

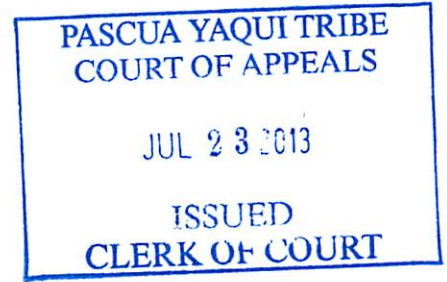
No. CA-12-001

Pascua Yaqui Court of Appeals

Pascua Yaqui Tribe, Petitioner,

vs.

Christopher Montana, Defendant/Respondent,



Appeal of a decision of the Pascua Yaqui Trial Court in Case No. CR 12-005, the Honorable Margaret Flores presiding.

Guadalupe Gutierrez, Office of the Prosecutor, Pascua Yaqui Tribe Tucson, AZ for the Petitioner.

Fredric Brahms J.D., PO Box 65493, Tucson AZ 85728 for the Appellee.

ORAL REASONS FOR JUDGMENT

1. This case raises a novel point of law for the Pascua Yaqui Tribal Courts. In this instance, the appellant Prosecutor on behalf of the Tribe filed a special action application during a criminal proceeding in the Pascua Yaqui Trial Court. The Defendant was charged with three counts of aggravated assault, domestic violence, for alleged emotional and physical abuse of the eleven-year-old victim, E.R.

2. At trial, Defense counsel alleged that the Prosecutor had coached the victim to provide favorable testimony. This appeal arose from the trial court's decision to grant Defense counsel's motion to compel disclosure and a subsequent motion to question the minor victim. The Prosecutor's motion to dismiss was denied.

3. The Prosecutor's special action seeks to dismiss the trial court's decision to grant a hearing on the grounds that (1) the record does not support the finding that a *prima facie* case for coaching was established and (2) the trial court acted in excess of its jurisdiction and made an arbitrary and capricious decision, not reasonably based on the facts in the record.

4. With regard to the jurisdiction of the Pascua Yaqui Court of Appeals, I find affirmatively that this is a matter within the Appellate Court's jurisdiction. Although the Pascua Yaqui Rules of Appellate Procedure are silent on special actions one can refer to the common law and State appellate court rules for guidance.

5. With regard to the merits and substance of the special action in this case, I want to highlight two novel points raised by the appeal. First, in criminal practice, the prosecutor cannot appeal a judgment acquitting a defendant in a criminal case. See 3 PYTC § 2-3-90. Second, special actions emerged in the common law as specific remedial writs in the face of erroneous, excessive, arbitrary, and or capricious government actions; the remedies are directed specifically at the state's role in the context of a proceeding.

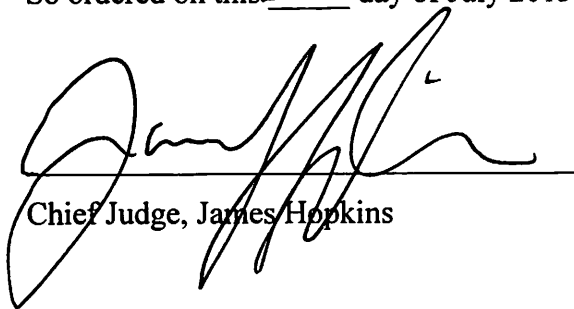
6. Likewise, Arizona permits special actions when (1) the trial judge has failed to exercise discretion which she has a duty to exercise, or to perform a duty required by law as to which she has no discretion; and (2) the trial judge has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority, and (3) the judge's determination was arbitrary or capricious or an abuse of discretion. See Rules 3(a),(b), (c), Ariz. R. P. Spec. Act.

7. Turning to the merits and substance of the special action before me, as to the Prosecutor's argument that the learned trial judge exceeded her jurisdiction by granting a hearing I find no evidence that the decision to hold the hearing was tantamount to an abuse of discretion based upon arbitrary and or capricious considerations. Indeed, hearings that are aimed at assessing the

reliability of child witnesses are squarely within the role of the trial judge and this Court will not disturb the Tribal Court's decision to hold a hearing to determine whether the minor victim has been coached.

8. Based on the foregoing I find that the necessary elements for a special action have not been met. This appeal is dismissed with additional reasons to follow.

So ordered on this 23rd day of July 2013.



Chief Judge, James Hopkins