

In the Southwest Intertribal Court of Appeals for the Zuni Tribal Court

NICOLE PINTO,

Appellant,

v.

PUEBLO OF ZUNI,

Respondent.

**SWITCA Case No. 17-001-ZTC
Zuni Case No. CR-2016-2857**

Appeal filed February 9, 2017

Appeal from the Zuni Tribal Court
Samuel Crowfoot, Judge

Appellate Judges: Jeanette Wolfley,
Anthony Lee and Heidi Todacheene

ORDER DISMISSING APPEAL

SUMMARY

Appeal dismissed due to Appellant's failure to file a brief or a motion seeking an extension of time.

This Court accepted this matter for appeal on October 26, 2017, and issued an Order Granting Appeal wherein the Appellant was given thirty (30) days after receipt of the Order to file a brief pursuant to SWITCA #26 (2001). Appellant Pinto's opening brief was due on or before November 28, 2017. Appellant did not file a brief on November 28, 2017 or any motion seeking an extension of time. This Court based on its inherent powers has dismissed appeals for failure to file a brief in accordance with SWITCA #26. See *Yates v. Pueblo of Nambe*, 22 SWITCA 11 (2011); *Price v. Baker*, 13 SWITCA 4 (2002); *Santistevan v. Myore*, 9 SWITCA 20 (1998) (appeal dismissed on appellee's motion to dismiss).

Accordingly, this Court hereby dismisses Pinto's appeal with prejudice.

IT IS SO ORDERED.

January 3, 2018

BRIAN LEEKITY,

Appellant,

v.

PUEBLO OF ZUNI,

Respondent.

**SWITCA Case No. 17-003-ZTC
Zuni Case No. CR-2017-0108**

Appeal filed July 31, 2017

Appeal from the Zuni Tribal Court
Samuel Crowfoot, Judge

Appellate Judges: Jeanette Wolfley,
Anthony Lee and Heidi Todacheene

OPINION

SUMMARY

Tribal court issued judgment and sentence (commitment or probation) finding Appellant guilty of sexual assault, intoxication, and disorderly conduct. Appellate court is not a fact-finder that re-weighs evidence to make a new determination of guilt or innocence. Appellant must overcome presumption that conviction is valid. Although Appellant disagrees with trial court's assessment of the evidence, nothing in the record is cited nor would support a finding by appellate court that evidence was improper as a matter of law or that it created reasonable doubt. Possible inconsistencies in victim's testimony are not determinative given the entire record before the tribal court. The evidence presented sufficiently supports the conviction of sexual assault, so tribal court committed no error. Tribal court's decision is affirmed and matter is remanded to implement the judgment and impose the sentence.

This case is an appeal from the Zuni Tribal Court challenging the conviction of Brian Leekity for Sexual Assault entered on July 31, 2017. *Pueblo of Zuni v. Brian Leekity*, No. CR-2017-0108, Zuni Tribal Court.

I. BACKGROUND

A. Factual Background

On November 12, 2016, at approximately 8:37 p.m., the Pueblo of Zuni Police responded to a call and arrived at the Brian and Carina Leekity residence on Harker Circle,

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located on the Pueblo of Zuni Reservation. Upon arrival, Officer Lionel Nevayaktewa met with Miranda Peynetsa, the grandmother of the 14-year-old minor child, identified as “Jane Doe”, who alleged Brian Leekity touched her inappropriately. Officer Nevayaktewa met with Jane Doe at the home and took her to a safer environment to talk with her. Jane Doe stated that, while at the residence of Brian and Carina Leekity, she was lying on a couch in the living room she felt something touching her between her legs and she thought it was a cat. She looked up, and saw Brian Leekity, husband of Jane Doe’s aunt, Carina Leekity, touching her and before she moved to kick him away, he slapped her left buttock with an open hand and walked away. Jane Doe immediately texted her aunt, Katrina Peynetsa, telling her what happened and she wanted to go home.

Following the interview with Jane Doe, Brian Leekity emerged from the residence yelling about Jane Doe’s mother, Quinna Peynetsa, and that his wife Carina was not talking for him. Officer Nevayaktewa advised Brian Leekity (hereinafter “Leekity”) to go back inside the home but Leekity continued yelling. Officer Nevayaktewa made contact with Leekity and eventually physically restrained him and noticed the odor of an intoxicating beverage. Leekity admitted he had been consuming multiple beverages of intoxicating liquor.

