

**IN THE HUALAPAI TRIBAL APPELLATE COURT  
HUALAPAI JURISDICTION  
PEACH SPRINGS, ARIZONA**

HUALAPAI TRIBE,	)	
Plaintiff/Petitioner	)	Appellate Case No. 2011-AP-024
	)	RE: 2011-CR-271(A)
vs.	)	
	)	<b><u>ORDER</u></b>
HUALAPAI TRIBAL COURT,	)	
Respondent,	)	
	)	
THOMAS GROVER,	)	
Defendant/Real Party in Interest	)	
	)	
	)	

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**Before Justice Robert N. Clinton (Lead) and Chief Justice Wes Williams, Jr.  
and Justice Carole Goldberg**

**Background**

On August 5, 2011, the Hualapai Tribe (Tribe) filed a criminal complaint against Thomas Grover (Grover) alleging one count of Disorderly Conduct in violation of the Hualapai Law & Order § 6.64, with application of the sentencing enhancement of Chapter 7 of the Law and Order Code (Domestic Violence) because the charge involved a family or household member. Defendant entered a not guilty plea and a bench trial was set for October 3, 2011.

The criminal complaint alleged that on or about August 3, 2011, at or around 6:22 p.m., Defendant engaged in disruptive behavior while under the influence of alcohol. Defendant resides with Tami Querta (Querta), the mother of his child. Defendant allegedly yelled at Querta and attempted to throw beer bottles at her. According to the complaint, Defendant then pushed Querta over the house's swamp cooler and continued to yell at her. A third party witness then present at the home, allegedly hit Defendant in an attempt to keep him from attacking Querta. The witness then ran to a neighbor's house to call the Police. Hualapai Police Officers Moore, Heiselman, and Badilla responded to the witness' call, took verbal statements from individuals allegedly involved and searched the area for Defendant who appeared to have fled the scene. On the following day, August 04, 2011, Officers Moore and Heiselman returned to the scene and arrested Defendant.

On September 9, 2011, Defendant filed a motion to dismiss the criminal complaint, arguing that he could not be arrested a day after the offense in question under the Tribal Court's holding in *Hualapai Tribe v. Loren Bravo*, 2011-CR-220 (2011). On September 12, 2011, the Tribal Court found good cause to grant Defendant's motion for a hearing on his motion to dismiss and scheduled oral argument for September 19, 2011. After conclusion of oral argument, the Tribal Court by Order dated September 19, 2011 dismissed the criminal complaint against the Defendant with prejudice. First, the Tribal Court stated that the Hualapai Police had no authority to arrest Defendant a day after he allegedly committed disorderly conduct. Second, the Tribal Court stated that pursuant to the Hualapai Law & Order Code § 7.6(2), the Hualapai Police were required to forward the investigative report to the prosecution. On October 17, 2011, the Tribe filed a Petition for Writ of Mandamus directing the Tribal Court to vacate the September 19, 2011 order of dismissal with prejudice. That Petition was filed thirty (30) days after entry of the September 19, 2011 Order.

## **Discussion**

According to the Hualapai Rules of Appellate Procedure, extraordinary writs are orders, "often issued by an appellate court, making available remedies not regularly within the powers of lower courts." Hualapai R. App. P. 16(a). As suggested by their name, such writs generally are employed by appellate courts where extraordinary circumstances require appellate court intervention in an emergency or urgent matter that cannot await the appeal, if any is available, of the final judgment in a matter. The writ of mandamus constitutes one of the available extraordinary writs. In such circumstances, the Hualapai Court of Appeals has the power to issue writs of mandamus compelling a judge or judges of the Tribal Court to "perform an act which Hualapai law or applicable federal law recognizes as a duty." Hualapai R. App. P. 16(a)(ii). To invoke the jurisdiction of this Court to issue such extraordinary writs, the Hualapai Rules of Appellate Procedure require that a petitioner must file a written statement of the facts and issues relevant to granting such a petition within fifteen (15) days after the Tribal Court's ruling. Hualapai R. App. P. 16(c)(i). This brief time period is consistent with the extraordinary and emergency nature of extraordinary writs.

In this case, the Tribal Court dismissed with prejudice the criminal complaint against Defendant on September 19, 2011. The Tribe did not file its Petition for Writ of Mandamus until October 17, 2011 – 30 days after entry of the Order of the Tribal Court that the Tribe seeks to contest. In *Hualapai Tribe v. Tribal Court, Real Party in Interest, Loren Bravo, Sr.*, No. 2011-AP-017 (2011), this Court dismissed a similar application for Writ of Mandamus that had not been filed within the fifteen (15) day period specified in Rule 16(c)(i). Accordingly, since Petitioner's Petition for Writ of Mandamus was not timely filed, the Tribe has not properly invoked the jurisdiction of this Court. For this reason, this Court must and hereby does dismiss the Petition for Writ of Mandamus in this matter as untimely.

In reviewing the record in this case, however, this Court was surprised that the dismissal of the criminal complaint was entered "with prejudice" instead of "without prejudice." In light of the analysis of the issue offered in *Hualapai Tribe v. Tribal Court, Real Party in Interest, Loren Bravo, Sr.*, No. 2011-AP-017 (2011), such a pretrial dismissal should be *without prejudice*. As no jury was impanelled in this matter, jeopardy had not attached and, therefore, any pretrial dismissal should have been *without prejudice*. This Court is not clear whether the phrasing of the Order in this matter resulted from a clerical error or a legal mistake on the part of the Tribal Court. Presuming that the dismissal here was meant to be without, rather than with, prejudice by the Tribal Court and that the final order did not so read through a clerical error, this Court in the exercise of its supervisory powers hereby corrects the Order of September 19, 2011 to read that the dismissal is *without* (rather than with) prejudice.

Accordingly, the Petition for Writ of Mandamus is dismissed as untimely and the Order of the Tribal Court of September 19, 2011 is corrected to reflect that the dismissal is *without* (rather than with) prejudice. The prior Order of this Court setting oral argument in this matter for Friday, March 16, 2012 at 1:30 PM is hereby vacated and that argument is cancelled.

IT IS SO ORDERED

Entered this 13th day of March, 2012  
on behalf of the entire Court of Appeals panel.

By: Robert N. Clinton  
Robert N. Clinton  
Justice