

No. CA-23-001

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

Jiovanni Jamal Butler, Appellant)	ORDER ON APPELLANT'S
)	UNOPPOSED MOTION TO
)	DISMISS APPEAL
v.)	
)	Tribal Court Case No. CR-22-042
)	
Pascua Yaqui Tribe, Appellee.)	
)	

For the Appellant: Rafael Gallego, Chief Defender
Mark F. Willimann, Deputy Public Defender

For the Appellee: Russell Boatwright, Deputy Prosecutor

Order

The Court GRANTS Appellant's unopposed motion to dismiss his appeal of this case.

So ORDERED this 20th day of May, 2022.

/s/ RJM
Interim Chief Justice Robert J. Miller

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

Stuart de Haan
Attorney for Appellant

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

JIOVANNI BUTLER,
Appellant,
vs.
PASCUA YAQUI TRIBE,
Appellee.

Case No. CA-23-001

Tribal Court No. CR-22-042

**MOTION FOR 2nd EXTENSION OF TIME
FOR FILING OPENING BRIEF**

Appellant, through counsel and pursuant to 3 PYTC § 2-3-70 (B) , Pascua Yaqui Rules of Appellate Procedure, respectfully moves this to Court to enter an order extending the time for the filing of the Appellant’s opening brief. Due to technology updates to the PYT Court computer systems, there has been a delay in obtaining required materials only accessible to court staff which has delayed the completion of this appeal.

The Tribe has no objection to this motion.

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

DATED this 24 day of January, 2023.

PASCUA YAQUI PUBLIC DEFENDER

/s/ Stu de Haan
Stuart de Haan
Senior Staff Attorney

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PYT Court of Appeals:

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

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 GIOVANNI BUTLER,
9 Appellant,
10 vs.
11 PASCUA YAQUI TRIBE,
12 Appellee.

)
) Case No. CA-23-001

)
) Tribal Court No. CR-22-042

)
) **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 is in the process of obtaining transcripts and needs additional time to
17 complete the brief.

18 The Tribe 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 29 day of December, 2022.

22 PASCUA YAQUI PUBLIC DEFENDER

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24 /s/ Stu de Haan
25 Stuart de Haan
26 Senior Staff Attorney
27
28

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

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4 PY Prosecutor's In-Box by:

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1 PASCUA YAQUI PUBLIC DEFENDER
7474 S. Camino de Oeste
2 Tucson, Arizona 85757
(520) 883-5013
3 Stu de Haan
AZ Bar No 026664
4 Stuart.dehaan@pascuayaqui-nsn.gov
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 GIOVANNI BUTLER,)

13 Defendant.)

Appellate Case No.: CA-23-001

Case No.: CR-22-042

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 September 26th, 2022. The Appellant is appealing the Trial
19 Court's granting of the Tribe's Motion to Admit Other Acts Evidence dated September 6th, 2022.

20 A copy of the bench trial minute and Sentencing Order as well as the New Trial Judgment
21 Order is attached to this motion pursuant to 3 PYTC § 2-3-90 (A)(1).

22 RESPECTFULLY SUBMITTED this 25th day of October, 2022.
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Stuart de Haan
Senior Staff Attorney
Attorney for Giovanni Butler

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The original of foregoing was filed in Pascua Yaqui Tribal Court on October 25th, 202s, 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 Giovanni Butler, Appellant/Defendant

1 UIN THE PASCUA YAQUI TRIBAL COURT

2 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

3	PASCUA YAQUI TRIBE,)	Case No.: CR-22-042
4	Plaintiff,)	
5	vs.)	NEW TRIAL JUDGEMENT ORDER AND
6	BUTLER, GIOVANI JAMEL,)	ORDER SETTING SENTENCING HEARING
7	Defendant.)	

