



**SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY  
COURT OF APPEALS**

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FILED  
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COURT  
2018 JUN 13 AM 9:11

**SALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY,**

Case No.: **APCR-18-0001**

Appellee,

-V-

**MEMORANDUM**

**SISTO RAMIREZ III,**

Appellant.

**ORDER**

This matter involves nine separate criminal cases over a period of 15 years regarding the same defendant, Mr. Sisto Ramirez III, who is the Appellant here. On appeal, Ramirez asserts two grounds for vacating his convictions. First, Ramirez claims that the lack of audio recordings of all of the hearings in all of the cases from 1998 until 2005 requires his convictions to be vacated. Second, Ramirez claims that his speedy trial right was vacated in each of the nine cases, requiring vacating the convictions. For the reasons stated below, his appeal is denied and the convictions are **AFFIRMED**.

**FACTS**

The facts of each case are uncontested and set forth in great detail in the briefs. For the purposes of this appeal, suffice it to say that Ramirez pleaded either guilty or no contest to one or more charges contained in each criminal complaint at arraignment or at a point in time prior to trial, in each instance with the assistance of legal counsel. We also note that in every criminal case in the trial court subject to this action, Ramirez was released from custody pending further proceedings and subsequently absconded. After Ramirez absconded for the last time on 12/13/2004, he was absent for a prolonged period of 13 years. However, once back in the custody of SRPMIC officials in 2017, these matters finally came for sentencing on 1/8/2018. Ultimately, his total consecutive sentencing amounts to 1,390 days of incarceration with credit for 300 days served. Ramirez appeals his convictions.

**ISSUES ON APPEAL**

Ramirez presents two issues on appeal. First, he asserts that his convictions in each criminal case must be vacated because there are no audio recordings of all proceedings prior to 2005 in each of his trial court cases. Second, Ramirez asserts that all of his convictions must be vacated due to speedy trial violations in each case. We will address each issue in sequence.

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### Lack of Audio Recordings

Ramirez cites no criminal procedure rule, SRO Code provision or an explicit right under the SRPMIC Constitution contemporaneous with his convictions in these cases that support his claim that an audio recording of those proceedings was required to be maintained by the trial court. Rather, he relies solely on an appellate rule amended to address audio recordings several years after his last conviction. During the times at issue, it appears that the trial court regularly created and maintained audio recordings of court proceedings, but it was not required to do so. Those courtesy audio recordings that may have existed were apparently created and maintained on storage media that has, with the passage of time, deteriorated to the point where they cannot be recovered.

Since 2012, the trial court has maintained audio recordings to comply with the enhanced sentencing requirements of the Tribal Law and Order Act of 2010 (TLOA), 25 U.S.C. § 1302(c)(5). Citing SR-RAP Rule 6(b), Ramirez asserts that a plain reading of the rule requires that a defendant's conviction and sentence must be vacated "[i]f the recording of the trial court proceeding is unavailable." Clearly this requirement for creating and maintaining audio recordings was considered when the Community Council adopted the current version of SR-RAP Rule 6 (a) and (b) in 2012, well after Ramirez's convictions. Appellant's reliance on SR-RAP Rule 6(b) is misplaced.

We note that, when it is applicable, Rule 6(b) requires a new trial in the absence of an audio recording. However, Ramirez never went to trial on any of these cases, choosing instead to plead guilty or no contest in lieu of a trial. We cannot grant him a new trial when he never had a trial to begin with. While not raised as an issue here, we note that 25 U.S.C. § 1302(c)(5) requires a tribe to "maintain a record of the criminal proceeding, including an audio or other recording of the **trial proceeding**." (Emphasis added). Since Ramirez never went to trial, and it appears the federal statute requires an audio recording only of the trial (not necessarily preliminary and other pre-trial proceedings), the absence of audio recordings from change of plea proceedings 10-plus years ago neither demonstrates nor supports reversible error.

Current SRO Code Section 4-3 requires that:

The clerk of the [Salt River] Community court shall keep for inspection a record of all proceedings of the court which record shall reflect the title of the case, the names of the parties, the substance of the complaint, the names and addresses of all witnesses, the date of the hearing or trial, by whom conducted, the findings of the court, the judgment and all other appropriate facts or circumstances.

In fact, the trial court provided the entire record maintained in compliance with Section 4-3 for each case being appealed, and the Section 4-3 record for each case also complies with the requirement of SR-RAP Rule 6(a). The record of each case supplied to this Court is sufficient.

Ramirez also cites *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969) for the proposition that a waiver of constitutional rights cannot be presumed from a silent record, drawing a parallel to his cases. However, the *Boykin* decision imputed an already existing federal criminal procedure rule into Alabama state criminal procedure via the 14th Amendment which, as will be shown below, would be improper here under the federal policy of promoting tribal self-government. U.S. Supreme Court

constitutional law cases have no precedential value in this Court because the due process right of the Constitution of the United States has no applicability to Indian tribes. As Ramirez correctly pointed out in his Motion to Vacate Purported Pleas of Guilty at p. 8, para. 3, filed in the trial court, the due process right contained in the Indian Civil Rights Act (ICRA) and Art. XII (2) of the SRPMIC Constitution is similar, but not identical, to the due process right contained in the U.S. Bill of Rights and the 14th Amendment to the U.S. Constitution. The U.S. Supreme Court recognized in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) that in enacting the ICRA, Congress "selectively incorporated and in some instances modified the safeguards of the Bill of Rights to fit the unique political, cultural, and economic needs of tribal governments." Against this backdrop supporting the sovereign right of tribal self-governance, Ramirez offers no sound reason to identically equate tribal due process with federal due process and, more importantly, offers no compelling argument why we should adopt the holding in *Boykin* as SRPMIC common law.

