

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RONALD F. ROMERO
Petitioner,

v.

No. CV 09-0232 RB/DJS

DONNA GOODRICH, Warden
Gallup McKinley Adult Detention Center

AND

PUEBLO OF NAMBÉ
Respondents

AFFIDAVIT OF JUDGE MARTI RODRIGUEZ

I, THE UNDERSIGNED, JUDGE MARTI RODRIGUEZ, Pueblo of Nambé Tribal Court, being sworn, state under oath:

1. I have been the Tribal Judge for the Pueblo of Nambé since 2003. I have also served as a pro tem judge at other Pueblos for several years. I attend judicial trainings each year. This year I am teaching classes for Tribal and State judges, including one in coordination with the New Mexico Attorney General's Office. I attended numerous classes offered through the State Judicial Education Center.
2. I informed Petitioner of the charges against him and the maximum penalty for each of the twelve (12) counts at his arraignment held on February 26, 2007 and again at the start of his trial. On both occasions I cited to New Mexico Statutes as adopted into tribal law pursuant to Tribal Council Resolution NP-96-28, read the specific charge against him under each statute and informed him of the maximum penalty for each count. I asked Petitioner if he understood the charges against him and the possible penalties at his arraignment and he said he understood and he didn't have any questions.

3. At Petitioner's arraignment I informed him of his right to a jury trial. I also informed him at his arraignment that he had a right to counsel at his own expense. I explained to him that under either Tribal Law or the Indian Civil Rights Act he did not have the right to free counsel at the Pueblo's expense. I asked him if he understood his rights and he said yes.

4. At the arraignment, Petitioner stated that he desired to have lay counsel. After the arraignment and Prior to the pre-trial conference, I personally made many attempts to secure legal counsel for Petitioner with Petitioner's understanding that if any qualified legal counsel wouldn't take his case pro bono, Petitioner would be financially responsible for his representation. I searched for lay counsel within the Pueblo community, called Indian Legal Aid, called the American Indian Law Center at the University of New Mexico School of Law (counsel for Petitioner in this Habeas Corpus Petition) and called the Volunteer Lawyers of Albuquerque, New Mexico and a number of individual lawyers. All requests were turned down including the request to current counsel in this case.

5. On March 30, 2007, a pre-trial conference was held at which Petitioner was offered a plea agreement. The plea agreement was handed to Petitioner by Officer Warren Candelaria, the arresting officer in this case. I did not participate in any negotiations regarding any plea agreements offered to Petitioner. I was not in the same room as Petitioner while plea agreements were discussed. Petitioner did not accept the plea agreements offered to him by the prosecution through Officer Candelaria.

6. At the pre-trial conference held on March 30, 2007, Petitioner informed the Court that he would hire an attorney to represent him.

7. On May 4, 2007, the Tribal Prosecutor filed an amended complaint in the Nambé Tribal Court. The amended complaint was served on Petitioner by faxing a copy of the Amended

Complaint to the prison at which Petitioner was incarcerated, with a cover letter asking the prison to provide the documents to petitioner. The documents faxed to the prison by the Court included the amended criminal complaint, witness statements, and a probable cause statement.

8. I was the presiding judge at the bench trial of Petitioner Ronald F. Romero on May 30, 2007, on charges relating to several incidents of domestic abuse that occurred on or about February 22, 2007.

9. Petitioner arrived at the Tribal Court on the day of his bench trial without legal representation. I offered to grant a continuance to provide more time to Petitioner to secure legal representation provided Petitioner would sign a waiver of his right to a trial within six months of arrest. Petitioner refused to sign the waiver.

10. I did not appoint arresting officer and witness Warren Candelaria as lay counsel for Petitioner at the pre-trial conference or at the Petitioner's trial. Officer Candelaria did not act as an advocate for Petitioner at any time during proceedings at the Nambé Tribal Court.

11. I gave Petitioner instructions on procedures and rules at the beginning of, and during, his trial in Tribal Court and permitted him an opportunity to ask questions regarding the procedures and the information I gave him.

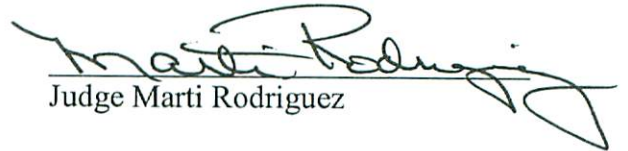
12. I informed Petitioner of his right to a jury trial at his arraignment but Petitioner did not request a jury trial until after he was sentenced on June 15, 2007.