8 The defendant, Giovanni Jamel Butler, appeared in this matter for a new trial on September
9 6, 2022 and in custody. Court-Appointed Counsel, Stu deHaan, was present. Deputy Prosecutor,
10 Russell Boatwright, appeared for the Tribe. Also appearing were witnesses: Officer Monique
11 Fimbres, and Mariabelen Molina.

12 The Court heard from the parties regarding the Tribe’s Motion to Admit Other Acts
13 Evidence and the defendant’s objection. Upon reviewing the Motion, Response and Reply and
14 after hearing from the parties in open Court, the Court finds good cause to grant the Tribe’s
15 Motion to Admit Other Acts Evidence. The Court applied the four-part test outlined in *United*
16 *States v. Beckmann*, in determining whether Other Acts Evidence should be admitted. (1) the
17 evidence tends to prove a material point (materiality); (2) the other act is not too remote in time
18 (recency); (3) the evidence is sufficient to support a finding that the defendant committed the other
19 act (sufficiency); and (4)...the act is similar to the offense charged (similarity). *United States v.*
20 *Beckmann*, 971 F.3d 999, 1002 (9th Cir.)

21 The Court finds that a new bench trial was held, testimony was heard, and documentary
22 evidence was submitted and reviewed. The Court finds Giovanni Jamel Butler guilty beyond a
23 reasonable doubt as to Count 1: Kidnapping/Domestic Violence, Count Two: Sexual
24 Abuse/Sexual Offenses and Sexual Crimes/Domestic Violence, Count Three: Assault/Domestic
25 Violence, and Count 4: Threatening or Intimidating/Domestic Violence.

26 The Court finds that the Tribe’s Exhibit One, a certificate of Indian blood and Pascua
27 Yaqui Tribal enrollment department record, was admitted, without objection. Through the
28 certificate, the Tribe has proven that the defendant is an Indian.

29 The Court finds that the Tribe has proven, beyond a reasonable doubt, that the defendant is
30 guilty of the following charges: Count 1: Kidnapping/Domestic Violence, Count Two: Sexual
31 Abuse/Sexual Offenses and Sexual Crimes/Domestic Violence, Count Three: Assault/Domestic
32 Violence, and Count 4: Threatening or Intimidating/Domestic Violence.

1 The Tribe has proven that Giovanni Jamel Butler, an Indian, on November 14, 2021 at 8:30
2 a.m., committed Count 1: Kidnapping/Domestic Violence by knowingly restraining Mariabelen
3 Molina, his girlfriend at the time, in a shed located at his uncle's house at 7544 S. Camino de
4 Oeste, an address within the Pascua Yaqui Reservation. Mr. Butler committed this offense with
5 the intent of having sexual intercourse with Mariabelen Molina against her will. Mariabelen
6 Molina testified that on November 14, 2021 in the early morning she went to the shed at Mr.
7 Butler's uncle's house to pick up her belongings. Giovanni Jamel Butler and Mariabelen Molina
8 were talking. Mr. Butler asked her to have sex with him and then Ms. Molina started to get her
9 things. Mr. Butler got mad and started hitting Ms. Molina. The Court finds that all the elements of
10 Count Three: Assault/Domestic Violence are met.

11 Ms. Molina further testified that she fell back on the bed and Mr. Butler got on top of her.
12 He told her to be quiet and not to say anything. Ms. Molina told Mr. Butler to stop, and she told
13 him, "no." Ms. Molina stated that she received bruises on her collar bone. Ms. Molina also stated
14 that she managed to kick the screen door of the shed while Mr. Butler held her down. She stated
15 that no one came out of the house.

