

FILED
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JUL 15 2016
CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA
BY: P. DEPUTY

AO 243 (Rev. 01/15)

REFERENCE CVLR 71(C)(1)
(Rule Number/Section)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District
Name (under which you were convicted): <u>Valance Ray Smith Sr.</u>		Docket or Case No.: <u>CR-13-8043-PCT-GMS</u>
Place of Confinement: <u>United States Penitentiary, Atwater, CA</u>	Prisoner No.: <u>90756-308</u>	
UNITED STATES OF AMERICA		Movant (include name under which convicted) <u>v. Valance R. Smith Sr.</u>

MOTION CR-13-8043-PCT-GMS-1

- (a) Name and location of court which entered the judgment of conviction you are challenging:
United States District Court, District of Arizona,
Sandra Day O'Connor, United States Courthouse,
401 West Washington Street, Room 130
Phoenix, Arizona. CV-16-8160-PCT-GMS-ESW
(b) Criminal docket or case number (if you know): No. CR 13-08043-001-PCT-GMS
- (a) Date of the judgment of conviction (if you know): Jan. 9, 2014
(b) Date of sentencing: May 5, 2014 (Amended: 5/7/2014)
- Length of sentence: One Hundred Forty-Six Months
- Nature of crime (all counts): 18:1153 & 113(A)(3), CIR Assault with a dangerous
weapon with intent to do bodily harm, CT1; 18:1153 & 113(A)(6), CIR
Assault resulting in serious bodily injury CT2.; 18:1153 & 113(A)
(3), CIR Assault with a dangerous weapon with intent to do bodily
harm.
- (a) What was your plea? (Check one)
(1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or
what did you plead guilty to and what did you plead not guilty to? N/A
- If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐
- Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
- Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: United States Court of Appeals for the Ninth Circuit

(b) Docket or case number (if you know): DC No. 3:13-cr-08043-GMS, 9th Cir. No. 9:14-10231

(c) Result: Affirmed

(d) Date of result (if you know): Sept 17, 2015

(e) Citation to the case (if you know): _____

(f) Grounds raised: A. Whether the dist. court clearly erred when it denied the defendants motion to suppress evidence and statements,
B. Whether the dist. court abused its discretion when it denied the defendants motion to sever.
C. whether the dist. court imposed a reasonable sentence where the defendants criminal history category did not over-represent the seriousness of the defendants criminal history.

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes



No



If "Yes," answer the following:

(1) Docket or case number (if you know): Application No. 15A671

(2) Result: Denied

(3) Date of result (if you know): December 28, 2015

(4) Citation to the case (if you know): _____

(5) Grounds raised:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kennedy, who on December 28, 2015, denied the application.

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐

No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: W/A

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition:

Yes ☐No ☐

(2) Second petition:

Yes ☐No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Petitioner's Constitutional Rights were violated when; During relevant Tribal Court proceedings;

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Tribal Court failed to comply with Tribal Law and Order Act of 2010, when sentenced petitioner to immediate imprisonment of more than one year, without appointment of defense counsel. As required under 25 U.S.C. 1302' (c)(1)(2).

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Trial counsel deficiently failed to ^{address} ~~present~~ this matter.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Trial Counsel deficiently failed to address this matter.

GROUND TWO: Petitioner's Constitutional Rights were violated when, During relevant Tribal Court proceedings;

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner was arraigned and sentenced to immediate imprisonment, by a Tribal Judge that did not meet the requirements established under 25 U.S.C. 1302'(c)(3)(A)(3).

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Trial Counsel deficiently failed to ~~present~~ address this matter.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Trial Counsel deficiently failed to address this matter.

GROUND THREE: Petitioner's Constitutional Rights were violated when: During relevant Tribal Court proceedings;

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Prior to being charged, Petitioner's procedural protections of making available the criminal laws, rules of evidence, and rules of criminal procedure, failed. As required under 25 U.S.C. 1302 (c)(4)

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Trial Counsel deficiently failed to address this matter.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: Petitioner's claim of a Constitutional Challenge
(motion). Federal Trial court "unfairly and prejudicially"
~~(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim):~~
 admitted an uncounseled conviction of tribal court, that was
 used in a subsequent prosecution as evidence exhibits ;
 A) Criminal complaint from Hualapai Tribal Court, Hualapai
 Reservation, Peach Springs, Arizona, in case No. 2012-CR-415
 A,B,C dated October 2, 2012.
 B) Tribal Court Order from Hualapai Tribal Court, Hualapai
 Reservation, Peach Springs, Arizona, Order in Case No.
 2012-ER-415 "total of 2yrs in jail" dated November 1, 2012.
 — Continued, See attached — on page 14

