellee,

NO. CA-22-001

10 Vs.


**SECOND MOTION TO EXTEND
RESPONSE DEADLINE**

11
12 **TRUJILLO, RAYMOND**
Appellant

13
14 COMES NOW The Pascua Yaqui Tribe, by and through undersigned counsel, hereby
15 requests this Honorable Court to extend the deadline 30 days for Appellee’s Response Brief. The
16 reason for this request is that this due date coincided with the Easter holiday, which the Tribe
17 returned from yesterday, as well as dealing with a compressed trial schedule that has impeded
18 progress on the this Response. Counsel for the Appellant has been notified and has no objection to
19 this request, and waives any applicable time limits.

20
21 **Respectfully submitted this 20th day of April, 2022.**

22
23 OFFICE OF THE PROSECUTOR
PASCUA YAQUI TRIBE

24 
25 Russell Boatwright
26 Deputy Prosecutor

1 Original of the foregoing delivered/mailed
This date to:
2 Clerk of the Court, Pascua Yaqui Appellate Court
3
A copy delivered to:
4 Stu de Haan
5 Office of Public Defender
6 By:

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1 PASCUA YAQUI TRIBE
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4 Russell Boatwright
Deputy Prosecutor
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6 **IN THE PASCUA YAQUI TRIBAL COURT**
7 **IN AND FOR THE PASCUA YAQUI RESERVATION, ARIZONA**
8

9 PASCUA YAQUI TRIBE,
Plaintiff,

NO. CA-22-001

10 Vs.

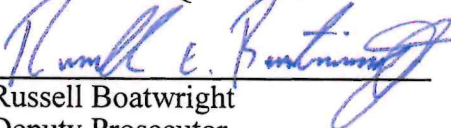
**MOTION TO EXTEND RESPONSE
DEADLINE**

11
12 **TRUJILLO, RAYMOND**
Appellant
13

14 COMES NOW The Pascua Yaqui Tribe, by and through undersigned counsel, hereby
15 requests this Honorable Court to extend the deadline 30 days for Appellee's Response Brief. Counsel
16 for the Appellant has been notified and has no objection to this request, and waives any applicable
17 time limits.
18

19 **Respectfully submitted this 18th day of March, 2022.**
20

21 OFFICE OF THE PROSECUTOR
PASCUA YAQUI TRIBE

22 
23 _____
Russell Boatwright
24 Deputy Prosecutor
25
26
27
28

1 Original of the foregoing delivered/mailed
This date to:

2 Clerk of the Court, Pascua Yaqui Tribal Court

3 A copy delivered to:

4 Stu de Haan
5 Office of Public Defender

6 By:

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No. CA-22-001

Pascua Yaqui Tribe Court of Appeals

Raymond Trujillo, Appellant)	ORDER ON APPELLANT'S
	)	MOTION FOR MORE TIME
	)	TO FILE OPENING BRIEF
v.)	
	)	Tribal Court Case No. CR-21-197
)	
Pascua Yaqui Tribe, Appellee.)	
)	

For the Appellant: Stuart de Haan, Deputy Public Defender

For the Appellee: Russell Boatwright, Prosecutor

Order

The Court GRANTS Appellant's unopposed motion to extend the time for filing its opening brief in this appeal. The brief will be filed no later than February 18, 2022.

So ORDERED this 22nd day of January, 2022.

/s/ RJM
Interim Chief Justice Robert J. Miller

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

RAYMOND TRUJILLO,
Appellant,

vs.

PASCUA YAQUI TRIBE,
Appellee.

) APPELLATE CASE NO. CA-22-001
)
) PASCUA YAQUI TRIBAL COURT NO. CR-
) 21-197
)
)
)
)
)

APPELLANT OPENING BRIEF

PASCUA YAQUI PUBLIC DEFENDER
Stuart de Haan
Deputy Public Defender
4725 W. Calle Tetakusim, Building B
Tucson, AZ 85757
(520) 883-5013

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I. JURISDICTION OF THE CASE

A. Tribe's Jurisdiction

The Pascua Yaqui Tribal Court had jurisdiction under 3 PYTC § 1-1-10 because the Tribe charged Raymond Trujillo, an enrolled member of Pascua Yaqui Nation, with three offenses enumerated in the Tribe's Code. The charges allegedly occurred within the 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.