16 Ms. Molina was questioned about an incident which took place prior to this incident. A
17 Ms. Molina testified that a couple of days before this incident she and Mr. Butler were in the same
18 shed and he asked her to have sex at that time. Ms. Molina told him, "No." Mr. Butler got angry
19 and told her that she was going to die. He told her that she did not want her. When asked if she
20 tried to leave, Ms. Molina stated, "Yes." Ms. Molina further testified that Mr. Butler got mad at
21 her and started hitting her on her head. She fell back on the bed and he got on her. He told her to
22 be quiet. Ms. Molina told him that she would do whatever he wanted. She said that she kind of
23 blacked out. She said that she was scared. She also stated that he pulled her pants down. Ms.
24 Molina stated that she did not want to get hurt more. After he was done having sex, she said that
25 she took off running to her uncle's house. Ms. Molina did not call 911 because she did not want
26 Mr. Butler to get into trouble. When asked why she went back to the shed on November 14, 2021,
27 she stated that she went back to get her kid's pictures, her stuff and clothes. She stated that both
28 incidents took place at the shed located on Camino de Oeste which is on the Pascua Yaqui
Reservation. When photographic evidence was shown to Ms. Molina, she confirmed that they
were photographs of her taken by police the day after the 2nd incident where she described
scratches to her face, bruises on her collar bone and bandaged fingers. When questioned about the
November 14, 2021 incident, Ms. Molina described that Mr. Butler put his fingers inside of her
vagina. She told him to stop because it hurt. The Court finds all the elements of Count Two:
Sexual Abuse/Sexual Offenses and Sexual Crimes/Domestic Violence are met.

Ms. Molina then stated that Mr. Butler told her that she should die. After reading the
transcript from the previous hearing, Ms. Molina stated that Mr. Butler told her that she should be
dead anyway. She said that she felt scared, betrayed, and terrified. She did not call 911

1 immediately but went to the casino to find her sister to call 911 for her. Officer Fimbres testified
2 that she responded to a sexual assault call to the Casino of the Sun and spoke with Ms. Molina.
3 Ms. Molina seemed upset, was trembling, and crying. Officer Fimbres stated that Ms. Molina's
4 injuries were documented by another officer. She further testified that she contacted Mr. Butler at
5 7455 S.. Camino de Oeste and read his rights. Officer Fimbres described scratches on Mr. Butler's
6 knuckles. During cross examination defense asked if there was a physical exam of Ms. Molina
7 and the Officer stated that Pascua Yaqui Fire Department did an initial exam. No DNA tests were
8 conducted. When the Officer was questioned about whether she spoke with the defendant, she
9 stated that she did. When asked if the defendant denied contact with Ms. Molina, the Officer
10 stated that Mr. Butler denied contact with Ms. Molina. On cross examination Ms. Molina
11 admitted to a prior felony conviction and her active drug use with Mr. Butler.

12
13 The Tribe moved to amend the complaint as to the address of the incident, based upon
14 Scribner's error. Defense counsel had no objection to the amendment. The Court granted the
15 amendment.

16 The Tribe recommended that the previously ordered release conditions should remain as
17 ordered. A Pre-Sentencing Investigation should be conducted by the Office of Probation and
18 Parole. Defense counsel had no objections to the Tribe's release recommendations. Good cause
19 appears to grant the recommendations made by the Tribe.

20 **IT IS ORDERED** that the Tribe's Motion to Admit Other Acts Evidence is granted and
21 the defendant's Motion to Admit Prior Convictions is also granted.

22 **IT IS FURTHER ORDERED** that the defendant, Giovanni Jamel Butler, is guilty beyond
23 a reasonable doubt of Count 1: Kidnapping/Domestic Violence, Count Two: Sexual Abuse/Sexual
24 Offenses and Sexual Crimes/Domestic Violence, Count Three: Assault/Domestic Violence, and
25 Count 4: Threatening or Intimidating/Domestic Violence.

26 **IT IS FURTHER ORDERED** that Giovanni Jamel Butler, shall remain in custody
27 pending his Sentencing hearing. Mr. Butler shall post a cash bond of \$500.00 prior to being
28 released. The defendant shall not consume or possess illegal drugs or alcohol or possess any drug
paraphernalia and shall be subject to random drug testing. The defendant shall have no contact
with Mariabelen Molina and no contact with the address of 7544 S. Camino De Oeste. The
defendant shall obey all laws and shall appear for all hearings. In the event bond is not posted, a
transport order shall issue for the defendant to appear for his Sentencing hearing.