### Asserted Speedy Trial Violations

Ramirez next contends that all nine convictions must be vacated because the Community violated his right to a speedy trial. In support of this theory, Ramirez relies on a portion of the Salt River Ordinances existing at the time of his convictions, but subsequently repealed. Specifically, he cites Sec. 5-35(b) from the 1981 Code, which stated in pertinent part that if a criminal defendant at arraignment entered a not guilty plea, "the case will be set for trial within ten (10) days . . . ." In each criminal case challenged, Ramirez, represented by legal counsel, entered pleas of not guilty at arraignment, and each case was scheduled for a pretrial conference, between 8 and 28 days following the arraignment proceeding. In only 3 of those cases was a trial ultimately scheduled, and in each of those 3 cases Ramirez absconded and failed to appear for trial, subsequently changing his pleas to guilty prior to another trial date.

Ramirez seems to read the repealed section of the Code to mean that he was guaranteed to have his trial **conducted** within ten days. Such a reading would serve to prejudice both a defendant as well as the Community in most cases, and therefore, is absurd. A distinction needs to be made between "setting" (i.e., scheduling) a trial and "conducting" the trial. First, a defendant is guaranteed a jury trial only upon request. Neither party informs this Court whether there was a time limit set forth in the Code within which a jury trial must be requested. However, the question arises how a defendant could make an informed decision to request a jury trial until his legal counsel had an opportunity to review all discovery material and advise his client accordingly. If a trial had been scheduled to be conducted within ten days of arraignment, conceivably a defendant could request a jury trial on the ninth day. Clearly, it would be impossible for the trial court to summons potential jurors with less than one day's notice. In addition, it would present an extraordinary burden on defense counsel to evaluate the case, interview potential defense witnesses and have them subpoenaed in less than ten days. The same holds true for prosecution witnesses. Clearly, the only logical meaning of the language in the old Code was that within ten days of an arraignment, the trial court must choose a date when a trial can be scheduled and conducted. It is worth noting that, currently, Chapter 5 (Rules of the Community Court), Article IV Rules of Criminal Procedure, Rule 5.1 provides that a trial will be set according to Rule 7.1 (within 150 days of arraignment, or within 120 days if the defendant is in custody).

Even so, the trial court did not choose a trial date in each of the cases within the ten-day limit. Instead, we are informed (and Ramirez does not dispute) that the contemporaneous practice of the trial court was to schedule each case for a pre-trial conference before setting a trial date for the very reason noted above, to give defense counsel and the defendant sufficient time to evaluate the case and determine whether to demand a trial and request a jury trial, thereby protecting a criminal defendant's rights and preserving and promoting procedural fairness and the integrity of the criminal justice process.

With the lone exception of the old statutory language cited, Ramirez offers no other support for his belief that his convictions must be vacated. He has cited no controlling case law from this Court, or persuasive authority from any other jurisdiction or source. Conversely, the Community cites to *Barker v. Wingo*, 407 U.S. 514 (1972), a seminal U.S. Supreme Court case establishing a balancing test incorporating four factors for consideration by a court to evaluate whether a criminal defendant's trial was unreasonably delayed. As with Defendant's reference to *Boykin*, we note that the Community has neither requested nor offered a sound reason or compelling argument why we should adopt the holding in *Barker* as SRPMIC common law. We do believe, however, that a criminal defendant cannot idly or strategically sit on his speedy trial right only to assert it on the day of trial or upon appeal. In this case, Ramirez, with the assistance of legal counsel, failed at every opportunity to assert his right to a speedy trial from the inception of each case, and most notably failed to object to setting each case for a pre-trial conference rather than a trial as the old Code provided. In most of his cases, a trial was never scheduled since Ramirez pled guilty pursuant to an apparently unwritten plea agreement, and in the three cases where he was scheduled for trial, he absconded and failed to appear. And in every single case Ramirez was released from custody, in a few instances even *after* he changed his plea. Clearly he suffered no prejudice from a lack of a speedy trial which he himself occasioned by his sometimes years-long absences.

### **CONCLUSIONS**

As to Defendant's first issue, we conclude that the Community law at the time of his guilty pleas did not require the trial court to maintain an audio recording of both trial and pre-trial proceedings, so the lack of such recordings cannot serve as a basis to invoke a subsequently enacted procedural rule requiring vacating his convictions. With regard to his second issue, we find that his right to a speedy trial was not violated since he never invoked his right by demanding a speedy trial after his arraignment, or at least not objecting to a procedurally, and arguably beneficial, minor delay of less than a month in each case.

**THEREFORE, IT IS THE ORDER OF THIS COURT** that Ramirez's convictions and sentences are **AFFIRMED**.

ISSUED this 13<sup>th</sup> day of June, 2018.

SEAL

Electronically approved 6/13/2018

/s/

Jan Morris, Justice

Electronically approved 6/13/2018

/s/

Mary Guss, Justice

Electronically approved 6/13/2018

/s/

Judith Dworkin, Justice

FILED  
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CLERK OF DISTRICT COURT  
JUDICIAL BRANCH