II. ISSUES PRESENTED FOR REVIEW

Did the trial court abuse its discretion in not crediting the number of days for time served when sentencing a Defendant held on bond since his initial appearance in this case?

III. STANDARD OF REVIEW

The standard of review is for an abuse of discretion. *PYT v. Bustamante*, CA-17-004 (PYT Ct. App. 2018); *In the Matter of Alvarez*, CA-17-008 (PYT Ct. App. 2018); and *PYT v. Baltazar*, CA-01-003 (PYT Ct. App. 2015). In *PYT v. Coleman*, this Court held, “[t]he 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.” CA-15-003 (Ct. of App. 2015) (citing to *Michaelson v. Garr*, 234 Ariz. 542, 544, 323 P.3d 1193, 1195 (Ariz. App. 2014)).

IV. STATEMENT OF THE CASE

Appellant is Defendant Raymond Trujillo and the and Appellee Pascua Yaqui Tribe Office of the Prosecutor (Tribe). On April 14th, 2021, Mr. Trujillo was charged with non-injury Assault, Threatening or Intimidating, Kidnapping, and Unlawful imprisonment of his girlfriend, Sandra Molina.

The bench trial was held on October 18th, 2021. Honorable Judge Cornelia Cruz found Mr. Trujillo guilty of Count 1: Domestic Violence Assault. A sentencing hearing was ordered and conducted on October 27th, 2021.

Materials were submitted for sentencing by The Tribe, the Pascua Yaqui Probation Department, and Defense Counsel for consideration. In a Sentencing Memorandum submitted by Mr. Trujillo, it was recommended that he be given credit for 99 days served in custody while being held on bond. This was also requested in oral argument at sentencing. *Sentencing Transcript*, August 30, 2021. After arguments, the Court granted the Defendant 41 days credit beginning on July 21, 2021 and ending on August 30, 2021. *Id.*

The court’s rationale was that Mr. Trujillo had been revoked on probation and a term of incarceration was imposed on August 30, 2021, for him to serve out his sentence on that matter. Therefore, he was only granted time served credit for the time he spent in custody up until that date, even though he was still on bond on the instant matter. *Id.*

The trial court abused its discretion as a Defendant is entitled to all time credit while being held in the Pascua Yaqui Jurisdiction on bond. This appeal follows.

V. ARGUMENT

A. The sentence imposed on Mr. Trujillo 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.

The Pascua Yaqui Tribal Code gives little guidance to parties on the factors to be considered at the time of sentencing. *See generally*, 4 PYTC § 4. However, Defendants in custody in the Pascua Yaqui Tribal jurisdiction are entitled to credit for pre-trial incarceration. *PYT v. Mesquita*, CA-21-001 (Ct. of App. 2021).

In *Mesquita*, the Pascua Yaqui Tribe addressed this question. There, the issue was not raised by Trial Counsel but was nonetheless addressed by the Court of Appeals. *Id.* Finding *sua sponte* that it was a clear error not to give the Defendant the appropriate days of pre-trial incarceration credit, the trial court was reversed on this particular sentencing issue. The code is silent as to the determination of time credit calculations; however, it is clear from *Mesquita* that it

includes the time held on bond in this jurisdiction. Additionally, the Appellate court noted that this premise was consistent with the general practice of the Federal Courts.

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. *Carthy* at 993.