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Trial Counsel deficiently failed to address this matter.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Yes. Grounds; One, two, three, four, five, Six and seven. Both trial and appellate counsel failed to address the grounds I've raised in my motion. After being abandoned by trial and appellate counsel, I carried on "pro se" in seeking relief of my unconstitutional conviction from federal court. The only remedy available now, as I see it, would be for a complete reversal of my conviction and sentence of the federal court. Along with an immediate release from unjust imprisonment. Can't see attached

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:
- (a) At the preliminary hearing: Jane L. McClellan #015902 Federal Public Defender, Dist. of Ariz.
850 W. Adams, Suite 201
Phoenix, AZ 85007
- (b) At the arraignment and plea: Jane L. McClellan
- (c) At the trial: Jane L. McClellan
- (d) At sentencing: Jane L. McClellan
- (e) On appeal: Katia Mehu, J.D. LL.M. P.O. Box 17787, Phoenix, Arizona 85011
- (f) In any post-conviction proceeding: N/A
- (g) On appeal from any ruling against you in a post-conviction proceeding: N/A
16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐
17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒
- (a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A
- (b) Give the date the other sentence was imposed: _____
- (c) Give the length of the other sentence: _____
- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐
18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*
N/A

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
 - (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
 - (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.
-

Therefore, movant asks that the Court grant the following relief:

To proceed "in forma pauperis"
or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on July 6, 2016
(month, date, year)

Executed (signed) on July 6, 2016 (date)

V. Lawrence R. Ellis Sr.
Signature of Movant


If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Inmate Inquiry

Inmate Reg #: 90756308 Current Institution: Atwater USP
 Inmate Name: SMITH, VALANCE Housing Unit: ATW-D-B
 Report Date: 07/01/2016 Living Quarters: D45-113L
 Report Time: 3:19:20 PM

General Information | Account Balances | Commissary History | Commissary Restrictions | Comments

General Information

Administrative Hold Indicator: No
 No Power of Attorney: No
 Never Waive NSF Fee: No
 Max Allowed Deduction %: 100
 PIN: 9833
 PAC #: 064665437
 Revalidation Date: 19th
 FRP Participation Status: Participating
 Arrived From: VIM
 Transferred To:
 Account Creation Date: 10/23/2014
 Local Account Activation Date: 12/23/2014 3:17:30 AM
 Sort Codes: 
 Last Account Update: 7/1/2016 2:26:37 PM
 Account Status: Active
 Phone Balance: \$7.85

Pre-Release Plan Information

Target Pre-Release Account Balance: \$12.90
 Pre-Release Deduction %: 0%
 Income Categories to Deduct From: ☒ Payroll ☒ Outside Source Funds

FRP Plan Information

FRP Plan Type	Expected Amount	Expected Rate
Quarterly	\$25.00	0%

Account Balances

Account Balance: \$0.44
 Pre-Release Balance: \$0.00
 Debt Encumbrance: \$0.00
 SPO Encumbrance: \$0.00
 Other Encumbrances: \$0.00

Outstanding Negotiable Instruments: \$0.00
 Administrative Hold Balance: \$0.00
 Available Balance: \$0.44
 National 6 Months Deposits: \$209.92
 National 6 Months Withdrawals: \$743.58
 Available Funds to be considered for IFRP Payments: (\$290.08)
 National 6 Months Avg Daily Balance: \$222.79
 Local Max. Balance - Prev. 30 Days: \$47.57
 Average Balance - Prev. 30 Days: \$12.54

Commissary History

Purchases

Validation Period Purchases: \$0.00
 YTD Purchases: \$810.91
 Last Sales Date: 6/14/2016 1:20:26 PM

SPO Information

SPO's this Month: 0
 SPO \$ this Quarter: \$0.00

Spending Limit Info

Spending Limit Override: No
 Weekly Revalidation: Yes
 Bi-Weekly Revalidation: No
 Spending Limit: \$50.00
 Expended Spending Limit: \$0.00
 Remaining Spending Limit: \$50.00

