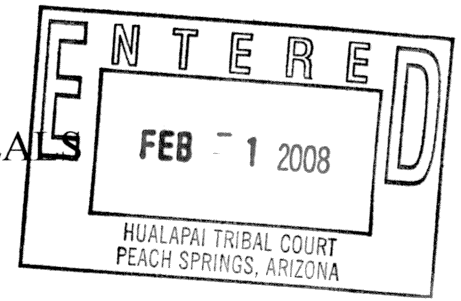


IN THE HUALAPAI COURT OF APPEALS
HUALAPAI NATION

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MORGAN COOK,)	Case No.: 2007 -AP- 007
)	(Trial Court Case No. 2007-CR-174)
Appellant,)	
)	ORDER
vs.)	
)	
HUALAPAI TRIBE,)	
)	
Appellee.)	
_____)	

This matter comes before the Court of Appeals on Appellant's, Morgan Cook, Notice of Appeal, filed on October 8, 2007. The Tribe filed their response on November 28, 2007.

Having reviewed the Notice of Appeal, Response, and record, this Court finds that oral argument is not necessary in order to resolve this matter. The sole remaining issue of Appellant's legal representation can be resolved based upon the record. Based upon that record, Appellant's argument that her due process rights to legal representation were violated in this case is found to be groundless. The Appeal is denied.

Discussion

From the Notice of Appeal, it appears that the Appellant is seeking to raise three issues. The Appellant did not file a brief in this matter, therefore the only issues and argument presented to this Court are those set forth in a very limited manner on the Notice of Appeal and in an

unsigned pleading filed on October 29, 2007. The Tribe's response to the issues raised by the Appellant was rather limited as well, with the Tribe stating that the notice is "insufficient for the Tribe to adequately respond". The Tribe's response was filed on November 28, 2007 and this Court, in its November 18, 2007 Order, had already found that two issues were foreclosed. Neither the Appellant nor the Appellee filed briefs addressing the remaining issue.

The first issued raised by the Appellant was Sec. 1.24 (1)(a) of the Notice of Appeal form, which states "That a Witness ready and willing to testify at the time of trial on behalf of the appellant was not allowed by the trial judge to take the witness stand and to testify and that such testimony would have materially altered the judgment of the trial court." This Court found that the Appellant was foreclosed from raising this issue because she failed to name any proposed witnesses or attach sworn written statements from any proposed witnesses to the Notice of Appeal. Further, from the record, it does not appear that the Appellant brought any witnesses or asked the Court to subpoena any witness on her behalf for the trial. The Appellant also failed to name any witnesses. The second issued raised by the Appellant was Sec 1.24 (1)(c) of the Notice of Appeal form, which states "That after the trail, the appellant discovered material evidence which, with reasonable diligence could not have been discovered and produced at trial and that such evidence would have materially altered the judgment of the trial court." Again, the Appellant failed to attach anything to the Notice of Appeal stating the nature of the newly discovered evidence, why it was not previously discovered or how it would have altered the trial court's judgment. Having failed to do so, this Court previously found that the Appellant was foreclosed from arguing the matter further.

On November 18, 2007, this Court advised the parties that the only remaining issue was

Appellant's due process argument relating to her legal representation at trial. The Appellant alleges that her legal advocate, Thomas Grover, was also an acting prosecutor in this case. The Tribe argues that there was no due process violation because although Thomas Grover represented the Appellant at the preliminary stages of this case, the Appellant waived legal counsel and elected to represent herself prior to the trial.

In support of her argument, the Appellant attached a copy of the July 2, 2007 Arraignment Order which shows that the Defendant, Morgan Cook, was present with her Defense Counsel Thomas Grover. Thomas Grover entered a Notice of Appearance on July 2, 2007. From a review of the record it does not appear that Mr. Grover ever filed a Motion to Withdraw. The Appellant also attached a copy of the Trial Court's August 29, 2007 Order wherein the Court granted the Tribe's request for Subpoenas. In the text of the August 29, 2007 Order, the Trial Court stated "On August 28, 2007 Acting Prosecutor Grover filed a Motion for Issuance of Subpoenas ...". In reviewing the file it becomes clear that the statement by the Court "Acting Prosecutor Grover filed" is simply a misstatement. On August 28, 2007, the Tribe filed a "Notice of compliance with discovery; notice of witness(es) to be called to testify at trial; and exhibits expected to be presented in trial; and motion to issue subpoenas" the document was signed by Marie James, Chief Prosecutor with a notation that a copy was delivered to Thomas Grover on 8/28/07. Chief Prosecutor James filed the request for Subpoenas not Grover. Grover was simply given a copy of the pleading. Therefore, it is clear that the Appellant was not represented by and prosecuted by the same legal representative, which would have been a due process violation

The real issue in this case is whether or not the Appellant's due process rights to legal

representation at trial were violated when the Trial Court proceeded with a Bench Trial in this matter on September 17, 2007 in the absence Thomas Grover. As a general rule once an advocate has filed a Notice of Appearance they become counsel of record in a case. As counsel of record for a party they become responsible for accepting copies of all pleadings and court orders on behalf of their client, responsible for filing appropriate pleadings, and must appear in Court with their client. Generally, the counsel of record's responsibility continues until either the case is completed, the Court grants a Motion to Withdraw or the client otherwise terminates the legal representative-client relationship.