Federal Code is not binding to this jurisdiction, however the Appellate Court referenced the Federal Code and caselaw in its determination of sentencing guidelines. "18 U.S.C. § 3585(b) provides that '[a] defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences. . . .'" *Jonah v. Carmona*, 446 F.3d 1000 (9th Cir. 2006). In *Carmona*, the issue was whether a juvenile was entitled to pre-sentence incarceration. *Id.* After an analysis of adult sentencing procedures it was held that the defendant was entitled to the credit and his sentence was reversed. "...[F]ederal courts, as a 'general practice,' 'provide[d] defendants credit against their sentence for time spent in jail for lack of bail.' *Stapf v. United States*, 367 F.2d 326, 328 (D.C.Cir.1966)."

In the Federal DC Circuit was determined through a challenge by a consolidated set of cases that to deny credit for pre-sentence incarceration for want of bail was a denial of due process. "We hold only that once the basic sentence was determined, the court had the duty to credit the

defendant's sentence with any presentence custody incurred for want of bail.” *Stapf v. United States*, 367 F.2d 326, 125 U.S. App. D.C. 100 (D.C. Cir. 1966).

Again, this appears to be the “general policy” of Federal law throughout the United States. From both Pascua Yaqui Tribal law as well as the United States Federal precedent, Mr. Trujillo should have received 99 days time served by any legal sentencing theories as he was unable to pay bond from the date of his Initial Appearance through his Sentencing date. In Federal sentencing questions, the other sentences receiving credit are consistently referring to either predicted sentences or sentencing times in foreign state jurisdictions. This is not the case here.

In the instant case, counsel filed a sentencing memorandum calculating the time served from the date of the initial appearance to the date of sentencing which was a total of 99 days pre-sentence incarceration. *Sentencing Transcript*, August 30, 2021. In open court, counsel argued that the appropriate sentence would be time served and calculated the 99 days. Acknowledging the request, the trial court then reduced the number of days to 41 days for the reason of time credit to another sentence within the jurisdiction. There is no such rule, thus the trial court abused its discretion in not crediting Mr. Trujillo for the time he was held in custody on bond prior to trial.

Due to the code being silent, distinguishable case law at the Federal Level, and a direct reading from PYT case law in *Mesquita*, it is clear that the 99-day request is the proper pre-sentence incarceration for this case.

VI. CONCLUSION

For the foregoing reasons, Mr. Trujillo respectfully asks this Court to vacate Mr. Trujillo’s sentence and to remand the case to the trial court for resentencing so the trial court can credit Mr. Trujillo with 99 days of incarceration served.

CERTIFICATE OF COMPLIANCE

This brief complies with the provisions set forth in 3 PYTC Part II, Chapter 2-3.

PASCUA YAQUI PUBLIC DEFENDER

/s/Stu De Haan _____

Stuart de Haan

Deputy Public Defender

4725 W. Calle Tetakusim, Building B

Tucson, AZ 85757

(520) 883-5013

Attorney for Defendant-Appellant

CERTIFICATE OF SERVICE

On February 18, 2022, the original and three copies of the *Appellant's Opening Brief* were filed and conforming copies were sent to the following:

Russell Boatwright
Deputy Prosecutor
7777 S. Camino Huivisim, Building A
Tucson, AZ 85757

Raymond Trujillo, Defendant- Appellant

PASCUA YAQUI PUBLIC DEFENDER

PASCUA YAQUI PUBLIC DEFENDER
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Deputy Public Defender
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Attorney for Defendant-Appellee

1 PASCUA YAQUI PUBLIC DEFENDER
2 Stuart de Haan
3 Deputy Public Defender
4 4725 W. Calle Tetakusim, Building B
5 Tucson, AZ 85757
6 (520) 883-5013

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

9 RAYMOND TRUJILLO,
10 Appellant,
11 vs.
12 PASCUA YAQUI TRIBE,
13 Appellee.

)
) Case No. CA-22-001
)
) Tribal Court No. CR-21-197

) **NOTICE OF FILING OF TRANSCRIPT**
)
)

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

18 DATED this 18 day of February, 2022.

19 PASCUA YAQUI PUBLIC DEFENDER

20 

21 _____
22 Stuart de Haan
23 Assistant Public Defender

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

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

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

PASCUA YAQUI TRIBE,)
)
 Plaintiff,)
)
 vs.)
)
RAYMOND TRUJILLO,)
)
 Defendant.)