IT IS FURTHER ORDERED that the Tribe shall ensure that a writ is submitted to the
Court for Ms. Mariabelen Molina to allow for a transport order Ms. Molina to appear for the
Sentencing hearing.

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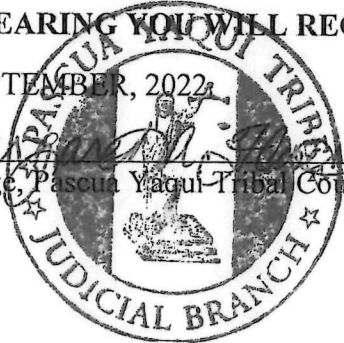
IT IS FURTHER ORDERED that the Sentencing hearing shall be heard on SEPTEMBER 26, 2022 AT 11:00 A.M. The Pascua Yaqui Office of Probation & Parole shall conduct a Pre-Sentencing Investigation Report and shall submit the completed report to the Court on or by September 20, 2022. Defense counsel may file a memorandum to the Court regarding Sentencing prior to the Sentencing hearing.

THIS IS THE ONLY NOTICE OF HEARING YOU WILL RECEIVE.

SO ORDERED THIS 6TH DAY OF SEPTEMBER, 2022.



Chief Judge, Pascua Yaqui Tribal Court



Cc: Date 9/23/2022
 Tribe Defendant Defense Counsel PY Detention Pretrial Services B.I.A. Contracted Detention Facility
Clerk: Monica Gomez

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

PASCUA YAQUI TRIBE,)
Plaintiff,)
vs.)
BUTLER, GIOVANNI JAMEL,)
Defendant.)

Case No.: CR-22-042

SENTENCING HEARING AND ORDER
FOR DETENTION AND PROBATION AND
ORDER FOR DEFENDANT TO REGISTER
AS A SEX OFFENDER

This matter came before this Court on September 26, 2022 for Sentencing hearing. The defendant, Giovanni Jamel Butler, appeared in custody. Defense counsel, Stu deHaan, was present. Appearing for the Tribe was Russell Boatwright. The victim, Mariabelen Molina, was present in custody with Victim Advocate, Sonia Laventure.

The Court finds as follows: defense counsel waived the reading of the defendant’s rights. Probation Officer Duran gave his Sentencing recommendations according to his submitted (Amended) Pre-Sentencing Investigation report. The Tribe gave their Sentencing recommendations according to their submitted Sentencing Memorandum. The Tribe stated that the victim, that although being incarcerated herself, has taken college courses from Rio Salado College, she has participated in and continues with counseling because of the emotional harm she has received from these acts by the defendant. The Tribe further informed the Court that the victim wished to make her own statement to the Court. The Court heard from Mariabelen Molina that she would like the defendant to serve time and work on himself. She stated that since she has been locked up, she feels grateful because, “God knows where I would be now.” She also stated that she has learned to love herself and that nobody can take her voice away. Defense counsel gave the defendant’s Sentencing recommendations according to the submitted Defendant’s Sentencing Memorandum and left the question to the Court of whether Sex Offender Registration is mandatory or discretionary for the Court to order in this matter.

Upon hearing from the parties and observing the victim, the Court finds that the victim has suffered substantial emotional harm resulting from the acts of the defendant in this matter. Good cause appears to enhance the sentence of incarceration by 25% for Count 2, which is a maximum of 10 months of jail suspended for 12 months of probation. Good cause appears to grant the remaining recommendations of the Probation Officer and Tribe, in part.

The Court further finds that the language of the Pascua Yaqui Tribal Code states that anyone convicted of a “Tier 3” Offense, in this case, Count 2, pursuant to PYTC Title 4 Chapter 1 Subchapter 1 Section 645(A) “In general. A sex offender shall register, and keep registration current...”