13. Petitioner filed a Notice of Appeal of his conviction and sentence immediately following the sentencing hearing on June 15, 2007. A copy of that Notice is **Attachment 1** to this Affidavit.

14. At the sentencing hearing I described the reasons I imposed the sentence on Petitioner including his lack of remorse, his failure to take responsibility for his actions and his long list of prior infractions of the law which included several violent episodes.

15. Petitioner did not ask to have me replaced as Judge in his Tribal Court case until after sentencing.

16. Petitioner exercised his right under Tribal Law to appeal. The Pueblo asked the Southwest Inter Tribal Court of Appeals ("SWITCA") to hear the appeal. **Attachment 2** is a copy of SWITCA Judge Wall's opinion on Petitioner's case which exhausted his tribal remedies. Further affiant sayeth not.


Judge Marti Rodriguez

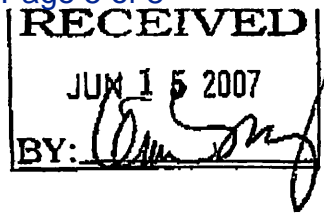
SIGNED AND SWORN TO before me this 9th day of April, 2009 by Judge Marti Rodriguez.

Notary Public: 

My commission expires:

Aug. 16, 2012





STATE OF NEW MEXICO

SANTA FE COUNTY

NAMBE PUEBLO TRIBAL COURT

Route 1 Box 117 BB

Nambe Pueblo, New Mexico

PUEBLO OF NAMBE,
Plaintiff

NO. CR-07-011

Vs

RONALD ROMERO,
Defendant

NOTICE OF APPEAL

Defendant hereby appeals the decision of the Nambe Pueblo Tribal Court in the above cause.

Dated: June 15, 2007

Ronald Romero
Signed
Ronald Romero
Name (print)
Rt 1 Box 117 BB
Address (print)
Santa Fe NM
City, state and zip code (print)

Telephone Number

(To be completed if Appellant desires to stay execution of Judgment)

Appeal bond is hereby set at \$ 5,000 cash only

Marta Rodriguez

Judge, Nambe Tribal Court

If a bond is not approved by the trial court within 15 days after the filing of the Notice of appeal, the collection of the judgment of the trial court may not be stopped. If a supersedes bond is approved by the trial court, a copy shall be forthwith filed with the appellate court.

ATTACHMENT 1

1 certify that this document is an exact copy of the original filed at Nambe Pueblo Tribal Court
Hymé-Dominguez
Court Clerk

IN THE SOUTWEST INTERTRIBAL COURT OF APPEALS FOR
TRIBAL COURT OF NAMBE PUEBLO
NAMBE, NM

Ronald Romero,

Appellant,

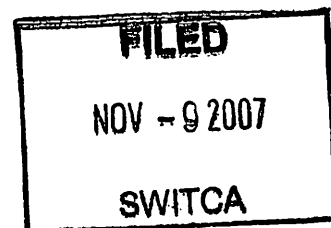
v.

Pueblo of Nambe,

Appellee.

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Cause Numbers
SWITCA 07-004-NTC
CR-07-011



SWITCA No. 07-004-NPTC
NPTC No. CR 07-110

Appeal Filed on July 11, 2007
Appealed from the Nambe Pueblo Tribal Court,
Marti Rodriguez, Judge

Stephen Wall, Judge
Southwest Intertribal Court of Appeals



NAMBE FILED TRIBAL COURT
SIG. [Signature]
11/20/07

SUMMARY

On May 30, 2007, the Tribal Court of the Nambe Pueblo found the Appellant guilty of twelve (12) charges including three counts of False Imprisonment and one count each of Battery on a Household Member, Assault on a Household member, Battery, Assault, Assault on a Peace Officer, Criminal Damage to Property, Interference with Communication, and Criminal Trespass.

After a Sentencing Hearing on 15 June 2007 the Nambe Pueblo Tribal Court sentenced the Appellant to the maximum jail sentence allowed for each charge under the Indian Civil Rights Act, 25 USCA 1302 (7). The sentence for four (4) counts were to run concurrently and the remaining eight (8) counts were to be served consecutively for a total of 2,920 days in jail. In addition, the Appellant was fined one thousand dollars (\$1000) per count, however the fine for five (5) of the counts was suspended leaving fines totaling seven thousand dollars (\$7000) plus fifty dollars (\$50) in court costs. Lastly, the Nambe Pueblo Court ordered the Appellant to five (5) years probation upon his release from the Chief Ignacio Justice Center.