Leekity was arrested and transported to the Zuni Detention Center, where he was booked and charged with two counts of Sexual Assault, Zuni Tribal Code § 4-4-19(1)(a) and § 4-4-19(1)(c); one count of Intoxication, Zuni Tribal Code § 4-4-107; and one count of Disorderly Conduct, Zuni Tribal Code § 4-4-97C.

Following the arrest, Jane Doe was extensively interviewed by Forensic Interviewer, Chanelle Benally (hereinafter “Benally”), at which time Jane Doe told Benally of the inappropriate touching on November 12, 2016. In addition, she advised Benally of an earlier incident that took place in approximately September 2015 involving Leekity, who touched her in the same home of her Aunt Catrina Leekity when she was asleep.

B. Procedural Background

On June 1 and 22, 2017, the Zuni Tribal Court held a bench trial. At trial, Leekity’s counsel conceded that the Pueblo of Zuni had proved its case on the counts of intoxication and disorderly conduct, but denied the two separate charges of sexual assault. The Pueblo of Zuni called several witnesses including: Forensic Interviewer, Chanelle Benally; Psychologist, Dr. Joycelyne Klasen; and Jane Doe’s mother, grandmother and cousin. Chanelle Benally testified about the interview of Jane Doe relating to the September 2015 and November 2016 incidents involving Leekity. Dr. Joycelyne Klasen

(hereinafter “Klasen”) testified as to Jane Doe’s severe depression, shame and guilt, which are consistent with the victim’s claim that she was sexually assaulted. Appellant’s counsel cross-examined the expert witnesses but did not offer any experts to rebut the testimony of either Chanelle Benally or Klasen. Jane Doe’s mother, grandmother and cousin testified about how Jane’s behavior significantly changed after the alleged sexual assault. Jane Doe also testified about the two separate incidents. Appellant offered lay witness testimony of relatives of Jane Doe challenging the testimony of the lay witnesses.

At the end of the Pueblo of Zuni bench trial, the court ordered the parties’ counsel to submit their Closing Statements in writing. Leekity argued that Jane Doe was not credible and perjured herself on the stand. He claims that her story at trial was inconsistent with the interview that Officer Nevayaktewa and Chanelle Benally conducted.

On July 19, 2017, the Zuni Pueblo Tribal Court issued a Judgment and Sentence (Commitment or Probation) and found Leekity guilty of: one count of Sexual Assault (related to the November 12, 2016 incident); one count of Intoxication; and one count of Disorderly Conduct.

On July 31, 2017, Leekity filed a timely appeal setting forth the following grounds for appeal: (1) evidence admitted should have been excluded and such evidence materially prejudiced the Appellant; (2) the conviction of Sexual Assault was not supported by the facts or law; and (3) the admissible evidence at trial left reasonable doubt as to Appellant’s innocence. This Court accepted the appeal in compliance with Zuni Rules of Civil Procedure. Civil Rule 38(H).

II. DISCUSSION

A. Standard of Review

An appellate court does not re-weigh the evidence presented to make a new determination as to the guilt or innocence of the appellant. There is a presumption that the conviction is valid which appellants must overcome. SWITCA “will not step into the role of fact finder.” *K.R. v. Thompson*, 19 SWITCA Rep. 6, 8-9 (2008). A conviction will stand if, after viewing all the evidence presented at trial, direct and circumstantial, in a light most favorable to the prosecution, any rational trier of fact could find the defendant guilty beyond a reasonable doubt. *U.S. v. Robison*, 978 F.2d 1554 (10th Cir. 1992). “This rule is premised on the fact that trial judges are the ones who actually see and hear the witnesses, thus making them better able to evaluate body language, intonation, and other matters necessary to resolving disputes about facts and credibility.” *Mounts v. Box*, 12 SWITCA Rep. 17, 21 (2001).