Case No. CR-21-197

SENTENCING HEARING

October 27, 2021

APPEARANCES:

RUSSELL BOATWRIGHT, ESQ.
Appearing for Plaintiff

STUART DE HAAN, ESQ.
Appearing for Defendant

YVETTE ALVAREZ
Appearing for Adult Probation Department

Pascua Yaqui Tribe vs. Raymond Trujillo
Pascua Yaqui Tribal Court Case No. CR-21-197
Sentencing Hearing: October 27, 2021

1 COURT: Please be seated. The Pascua Yaqui Tribal Court
2 is now in session in the matter of the *Pascua Yaqui Tribe*
3 *versus Raymond Trujillo*, docket number CR-21-197. Today's date
4 is October 27th 2021. Russell Boatwright appears for the Tribe;
5 Yvette Alvarez, Probation Department; defendant appears in
6 custody with legal counsel, Stu de Haan. And this is the
7 sentencing hearing in this matter. And Mr. de Haan, do you
8 waive reading of your client's rights?

9 MR. DE HAAN: Waive reading.

10 COURT: And the Court has received the pre-sentencing
11 investigation report, also the sentencing memorandum from the
12 Tribe and also defendant's sentencing memorandum. And are the
13 parties ready to proceed?

14 MR. BOATWRIGHT: Your Honor, I believe counsel will have
15 a motion, but also we just received a letter from the victim,
16 Miss Molina, in this matter. May I approach? It's-, it's
17 brief, Your Honor.

18 COURT: All right, okay.

19 MR. DE HAAN: And I also have a letter from the defendant,
20 if I may approach.

21 COURT: Sure. And you both disclosed?

Pascua Yaqui Tribe vs. Raymond Trujillo
Pascua Yaqui Tribal Court Case No. CR-21-197
Sentencing Hearing: October 27, 2021

1 MR. DE HAAN: I have not shown this. I just received this
2 right now. Did you want to take a look at it?

3 MR. BOATWRIGHT: That's fine.

4 MR. DE HAAN: Okay.

5 COURT: Okay.

6 MR. DE HAAN: And then one more matter, Your Honor. I was
7 informed just this morning that Mr. Boatwright had submitted
8 an audio that is...

9 COURT: Oh, yeah, ah-ah.

10 MR. DE HAAN: Did the Court review that?

11 COURT: No. I-, I didn't have time. I mean, I kind of
12 reviewed it last minute.

13 MR. DE HAAN: Okay.

14 COURT: Yeah.

15 MR. DE HAAN: And the reason I bring it up is I had an
16 objection to that, but if the Court hasn't considered it, I-,
17 I will not.

18 COURT: No. It's...

19 MR. DE HAAN: I'll withdraw the objection.

20 COURT: I didn't, I'm sorry, I didn't have-, I didn't
21 have time to review it. Last minute, I'm back there doing
22 oth-, other things. So no, I haven't had time.

1 MR. BOATWRIGHT: Yeah, that's fine, Your Honor.

2 COURT: I haven't reviewed it.

3 MR. BOATWRIGHT: That's fine, Your Honor.

4 COURT: Okay. And-, okay. And again, let me hear
5 sentencing recommendations. I have review-, reviewed the two
6 letters just submitted and also on record that I have not had
7 time to review the, or hear the, the recording that was filed
8 by the Tribe. Let me hear sentencing recommendations.

9 MS. ALVAREZ: Thank you, Your Honor. At this time, due to
10 my investigation in this matter, Probation is requesting for
11 count one, assault/domestic violence, nine days of detention
12 to be served immediately, Your Honor. Thank you.

