

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for a Finding of Suitability, Tribal Key Employee Regarding:

JARMAINE AQUINO PASCUA

Applicant.

BGC Case No. BGC-HQ2020-00024SL
CGCC Case No. GCADS-TRKE-017878

DECISION AND ORDER

Hearing Date: March 12, 2021
Time: 10:00 a.m.

This matter was heard by the California Gambling Control Commission (Commission) pursuant to Business and Professions Code sections 19870 and 19871 and Title 4, California Code of Regulations (CCR) section 12060, and held via Zoom video conference, on March 12, 2021.

Noel A. Fischer (DAG Fischer), Deputy Attorney General, State of California, represented complainant Stephanie Shimazu, Director of the Bureau of Gambling Control (Bureau), Department of Justice, State of California.

Jarmaine Aquino Pascua (Applicant) appeared on his own behalf without representation.

During the evidentiary hearing, Presiding Officer Russell Johnson took official notice of the following: Notice and Agenda of Commission Hearing; Commission's Conclusion of Prehearing Conference letter; the Commission's Notice of Hearing with attachments: Application for Finding of Suitability Tribal Key Employee and the Bureau's Tribal Key Employee Background Investigation Report; the Bureau's Statement of Reasons and; Applicant's signed Notice of Defense.

During the evidentiary hearing, Presiding Officer Russell Johnson accepted into evidence the following exhibits offered by DAG Fischer on behalf of the Bureau as identified in the Table of Contents:

- (1) Statement of Respondent; Statement of Reasons; Excerpts of the California Business and Professions Code and the California Code of Regulations, Bates Nos.

1 001-021;

2 (2) April 30 2019 (Redacted) Application for Finding of Suitability of Tribal
3 Key Employee, Jarmaine Aquino Pascua with Exhibits, Bates Nos. 022-024;

4 (3) July 31, 2020 (Redacted) Tribal Key Employee Renewal Background
5 Investigation Report, Jarmaine Aquino Pascua, Bates Nos. 025-036;

6 (4) August 24, 2020 Referral of Jarmaine Pascua's Application to an
7 Evidentiary Hearing, Bates Nos. 037-043;

8 (5) September 8, 2020 Notice of Defense, Bates Nos. 044-046;

9 (6) Certified License History for Jarmaine Pascua, Bates Nos. 047-049;

10 (7) *State of California vs. Jarmaine A. Pascua*, Conviction Date January 31,
11 2018, (Redacted) Court Documents with Police Report, Case Number:
12 SWM1800074, Bates Nos. 050-061;

13 (8) Correspondence-Requests for Additional Information and Responses, Bates
14 Nos. 062-081.

15 The record was closed and the matter was submitted on March 12, 2021.

16 FINDINGS OF FACT

17 **Procedural History**

18 1. Applicant was issued a Tribal Key Employee License, TRKE-017878 by the Pala Band of
19 Mission Indians ("Tribe") on or about November 2, 2017, which allowed Applicant to work at the
20 Pala Casino Spa and Resort.

21 2. As required by the Tribal-State Gaming Compact between the State of California and the
22 Tribe, Applicant submitted a renewal Application for Finding of Suitability Tribal Key Employee
23 (Application) to the Bureau on or about May 22, 2019. The Application was dated April 30, 2019.

24 3. On or about July 31, 2020, the Bureau issued its Tribal Key Employee Renewal
25 Background Investigation Report in which it recommended that the Application be denied
26 because Applicant was convicted of a misdemeanor crime of moral turpitude within 10 years of
27 submitting his application.
28

1 4. On or about August 24, 2020, the Commission's Executive Director referred consideration
2 of Applicant's Application to an evidentiary hearing to be conducted as a Gambling Control Act
3 hearing pursuant to California Code of Regulations, Title 4, Division 18, Chapter 1, section
4 12060.

5 5. On or about September 30, 2020, Applicant submitted a Notice of Defense to the
6 Commission requesting an evidentiary hearing on the consideration of his Application.

7 6. On November 20, 2020, a Notice of Hearing was sent to DAG Fischer and Applicant
8 stating that an evidentiary hearing would be held before the Commission by means of video
9 conferencing using Zoom on March 12, 2021 and a prehearing conference would be held on
10 January 25, 2021.