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B. Analysis

1. Sufficiency of Evidence

On appeal, the record is reviewed in a light most favorable to the government to determine whether the evidence, both direct and circumstantial, and the reasonable inferences connected to that evidence, is such that any rational trier of fact could find the defendant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (1979). A criminal conviction may be sustained on circumstantial evidence as well as inferences drawn therefrom, considered in the aggregate. *United States v. Hooks*, 780 F.2d 1526, 1531 (10th Cir.), cert. denied, 475 U.S. 1128 (1986). This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. Once a defendant has been found guilty of the crime charged, the fact-finder's role to evaluate the weight of the evidence is preserved through a legal conclusion that, upon judicial review, *all of the evidence* is to be considered in the light most favorable to the prosecution. SWITCA will not substitute judgment as to such matters that are within the appropriate role of the fact-finder, nor re-weigh the evidence. See *State v. Hernandez*, 115 N.M. 6, 26, 846 P.2d 312, 332 (1993). "The trial court judge, during a trial to the court, is the sole adjudicator in making decisions on credibility of the witnesses and the weight given to evidence presented at trial." *Poblano v. Pueblo of Zuni*, 17 SWITCA Rep. 6, 7 (2006). We review the sufficiency of the evidence under a substantial evidence standard. *State v. Sutphin*, 107 N.M. 126, 131, 753 P.2d 1314, 1319 (1988).

2. The Charge of Sexual Assault

Leekity was charged with sexual assault under four provisions of the Zuni Tribal Code. First, Zuni Tribal Code § 4-4-19(1)(a) states that a person is guilty of sexual assault if he subjects another not his spouse to any sexual contact and he knows that the conduct is offensive to the other person. Second, Zuni Tribal Code § 4-4-19(1)(c) provides a person is guilty of sexual assault if he subjects another not his spouse to any sexual contact and he knows that the other person is unaware that a sexual act is being committed. Third, Zuni Tribal Code § 4-4-19(1)(e) states a person is guilty of a sexual assault if he subjects another not his spouse to any sexual contact and the other person is less than 14 years old. Fourth, Zuni Tribal Code § 4-4-19(1)(f) provides a person is guilty of sexual assault if he subjects another not his spouse to any sexual contact and the other person is less than 16 years old and the actor is at least four years older than the person. Zuni Tribal Code § 4-4-19(1)(e) does not apply to the incident because Jane Doe was 14 years old.

The court heard testimony that (1) Jane Doe was 14 years old; (2) Defendant was 40 years old; (3) Defendant was married to Carina Leekity; and (4) Defendant had sexual contact with Jane Doe. The prosecution presented evidence about the incident that took place on the night of November 12, 2016, through the testimony of the victim Jane Doe, Officer Nevayaktewa, Forensic Interviewer Benally, Psychologist Klasen, Jane Doe's mother, grandmother and cousin. The testimony moved the Zuni Pueblo Trial Court to find that Leekity had the opportunity to commit the sexual assault and that Jane Doe's testimony matched both the physical evidence taken by the Zuni police at the scene and Jane's testimony given to the Forensic Interviewer.

On appeal to this Court, Leekity has only challenged the credibility and testimony of the victim Jane Doe.¹ Leekity argues that Jane Doe perjured herself in court, claiming her testimony given to Officer Nevayaktewa immediately after the alleged event on November 2016 differed from her subsequent testimony given to Forensic Officer Benally and at trial. Leekity contends there are three differences. First, Jane Doe, said she "felt something touch her 'in her private area.'" Whereas at trial she stated she felt "a light touch on her butt." Second, Leekity maintains Jane Doe testified that she did not look up at all, but earlier stated, "...she turned around, looked up, and saw Defendant." Third, Leekity asserts Jane Doe testified that she "...made direct eye contact with the Defendant," but also stated that she saw "his reflection in the television." Leekity contends that these differences create reasonable doubt.

At trial, there was testimony that Leekity was in the house on the night the November 2016 incident occurred. Jane Doe immediately texted her aunt Katrina Peynetsa about the incident who then called the Zuni Pueblo police. The text message exchange between Jane Doe and aunt Katrina Peynetsa was entered into evidence at trial and Leekity did not controvert this piece of evidence. Officer Nevayaktewa interviewed Jane Doe at the scene and his report corroborates the testimony of the victim. Additionally, the Forensic Interviewer Benally's report

¹ Appellant's Notice of Appeal identifies three issues: (1) evidence admitted should have been excluded and such evidence materially prejudiced the Appellant; (2) the conviction of Sexual Assault was not supported by the facts or law; and (3) the admissible evidence at trial left reasonable doubt as to Appellant's innocence. Appellant, however, only challenges in his brief on appeal the credibility of Jane Doe. Appellant has failed to provide any facts or legal analysis on the other issues. Appellate courts "repeatedly warn[] litigants that unsupported issues adverted to in a perfunctory manner and without developed argumentation are deemed waived on appeal." *Berget v. Gibson*, 188 F.3d 518 (10th Cir. 1999).