Commissary Restrictions

Spending Limit Restrictions

Restricted Spending Limit: \$0.00
 Restricted Expended Amount: \$0.00
 Restricted Remaining Spending Limit: \$0.00
 Restriction Start Date: N/A
 Restriction End Date: N/A

Item Restrictions

List Name	List Type	Start Date	End Date	Active
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Comments

Comments:

++++++June 27,2016+++++

Ground One--Petitioner's Constitutional Rights were violated
when: During relevant tribal court proceedings;

a) Tribal Court failed to comply with Tribal Law and Order
Act of 2010, when sentencing petitioner to immediate
imprisonment of more than one year, without the appointment of
defense counsel. As required under 25 U.S.C. 1302' (C) (1) (2) .

+++++

Ground Two--Petitioner's Constitutional Rights were violated
when: During relevant tribal court proceedings;

a) Petitioner was arraigned and sentenced to immediate
imprisonment, by a Tribal Judge that did not meet the
requirements established under 25 U.S.C. 1302' (C) (3) (A) (B) .

+++++

Ground Three--Petitioner's Constitutional Right were
violated when: During relevant tribal court proceedings;

a) Prior to being charged, petitioner's procedural
protections of making available the criminal laws, rules of
evidence, and rules of criminal procedure, failed. As required
under 25 U.S.C. 1302' (C) (4) .

+++++

Ground Four--Petitioner's claim of a Constitutional Challenge
(moment) :

Federal trial court "unfairly and prejudicially" admitted a
uncounseled conviction of tribal court, that was used in a
subsequent prosecution as evidence in exhibits:

a) Criminal complaint from Hualapai Tribal Court, Hualapai
Reservation, Peach Springs, Arizona, in Case No.2012-CR-415
A,B,C dated October 2,2012.

b) See page 9

Ground Four--(con't) *from page 9,*

i) Resulting in "structural error" that was per se prejudicial to petitioner. Violates United States v. Ant. 882 F.2d at 1395-96 (9th cir.1989).

ii) Violates due process clause of fifth amendment. White v. Maryland 373 U.S.59.

iii) Uncouseled convictions are too unreliable to be used as a basis for imposing a prison sentence in a subsequent case. Watford cir. Judge (9th)

iv) The Supreme Court has held that under fifth and sixth amendments. A defendant may not be sentenced to a term of imprisonment, unless he has been afforded the right to assistance of counsel in his defense. Scott v. Illinois 440 U.S. 367.

v) "It is inherently prejudicial to admit a constitutional infirm plea against a defendant at a subsequent trial on a new offense". Burgette v. Texas 389 U.S.109 (1967)

Ground Five--

Petitioner's claim of a constitutional challenge (moment):
The Grand Jury considered unconstitutionally obtained evidence when;

a) The Grand Jury's indictment of petitioner in federal court was based upon the same conduct that comprised the tribal indictment and sentencing order.

b) Petitioner's sufficient remedy in being able to challenge the introduction of such evidence used at trial is under, United States v. Blue 384 U.S. 251, 86 S.Ct.1416.

Ground Six--

Ineffective assistance of counsel: Trial counsel deficiently failed to investigate petitioner's prior tribal court proceedings that resulted in a uncounseled conviction that was "presumably void". That investigation would have revealed;

a) Petitioner was not appointed defense counsel established under the constitutional protections of the "TLOA" of 2010.

b) Petitioner did not "Knowingly or intelligently" waive his right to appointed defense counsel under Federal and Ninth Circuit standards.

c) Petitioner entered a "Nolo Contendere" plea, inadmissable under Rule 410 (a) (2).

d) Petitioner was denied a "fair trial", as the result of "structural error", depriving petitioner of basic constitutional protections.

e) Petitioner was subjected to "substantial error" of both Tribal and Federal prosecutions.

f) Petitioner's tribal conviction was "presumably void" constitutionally requireing federal trial court to review the tribal conviction before relying on it.

g) The Grand Jury's indictment of petitioner in federal court was based upon the same conduct that comprised the tribal indictment and sentencing order.

h) The Grand Jury considered unconstitutionally obtained evidence in the federal indictment against the petitioner.