13 COURT: Anything from the Tribe?

14 MR. BOATWRIGHT: Yes, Your Honor. So the, the Tribe is
15 requesting something different. Basically, that we do feel Mr.
16 Trujillo is a-, is a threat. He's-, we do believe that his
17 behavior is increasing and very much in severity. The-, the
18 audio we were going to submit was not to re-try the case or to
19 detail what you said, but rather, to point out that she did
20 highlight that this isn't an isolated act, that there is an
21 ongoing power and control dynamic with Mr. Trujillo-,
22 Trujillo.

1 And it does sound like he has a drinking problem as she
2 did state in that that he drinks about an 18-pack a day and
3 that he kind of insists on it being provided to him. So Mr.
4 Trujillo really needs to get that under control, which is-, is
5 why we're requesting probation. I know probation, and probably
6 the Court, and probably any reasonable person would think that
7 that's going to be pointless, but we would like to see Mr.
8 Trujillo really turn things around. Because if he doesn't,
9 it's almost assured we're going to be back here again, and who
10 knows how severe next time.

11 So we submitted the-, the prior that he had, not to
12 again, to re-try that case, but to show that he's not being
13 dissuaded. That was, he was very fortunate, I think, to get
14 that plea offer to have probation and only four months hanging
15 over his head for a very severely violent act. And then to
16 say, "I don't care about the opportunity I got in spite of
17 what I did," to turn around and commit another domestic
18 violence while on probation that he's not taking advantage of,
19 and in warrant status, just shows the reckless, careless
20 behavior.

21 So I-, I didn't read the defendant's letter, but as far
22 as accepting responsibility, I don't think there's any

1 evidence defendant's accepting any responsibility other than
2 him saying it after the fact that he's convicted in order for
3 the Court to show leniency. So we are requesting he's on
4 probation with a big time hanging over his head because I
5 think that's the only thing that's going to get Mr. Trujillo
6 to change. You know, otherwise, we'll just have another case.

7 And, and I'm going to point out the victim, too. I think
8 she's enabling him in this. She-, she'll at first report and
9 cooperate but then misses him and then wants to back off and
10 then the only thing we can do to get her in here to cooperate
11 is threaten her with a warrant. By her doing that, it's going
12 to cause this again and we're going to be back here. So we
13 need something to get these two to stop. We need something to
14 persuade Mr. Trujillo to stop harming people to get his way.

15 So I think with him on probation, with him knowing that
16 the next time it's going to be a year if he steps out of line
17 and doesn't do what he needs to, then, then that may be enough
18 encouragement because positive reinforcement hasn't done it,
19 so maybe negative reinforcement will be enough to get him to
20 stop hurting people.

21 If the Court feels that the resources are a waste of time
22 on Mr. Trujillo, then we are asking for six months. We're

1 asking to send a message that violence isn't going to be
2 tolerated and we're asking that be consecutive to his matter
3 that he's serving on now. Thank you.

4 COURT: Okay. Mr. de Haan?

5 MR. DE HAAN: Thank you, Your Honor. My additional
6 request, based on the conviction that Mr. Trujillo had in this
7 case, was that he get time served. I would like first to point
8 out that he's been in custody for 99 days, held on bond in
9 this case. And it was along with other matters, that is true,
10 but he's been in custody for a significant amount of time for
11 what ended up being a non-injury assault conviction.

12 Now in this case there's no restitution being requested.
13 Additionally, there's no retribution being requested. We have
14 a letter from the victim in this case saying that he's been in
15 long enough. And as far as any deterrent factor, Your Honor,
16 some significant life event occurred while he was in custody
17 and he had to go to his grandmother's funeral in shackles. I
18 do believe this was a legitimate wake-up call and a sobering
19 experience for Mr. Trujillo that he can't be going in and out
20 of custody like this, and he's got more, now and more
21 important responsibilities with his family, now that somebody

1 very important in his family is deceased and this all happened
2 while he was sitting here in custody on this.

