IN THE HUALAPAI COURT OF APPEALS

HUALAPAI RESERVATION, STATE OF ARIZONA

THOMAS GROVER, Appellant	)	Case No.: 2009-AP-011 Re: 2009-CR-032AB
v.	)	OPINION AND ORDER
HUALAPAI TRIBE, Appellee	)	

Before Justices Carole Goldberg, Pat Sekaquaptewa, and Robert N. Clinton

Opinion by Justice CLINTON

OPINION AND ORDER

Statement of Relevant Facts and Procedural History

Appellant was charged with Count A, Battery VIO[1] pursuant to Law and Order Code Section 6.87A, and Count B VIO pursuant to Section 6.200A4. The Criminal Complaint alleged the Appellant committed the offenses on December 23, 2008, when he reportedly argued with Tammy Querta, with whom he lives and has a child. The Criminal Complaint further alleged the Appellant stated he was going to kill Tammy and grabbed her around the neck to choke her. Count B alleged the Appellant committed the acts in Count A in front of a child, thereby committing Child Abuse VIO.

On March 13, 2009, Appellant pled not guilty at the arraignment. Appellant submitted a Motion to Continue on the date of his pre-trial hearing, June 10, 2009, as he was participating in Advocate Training. On July 13, the date of the re-scheduled pre-trial hearing, Appellant submitted a motion for a jury trial. The Judge scheduled the trial for September 15, 2009. On July 21, 2009, Judge Flores denied the motion for a jury trial, stating the defendant had failed to appear at the pre-trial hearing.

On September 15, 2009, Appellant moved to dismiss the case based on a violation of his constitutional right to a speedy trial. He also disputed the dismissal of his motion for a jury trial. The Court reviewed the tapes and found Appellant had appeared at the pre-trial hearing on July 13, and therefore, reconsidered and granted the motion for a jury trial. The Judge denied Appellant's motion to dismiss based on a constitutional violation

1 "VIO" in a Hualapai criminal complaint apparently indicates that a particular offense is a domestic violence offense that is subject to different sentencing guidelines under the Hualapai Law and Order Code.

of his right to a speedy trial.

The Tribal Court rescheduled the trial for November 23, 2009. At trial, the Tribal Judge limited to three the number of cause challenges during jury selection. Appellant objected, arguing that this limitation on the number of cause challenges violated his constitutional rights, as he was no longer guaranteed a fair and impartial jury trial. The Tribal Court nonetheless refused to allow Appellant any further challenges for cause.

The jury returned a verdict of NOT GUILTY on both Counts A and B. Appellant submitted a Notice of Appeal on the same day and a judgment of acquittal was entered the same day on both Counts. In his timely but content deficient "Notice of Appeal" filed on November 23, 2009, Appellant only stated he was appealing the criminal judgment without noting any other order or stating the reasons or basis for his appeal. During the January 15, 2010 hearing before the Court of Appeals, Appellant asserted that his constitutional rights had been violated by the Tribal Judge's limit to three of cause challenges in jury selection.

Issue

Whether because of the final judgment acquitting Appellant/Defendant on all counts this Court lacks jurisdiction over Appellant/Defendant's claim of error either because the case does not fall within the constitutional and statutory jurisdiction of this Court under Hualapai law or because his claim is moot.

Jurisdiction

The Hualapai Court of Appeals is a court of limited jurisdiction that may review final judgments of the Tribal Court in civil, criminal, and juvenile matters. Law and Order Code Section 10.2. Additionally, a written Notice of Appeal must be timely filed within five days after the final judgment is entered. Law and Order Code Section 10.4.

In the present case, the Tribal Court acquitted Appellant on both charges on November 23, 2009. Appellant filed his Notice of Appeal the same day, on November 23, 2009. Accordingly, Appellant tried to invoke the jurisdiction of this court by filing his Notice of Appeal in a timely manner following his final judgment of sentence. Nevertheless, as more fully explained in *Hualapai Tribe v. Paya*, 2009-AP-008 (Hualapai Ct. App. 2009), argued the same day, the Notice of Appeal in this case failed to fully comply with the requirements of Hualapai law. As more fully discussed below jurisdiction may be destroyed, or the exercise of jurisdiction may be inadvisable as a matter of judicial restraint, if the appeal is or becomes moot. More importantly, as also more fully discussed below, this case fails to come within the jurisdiction of this Court as set forth in the Hualapai Constitution and Law and Order Code.

Scope of Review

Article VI, section 12 of the Hualapai Constitution provides that "[a]ll matters of

law and procedure may be decided by the Court of Appeals. Findings of fact shall be made by the Trial Court, and shall be reviewable only when arbitrary and capricious." Accordingly, in considering this appeal, the Court may review legal errors *de novo*. Appellant does not contest any factual findings below and presents solely a question of law. More importantly, this Court has power to raise questions of its subject matter jurisdiction on its own motion and considers or reviews such question *de novo*.