Ground Seven--

Ineffective assistance of appeallate counsel: Appeallate

counsel failed to investigate petitioner's prior tribal court proceedings that resulted in a uncounseled conviction that was "presumably void". That investigation would have revealed;

a) Petitioner was not appointed defense counsel established under the constitutional protections of the "TLOA" of 2010.

b) Petitioner did not "knowingly or intelligently" waive his right to appointed defense counsel under Federal and Ninth circuit standards.

c) Petitioner entered a "Nolo Contendre" plea, inadmissible under Rule 410 (a)(2).

d) Petitioner was denied a "fair trial", as the result of "structural error", depriving petitioner of basic constitutional protections.

e) Petitioner was subjected to "substantial error" of both Tribal and Federal prosecutions.

f) Petitioner's tribal conviction was "presumably void" constitutionally requiring federal trial court to review the tribal conviction before relying on it.

g) The Grand Jury's indictment of petitioner in federal court was based upon the same conduct that comprised the tribal indictment and sentencing order.

h) The Grand Jury considered unconstitutionally obtained evidence in the federal indictment against the petitioner.

13) Continued-- from page 10

I have also attached "certified copies" of the Hualapai Tribal Courts Arraignment Minute Order and Judgement and Sentencing Order that was used as evidence in a subsequent federal prosecution of petitioner. There is no indication of

Defense counsel being present during these proceedings. Only the presence of the Tribal Prosecutor, Marie James. There is not any indication that I had waived my rights to appointed defense counsel or was I asked if I wanted an attorney. Although, I was advised of my rights to a lawyer at my own expense. Which failed, due to the fact that I was sentenced to more than one year, being denied the appointment of defense counsel as required under 25 U.S.C. '1302 (C) (1) (2).

Had trial or appellate counsel in fact investigated the tribal court proceedings and attacked their validity, the probability of the federal court trial proceedings would have been different.

Which resulted in a "complete miscarriage of justice", being deprived of defense counsel when arraigned and sentenced to immediate imprisonment. Then, indicted by the federal government on the same criminal proceedings.

Federal and Tribal Courts prejudicially erred and violated petitioners federal constitutional rights to a fair trial. Furthermore, defense counsel of trial and appellate performance was deficient that resulted in as error so serious as not to function as "counsel" guaranteed by the Sixth Amendment. Strickland 466 U.S. at 687, 104 S.Ct. at 2064.

Petitioner believes he has shown "good cause" for failing to make the challenges at trial and showed the entire criminal proceedings of both tribal and federal courts "irregular and invalid", infected with error of constitutional demensions.

Under the Cause and Prejudice Rule and the Exclusionary Rule, requireing automatic reveral and dismissal with prejudice.

Petitioner is in custody under the sentenced "illegally"

imposed upon him by the District Court of Arizona, Hon. Judge Snow, is now claiming the right to be "immediately released" from custody upon the grounds *infra*, *supra*, that the sentence was imposed in violation of the Constitution or Laws of the United States. 28 U.S.C. 2255 (b).

**IN THE HUALAPAI TRIBAL COURT
HUALAPAI RESERVATION, ARIZONA**

HUALAPAI TRIBE,

Plaintiff,

Case No.

vs.

20 12-CR- 415 ABC

OCT 2 2012

Valance Smith Sr.

Defendant.

20 ____-TR-____

ARRAIGNMENT MINUTE ORDER

The above-named Defendant came before the Court for arraignment on the 2nd day of October, 20 12 charged with the following offense(s):

Code	Offense	Code	Offense
COUNT A: Sec. <u>6-89A</u>	<u>Aggravated Battery (vio)</u>	COUNT D: Sec. _____	_____
COUNT B: Sec. <u>6-107</u>	<u>False Imprisonment (vio)</u>	COUNT E: Sec. _____	_____
COUNT C: Sec. <u>6-242A</u>	<u>Failure to obey Court orders</u>	COUNT F: Sec. _____	_____

The Defendant ☒ IS ☐ IS NOT in custody and is/is not present.

Parties present at the arraignment were: Prosecutor M. James T. Walker

Defendant was advised of: ☒ his/her rights, ☒ the charge(s) against him/her, ☐ the applicable provisions of the Code, ☐ the range of penalties which could be imposed upon conviction of each charge.

