**No. CA-13-003**

Pascua Yaqui Court of Appeals

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Alvarez, Mateo, Appellant,

vs.

Pascua Yaqui Tribe, Appellee,

Appeal of a decision of the Pascua Yaqui Trial Court in Case No. CR 08-056, the Honorable Melvin Stoof presiding.

Patricia Leon-Enriquez, Office of the Public Defender for the Appellant.

G. Allen Osburn, Office of the Prosecutor for the Appellee.

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**I. Opinion**

The issue before this Court is whether Appellant pled to two 12-month probation terms or one 24-month probation term. Pursuant the plea agreement, Appellant was sentenced to two terms of 360 days detention, sentence suspended for 12 months of supervised probation. Appellant was also sentenced to a total of 495 days in detention. The plea agreement stated that detention days were to run consecutively and that probation days were to run consecutively. Appellant was released from detention on November 12, 2010, thereby starting his probation. On December 15, 2011, one month into Appellant's second probation sentence, Appellant's probation officer filed a motion to revoke probation based on several violations. The Tribal court revoked Appellant's probation on December 12, 2012 and imposed a 24-month detention sentence. This Court finds that pursuant the plea agreement, Appellant was sentenced to two distinct consecutive 12-month terms of probation and that the motion to revoke probation was filed after Appellant's first 12-month probation term had expired. The Tribal court lacked jurisdiction to revoke probation once the term had expired. The Tribal Court did have jurisdiction over the second 12-month term, which Appellant completed on November 19, 2013. Appellant is hereby ordered released.

**II. Background**

Appellant was charged by criminal complaint with count 1, assault (a violation of 4 PYTC § 1-150(A)(1)(c)), count 2, disorderly conduct (a violation of 4 PYTC § 1-305), counts 3 through 9, aggravated assault (a violation of 4 PYTC § 1-150(A)(2), and count 10, destroying evidence (a violation of 4 PYTC § 1-560). Pursuant to a plea agreement, Appellant pled guilty to Counts 2, 3, 7, 9 and 10. Counts 1, 4, 5, 6, and 8 were dismissed. Pursuant to the plea agreement, Appellant was sentenced to 360 days detention, sentence suspended for 12 months of supervised probation (Count 2), 170 days detention to be served (Counts 3 and 7), 155 days of detention to be served (Count 9), and 360 days of detention, sentence suspended for 12 months of supervised probation (Count 10). The Tribal Court's acceptance of the plea agreement provides that Appellant's sentence totaled 1215 days of detention, with credit for 115 days already served, 495 days to be served, and 720 days suspended for a total of 24 months of supervised probation. According to the plea agreement, Appellant was to be released from detention on November 12, 2010. The order accepting the plea did not specify whether the sentences would be consecutive, but the original plea agreement provided the sentence would be imposed as follows:

> Defendant sentenced to 1215 total days of detention; 495 days are to be served with 720 days suspended for a total of 24 months of probation. Detention days to be consecutive; probation to be consecutive. Defendant to be credited with time served from July 5, 2009.

However, the order accepting the plea indicated the Court was adopting "all sentencing recommendations made." Appellant waived his right to appeal the judgment and sentence to the Pascua Yaqui Appellate Court. According to the probation order, probation was scheduled to begin on November 12, 2010 and terminate on November 12, 2012.

On December 15, 2011, Appellant's probation officer filed a motion to revoke probation based upon the following violations: (1) failure to report to probation officer as directed, (2) failure to participate in treatment and or counseling programs as directed, (3) failure to pay $25 court cost or complete two hours or community service due no later than September 12, 2011, (4) failure to pay $20 probation fees for the months of October through December 2011, and (5) failed to submit written verification of 50 completed community service hours due on September 12, 2011. On December 27, 2011, the probation officer appeared in court and was unable to

contact Appellant to process paperwork. Appellant's whereabouts were unknown; therefore, a warrant for his arrest was issued.

