

No. CA-14-003

Pascua Yaqui Court of Appeals

Pascua Yaqui Tribe, Appellant,

vs.

Molina, Salomon Flores, Appellee,

Interlocutory Appeal of a Tribal Court Order in Case No. CR-14-196, the Honorable Margaret Flores presiding.

Frederick Lomayesva, Office of the Prosecutor of the Pascua Yaqui Tribe, 7777 Camino Huivisim, Tucson, AZ for the Appellant.

Patricia Leon-Enriquez, Pascua Yaqui Public Defender, 7474 S. Camino de Oeste, Tucson AZ 85757 for the Appellee.

Order

I. Background

On May 1, 2014, the Tribe filed an interlocutory appeal seeking review of a tribal court order in case CR-14-196 for dismissing Count 3, a violation of 4 PYTC § 2-30(A)(1), Public Sexual Indecency as well as allowing the inclusion of Jury Instruction number 23 for the jury trial set for May 6, 2014. The Tribe also requested that this Court issue a stay of execution for the jury trial pending the outcome of this appeal. The Tribe has not submitted a petition for a stay from the trial court.

Defendant subsequently filed a Response to which the Tribe then filed a Reply.

II. Appeal and Request for Stay of Execution

Appellant must follow the filing requirements in 3 PYTC § 2-3-250 and file a petition to stay the trial with the trial court before asking this Court to issue a stay of execution of any order, judgment, or conviction in trial court. Appellant cannot request of a stay of execution of a trial

court order from the Court of Appeals in lieu of requesting it from the trial court. The Pascua Yaqui Tribal Code provides the following:

(A) Filing requirements:

(1) An appellant may file with the trial court a motion for a stay of execution of its ***judgment, order, or conviction*** at any time after the decision is final.

(2) If the trial court denies the motion, it shall set for its reasons in writing.

(B) Documents Forwarded. All original documents, orders, and other papers filed in the trial court relating to the stay of execution shall be included in the record on appeal forwarded to the appellate court.

(C) Motion for Stay Denied.

(1) If the trial court denies the motion for stay, ***and only in such case***, a petition for a stay may be filed with the appellate court clerk, and the chief justice may grant the stay upon any conditions that protect the interests of the parties.

(2) The trial court's order denying the stay shall be attached to the petition to the appellate court.

(3) If the trial court grants the stay, a copy of the order granting the stay shall be filed with the appellate court clerk.

See 3 PYTC § 2-3-250 (emphasis added).

The Code requires that appellant file a motion for a stay of execution with the trial court first before coming to this Court with such a motion. The Code distinctly states that appellant may file a motion for a stay of execution for a final judgment, an order or a conviction, and the Code defines judgment as "any order that can be appealed, whether denominated an order, a judgment, a decree or otherwise." Any order that can be appealed includes orders that are the basis for interlocutory appeals. See 3 PYTC § 2-3-40(C)

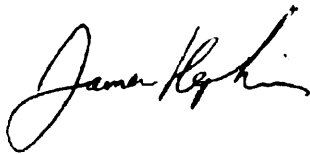
If appellant were allowed to come directly to this Court with petitions to stay proceedings in trial court, it could lead to a delay of justice in trial court cases while issues are litigated in the Court of Appeals. This rule allows trial court judges to have a first, but not final, say in whether issuing a stay is sensible and necessary. Only when the trial court denies a motion for stay may appellant file a petition for a stay with this Court, and even then, the Code states that the chief justice ***may*** grant the stay to "protect the interests of the parties". See 3 PYTC § 2-3-250(C)(1) (emphasis added).

In this case, appellant filed an interlocutory appeal requesting an expedited briefing schedule and stay of execution of an upcoming jury trial in trial court. Appellant did not file a stay with the trial court first, as the Code demands. Although appellant filed an interlocutory

appeal based on an order, the Code is clear that the same filing requirements apply to all appeals. The interlocutory appeal filed for CR-14-196 will continue with an expedited briefing schedule, but the request for an order staying the May 6, 2014 trial is denied. Appellant must first request a petition for a stay with the trial court.

This Court requests an expedited issuance of the Index and Transmittal from the trial court clerk as well as expedited submission of any transcripts of proceedings necessary for inclusion in the record. At the issuance of the Index and Transmittal, appellant will have ten (10) days to submit an opening brief. Appellee will have ten (10) days to submit a response. Appellant will have ten (10) days to submit a reply.

So ordered on this 2nd day of May 2014.

A handwritten signature in black ink, appearing to read "James Hopkins", written in a cursive style.

Chief Justice, James Hopkins