Defendant waived the reading of: ☐ complaint

The Prosecutor motioned to amend criminal complaint as follows: _____

☒ The Court found that Defendant understood his/her rights, the charge(s) against him/her and the possible penalties if convicted, and further found that he/she knowingly, voluntarily and intelligently entered the following plea(s):

☒ The Court entered the following plea(s) on behalf of Defendant:

COUNT A: NG G <u>NC</u>	COUNT C: NG G <u>NC</u>	COUNT E: NG G NC
COUNT B: NG G <u>NC</u>	COUNT D: NG G NC	COUNT F: NG G NC

☐ The Court further ordered the Defendant and the Office of the Prosecutor to appear before the Court for

☐ Pre-Trial ☐ Bench/Jury Trial ☐ sentencing on the _____ day of _____, 20 ____ at ____:____.m.

☐ The Court found Defendant GUILTY on each count.

☐ Tribe recommends remand/bond: A _____, B _____, C _____, D _____, E _____, F _____ totaling \$ _____

☐ Defendant is ordered REMANDED to the custody of Hualapai Adult Detention Center until he/she has posted bond with this Court in the amount of: A _____, B _____, C _____, D _____, E _____, F _____ for a total amount of: \$ _____, and when released shall abide by the provisions of the Order Setting Release Conditions.

☐ Defendant is ordered REMANDED to the custody of the Hualapai Adult Detention Center without bond pending next court hearing.

☐ Defendant is ordered RELEASED on his/her own recognizance with conditions set forth in the Order Setting Release Conditions.

☒ Defendant is ordered according to: ☒ Judgment and Sentence entered on separate Order.

The Prosecutor motioned to dismiss for want of prosecution counts A, B, C, D, E, F.

Count(s) A, B, C, D, E, F is hereby dismissed with / without prejudice. The Tribe has _____ to re-file.

The Court on its own motion dismisses counts A, B, C, D, E, F for lack of required elements.

Date: 10/2/12

[Signature]
Tribal Court Judge

Distribution of copies: ☒ Prosecutor

☒ Defendant

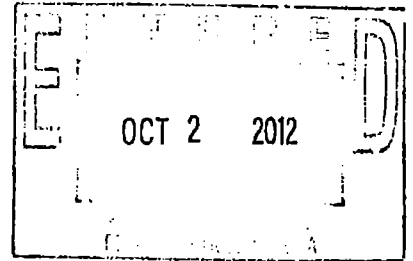
☒ Jail

☐ Other: _____
I hereby certify that this is a true and correct copy of the instrument on file in the court of the Hualapai Tribe.

Form A1: Updated 2 2012

[Signature]
Court Clerk
Hualapai Tribal Court

IN THE HUALAPAI TRIBAL COURT
HUALAPAI RESERVATION, ARIZONA



HUALAPAI TRIBE,

Plaintiff,

Case No. 2012 OR-415 ABC

vs.

Valance Smith Sr.

Defendant.

JUDGMENT OF GUILT
AND SENTENCING ORDER

On October 2nd, 20 12, the above-named Defendant entered a plea of no contest to/entered a plea of guilty to/ was convicted at trial of the offenses listed below. Judgment of guilt is now entered against the above-named Defendant, on this 2nd day of October, 20 12, and sentencing is hereby imposed, as follows:

Count A Sec. 6.89A Offense: Aggravated Battery

Sentence imposed: 1 yr. Jail time

Count B Sec. 6.107 Offense: False Imprisonment

Sentence imposed: 1 yr Jail time

Count C Sec. 6.242A Offense: Failure to obey a Court order

Sentence imposed: 1 yr Jail time Concurrent w/ B/B

Count D Sec. Offense:

Sentence imposed:

Count E Sec. Offense:

Sentence imposed:

Fines totaling: \$

Due:

☐ Defendant to serve a term of imprisonment for a period totaling _____ days/months/year

beginning _____ and ending _____;

☐ With _____ days SUSPENDED to: _____

☐ Defendant is placed on ☐ Supervised ☐ Unsupervised Probation

beginning _____ and ending _____.

Terms and conditions of Probation:

Sentencing provisions:

Dated: 10/2/12

[Signature]
Hualapai Tribal Court Judge

I Certify that I distributed Copies to: ☒ Prosecutor ☒ Defendant ☒ Jail ☐ Probation ☐ Social Services ☐ Health

Dept. ☐ Other _____

(Revised April 2012)

I hereby certify that this is
a true and correct copy of the
instrument on file in the court
of the Hualapai Tribe.

[Signature]
Court Clerk
Hualapai Tribal Court