Appellant admitted to allegation 1, and his probation was revoked on December 12, 2012. The Court imposed the original 720 days that were previously suspended for Counts 2 and 10 and granted credit for 19 days already served for a total of 701 days.

In the Motion to Reconsider filed with the Tribal Court, Appellant asserts that the petition to revoke probation was filed a month after the probation term imposed for Count 2 had expired. He stated that the Tribal Court retained jurisdiction over the motion to revoke probation because Appellant was still on probation for Count 10. It is Appellant's belief that the probation term for Count 2 had expired, and only the 360-day term from Count 10 could be imposed.

**III. Probation Terms**

The main issue before this Court is whether Appellant pled to two consecutive 12-month probation terms or one 24-month probation term.

In a criminal proceeding, the Court of Appeals reviews a district court's denial of a motion to reconsider for abuse of discretion. *U.S. v. Lopez-Cruz*, 730 F.3d 803, 811 (9th Cir. 2013) (citing *United States v. Tapia–Marquez*, 361 F.3d 535, 537 (9th Cir. 2004); *United States v. Hinkson*, 585 F.3d 1247, 1261–62 (9th Cir. 2009) (en banc)).

Plea agreements are analyzed under contract law principles. *See* e.g., *United States v. Sandoval–Lopez*, 122 F.3d 797, 800 (9th Cir. 1997). Thus, courts apply contract law standards to examine and enforce the plain language of a plea agreement and do not consider extrinsic evidence to interpret the terms of an agreement if it is clear and unambiguous on its face. *United States v. Trapp*, 257 F.3d 1053, 1056 (9th Cir. 2001); *United States v. Nunez*, 223 F.3d 956, 958 (9th Cir. 2000) (citing *Wilson Arlington Co. V. Prudential Ins. Co. Of America*, 912 F.2d 366, 370 (9th Cir. 1990)). "In construing an agreement, the court must determine what the defendant reasonably understood to be the terms of the agreement when he pleaded guilty." *United States v. De la Fuente*, 8 F.3d 1333, 1337 (9th Cir. 1993). Additionally, any ambiguity is read against the government. *Id.* at 1338.

As stated previously, pursuant to the plea agreement, Appellant was sentenced to 360 days detention, sentence suspended for 12 months of supervised probation (Count 2), 170 days

detention to be served (Counts 3 and 7), 155 days of detention to be served (Count 9), and 360 days of detention, sentence suspended for 12 months of supervised probation (Count 10). The Tribal Court's acceptance of the plea agreement provides that Appellant's sentence totaled 1215 days of detention, with credit for 115 days already served, 495 days to be served, and 720 days suspended for a total of 24 months of supervised probation. Appellant was to be released from detention on November 12, 2010. The order accepting the plea did not specify whether the sentences would be consecutive, but the original plea agreement provided, "*Detention days to be consecutive; probation to be consecutive.* Appellant to be credited with time served from July 5, 2009." (emphasis added) The order accepting the plea indicated the Court was adopting "all sentencing recommendations made."

According to Black's Law Dictionary, consecutive is defined as "Successive; succeeding one another in regular order; to follow in uninterrupted succession." Consecutive sentences are defined as "when one sentence of confinement is to follow another in point of time, the second sentence is deemed to be consecutive. May also be applied to suspended sentences. Also called "from and after" sentences." A subsection beneath the definition for "sentence" provides:

> Consecutive sentence. See Cumulative sentences, below.
>
> Cumulative sentences: Separate sentences (each additional to the others) imposed upon a defendant who has been convicted upon an indictment containing several counts, each of such counts charging a distinct offense, or who is under conviction at the same time for several distinct offenses; one of such sentences being made to begin at the expiration of another. *Carter v. McClaughry*, 183 U.S. 365, 22 S.Ct. 181, 46 L.Ed. 236.

Black's Law Dictionary 1362 (Bryan A. Garner ed., 6th ed., West 1999).

