In the Judicial Court of the Tohono O'odham Nation County of Pima, In the State of Arizona Court of Appeals

Tohono O'odham Nation, Appellant) Case No.: AP2023-0001) (Ref: CR2022-0423-1-4)
v. Francisco Augustine Salcido Jr.,))) ORDER)

Before: Hon. Tessa L. Dysart, Hon. Kyle Fields, and Hon. Rene Alcoverde.

Appellee

The Nation filed a Notice of Interlocutory Appeal from the Trial Court's Order on April 27, 2023. The Order denied the Nation's motion to appoint an attorney for Mr. Salcido. Per Rule 14 of Tohono O'odham Rules of Appellate Procedure, the Nation asked the Trial Court for permission to file an interlocutory appeal, which the Trial Court granted. On June 20, 2023, the Nation filed an Amended Notice of Interlocutory Appeal raising more arguments about appointment of counsel from the Trial Court's May 26, 2023, Order. Because the Trial Court did not commit an "obvious error," we deny the request for an interlocutory appeal.

Under Rule 15 of the Tohono O'odham Rules of Appellate Procedure, this Court will grant an interlocutory appeal if:

- (1) the trial court has committed an obvious error;
- (2) the error would render further trial proceedings useless or substantially limit the freedom of a party to act; and
- (3) the error presents a substantial question of law which would determine the outcome of the appeal.

The Rules do not define "obvious error," and this Court has yet to define the term. In this context, the term "obvious error" is synonymous with "clear error." *See Puckett v. United States*, 566 U.S. 129, 135 (2009) (using the terms interchangeably). Black's Law Dictionary defines "clear error" as "[a] trial judge's decision or action that appears to a reviewing court to have been unquestionably erroneous." Black's Law Dictionary (11th ed. 2019). Here, the Trial Court relied on *Nation v. Nunez*, Case No. CR2022-0362-1-4 (Tr. Ct. Feb. 6, 2023), to explain why it was denying the Nation's motion to appoint Mr. Salcido counsel. The *Nunez* case is scheduled for publication, and the Nation did not appeal the Trial Court's ruling in *Nunez*. Thus, the Trial Court's decision was not obvious or clear error.

The Nation also raises arguments related to the Trial Court's ruling on Mr. Salcido's Motion to Dismiss based, in part, on his right to a speedy trial. The Nation, however, sought an interlocutory appeal from the April 27, 2023, Order which solely addressed the Nation's Motion to Appoint a State-Licensed Attorney. The Trial Court's Order on Mr. Salcido's Motion to Dismiss was on April 10, 2023. Therefore, the speedy trial issue is not properly before this Court.

The Court denies the interlocutory appeal. The Court also denies the Nation's Motion to Stay and Motion to Extend Time to File an Opening Brief.

Dated June 29, 2023

Hon. Tessa L. Dysart

For the Panel

¹ Black's Law Dictionary defines "obvious error" as "A standard of review that applies to unobjected-to actions and omissions at trial that are so seriously prejudicial as to result in manifest injustice." Black's Law Dictionary (11th ed. 2019). That definition does not apply to this particular circumstance since the Nation did object to Trial Court's actions below.

NUDICIARY