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and testimony are consistent with the facts that Leekity had sexual contact with Jane Doe. Although Leekity clearly disagrees with the trial court’s assessment of evidence, nothing in the record is cited nor would support a finding by this Court that such evidence was improper as a matter of law or created reasonable doubt. The fact that there may be some inconsistencies in Jane Doe’s prior testimony is not determinative given the entirety of the record before the trial court. The evidence presented in this case sufficiently supports the convictions of sexual assault.

CONCLUSION

We conclude that the Zuni Pueblo Trial Court committed no error in entering judgment of conviction against Mr. Leekity for sexual assault. We affirm the decision of the trial court and the matter is remanded to the trial court for further proceedings to implement the judgment of conviction and imposition of the sentence.

IT IS SO ORDERED.

March 13, 2018

ROBERTO L. RODRIGUEZ,

Appellant,

v.

KICKAPOO TRADITIONAL TRIBE OF TEXAS,

Respondent.

**SWITCA Case No. 18-001-KTTTC
Tribal Case No. 2017-0151**

Appeal filed March 12, 2018

Appeal from the
Kickapoo Traditional Tribe of Texas Tribal Court,
Francisco Martinez, Judge

Appellate Judges: Jeanette Wolfley,
Anthony Lee and Heidi Todacheene

ORDER DISMISSING APPEAL

SUMMARY

Appeal dismissed due to appellant’s unopposed Motion to Dismiss with Prejudice.

This case is an appeal from the Kickapoo Traditional Tribe of Texas Tribal Court. The Court has not acted on

the Notice of Appeal filed by Appellant. On May 4, 2018, the Appellant filed a Motion to Dismiss with Prejudice the appeal. The Court having reviewed the pleadings and recognizing the Motion to Dismiss is unopposed by the Appellee, finds the Motion to Dismiss should be granted.

IT IS THEREFORE ORDERED that Appellant’s Motion to Dismiss with Prejudice is **GRANTED** and the appeal is **DISMISSED**, with Appellant to bear all fees and costs.

May 10, 2018

LETA YARBERRY,

Appellant,

v.

AK-CHIN INDIAN COMMUNITY HOUSING,

Appellee.

**SWITCA Case No. 18-006-ACICC
Tribal Case No. CV-2018-008**

Appeal filed August 2, 2018

Appeal from the Ak-Chin Community Court,
Tresa S. Georgini, Judge

Appellate Judge: Anthony Lee

ORDER DISMISSING APPEAL

SUMMARY

Appeal dismissed because Administrative Appeals Procedures Ordinance divested SWITCA of subject matter jurisdiction.

This case is an appeal by Appellant Yarberry from a final Amended Order entered on July 9, 2018, that affirmed the termination of her housing lease. The Appellant filed a timely Notice of Appeal on July 24, 2018, meeting the requirements of SWITCARA #11 (2001). The Appellee, the Ak-Chin Indian Community, filed a Motion to Dismiss – Lack of Subject Matter Jurisdiction on September 6, 2018. The Appellant has not filed a response to the Motion.

Pursuant to Resolution No. A-74-99 of the Ak-Chin Indian Community Council, the Southwest Intertribal Court of Appeals (“SWITCA”) is authorized to act as the Tribe’s independent appellate court over trial court

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criminal and civil matters. However, this jurisdiction is limited. This Court has only the jurisdiction granted expressly by resolution of the Tribe. See SWITCARA #2(a) (2001). Additionally, when there is a conflict between a SWITCA rule and a tribal rule, the tribal rule will govern. See SWITCARA #1(b) (2001).