In this case, the Appellant states in an October 29, 2007 unsigned pleading:

From the beginning of this case, Mr. Thomas Grover was representing me. However, since the first Court hearing, Mr. Grover did not make contact with me on this matter at any time. On the day of Bench Trial, I was waiting for Mr. Grover to show up, but he never did. He did not inform me in writing or verbally that he would no longer represent me. He did not inform the Court that he had withdrawn himself from my case. Therefore I was not sure of what was happening in Court. I am not familiar with the procedures of a Bench Trial, nor how to represent myself in Court. I felt that it was unfair for me to go through Trial without any Counsel. Knowing that I was there by myself, Judge Honga should have asked me if I would like a continuation, but he did not offer that choice.

The Tribe argues in its November 28, 2007 Response to the Notice of Appeal that the Appellant "opted to represent herself and asked for her mother to sit next to her for support."

From the written record in this case, this Court cannot determine why Mr. Grover was not present at the September 17, 2007 Bench Trial. Had Mr. Grover filed a written Motion to Withdraw this matter could be easily resolved. However, the written record does not contain a written Motion to Withdraw from Mr. Grover. Although the best practice would be the filing of a Motion to Withdraw to terminate the legal representative-client relationship after a Notice of Appearance has been filed, the relationship can be terminated in other ways. For example, a client

can decide to waive their right to legal representation and proceed to represent themselves, essentially discharging their legal representative. However, the decision to waive legal representation must be clear from the record, it cannot be implied.

In this case, the Court asked the Appellant a number of questions pertaining to Mr. Grover and whether or not she wanted to waive legal representation and proceed on her own before proceeding with the Bench Trial. The following exchanges took place prior to the start of the Bench Trial:

Court: . . . Notice of Appearance by Mr. Grover. Is he not going to be defending you today?

Ms. Cook: No.

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Court: Are you going to be defending yourself in this matter?

Ms. Cook: Yes.

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Court: Ms. Cook the Prosecutor just wants it stated clearly for the record that there is a Notice of Appearance by Mr. Grover entered and that you are waiving your right to counsel. Is that correct?

Ms. Cook: Yes.

Court: That you do not wish Mr. Grover to be here?

Ms. Cook: No.

By responding to the Court's questions in the manner that she did, the Appellant effectively waived her right to have legal representation at the Bench Trial. Again the record would have

been somewhat clearer if the Court would have established that the Appellant was knowingly and voluntarily waiving her right to counsel and then explicitly entered that finding on the record. However, because the Appellant told the Trial Court that she would be defending herself and did not want Mr. Grover appearing, the Trial Court did not violate her due process right to legal representation by then proceeding with the Bench Trial.

The Appellant argued in her October 29, 2007 pleading that the Court “Knowing that I was there by myself, Judge Honga should have asked me if I would like a continuation”. Had the Appellant told the Court on September 17, 2007 that she wanted Mr. Grover to be present it would have been error not to continue the matter in order to allow defense counsel to appear. But that is not the case here. Here, the Appellant told the Court that Mr. Grover would not be defending her, that she did not want Mr. Grover to be present, and that she would be defending herself in this matter. Given the Appellant’s statements there was no error in the Trial Court proceeding with the Bench Trial.

Further, the Appellant did not tell the Court that she needed additional time to obtain legal representation, telling the Court that she would defending herself. In short, the Appellant did not ask for a continuance. Because the Appellant did not, in any way, indicate to the Trial Court that she needed more time it was also not error for the Trial Court to proceed without asking Appellant if she wanted a continuance. The Appellant had the burden of requesting that the matter be continued and stating the grounds for the request.


IT IS ORDERED denying the Appeal for the reasons set forth above.

IT IS FURTHER ORDERED lifting the stay of sentence and vacating the release.

IT IS FURTHER ORDERED remanding this matter back to the Trial Court for final

consideration of the Tribe's December 21, 2008 Motion for Release.

So ORDERED this 29th day of January, 2008.


Justice Gloria Kindig

Mailed to : Appellant Cook on: 2/6/08 via mail
Appellee Hualapai Nation on: 2/8/08 via in-house