Immediately after the sentence was entered, the Appellant appealed the Court's order to The Nambe Tribal Council. The Nambe Tribal Council, upon advice of counsel, submitted the appeal to the Southwest Intertribal Court of Appeals (SWITCA) on 17 July 2007. SWITCA jurisdiction in this matter is based in SWITCARA # 2(a) and resolutions passed by the Nambe Tribal Council establishing a relationship with SWITCA. The

Notice of Appeal dated 15 June 2007, did not identify specific grounds for appeal and the Appellant was represented *pro se* during the trial and sentencing hearing. Since the Appellant was represented *pro se*, the SWITCA will liberally construe the application of SWITCARA # 11(e), rules of procedures relating to the contents of the notice of the appeal. Also the Nambe Tribal Court Appeal notice form does not provide all of the information that is required under SWITCARA #11(e) and the Defendant did not know of the SWITCA requirements. The SWITCA will allow the appeal to be heard. During the trial and in a subsequent letter to the Nambe Pueblo Tribal Court, the Appellant requested that the charges be dismissed since he did not have the benefit of counsel and that he was not "Mirandized", meaning that the Appellant was not read or apprised of his right against self-incrimination under the United States Constitution at the time of arrest. SWITCA will assume that the grounds for the appeal are based in the Appellant's complaints about the lack of access to counsel and the failure to be Mirandized, since no other issues were specifically identified by the Appellant and in its review of the record, SWITCA did not find any other possible bases for appeal.

RIGHT TO COUNSEL

The Appellant is claiming that he was denied the right to counsel and therefore the charges must be dismissed because of that denial. The right to counsel is guaranteed to defendants in criminal trials in American Indian tribal courts through the Indian Civil Rights Act, 25 USCA 1302 (6). The Indian Civil Rights Act was passed to guarantee Indian defendants in tribal courts some of the rights that extend to American citizens in Federal and State courts since the Bill of Rights protections of the United States Constitution do not apply to tribal governments. The Indian Civil Rights Act was very clear that the right to counsel in tribal court was not an absolute right. The wording of 25 USCA 1302 (6) indicates that the right to counsel is dependent upon the defendant's ability to secure and pay for counsel. There are some tribes that have the funds to provide indigent legal counsel in criminal cases in tribal court, but apparently the Pueblo of Nambe does not provide that service. In this case, the court record indicates that the Judge for the Tribal Court of Nambe Pueblo made an effort to identify counsel for the Appellant. The Appellant had quite a bit of time from the time arrest to locate counsel and had the option to continue the case pending his ability to secure counsel. The record does not show any request by the Appellant for a continuance pending the securing of counsel. The Appellant does not have an absolute right to counsel. The Court made a reasonable attempt to locate counsel for the Appellant and the record does not indicate that the Appellant made any attempt to locate counsel on his own behalf or requested a continuance to provide additional time to secure counsel. Thus there is no basis for dismissing the charges based on denial of right to counsel.

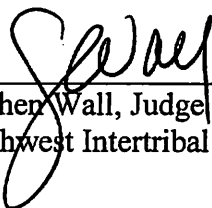
SELF INCRIMINATION

The purpose of the Miranda warnings is to insure that Defendants are aware of their right not to make statements that may incriminate themselves. The Miranda warnings are usually given at the time of arrest and at other times when the Defendant may make a statement that could be self-incriminating. The Miranda warnings also tell the Defendant

that they have a right to have an attorney present at the time of questioning. In tribal courts, the right to an attorney is not absolute. This means that under 25 USCA 1302 (6) a lawyer can only be required to be present at any questioning of the Defendant if the Defendant has the funds to pay for counsel. However, the test of whether a person's right against self-incrimination has been violated is not whether the Miranda warnings were given, but whether non-Mirandized self-incriminating evidence was used in the finding of guilt. If a self-incriminating statement was taken without the Defendant knowing of the right against self-incrimination or waiving that right and the statement was used to determine guilt, then the conviction could be reversed. However in this case the record does not indicate that self-incriminating statements were taken from the Appellant at the time of arrest and the BIA Criminal Investigator testified that when he interviewed the Appellant, the Appellant was Mirandized. Thus the failure to Mirandize the Appellant at the time of arrest did not prejudice the Appellant and there is nothing in the record that indicates self-incriminating evidence taken from the Appellant was used to determine guilt, thus there is no basis for reversing the conviction based on the failure to Mirandize the Appellant.

SWITCA finds no other basis for dismissal of the charges or reversal of the finding of guilt.

Done this 7th day of November 2007.



Stephen Wall, Judge
Southwest Intertribal Court of Appeals