Therefore, when there is a tribal law that specifically limits the scope of an appeal, this Court must adhere to that tribal law. In this matter, the Tribe enacted the Administrative Appeals Procedures Ordinance (“AAPO”) that does, in fact, divest this Court of subject matter jurisdiction to hear this appeal. Rule 10 of the Ordinance specifically states that “[t]he decision of the Court shall be final and there shall be no further appeal available.” AAPO, Rule 10. The AAPO defines “Court” in Rule 3(E) as the Ak-Chin Indian Community Court. Since there is no mention of an appeal to the Appellate Court, and the plain language sets forth that no further appeal is available, this Court lacks the subject matter jurisdiction to hear this case. The Appellant was so notified in the Amended Order, dated July 9, 2018, that the Order was final and could not be appealed.

ACCORDINGLY, the Appellee’s Motion to Dismiss for Lack of Subject Matter Jurisdiction is hereby GRANTED, and Appellant’s Appeal is hereby DISMISSED.

IT IS SO ORDERED.

October 29, 2018

GERALD NAHA, SR.,

Defendant-Appellant,

v.

WHITE MOUNTAIN APACHE TRIBE,

Plaintiff-Appellee.

SWITCA Case No. 18-002-WMATC

Tribal Case No. SO-2016-0090

Appeal filed March 26, 2018

Appeal from the White Mountain Apache Tribal Court
Gloria Kindig, Judge

Appellate Judges: Jeanette Wolfley,
Heidi Todacheene and Melanie Fritzsche

OPINION AND ORDER DISMISSING APPEAL

SUMMARY

Appeal dismissed for lack of jurisdiction due to mootness because Appellant’s release from incarceration before appellate court considered his appeal deprived appellate court of an actual controversy to adjudicate. Tribal court is encouraged to utilize SWITCA rules in future proceedings in which tribal court’s rules are silent with regard to a particular procedure that is addressed by SWITCA rules.

This is an appeal from a conviction entered against the Defendant Gerald Naha, Sr., by the Plaintiff White Mountain Apache Tribe. The Southwest Intertribal Court of Appeals (“SWITCA”) has jurisdiction over this matter pursuant to Resolution No. 10-2016-212 of the Tribal Council of the White Mountain Apache Tribe, passed on October 16, 2016, which authorizes the SWITCA to act as the White Mountain Apache Tribal Court of Appeals and adopts the SWITCA Rules of Appellate Procedure to the extent consistent with Tribal law.

I. Facts and Procedural Background

On November 18, 2016, the female victim (“Victim”), was drinking with two friends at the friends’ trailer in Whiteriver, Arizona. At some point in the early morning hours, Defendant stopped by the trailer and drank with Victim and others. The friends left the trailer or were passed out, and Defendant attacked the Victim, dragged her into a back bedroom and forcibly assaulted and raped her. A sexual assault examination was conducted in Show Low, Arizona in the morning on November 19, 2016.

On November 28, 2016, Defendant was arrested by Tribal Police and charged with several violations of the Tribal Criminal Code: (1) Assault (WMAT Crim Code Sec. 2.4); (2) Assault with Intent to Commit Rape (Sec. 2.7); (3) Sexual Abuse (Sec. 4.4); (4) Sexual Assault (Sec. 4.6); and (5) Criminal Negligence (Sec. 2.21). Defendant claimed the sex was consensual. On August 3, 2017, a bench trial was held before the Honorable Gloria Kindig, and Defendant was found guilty of charges (1)-(4), Count 5 was dismissed as a lesser included offense.

On August 7, 2017, Defendant filed a Motion for New Trial arguing four grounds for a new trial: First, Defendant claimed he was not given a fair and impartial trial. Second, he maintained his witness was not notified of the trial date. Third, his family was excluded from entering the trial proceedings. Finally, three different prosecutors worked on the case at different times, which amounted to prosecutorial misconduct. The Tribal Court held a hearing on the motion following briefing by the

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parties. On September 13, 2017, the Court found all the arguments without merit as the Defendant did not provide any specific allegations from the record showing an unfair and impartial trial. As to the second issue of the absent witness the Court held that Defendant never sought a continuance or informed the Court that his witness was not present until after the prosecution had presented its case. The trial was open to the public and none of Defendant's family member provided any affidavits that they were excluded, therefore the third argument was denied. The Tribal Court on the fourth argument held that no defendant has a right to choose the prosecutor and there were no facts of misconduct alleged.

On September 27, 2017, a sentencing hearing was held by the Tribal Court and the Defendant was sentenced to one year for Assault; one year for Assault with Intent to Commit Rape; 8 months for Sexual Abuse; and 8 months for Sexual Assault. On October 3, 2017, Defendant filed a Notice of Appeal. Then, on October 19, 2017, Defendant filed a Motion requesting a "change of Visiting Judge Kindig to White Mountain Apache Judge Hasting."