3 As far as how much time he should get, if he's given any
4 additional time, again, I'm asking for time served on this.

5 One of the reasons why, and I am going to compare this to
6 Arizona state law, which the Code provides is that, that we
7 can do that in this jurisdiction, is the assault statute is
8 word for word verbatim the same as the Arizona state statute
9 under 13-1203. The reason I bring this up is the difference
10 between a class one and a class three assault is twelve times
11 the maximum sentence. So in the state of Arizona, you can get
12 a six-month sentence on this same statute, you can get a
13 maximum of thirty days on the class three, which is what he
14 was convicted of.

15 Now numbers aside, I just would like to point out that
16 what this was modeled at has significant departure from the A1
17 to the A3 based on the fact that there was no injury in this
18 event. Now based on all these factors, and I won't reiterate
19 everything that I put in the sentencing memorandum, but based
20 on all these factors I would ask that he, the time he has in
21 custody be considered.

1 Also, if the Court is not inclined to give him time
2 served on this, I have spoken to him and I think that he is a
3 much more better candidate for probation now than he has been
4 in the past. First of all, he's-, he's completely sober as
5 he's been in custody for a significant amount of time, which
6 also gave him time to think about the situation. And he knows,
7 based on what the Tribe is saying here today, what's going to
8 happen if he picks up any more of these types of charges. He
9 is well-aware.

10 He also has been amenable to treatment. He's got a
11 certificate in his hand right here of a class that he took
12 while in custody on his own volition. This was a certificate
13 of completion of an alcohol and drug education. He is very
14 much willing to continue going to that, he believes it's
15 beneficial to him. And I think, Judge, being having gone to
16 trial, having heard what-, what the Tribe is recommending, his
17 life events and everything else that I've stated here today,
18 Your Honor, I just would ask the Court to take those in
19 consideration for mitigation.

20 COURT: Anything else from either Probation or the
21 Tribe? I'm sorry.

1 MR. BOATWRIGHT: Nothing from the Tribe, Your Honor.

2 Thank you.

3 COURT: Having reviewed the, the documents filed in this
4 matter with the exception of the-, the (inaudible) that was
5 filed, again, I didn't have time to review that or hear it, I
6 have reviewed the defendant's history. The Court does find the
7 defendant does have a history of revocations of probation,
8 histories of extension, histories of violent charges, and that
9 based on that history, the Court will sentence defendant and
10 will not impose probation in this matter.

11 The Court does not believe that probation, that he will
12 benefit from probation given this history that he has. He
13 committed crimes while absconding from probation. He absconded
14 from probation, committed other crimes, violent crimes, so the
15 Court will impose just jail days and the Court will-, has
16 taken into consideration that the defendant in this matter
17 came before the Court on July 14th 2021 for the Initial Hearing
18 and a two hundred dollar consecutive bond was imposed.

19 However, defendant did not post that bond and the Court
20 will give him credit for time served of forty-one days because
21 as of August 30th 2021, defendant's probation was revoked and
22 he started serving sentence in that matter.

1 So from July 14th to August 30th 2021, the defendant in
2 this matter up to the probation-, the probation revocation and
3 imposition of the suspended sentence, has served forty-one
4 days and the Court will credit defendant with forty-one days
5 time served in this matter.

6 And the Court, having reviewed this matter, will impose
7 six months in jail. Again, given the defendant's history, the
8 nature of the charge, the violence involved in this matter,
9 the fact that the defendant has been given the opportunity to
10 serve under probation, to abide by probation and he has failed
11 to do so, the Court will impose the six months in jail with
12 credit for time served of forty-one days.

13 Was there a request for Court costs or anything like
14 that?

15 MR. BOATWRIGHT: Yes, Your Honor. We would request the
16 fifty dollar Court cost.

17 COURT: And that would be due after defendant is
18 released from custody?

19 MR. BOATWRIGHT: Yes, Your Honor. We request thirty days
20 after release from sentencing-, or yeah, release from
21 detention.

1 COURT: Okay. Defendant will pay Court costs of fifty
2 dollars due within thirty days after release. That is the
3 order of the Court. And is there anything further?