11 7. On or about January 20, 2021, The Commission received the Bureau's Statement of
12 Reasons. In the Statement of Reasons, the Bureau requests that the Commission deny the
13 Application on the basis of Applicant's conviction of a misdemeanor crime of moral turpitude
14 within 10 years of submitting his application.

15 8. On January 25, 2021, the noticed Prehearing Conference was held before Presiding
16 Officer Russell Johnson, Attorney III of the Commission. DAG Fischer attended on behalf of the
17 Bureau. Applicant attended on his own behalf without representation.

18 9. The Commission held the Gambling Control Act evidentiary hearing on this matter via
19 Zoom video conference on March 12, 2021. The Bureau was represented by DAG Fischer and
20 Applicant appeared on his own behalf without representation.

21 **Applicant's Criminal History**

22 10. On or about January 31, 2018, Applicant was convicted, upon a plea of guilty, of violating
23 California Penal Code section 273.5, subdivision (a), inflicting corporal injury on a spouse or
24 cohabitant, a misdemeanor, in the case of *State of California vs. Jarmaine A. Pascua*, Riverside
25 County Superior Court, Case Number SWM1800074.

26 11. There was no evidence presented during the evidentiary hearing that Applicant has any
27 additional arrests or convictions on his criminal history other than the January 31, 2018
28

1 subdivision (a).

2 17. At an evidentiary hearing pursuant to Business and Professions Code sections 19870 and
3 19871 and Title 4, CCR section 12060, subdivision (b), the burden of proof rests with the
4 applicant to prove their qualifications to receive any license under the Gambling Control Act.
5 Title 4, CCR section 12060, subdivision (i); Business and Professions Code section 19856,
6 subdivision (a).

7 18. Public trust and confidence can only be maintained by strict and comprehensive regulation
8 of all persons, locations, practices, associations, and activities related to the operation of lawful
9 gambling establishments and the manufacture and distribution of permissible gambling
10 equipment. Business and Professions Code section 19801, subdivision (h).

11 19. The Commission has the responsibility of assuring that licenses, approvals, and permits
12 are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations
13 are conducted in a manner that is inimical to the public health, safety, or welfare. Business and
14 Professions Code section 19823, subdivision (a)(1).

15 20. An “unqualified person” means a person who is found to be unqualified pursuant to the
16 criteria set forth in Section 19857, and “disqualified person” means a person who is found to be
17 disqualified pursuant to the criteria set forth in Section¹ 19859. Business and Professions Code
18 section 19823, subdivision (b).

19 21. A “finding of suitability” means a finding that a person meets the qualification criteria
20 described in subdivisions (a) and (b) of Section 19857, and that the person would not be
21 disqualified from holding a state gambling license on any of the grounds specified in Section
22 19859. Business and Professions Code section 19805, subdivision (j).

23 22. Every Gaming Employee shall obtain, and thereafter maintain current, a valid tribal
24 gaming license, and except as provided in subdivision (b), shall obtain, and thereafter maintain
25 current, a State Gaming Agency² determination of suitability, which license and determination

26 ¹ All references to statute herein refer to the California Business and Professions Code unless
otherwise stated.

27 ² “State Gaming Agency” means the entities authorized to investigate, approve, regulate, and
28 license gaming pursuant to the Gambling Control Act. Tribal State Compact between the State of
California and the Pala Band of Mission Indians, section 2.26.

1 shall be subject to biennial renewal. Tribal State Compact between the State of California and the
2 Pala Band of Mission Indians section 6.4.3, subdivision (a).

3 23. Investigations and disposition of applications for a determination of suitability shall be
4 governed entirely by State law, and the State Gaming Agency shall determine whether the
5 Applicant would be found suitable for licensure in a gambling establishment subject to the State
6 Gaming Agency's jurisdiction. Tribal State Compact between the State of California and the Pala
7 Band of Mission Indians section 6.5.6, subdivision (c).

8 24. Pursuant to Section 19859, subdivision (d), the Commission shall deny a license to any
9 applicant who is disqualified for having been convicted of any misdemeanor involving dishonesty
10 or moral turpitude within the 10-year period immediately preceding the submission of the
11 application, unless the applicant has been granted relief pursuant to Penal Code sections 1203.4,
12 1203.4a, or 1203.45. Business and Professions Code section 19859, subdivision (d) does not
13 direct the Commission to consider the facts and circumstances of how a crime was committed,
14 but only to look at the existence of a conviction.