A consecutive sentence, by definition, does not begin until the sentence to which it is consecutive has been satisfied. *Eyman v. McPherson*, 1 Ariz. App. 578, 580 (1965). Consecutive probation terms reflect a "distinct sanction for each count". *State v. Bowsher*, 225 Ariz. 586, 590, ¶ 21 (2010).

On counts 2 and 10, Appellant's sentences were suspended for each count and a 12-month probation term was imposed for each count. Each count was to be served consecutively according to the agreement.

Appellant was supposed to be released from detention on November 12, 2010, meaning the Appellant's first probation term began on that date and ended on November 8, 2011. Appellant's probation officer filed a motion to revoke probation on December 15, 2011. Therefore, the motion to revoke was filed after Appellant's first 12-month probation term had expired. The court lacks jurisdiction to revoke probation once the probation period has expired. *See Chacon*, 221 Ariz. 523, 526 (2009) (citing *State v. Johnson*, 182 Ariz. 73 (Ariz. App. 1995)). Appellant's probation on Count 2 could not be revoked because the term had expired. As a result, only the probation term for Count 10 remained and Appellant could only be revoked on Count 10.

Appellant alleges that at the time the revocation hearing was held on December 12, 2012, he had already served 19 days. The Tribal Court judge imposed a sentenced of 701 days, which indicates there was credit for 19 days served, and ordered that Appellant's detention term would be completed on November 14, 2014 at 8:00 a.m.

This Court finds that Appellant could only be revoked on Count 10; therefore, his release date should have been a year earlier than the sentence imposed by the Tribal Court. Appellant's release date should have been November 19, 2013. Appellant is hereby ordered released.

**IV. Application of *Miranda v. Anchondo***

This Court wants to reiterate that the Tribal Court has the authority to impose one year terms of imprisonment or probation for each criminal offense. This issue has already been decided in the affirmative by *Miranda v. Anchondo,* which holds that Tribal courts may impose up to a one year sentence for each criminal violation. 684 F.3d 844 (2012). The main issue this order addresses is whether Appellant's plea agreement to serve two consecutive 12-month sentences should have been enforced as two separate sentences running consecutively or one 24-month sentence. This Court's decision does not disturb *Miranda's* reasoning regarding the court's jurisdiction to stack sentences for multi-count criminal cases.

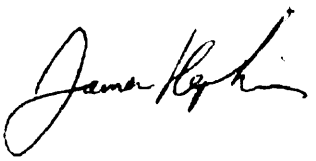
Additionally, this Court and the Tribal Court would have benefited from the crafting of a plea agreement where the terms are consistent and clear throughout the document. Also, if a defendant is in detention and the issue is one of early or modified release, then a motion or notice to expedite should be submitted to make the Court aware of defendant's position. In this

particular instance, both the Tribe and defense counsel asked for extensions for filing deadlines, thereby prolonging Appellant's time in custody.

**V. Conclusion**

For the foregoing reasons, the Court of Appeals reverses the Tribal Court's denial of the motion to reconsider and orders Appellant released. An order of transport is attached to this final order so that Appellant can be transported back to the Pascua Yaqui Tribe and immediately released.

So ordered on this 4th day of April 2014.



Chief Justice, James Hopkins

IN THE PASCUA YAQUI COURT OF APPEALS

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

| | |
|---|---|
| THE PASCUA YAQUI TRIBE<br>Appellee<br>v<br><br>Mateo Alvarez<br><br>Appellant | ORDER TO TRANSPORT<br><br>CASE NO. CA-13-003<br>TRIBAL CASE NO. 08-056 |

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** for **IMMEDIATE RELEASE.**

Dated this 4th Day of April, **2014**.

Chief Justice Hopkins, Pascua Yaqui Court of Appeals

PASCUA YAQUI TRIBE
COURT OF APPEALS

APR 04 2014

ISSUED
CLERK OF COURT

Cc:
DETENTION/PROSECUTOR
DATE: _____
CLERK: _____