The Inmate Criminal Motion form was routed to the Prosecutor's office which filed an objection on the form stating "No valid grounds for change of judge." On November 6, 2017 the Court Order on the same Motion form commented "Null" and signed the Order. On January 29, 2018, Defendant filed another Motion to "Reconsider My Appeals." Defendant claims his case was closed by the court without any notice to him, and a requirement for payment for the appeal. Defendant filed the same motion on March 29, 2018.

On March 26, 2018 the Defendant's Notice of Appeal was received by SWITCA. The certified copy of the Bench Trial and Sentencing Hearing was received by SWITCA on June 19, 2018. Following the Notice of Appeal, the Defendant continued to file several motions in the Tribal Court. On April 23, 2018, Defendant filed an Inmate Criminal Motion arguing the Tribal Court Judge had no authority to hear the case and issue a conviction because she was not licensed in the state of Arizona, a prerequisite to serve as a *Pro Tem* Judge in the White Mountain Apache Tribal Court. On May 4, 2018, the Prosecutor filed its Response. On or about June 8, 2018, Defendant filed a Pleading entitled "Inmate Motion: In Response to Tribal Prosecutor's Response and Defendant's Motion for Credit Time Served and Release." On July 16, 2018, the Tribal Court held a hearing on Defendant's motion filed on April 23, 2018, and accepted and considered the motion as a Writ of Habeas Corpus. Following arguments on the motion, the Tribal Court entered an order granting Defendant's Writ of Habeas Corpus and releasing Defendant from custody.

This Court granted the Notice of Appeal on September 13, 2018. While considering this appeal, the Court noted

several crucial court documents were missing from the appeal record and requested those documents from the Tribal court. SWITCA has received and reviewed those documents relating to the Tribal Court's order of July 16, 2018. As noted, Appellant has subsequently been released from his physical incarceration in the White Mountain Apache Tribal jail by the lower court. Therefore, the alleged violations set forth in the Notice of Appeal are no longer present, and the remedy sought is no longer necessary.

Courts only have jurisdiction to adjudicate actual controversies. *See Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477-78 (1990); *Fischbach v. N.M. Activities Ass'n.*, 38 F.3d 1159, 1160 (10th Cir.1994). A controversy must exist during all stages of the appellate review. *Fischbach*, 38 F.3d at 1160. Once such controversy ceases to exist, the action is moot and this court lacks jurisdiction to adjudicate the matter. *Id.* An exception to the mootness doctrine, however, arises when the case is "capable of repetition, yet evading review." *Gannett Co. v. DePasquale*, 443 U.S. 368, 377 (1979) (quotation omitted); *Fischbach*, 38 F.3d at 1161. This exception applies when: (1) the duration of the challenged action is "too short to be fully litigated prior to its cessation or expiration," and (2) there is "a reasonable expectation that the same complaining party. . . [will] be subjected to the same action again." *Gannett*, 443 U.S. at 377. The exception is not applicable here because this criminal case has unique facts and procedural history that is unlikely to be repeated. The Court finds that this case is moot. The appeal is dismissed based on lack of jurisdiction.

Ordinarily, once the Court finds it does not have jurisdiction, it will not issue advisory opinions on the merits of a case, but given the extraordinary procedure taken by the Tribal Court in issuing a writ of habeas corpus, this Court offers the following guidance. Pursuant to Resolution No. 10-2016-212 of the Tribal Council of the White Mountain Apache Tribe, SWITCA was authorized to act as the White Mountain Apache Tribal Court of Appeals and the Tribal Council adopted the SWITCA Rules of Appellate Procedure. Where the Tribal court's rules are silent as to procedure the SWITCA rules apply. In this case, the WMAT Code does not provide for a writ of habeas corpus process, however, SWITCARE # Rule 24 sets forth procedures regarding a writ of habeas corpus and should have been utilized by the Tribal Court. We encourage the Tribal court to utilize the SWITCA rules in future proceedings.

ACCORDINGLY, IT IS THE ORDER OF THIS COURT THAT THE APPEAL IS HEREBY DISMISSED.

IT IS SO ORDERED.

December 17, 2018