



1
2
3
4
5 **IN THE HUALAPAI TRIBAL COURT OF APPEALS**
6 **HUALAPAI RESERVATION, ARIZONA**

7
8 HUALAPAI TRIBE.)

9 Appellee.)

10 v.)

11 LONGHAIR HAVATONE.)

12 Appellant.)

App. Div. Case No.: 2011-AP-007
Trial Court Case No.: 2010-CR-441AB

OPINION AND ORDER

13
14 COUNSEL: MARIE JAMES, Chief Prosecutor, for Appellee Hualapai Tribe.
ESTEVAN HERNANDEZ, Public Defender, for Appellant Longhair Havatone.

15 **Before Chief Justice Wes Williams, Jr., Justice Robert N. Clinton, and Justice Carole**
16 **Goldberg.**

17 Opinion by Chief Justice WILLIAMS.

18 **OPINION AND ORDER**

19 The Tribe filed a criminal complaint against appellant Longhair Havatone (hereafter
20 "Havatone") on November 2, 2010. The Tribal Court held a trial on the complaint on March 23,
21 2011 where Havatone was convicted of Disorderly Conduct (Hualapai Law & Order Code §
22 6.64), and two counts of Child Abuse (VIO)(Hualapai Law and Order Code § 6.200.A.4).
23 Havatone timely filed a notice of appeal of his conviction on March 29, 2011, within thirty (30)
24 days of sentencing, which took place on March 25, 2011. On appeal, Havatone asserts that his
25 right to a speedy trial was violated by the Tribal Court scheduling and holding his trial more than
26 ninety (90) days after the criminal complaint was filed.
27
28

1 The Hualapai Tribe's Law and Order Code requires all criminal trials to be held within
2
3 ninety days of the filing of a criminal complaint, unless extraordinary circumstances exist or the
4 defendant agrees in writing to waive his right to a speedy trial. Hualapai Law and Order Code §
5 5.15.A. "The trial of a criminal case shall take place within 90 days after the date on which the
6 complaint initiating the case was filed, unless extraordinary circumstances exist which require
7 further delay or the defendant consents in writing to a delay." *Id.* The prosecutor did not present
8 any argument that extraordinary circumstances existed to justify a delay in holding the trial.
9 Also no evidence was presented that Havatone waived in writing his right to a speedy trial.
10

11 In the case of *Tribe v. Coleen Mahone*, 2010-AP-014 (Hualapai Ct. App., May 26, 2011),
12 this Court held that failure to comply with the ninety-day period specified in Hualapai Law &
13 Order Code § 5.15.A violates a criminal defendant's rights under the Hualapai Constitution and
14 Law & Order Code to a speedy trial.

15 [B]efore trial the Tribe has the option of dismissing the charges against a
16 defendant and re-filing at a later date, thus, re-starting the speedy trial clock. The
17 initial and primary responsibility to monitor and assure compliance with the
18 defendant's statutory speedy trial rights set forth in Hualapai Law and Order
19 Code, Section 5.15(A), therefore, rests with the Prosecutor since only (s)he can
20 voluntarily dismiss a prosecution pre-trial if such rights might be violated. If the
21 Prosecutor takes a case to trial after the speedy trial date set forth in Hualapai Law
22 and Order Code, Section 5.15(A), the Tribe does so at its peril and the Tribe must
23 make a showing on the record of the extraordinary circumstances required by that
24 section for such actions. No such showing was made in this particular case.
25 Thus, we interpret Law and Order Code to establish an absolute time limit, which
26 can be relaxed only where the Tribal Court record clearly demonstrates
27 "extraordinary circumstances" or the defendant's proper written consent to a trial
28 later than the deadline set forth in Hualapai Law and Order Code, Section
5.15(A).

Tribe v. Coleen Mahone, at p. 6.

26 The *Mahone* decision provided the Tribal Court and prosecutor guidance on how to
27 comply with the speedy trial rule. Since that decision was issued a short time prior to oral
28

1 argument in this case, the Court will apply its holding to meet the interests of justice.¹

2
3 Since the Tribal Court record does not reflect any showing of extraordinary
4 circumstances or a written waiver by Havatone, the Tribal Court violated Havatone's right to a
5 speedy trial.

6 Based on the foregoing, Havatone's judgment of conviction is hereby vacated and the
7 Tribal Court is ordered to dismiss the complaint against Havatone with prejudice.

8 IT IS SO ORDERED ON BEHALF OF THE ENTIRE
9 PANEL

10
11 I Hereby Certify That I Have mailed
12 A True Copy To Public Defender
13 This 9th Day of Aug. 2001
14 Clerk of Court [Signature]

[Signature]
WES WILLIAMS JR.
CHIEF JUSTICE OF THE
HUALAPAI COURT OF APPEALS

Dated: August 5, 2011.

15 I Hereby Certify That I Have mailed
16 A True Copy To the Defendant
17 This 9th Day of Aug. 2001
18 Clerk of Court [Signature]

19 I Hereby Certify That I Have given
20 A True Copy To Prosecutor via in house mail,
21 This 10th Day of Aug. 2001
22 Clerk of Court [Signature]

23
24 ¹ Also based on the timing of the *Mahone* decision and in the interests of justice, this Court will
25 defer to a subsequent case addressing the issues raised in the Tribe's post-hearing brief regarding
26 the timing of and need for Havatone raising the speedy trial defense. The Court notes that
27 Havatone asserts broadly that no provision of Hualapai law requires an appellant to raise any
28 issue in the Tribal Court prior to appeal. This broad claim is generally incorrect, as this issue is
specifically addressed by Rule 2(c) of the Appellate Rules of Procedure. An issue generally
must be raised first in the Tribal Court proceedings, else it will only be considered on appeal in
the most extreme circumstances as stated in Rule 2(c). Appellants and their representatives
generally have a duty and responsibility to raise issues in a timely manner to allow the proper
and fair development of a case and of the law. Havatone's argument seeks to create a broad
general avenue of escape from these requirements that ignores the Rules of this Court. Of
course, whether the speedy trial issue raised in this case constitutes an issue that is subject to
Rule 2(c), or is instead governed by the requirements of Law and Order Code Section 5.15 and
the obligations imposed on the Prosecutor and the Court by this Court's decision in *Mahone*, is
one this Court leaves to another day. Since the *Mahone* decision had not been issued at the time
of trial in this case, this Court cannot fault and will not penalize the defendant in this matter for
failing to raise the *Mahone* speedy trial issue.