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DAY OF May, 2024.

(Court Order re: Opinion dated April 25, 2024

ref.AP2023-0005 [Ref: CR2023-0037-1-8])

TO THE FOLLOWING:

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In the Judicial Court of the Tohono O’odham Nation  
Court of Appeals

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Tohono O’odham Nation ) Case No.: AP2023-0005  
 ) (Ref: CR2023-0037-1-8)  
Appellee )  
 ) OPINION  
v. )  
 )  
Tyrone Miles )  
 )  
Appellant )  
 )

D. Tyler Francis, Counsel for Tyrone Matthew Miles, Appellant  
Amy S. Ruskin, Counsel for the Tohono O’odham Prosecutor’s Office, Appellee  
Before: Hon. Tessa L. Dysart, Hon. Barbara A. Atwood, and Hon. Amy B. Courson.

Tyrone Matthew Miles appeals from his convictions and sentences for assault and abuse of a person. He argues that the abuse of person statute requires some sort of caretaking relationship, and that without such a relationship the crime of assault is “indistinguishable” from abuse of a person. For the reasons below, we affirm Mr. Miles’s convictions and sentences.

**STATEMENT OF FACTS**

On February 20, 2023, Tyrone Matthew Miles, was charged in CR2023-0037-1-8, with eight counts related to the alleged assault of Nicollette Francisco, the grandmother of his child. At a bench trial on August 30, 2023, after the victim and the responding officer had testified, and various exhibits were placed into evidence, Judge Kyle Fields found Mr. Miles guilty of Counts 1, 2, 4, 5, 6, and 8, and not guilty of Counts 3 and 7.

Mr. Miles was sentenced on September 25, 2023, to 90 days for Count 1 – Assault (amended as a lesser included from Aggravated Assault) to run concurrently to his other convictions, and to 360 days for Count 2 – Abuse of a Person, along with convictions for four other charges. He was given

credit for time served. Mr. Miles filed his Notice of Appeal on October 20, 2023. He did not directly address the issue of double jeopardy in any of his filings with the Court of Appeals.

### **JURISDICTION**

Having considered the parties' submissions as well as case law from the Tohono O'odham Court of Appeals, the Court determines that the Notice of Appeal was timely filed. Under Rule 3(c)(2) of the Tohono O'odham Rules of Appellate Procedure, this Court may review "a criminal matter after a judgment of guilt and sentencing," and under Rule 12(a), a notice of appeal must be filed "within 30 days of the entry of judgment." This Court has recognized that the time for filing an appeal should run from the date of sentencing. *See, e.g., Narcho v. Tohono O'odham Nation*, 3 TOR.3d 13, CTA-0089 (T.O. Ct. App 2007) ("Appellant had . . . thirty days from . . . the date the Appellant was sentenced" within which to file a notice of appeal.); *Wichapa v. Tohono O'odham Nation*, 3 TOR.3d 26, CTA-0057 (T.O. Ct. App 2009) (using the date of sentencing to determine whether a request to appeal was untimely); *Molina v. Tohono O'odham Nation*, 2021 TOR Supp. 30, (T.O. Ct. App 2015) (using the date of sentencing to determine whether a request to appeal was untimely). The sentencing in this case occurred September 25, 2023, and the Notice of Appeal was filed October 20, 2023. The Court therefore concludes that it has jurisdiction over this appeal.

### **DOUBLE JEOPARDY**

Mr. Miles argues that his conviction and sentence for abuse of a person under 7 T.O.C. § 8.4(A)(2) was improper because that statute implicitly requires a custodial or financial relationship between the parties, and that without such a relationship the "the definition of 'Abuse of a Person' is indistinguishable from simple assault." Opening Brief at 6. Although Mr. Miles did not directly address the applicability of double jeopardy in his filings with this Court, we understand his argument to raise a concern that conviction and sentencing for both abuse of person and simple assault would violate the double jeopardy prohibition.

Although the Tohono O’odham Constitution does not contain a prohibition on double jeopardy, the Indian Civil Rights Act does contain a double jeopardy provision. *See* 25 U.S.C. § 1302(a)(3). Under Tohono O’odham case law, double jeopardy prevents a person from being tried twice for the same offense or being prosecuted under two identical statutes. *Tohono O’odham Nation v. Campillo*, 1 TOR3d 105, 106–07. As the Court explained in *Campillo*, “the test that needs to [be] applied [to determine whether double jeopardy exists] is whether the elements required to prove one charge is not present in the other . . . .” *Id.* at 108.

In this case, Mr. Miles was convicted of assault under 7 T.O.C. § 7.1(A)(1) and abuse of a person under 7 T.O.C. § 8.4(A)(2). The assault statute states that “[a] person commits the offense of assault if he or she commits any of the following acts: 1. with intent to cause bodily injury to another person he or she causes bodily injury.” 7 T.O.C. § 7.1(A)(1). In contrast, the abuse of a person statute provides that “[a] person commits the offense of abuse of a person if he or she intentionally causes or permits a person to be: 2. subjected to infliction of physical or mental injury.” 7 T.O.C. § 8.4(A)(2).

Although similar, these two statutes punish distinct conduct, with different elements to prove each. Abuse of a person occurs when a defendant causes or allows another to be “subjected to . . . injury,” and it penalizes both physical and mental injury. Assault, on the other hand, requires a defendant to “commit . . . bodily injury to another person” and is limited to physical injury. In determining whether criminal charges are the same for purposes of double jeopardy, Arizona courts “look to the elements of the offenses and not to the particular facts that will be used to prove them.” *State v. Ortega*, 220 Ariz. 320, 324, ¶ 9 (Ct. App. 2008). In the absence of conflicting Tohono O’odham law, we agree with that reasoning. Here the Nation needed to prove different elements for the two counts and sufficient facts were presented at trial to support conviction on both charges. Accordingly, Mr. Miles’s convictions and sentences do not implicate double jeopardy.

Because we find that the elements of the offense of abuse of a person are distinguishable from the elements of assault and there is no double jeopardy issue, we need not address Mr. Miles’s

argument asking this Court to construe legislative intent and determine whether the offense of abuse of a person implies a relationship between the parties.

Therefore, this Court affirms Mr. Miles's convictions and sentences.

Dated April 25, 2024



Hon. Tessa L. Dysart  
For the Panel

