

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 15-331

Judge:

Complainant:

ORDER

The complainant alleged a superior court judge was denying him the right to present mitigation evidence in a criminal proceeding.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

The commission does not have jurisdiction to review the legal sufficiency of the judge's rulings. In addition, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: January 13, 2016

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on January 13, 2016.

This order may not be used as a basis for disqualification of a judge.

CONFIDENTIAL

State of Arizona
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

FOR OFFICE USE ONLY

2015-331

COMPLAINT AGAINST A JUDGE

Name: _____

Judge's Name _____

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

Nature of Complaint

IT IS DEFENDANT'S BELIEF THAT _____ IS DEPRIVING HIS LEGAL RIGHT TO ACCESS THE COURT TO APPROPRIATELY INFORM THE COURT AND EXHAUST DEFENDANT'S CLAIMS OF MITIGATION IN WHICH RAISE'S IMPORTANT ISSUES OF LAW OF FIRST IMPRESSION FOR OFFICIAL RECORD, FOR GOOD CAUSE SHOWN TO MITIGATE SENTENCE. RESPECTFULLY DEFENDANT IS CLAIMING MITIGATION FACTOR(S) THAT HE IS ENTITLED TO INVOKE THE DUE PROCESS OF DISCOVERY AVAILABLE FOR MITIGATION IN A OPEN RANGE PLEA AGREEMENT TO THE EXTENT FOR _____ TO EXERCISE HIS DISCRETION. POSSIBLE MANIFEST INJUSTICE, ABUSE OF DISCRETION. THE COMPLAINT TO ACCESS THE COURT AND PREVENT MISTAKE OF LAW, ON PART OF THE COURT, THE FAILURE TO FOLLOW THE PROCEDURES FOR MITIGATION HEARING FACTOR(S) AND CONCERNING ELEMENTS FRAUDULENTLY BEING CONCEALED FROM OFFICIAL RECORD. PERMANENT PHYSICAL INJURIES CAUSED BY (NOW) _____ TO PREVENT INCOMPETENT FACTUAL DETERMINATION. AS PURSUANT TO RULE 26.8 (B) PROSECUTOR'S DUTY TO DISCLOSE INFORMATION THAT WOULD REDUCE PUNISHMENT RULE 26.7 PRE-SENTENCING HEARING TO INTRODUCE RELEVANT VARY RELEVANT EVIDENCE AND RULE 26.6 DISCLOSURE OF ANY PRE-SENTENCING REPORTS, THE DEFENDANT REQUESTED MITIGATION HEARING TO FORMULATE

THIS INDIGENT DEFENDANT NEVER ABLE TO CONSULT HIS ATTORNEY, NEVER ABLE TO CONTACT HIS ATTORNEY.

THIS DEFENDANT'S ATTORNEY DEPRIVING CLIENT ACCESS TO COURTS

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ALL mitigation circumstances "to prevent manifest injustice" (THE COMPLAINT) (FAILURE TO HAVE ALL RELEVANT MITIGATION FACTORS) HARMFUL AND EXTREMELY ONE SIDED AND PREJUDICIAL AGAINST THE DEFENDANT AMOUNTING TO AN ABUSE OF SENTENCING DISCRETION, BECAUSE MISSING AND DISREGARDING VERY IMPORTANT MITIGATION FACTORS) VERY SIGNIFICANT, THAT WOULD PROBABLY CHANGE THE OUTCOME OF THE PLEA AND SENTENCING AGREEMENT (AS SHOWN IN THE OPEN RANGE PLEA). ARIZONA LEGISLATURE HAS PRESCRIBED IN THE SENTENCING SYSTEM, THAT JUDGES MUST FOLLOW AND IT HAS REQUIRED THAT ALL SENTENCING FACTORS) BE CONSIDERED FOR ANY REDUCTION OR INCREASE FROM THE PRESUMPTIVE SENTENCE. SEE: STATE VS. MONNINGER, 209 ARIZ. 473 (2005) * THE EXISTENCE OF A SINGLE AGGRAVATING CIRCUMSTANCE DOES NOT NECESSARILY SUBJECT DEFENDANT TO AN AGGRAVATED SENTENCE, IF MITIGATING CIRCUMSTANCES ARE ALSO PRESENT THE COURT MAY IMPOSE A PRESUMPTIVE ON MITIGATED SENTENCE. THE PLEA stipulates THAT NO MORE THAN PRESUMPTIVE IS WARRANTED, THERE IS MITIGATION FACTORS) THAT ENCOURAGED THIS PLEA BECAUSING THAT ARE UNFAIRLY BEING WITHHELD.