4 MR. BOATWRIGHT: No, Your Honor.

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

6 MR. DE HAAN: No, Your Honor.

7 COURT: A Transport Order will issue. If the defendant
8 is housed off the reservation, then he will be transported to
9 be released from, to the streets in this matter. Court's
10 adjourned.

11 BAILIFF: All rise.

12 [END OF SENTENCING HEARING]

13 [Transcriber's Certification Follows:]
14

Pascua Yaqui Tribe vs. Raymond Trujillo
Pascua Yaqui Tribal Court Case No. CR-21-197
Sentencing Hearing: October 27, 2021

1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF APACHE)

4 BE IT KNOWN that the foregoing transcript was typed before
5 me, MICHAELE MCKENZIE, transcriptionist; that the
6 witness/witnesses before testifying were sworn by the Court to
7 testify to the whole truth; that the questions propounded to
8 the witness/witnesses and the answers of the witness/witnesses
9 thereto was/were typed by me and printed under my direction;
10 that the foregoing pages are a true and correct transcript of
11 all proceedings, all done to the best of my skill and ability.

12 I further certify that I am in no way related to any of the
13 parties hereto nor am I in any way interested in the outcome
14 hereof.

15 Dated in Nutrioso, Arizona, this 11th day of January, 2022.

16
17 Michael McKenzie
18 Michael McKenzie, Transcriptionist
19

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

3 Stuart de Haan
4 Attorney for Appellant

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

8 RAYMOND TRUJILLO,

9 Appellant,

10 vs.

11 PASCUA YAQUI TRIBE,

12 Appellee.

) Case No. CA-22-001

) Tribal Court No. CR-21-197

) **MOTION FOR EXTENSION OF TIME FOR**
) **FILING OPENING BRIEF**

13
14 Appellant, through counsel and pursuant to 3 PYTC § 2-3-70 (B) , Pascua Yaqui Rules of Appellate
15 Procedure, respectfully moves this to Court to enter an order extending the time for the filing of the
16 Appellant’s opening brief. Appellant received the transcripts on January 11, 2022 and needs additional time
17 to complete the brief.

18 Prosecutor Russell Boatwright has no objection to this motion.

19 WHEREFORE Appellant respectfully moves this Court to enter an order extending the time for
20 the filing of the Appellant’s opening brief.

21 DATED this 19 day of January, 2022.

22 PASCUA YAQUI PUBLIC DEFENDER

23
24 /s/ Stu de Haan

25 Stuart de Haan
26 Deputy Public Defender
27
28

1 ORIGINAL hand delivered this date
2 PYT Court of Appeals:

3 COPY of the foregoing emailed this date
4 PY Prosecutor's In-Box by:

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3 Stu de Haan
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5

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

9 PASCUA YAQUI TRIBE,)
10)
Plaintiff,)
11 vs.)
12 RAYMOND TRUJILLO,)
13 Defendant.)

Appellate Case No.:
Case No.: CR-21-197

NOTICE OF APPEAL

14
15 Appellant/Defendant, Raymond Trujillo, through counsel, pursuant to 3 PYTC § 2-3-90(A),
16 3 PYTC § 2-3-90(B) of the Pascua Yaqui Tribe Rules of Appellate Procedure, respectfully files a
17 Notice of Appeal in the Pascua Yaqui Tribe Appellate Court from the Order entered in this action
18 by the Pascua Yaqui Tribal Court on October 27th, 2021. The Appellant is appealing the Trial
19 Court's sentencing in this matter.

20 A copy of the bench trial minute and sentencing order is attached to this motion pursuant to
21 3 PYTC § 2-3-90 (A)(1).

