

COPY(IES) OF THE FOREGOING MAILED/HAND DELIVERED THIS 4<sup>th</sup>,  
DAY OF January, 2024.

(Court Order dated January 4, 2024

ref.AP2023-0004 [Ref: CR2022-0483-1/2/5-9])

TO THE FOLLOWING:

Tohono O'odham Nation  
Office of the Prosecutor  
Attn: Amy Ruskin - Assistant Prosecutor  
Appellant  
(E-mailed to Prosecutor'sOffice@tonation-nsn.gov)

Dale Lloyd Joaquin  
Tohono O'odham Detention Center  
Sells, Arizona 85634  
Appellee  
(Fwd to C.O.'s for delivery)

THE JUDICIAL COURT OF THE TOHONO O'ODHAM NATION

IN THE STATE OF ARIZONA

COURT OF APPEALS

FILED WITHIN THE TOHONO O'ODHAM JUDICIARY  
2024 JAN -4 P 3:27  
Frances Ruiz  
JUDICIARY SERVICE CLERK

Tohono O'odham Nation,	)	Case No.: AP2023-0004
	)	
Appellant,	)	
	)	
v.	)	
	)	
Dale Lloyd Joaquin,	)	
	)	
Appellee.	)	
	)	

DECISION

Before Debra S. Doll, Presiding Judge, and Deola Juan and Barbara Atwood, Appellate Judges.

THIS MATTER comes before the Appeals Court on Motion by the Nation, through Acting Chief Prosecutor Caroline Allen and Assistant Prosecutor Amy S. Ruskin, dated October 2, 2023, and in reference to Case Number CR2022-0483-1/2/5-9, *The Tohono O'odham Nation v. Dale Lloyd Joaquin*. In its Appeal, the Nation now seeks review of the Trial Court's conclusion as to when the right to appointed counsel does attach, or is triggered, for a defendant under the Tribal Law and Order Act and Tohono O'odham law.

## **JURISDICTION**

The Appeals Court has jurisdiction in all matters arising from the Trial Court, as established by Section 7, Article VIII, of the Constitution of the Tohono O’odham Nation. The Appeals Court has subject matter and personal jurisdiction, under Sections 2 and 10, Article VIII, of the Constitution of the Tohono O’odham Nation.

## **QUESTION OF LAW**

THE NATION SEEKS REVIEW OF THE TRIAL COURT’S CONCLUSION REGARDING WHEN THE RIGHT TO APPOINTED COUNSEL ATTACHES OR IS TRIGGERED.

The Court of Appeals finds this question was answered initially on April 3, 2023 in the Court’s Trial Record Entry, then again on July 31, 2023, in the Trial Record Entry, which was a final judgment by the Trial Court regarding the case. It was once again addressed by the Trial Court on August 31, 2023, in the Order Denying Defendant’s Motion to Drop Charges. This Court concludes that the Notice of Appeal filed by the Nation is outside of the time prescribed under Rule 12(a), Tohono O’odham Rules of Appellate Procedure. In addition, this Appeal falls outside of the authority of this Court as it would not affect the outcome of Defendant’s criminal case. See Rule 3(c)(2), Tohono O’odham Rule of Appellate Procedure.

## **RULES OF COURT**

This Appeal is governed by several provisions in the Tohono O’odham Rules of Court. Rule 12(a), 2023 Rules of Appellate Procedure, states “[a]n appeal will be taken by filing a notice of appeal with the trial court within 30 days of entry of judgment by that same court.” Rule 6(h),

Rules of Appellate Procedure, defines “final judgment or decision” to mean “a judgment or decision which affects a substantial right leaving nothing open to dispute and which ends the action between the parties in the trial court. The Rule further defines “motion” to mean “any request for an order other than the complaint, petition, or answer.” Rule 6(j), Tohono O’odham Rules of Appellate Procedure.

### ANALYSIS

There are three distinct topics for the Court to address in determining whether it has jurisdiction over this Appeal: (1) the question of law raised by the Nation, (2) the significance of the motion by Defendant dated August 14, 2023, and (3) the timeliness of the Notice of Appeal.

#### I. Question of Law

The question of law was addressed by the Trial Court and was answered at three separate times by the Trial Court. The first time the Trial Court addressed when the right of a defendant to have counsel attaches was on April 3, 2023, in the Trial Record Entry. The Court stated:

“The Court does not have any attorneys that it can appoint at the Nation’s expense. Accordingly, the Court will be unable to sentence Mr. Joaquin to more than one year in jail in this proceeding. The Court orders the parties to proceed as Mr. Joaquin is a self-represented litigant.”

The second time the Court addressed the issue was in the Trial Record Entry, which was a judgment and sentence adjudicating the matter, dated July 31, 2023. There the Court stated:

“As Mr. Joaquin was not represented by counsel throughout this proceeding, the Court is unable to impose a total term of imprisonment of more than 1 year, as the Nation request, pursuant to T.O.C. Ch. 1, 1108 and the Tribal Law and Order Act (25 U.S.C. 1302(c)).”

Finally, post-conviction, the Trial Court addressed the issue for the third time in its Order Denying Defendant’s Motion to Drop Charges, dated August 31, 2023. In this Order, the Court stated:

“The Nation’s Code and ICRA refer specifically and only to prison terms over one year, not overall sentences that include over one year of imprisonment. See 6 T.O.C. ch1 1108 (“An indigent defendant shall have the right to a state-licensed attorney at the expense of the Tohono O’odham Nation in a criminal proceeding in which *a total term of imprisonment of more than one* year is actually imposed.”)

The Defendant was never in jeopardy of having a prison sentence for more than one (1) year, given there was no state-licensed attorney available to represent the defendant. Thus, the question presented by the Nation would not affect the outcome of the criminal case.

II. Motion by Defendant dated August 11, 2023 and Recorded August 14, 2023.

The Motion by the Defendant, dated August 11, 2023 and entered into the record on August 14, 2023, is just that, a *Motion to Speak With the Court*. It is a motion that is post-

conviction. It is not an appeal. Therefore, when the Nation based its appeal on the Trial Court’s Order Denying Defendant’s Motion to Drop Charges (dated August 31, 2023), the Nation was in error to characterize this as a final judgment by the Trial Court. The final judgment by the Trial Court was entered on July 31, 2023, and the appeal process ran on August 31, 2023.

In addition, this appeal by the Nation is not brought on behalf of the Defendant and the Nation does not represent the Defendant. The Defendant moved to have the entire sentence vacated on the ground of religious freedom—an argument not advanced in this Appeal. Accordingly, the Nation does not have standing to bring this appeal.

III. Timeliness of Filing of Appeal by the Nation

The Nation filed this Appeal on or about October 2, 2023. The final judgment and sentence of the Trial Court was on July 31, 2023. Under Rule 12(a), of the Tohono O’odham Rules of Appellate Procedure, the “appeal will be taken by filing a notice of appeal with the trial court within 30 days of entry of judgment by that same court.” The final day for the Nation, or the Defendant, to file a notice of appeal would have been August 31, 2023. The Court hereby finds this appeal to be untimely.

**THEREFORE, THE COURT HOLDS THAT IT LACKS JURISDICTION OVER THIS APPEAL. THE APPEAL IS HEREBY DISMISSED.**

Judge Deola Juan and Judge Barbara Atwood concur.

Dated this 3<sup>rd</sup> day of January, 2024

  
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Debra S. Doll  
Judge  
  
JUDICIARY