SEE: CASE AUTHORITIES PROVIDED PLEASE

CONCERNING ELEMENTS OF INCIDENT AND THE
REQUESTED (BRADY) AND (GIGLIO) MATERIAL, THAT
IS MITIGATION BEING FRAUDULENTLY CONCEALED
FROM ACCESS TO COURT RECORDS, "MITIGATION".
THIS DEFENDANT'S MEDICAL RECORDS AVAILABLE
WOULD VERIFY.

INJURIES FROM
MULTIPLE
ENORMOUS

THROUGH THE REST OF MY LIFE.

THERE IS EXTRAORDINARY HARM AND
BECAUSE OF THE

EXCESSIVE FORCE, AN
ON A PROPER MITIGATING SENTENCING
NOT TO BE IGNORED OR DISCARDED, BY

* SEE: BRADY VS. MARYLAND, 373 U.S. 83, 87
S.Ct. 1194, 10 U.S. 2d 215 (1963), AND

* SEE: GIGLIO VS. UNITED STATES, 405 U.S. 150,
153-55, 92 S.Ct. 763, 31 U.S. 2d 104 (1972)

* SEE: MILKE VS. RYAN, 711 F.3d 998 (2013)
RELEVANT CREDIBILITY IMPROVEMENT EVIDENCE
HAS NOT BEEN PRODUCED, PERHAPS BECAUSE
IT'S BEEN FRAUDULENTLY CONCEALED, (NOW)

* MITIGATION CIRCUMSTANCES *

THE DEFENDANT WAS NOT IMMEDIATELY
INFORMED BACK IN THE COMPLAINT
WAS REFILED AND SUBMITTED TO GRAND
JURY, UNTIL (3) YEARS TIME CAPS

STILL TODAY PROSECUTOR VERIFYING DEFENDANT NOT ON ANY RELEASE STATUS AND NO ADDITIONAL CHARGES OVER THAT (3) YEARS. A PROPER MITIGATION FACTOR TO BE CONSIDERED BY DEFENDANT ENROLLED INTO AND COMPLETED A (6 MONTHS) DRUG AND ALCOHOL TREATMENT PROGRAM WITH HIS PHYSICAL THERAPY IMMEDIATELY FOLLOWING THE INCIDENT A SUBSTANTIATED AS A PROPER MITIGATION FACTOR TO BE CONSIDERED BY

* (NOTING) NO AGGRAVATING FACTORS AVAILABLE FROM THE PROSECUTOR FOR JUDGE TO RULY ON EXCEPT ONE PRIOR CONVICTION IN WHICH CANNOT BE DOUBLE COUNTED BY USING THEM TO ENHANCE THE CHARGE THEN (TWICE) USED TO ENHANCE THE SENTENCE AND THEN AGAIN TO AGGRAVATE IT, FROM 1990 OVER 25 YEARS (AGO), SEE: B13-701 (D)(II) THERE IS ABSOLUTELY NO VICTIM'S OTHER THAN THIS DEFENDANT HIMSELF AT THE TIME SEEKING MEDICAL TREATMENT, THIS CONFIRMED BY PROSECUTOR STIPULATING IN PLEA NO MORE THAN PRESUMPTIVE SENTENCE REQUIRING JUDGE TO BALANCE ALL THESE STATUTORILY MITIGATING CIRCUMSTANCES WITH THE PERMISSIBLE RANGE OF PUNISHMENT, MITIGATION SENTENCE

A MANDATORY MINIMUM OF 4 MONTHS IN (D.O.C), THE DEFENDANT'S AGE AND HEALTH, WITH HIS MOTHER'S HEALTH AS A PROPER MITIGATION FACTOR TO BE CONSIDERED, THE PROSECUTOR STATING THAT CERTAINLY THE TIME ALREADY SERVED IS A MITIGATING CIRCUMSTANCE FORCED TO ENDURE 70 MONTHS AND MORE.

INMATES RECEIVING 2 FOR 1 DAY TIME CREDITS WHILE UNDER THE CIRCUMSTANCES ANOTHER MITIGATION FACTOR TO BE CONSIDERED BY THE COURT.

THE TERM "TEST INJUSTICE" IS INTENDED TO INCLUDE THE DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL; PRIOR TO PLED TWO MOTIONS TO DISMISS WERE SET FOR EVIDENTIARY HEARING. THIS DEFENDANT IS BEING MISREPRESENTED AND DEPRIVED HIS RIGHT TO MEANINGFUL ACCESS TO COURTS. (A CONSTITUTIONAL RIGHT) TO TIMELY ACCESS THIS COURT AND BE INFORMED.

Dated 11-30-15

Signed

OPEN MANDATE PLEA; stipulated no more than presumptive