Discussion

Echoing the language of the Hualapai Constitution, Section 10.3 of the Hualapai Law and Order Code provides that a "defendant in a criminal action *dissatisfied with a final judgment or order of the Tribal Court* may appeal therefrom to the Tribal Court of Appeals. (Emphasis supplied). *See also,* Hualapai Constitution, Art. VI, sec. 12. Thus, the right of appeal depends on dissatisfaction with the "final judgment or order of the Tribal Court," not antecedent rulings of the Tribal Court, such as rulings in jury selection, unless such rulings adversely impacted the final judgment or order in a fashion that reasonably caused the party appealing to be "dissatisfied." By this language, mere unhappiness with judicial rulings in some earlier phase of the proceedings not material to the "final judgment or order" does not constitute a reasonable ground for appeal.

The jury found Appellant not guilty on both Counts A and B, and the Tribal Court entered a final judgment of acquittal of the Appellant on all counts and closed the case. Appellant's appeal of a violation of his constitutional rights raises the issue of jurisdiction and mootness, because the acquittal negates the underlying controversy in the case and may cause the case to fall outside the requirements for appeal under the Hualapai Constitution and the Law and Order Code.

This Court has previously found that in cases where the dispute or conflict leading to the appeal no longer exists, the case is moot. *Washington v. Hualapai Tribe*, 2009-AP-002, at 3 (Hualapai Ct. App. 2009). In cases that are moot, not ripe for consideration, not fully developed, or anticipating issues that have not yet risen, this Court has also held it should decline to issue an advisory opinion based on principles of judicial restraint. *Hualapai Tribe v. Paya*, 2007-AP-003, at 4 (Hualapai Ct. App. 2007). Thus, this Court should decline to address the alleged constitutional issue in this case if it has become moot with the defendant's acquittal and if it therefore falls outside the requirements of Hualapai Constitution, Art. IV, sec. 12 and Hualapai Law and Order Code, Section 10.3

The case of a criminal defendant appealing his own acquittal constitutes a particularly strange event and raises an unusual issue of first impression. First, this Court fails to see how a criminal defendant can be "dissatisfied" with a final judgment of acquittal on all counts as required for the ability to appeal under Hualapai Law. Second, the Court believes that the mootness doctrine may also foreclose criminal defendants from appeals judgments of acquittal, even where, as here, they are unhappy about earlier adverse rulings of the court in their case. On this mootness question, the Court of Appeals can also be "guided by common law as developed by other tribal, federal or state courts" in determining how to approach the issue of mootness. Law and Order Code

Section 3.1.

The Supreme Judicial Court of Maine decided a similar issue of mootness in an appeal in a criminal trespass case, in which the defendant appealed a denial of his application for a writ of habeas corpus even though he had been released and acquitted. See *Leigh v. Superintendent*, 817 A.2d 881 (Me. 2003). The defendant argued the competency hearing preceding his civil commitment violated his right to due process of law. The court held since the defendant had been released from civil commitment and found not guilty, the issue was moot, having lost its "controversial vitality." *Id.* at 883. The court further found that none of the three exceptions to mootness had been met, those being (1) sufficient collateral consequences will flow from a determination of the questions presented, (2) the question, although moot in the immediate context, is of great public interest and should be addressed for future guidance of the bar and public, or (3) the issue may be repeatedly presented to the trial court, yet escape review at the appellate level because of its fleeting or determinate nature. *Id.* At 884.

As a practical matter, the acquittal ended Appellant's legal controversy with the Hualapai Tribe. If this Court were to rule on Appellant's claim of error in jury selection and reverse the Tribal Court's decision, Appellant would be no better off. He would gain no additional benefits or remedy beyond the acquittal. Likewise, Appellee Tribe would be no worse off if this Court were to reverse the Tribal Court's ruling on jury selection. Thus for two reasons this Court has no jurisdiction over his appeal. First, he is not claiming dissatisfaction with the "final judgment or order" of the Tribal Court, but, rather, with an earlier order that he cannot claim materially contributed to dissatisfaction with the final order or judgment as required by Section 10.3 of the Hualapai Law and Order Code and Article IV, section 12 of the Hualapai Constitution. Second, the appeal is moot.

Mootness doctrine is designed to ensure that parties advocating on appeal have a real incentive to pursue their arguments, and that the resources of the court system are conserved for cases with consequences that matter to the parties. Furthermore, mootness doctrine protects the court system from the appearance of bias that may arise if courts reach out to decide issues that have no practical consequences. All of the reasons for mootness doctrine apply to the Hualapai court system and to this appeal.