1 **THE COURT ORDERS** that the defendant, Jiovanni Jamel Butler is sentenced to the
2 following:

3 **Count 1: 4 PYTC § 1-200 (C) Kidnapping/Domestic Violence:**

4 1.) The defendant shall pay serve 6 months of jail to be served immediately.

5 **Count 2: 4 PYTC § 2-40 (A)(B), 4 PYTC § 2-10 (N) ~ Sexual Abuse/ 4 PYTC § 4-100-110**
6 **Sexual offenses and Sexual Crimes/ 3-10(A) ~ Domestic Violence:**

7 1.) The defendant shall serve 10 months in jail, suspended for one year (12 months) of
8 supervised probation.

9 **Count 3: 4 PYTC § 1-130 (A)(3) ~ Assault /3-10(A) ~ Domestic Violence:**

10 1.) The defendant shall serve 12 months (1 year) in jail, suspended for 1 year (12 months)
11 of supervised probation.

12 **Count 4: 4 PYTC § 1-255 (A) ~ Threatening or Intimidating// 3-10(A) ~ Domestic Violence:**

13 1.) The defendant shall serve 6 months in jail, to be served immediately.

14 **Counts 1 and 4 shall run consecutively, to be served immediately. The defendant is**
15 **given credit for time served on 291 days, with a remainder of 74 days to be served,**
16 **releasing the defendant from custody on December 9, 2022 at 11:00 a.m. to be place**
17 **on supervised probation. Pascua Yaqui Law Enforcement/Detention shall transport**
18 **the defendant to the Pascua Yaqui Detention Facility prior to his release date so that**
19 **he may be released from custody on the Pascua Yaqui Reservation.**

20 **Counts 2 and 3 shall run consecutively to each other for a total of 22 months in jail,**
21 **suspended for a total of 18 months of supervised probation.**

22 Jiovanni Jamel Butler shall have no contact with Mariabelen Molina or her residence for
23 the duration of probation.

24 The defendant shall pay a court cost of \$100.00 to the Pascua Yaqui Tribal Court within 90
25 days of his release from custody, by March 9, 2023.

26 The defendant shall report to probation with 48 hours of being released from custody or no
27 later than December 12, 2022.

28 The defendant shall pursue treatment in an impatient substance abuse center through the
Pascua Yaqui Centered Spirit Program.

The defendant shall complete a comprehensive assessment focused on substance abuse
with the Centered Spirt Program within thirty (30) days of his release.

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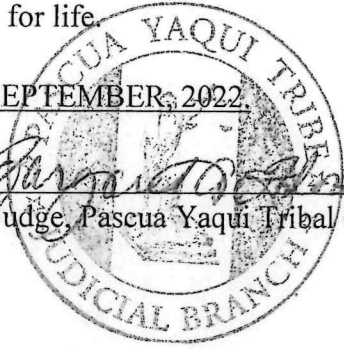
The defendant shall complete twenty-nine (29) sessions of Domestic Violence classes with the Hiapsi Kuakte Program within 12 months of Probation.

If the defendant is not in treatment, the defendant shall provide proof of employment or show that he is actively trying to find employment.

The defendant shall follow all standard conditions of probation.

THE COURT FURTHER ORDERS that the defendant, Jiovanni Jamel Butler is convicted of a "tier 3" offense as to Count 2 and the defendant shall register as a sex offender and shall comply with the Pascua Yaqui Tribal Code (PYTC) Title 4 Chapter 1 Subchapter 1 Section 635 and Section 640. Pursuant to PYTC Title 4 Chapter 1 Subchapter 1 Section 645(A)(3) the defendant is required to register as a sex offender for life.

SO ORDERED THIS 26TH DAY OF SEPTEMBER, 2022.



Chief Judge, Pascua Yaqui Tribal Court

Cc: Date 9/28/22
Tribe Defendant Defense Counsel PY Detention B.I.A. Contracted Detention Facility
Clerk: _____