



**SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY
Court of Appeals**

10,005 E. OSBORN RD. SCOTTSDALE, AZ 85256 (480) 850-8115

RICKY RICHARDS,

Appellant,

-v-

**SALT RIVER PIMA MARICOPA
INDIAN COMMUNITY,**

Appellee.

Case No.: APCR-13-0002

(PVT-11-0750)

OPINION

Little, Pro Tem Judge.

{1} Ricky Richards (Richards) entered a plea to driving while intoxicated and was placed on probation for a period of eighteen (18) months. He was sentenced to serve a period of confinement of ten (10) days with seven (7) days suspended. Richards allegedly violated probation and his probation officer filed a motion for revocation of his probation. He was arrested pursuant to the execution of an arrest warrant on October 29, 2012. At the November 5, 2012 arraignment hearing, Richards entered a plea of guilty (admit) to violating his probation and the court ordered he serve the balance of the period which had been suspended in the original sentence of seven (7) days.

{2} The trial court sought the Community's recommendation prior to disposition (sentencing) and Richard's response to the recommendation of the Community which was for re-instatement of the balance of the suspended sentence of seven (7) days. Richard's, through his counsel, requested the court to grant him credit for pre-trial confinement of seven (7) days. When asked by the court, Richard's counsel was unable to cite to the specific provision for the court's grant of credit for pre-trial confinement. The court entered a disposition (sentence) ordering Richards to serve the balance of the suspended sentence of seven (7) days. There is no written record for the court's finding. The trial court's finding cannot be given deference by this Court for lack of a written finding. However, the Court may give recognition to the trial court's judgment where the court announced its' judgment at the arraignment in open court and the judgment is complete and valid. SRPMIC RCP, Rule 26.13

STANDARD OF REVIEW

{3} The Court reviews the trial court's findings for abuse of discretion denying Richards' request for credit for pre-trial confinement. Because the issue of whether a defendant in a post-conviction revocation hearing should be granted credit for pre-trial confinement is an issue capable of repetition and, therefore, evade review, the court shall address Richards' appeal and not avoid the issue as moot.

DISCUSSION

{4} Richards' argues on appeal that the trial court erred when it denied his request for pre-trial confinement and ordered him to serve the seven (7) days confinement citing SRPMIC RCP 26.9 (b)(2). In a criminal case, the trial court shall state its consideration of the time a defendant has spent in custody on the charge presently before the court. Apparently, Richards' may have received credit for pre-trial confinement in the original charge. He argues here that this rule requires he be given credit in a post-conviction motion for revocation of his probation when he was arrested after the filing of the motion to revoke.

{5} Richards further argues that SRPMIC RCP Rule 27.7(c)(2), which applies to probation revocation proceedings, requires the trial court to pronounce sentence in "accordance with the procedures set forth in Rules 26.10 through 26.14." Richards argues that the trial court is required to grant credit for pre-trial confinement and, therefore, is without discretion to re-instate the suspended sentence without granting pre-trial confinement.

{6} A motion to revoke the probation of a defendant is a civil matter. The standard for establishing a violation of probation is by the preponderance of the evidence. SRPMIC RCP Rule 27.7(3). Although a defendant may have civil rights similar to a criminal proceeding, there is no right to a jury trial and the presumption of detention exists unless a defendant established good cause not to re-instate confinement. SRPMIC RCP Rule 27.6.

{7} Here, Richards entered a "straight up" plea admitting to a probation violation. There was no agreement with the Community either recommending or opposing the trial court's entry of a judgment granting pre-trial confinement. In fact, the Community recommended re-instatement of the original suspended sentence and the court exercised its' discretion to re-instate the suspended sentence. Richards admitted to the factual basis for the court's finding that his plea was knowingly, intelligently and voluntarily made.

{8} "Upon a determination that a violation of a condition or regulation of probation occurred, the Court may revoke, modify or continue probation...Upon revocation, the Court may reinstate the original suspended sentence or upon motion by the Prosecutor, the Court may reduce the original sentence..." SRPMIC RCP 27.7. Richards failed to obtain an agreement with regard to the disposition and the trial court entered its' judgment.

{9} The trial court did not abuse its' discretion under these circumstances and Richards' was properly ordered to serve the suspended sentence upon the court's finding that he had violated his probation.

CONCLUSION

{10} For the foregoing reasons, we affirm the trial court's Judgment and Order.

IT IS SO ORDERED

ISSUED this 5th day of July, 2013.

FILED
2013 JUL -5 PM 4:45
SALT RIVER PIMA-ARIZONA
INDIAN COMMUNITY COURT



Judge Anthony Little

Electronically Approved 7/5/13

Judge Jan Morris