The exceptions to the mootness doctrine that are often applied in tribal, federal, and state court systems do not provide an opportunity for this appeal to continue. *See, e.g., Eggers v. Richardstiff*, 2001 Crow 9 (Crow 09/13/2001); *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167 (2000); *Riley v. INS*, 310 F.3d 1253 (10th Cir. 2002); *Atlantic Richfield Co. v. United States Dep't of Energy*, 769 F.2d 771, 784 (D.C. Cir. 1984). There is no evidence of sufficient collateral consequences from denying a review of the process of for cause jury selection in this case. The question does not amount to one of "great public interest." Finally, the issue of for cause jury selection can be resolved on appeals in other criminal cases, in which the verdict of guilty continues the underlying controversy.

During the January 15, 2009 hearing, Appellant argued that this Court's decision in *Hualapai Tribe v. Wescogame*, 2007-AP-006 (Hualapai Ct. App. 2007) supports allowing the appeal in his case. Nothing could be further from the case. In *Wescogame*, this Court allowed the Tribe to appeal a *partially* favorable final judgment, declining to characterize the appeal as moot or to find that the appellant lacks standing to appeal precisely because the final judgment in the case did not have the legal force and effect sought by the appellant in the Tribal Court. The facts of *Wescogame* are far different from those of this case, however. *Wescogame* involved the Tribal Court's creation of new judicial procedures and criteria for criminal expungement. Although the Tribe argued to the Tribal Court that it lacked the power to expunge a criminal record, the Tribal Court disagreed, finding no violation of the separation of powers. After taking evidence in Wescogame's case, the Tribal Court ultimately concluded that the criminal record in that case did not meet the requirements for criminal conviction expungement, a cause of action which it had created and defined in that case. Although the Tribe prevailed factually in the case since the Tribal Court declined to expunge the conviction of the petititoner, the Tribe nonetheless appealed, claiming that the Tribal Court should have granted its motion to dismiss the expungement proceeding for lack of any such cause of action.

In *Wescogame*, this Court accepted the Tribe's appeal, declining to find that the Tribe's victory in the court below had foreclosed jurisdiction or rendered the appeal moot. It accepted the appeal because the Tribal Court's decision to proceed with the expungement action represented an adverse outcome for the Tribe and resulted in a final judgment or order which was not to the satisfaction of the Tribe since it awarded the nevertheless victorious Tribe less relief than it sought. In *Wescogame,* the Court wrote that since the final judgment, while in favor of the Tribe, awarded it far less relief than it sought, the Tribe had:

> a continuing threat of injury [that] explains why the Tribe is "dissatisfied" within the meaning of both the Hualapai Constitution and section 10.3 As such, the Tribe had a lawful right to appeal even though in one sense it may have been the prevailing party in this proceeding in the Tribal Court.

Id. at pp. 8-9. The Court noted that in other jurisdictions even a prevailing party who secures less than all relief sought from a final judgment may appeal that final judgment. *E.g. Forney v. Apfel*, 524 U.S. 266 (1998); *Aetna Casualty & Surety Co. v. Cunningham*, 224 F.2d 478 (5th Cir. 1955). As this Court phrased it in *Wescogame*, a prevailing party who nevertheless got only "half the loaf" that they sought, can appeal under Hualapai law because they are "dissatisfied" with the "final judgment or order" and they can claim error insofar as they failed to get the remainder of the loaf they sought.

In this case, the Appellant makes no such claim. Rather, he was acquitted on all counts through the final judgment of the Tribal Court. He received all the relief he sought through the judgment of acquittal. In no sense did he get half a loaf through that judgment; he got everything he sought in the final judgment of the Tribal Court. While he may be unhappy, and perhaps rightly so (although we express no opinion on the

issue), with the Tribal Court's preliminary ruling limiting to three cause challenges during jury selection, that is a preliminary ruling, not the "final judgment or order." The only matter appealable under Hualapai law, a final judgment or order, gave the Appellant all the relief he sought; he got the whole loaf! Thus, as a matter of law, unlike the Tribe in *Wescogame*, he cannot be dissatisfied with the final order or judgment of the Tribal Court, as required under Hualapai law to invoke this Court's jurisdiction.

Conclusion and Order

In light of Appellant's acquittal on all charges in this matter, under Article IV, section 12 of the Hualapai Constitution and section 10.3 of the Hualapai Law and Order Code, this Court lacks jurisdiction over Appellant's claim of a violation of his constitutional rights during jury selection in his criminal trial. Additionally, such claims are moot on appeal since Appellant was acquitted on both Counts A and B. None of the exceptions to mootness applies here. This Court's precedents also weigh in favor of exercising judicial restraint in cases where the underlying controversy no longer remains on appeal.

For the foregoing reasons, IT IS ORDERED that this appeal must be and hereby is DISMISSED for want of jurisdiction.

Entered this 17th day of February, 2010
on behalf of the entire panel.

Robert N. Clinton
Associate Justice