22 RESPECTFULLY SUBMITTED this 23rd day of November, 2021.
23
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25



Stuart de Haan
Deputy Public Defender
Attorney for Raymond Trujillo

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The original of foregoing was filed in Pascua Yaqui Tribal Court on November 23rd, 2021, and copy of was delivered this same date to:

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

Ben Casey
Pascua Yaqui Tribe Court of Appeals

Conforming copy to Raymond Trujillo, Appellant/Defendant

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IN THE PASCUA YAQUI TRIBA COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

PASCUA YAQUI TRIBE)	
Plaintiff,	)	No. <u>CR-21-197</u>
VS.)	
Trujillo Raymond,	)	ORDER
Defendant)	
_____)	

The defendant appeared before this Court in custody for the Sentencing hearing held on this 27th day of October, 2021 in custody. Russell Boatwright appeared for the Tribe; Yvette Alvarez, Chief Probation Officer appeared; Stu De Haan, legal counsel for defendant appeared.

The Court finds that, the Pre-sentence has been and that the Court has also received the Tribe's and defendant's Sentencing Memorandums; that defense counsel states that they object to the recording filed with the Tribe's memorandum as they do not know what it consists of; that the Court informs the parties that the Court did not hear the recording due to time constraints as the memorandum was filed in a time manner to allow the Court time to listen to the recording prior to the hearing; that the Probation Officer is recommending 90 days in jail with no credit for time served and no probation term given the defendant's history of non-compliance with the probation terms and history of escalating behavior including new charges while the defendant was absconded from probation; that the Tribe recommends one year probation term with a substantial amount of suspended jail days given the defendant's history of charges and probation violations and escalating violent behaviors as the Tribe does not believe defendant is remorseful and has not learned based on his behaviors and the victim is also contributing to the defendant's behavior and further that in the alternative, that a 6 month jail sentence is appropriate; that defense counsel states no restitution or retribution is being sought, that there were no sustained injuries, that under Arizona Law defendant would be receiving a 30 day sentence, that the defendant's grandmother passed away while he was incarcerated, that defendant was allowed to attend the funeral, that the defendant is remorseful and that defendant has obtained alcohol and substance abuse counseling while incarcerated, and feels that he would benefit from probation as he is now willing to comply and defense counsel recommends defendant be credited with time served of 99 days; that after reviewing the sentencing recommendations and hearing from the parties, the Court finds that the defendant is not a good candidate for probation given his escalating violent behavior, given his history of failures to comply with probation conditions after having been granted extensions of the probation conditions, having obtained additional charges which were violent in nature while being absconded from his probation terms, that the defendant will not comply with any probation conditions imposed by the Court and the Court further finds that the defendant has been incarcerated in this matter beginning on July 21, 2021 when the Court held the Initial hearing and imposed bond of \$200.00 and further, that the Court will grant credit for time served of 41 days beginning on August 30, 2021 as on this date, the Probation Disposition hearing was held in CR-19-049/263 and the suspended 120 jail days were impose and defendant was ordered to begin serving the sentence immediately and further,

1 defendant will be ordered to pay cost of \$50.00 and the Court will impose six months of jail; that
2 defendant's release date in the Probation matter is set for October 30, 2021.

3 **IT IS ORDERED THAT**, defendant shall serve 6 months in jail beginning on **October**
4 **30, 2021** and defendant is credited with time served of 41 days and defendant shall serve the
5 balance of 139 in jail beginning on **October 30, 2021** and defendant shall pay Court cost of
6 \$50.00 due on or by **April 19, 2022** and defendant shall be released from custody to the streets
7 on **MARCH 20, 2022 AT 8:00 A.M.**, and further, in the event that the defendant is serving his
8 sentence in a detention facility located off the Pascua Yaqui Reservation, Transport Order shall
9 issue and defendant shall be transported to the Pascua Yaqui Detention facility to be released to
10 the streets on the above date from this facility.

11 **SO ORDERED THIS** 27th **DAY OF** October, 2021.

12 
13 Judge, Pascua Yaqui Tribal Court
14 

15 Cc: 10/27/21
16 Date

17 Tribe Defendant/Legal Counsel Probation Detention Other
18 [Signature]
19 Clerk