15 25. Several state appellate courts have concluded that infliction of corporal injury on a spouse
16 or cohabitant in violation of Penal Code section 273.5 is a crime involving moral turpitude.
17 (*People v. Rodriguez* (1992) 5 Cal.App.4th 1398, 1402; *Donley v. Davi* (2009) 180 Cal.App.4th
18 447, 461; *People v. Burton* (2015) 243 Cal.App.4th 129, 134).

19 26. Applicant's January 31, 2018 conviction occurred within the 10-year period immediately
20 prior to the submission of his Application and he has not obtained relief from that conviction
21 pursuant to Penal Code sections 1203.4, 1203.4a, or 1203.45. Therefore, Applicant is disqualified
22 from licensure pursuant to California Business and Professions Code section 19859, subdivision
23 (d). As a result, Applicant is not qualified to receive a finding of suitability under Business and
24 Professions Code section 19859, subdivision (d).

25 27. Should Applicant obtain relief from his January 31, 2018 conviction pursuant to
26 California Penal Code sections 1203.4, 1203.4a, or 1203.45, or upon the expiration of ten years
27 from the date of the conviction, Applicant may immediately reapply for a temporary or permanent
28

1 license or a work permit available pursuant to the Gambling Control Act or Commission
2 regulations.

3 NOTICE OF APPLICANT'S APPEAL RIGHTS

4 Applicant has the following appeal rights available under state law:

5 Title 4, CCR section 12064, subdivision (a) and (b) provide, in part:

6 (a) After the Commission issues a decision following a GCA hearing conducted
7 pursuant to Section 12060, an applicant denied a license, permit, registration, or
8 finding of suitability, or whose license, permit, registration, or finding of
9 suitability has had conditions, restrictions, or limitations imposed upon it, may
10 request reconsideration by the Commission. A request for reconsideration must
11 be:

12 (1) Made in writing to the Commission, copied to the Complainant. The
13 Bureau may provide a written response to the Commission within 10 calendar
14 days of receipt of the request; and

15 (2) Received by the Commission and Complainant within 30 calendar days
16 of service of the decision, or before the effective date specified in the decision,
17 whichever is earlier.

18 (b) A request for reconsideration must state the reasons for the request, which
19 must be based upon either:

20 (1) Newly discovered evidence or legal authorities that could not reasonably
21 have been presented before the Commission's issuance of the decision or at the
22 hearing on the matter; or,

23 (2) Other good cause which the Commission may decide, in its sole
24 discretion, merits reconsideration.

25 Business and Professions Code section 19870, subdivision (e) provides:

26 A decision of the commission denying a license or approval, or imposing any
27 condition or restriction on the grant of a license or approval may be reviewed by
28 petition pursuant to Section 1085 of the Code of Civil Procedure. Section 1094.5
of the Code of Civil Procedure shall not apply to any judicial proceeding
described in the foregoing sentence, and the court may grant the petition only if
the court finds that the action of the commission was arbitrary and capricious, or
that the action exceeded the commission's jurisdiction.

Title 4, CCR section 12066, subdivision (c) provides:

A decision of the Commission denying an application or imposing conditions on a
license shall be subject to judicial review as provided in Business and Professions
Code section 19870, subdivision (e). Neither the right to petition for judicial
review nor the time for filing the petition shall be affected by failure to seek
reconsideration.

ORDER

1. Applicant Jarmaine Pascua's renewal Application for Finding of Suitability, Tribal Key Employee, is DENIED.
2. Should Applicant obtain relief from his January 31, 2018 conviction pursuant to California Penal Code sections 1203.4, 1203.4a, or 1203.45, or upon the expiration of ten years from the date of the conviction, Applicant may immediately apply for any license or work permit available pursuant to the Gambling Control Act or Commission regulations.
3. No costs are to be awarded.
4. Each side to pay its own attorneys' fees.

This Order is effective on May 10, 2021.

Dated: April 8, 2021

Signature: 


Paula LaBrie, Chair

Dated: April 8, 2021

Signature: 

Eric Heins, Commissioner

Dated: April 8, 2021

Signature: 

Edward Yee, Commissioner