

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-13-0004
PETITION TO AMEND RULE 15.8,)
ARIZONA RULES OF CRIMINAL)
PROCEDURE)
)
)
) **FILED 09/03/2014**
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_____)

**ORDER
AMENDING RULE 15.8, ARIZONA RULES OF CRIMINAL PROCEDURE, ON A
PERMANENT BASIS**

Rule 15.8, Arizona Rules of Criminal Procedure, was amended on an expedited basis on January 1, 2014, with a comment period ending May 20, 2014. Comments having been received, and upon consideration,

IT IS ORDERED that the amendments to Rule 15.8, Arizona Rules of Criminal Procedure, adopted on an expedited basis, be adopted as modified on a permanent basis in accordance with the attachment hereto, effective January 1, 2015.

DATED this 3rd day of September, 2014.

SCOTT BALES
Chief Justice

TO:

Rule 28 Distribution

John A Furlong

Barbara LaWall

Mark C Faull

Sheila Sullivan Polk

Elizabeth B Ortiz

Jeremy D Mussman

David J Euchner

Robert L Ellman

ATTACHMENT*

Rule 15.8. Disclosure prior to expiration or withdrawal of a plea offer; sanctions

a. In a case in which an indictment or information has been filed in Superior Court, when extending a plea offer, the prosecutor must provide the defense with material disclosure listed in Rule 15.1(b) then within the prosecutor's possession, if the prosecutor has not previously made such disclosure. If the disclosure is made less than 30 days before the offer expires or is withdrawn, sanctions may be imposed under Rule 15.8(~~bc~~), unless the prosecutor reasonably believes that an offer should be withdrawn because, in light of new information, it is contrary to the interests of justice.

b. This rule does not affect any disclosure obligations otherwise imposed by law. While a plea offer is pending, the prosecutor must continue to comply with Rule 15.6, but additional disclosures under that rule do not extend the 30-day period. Disclosure of evidence, including the results of any scientific testing, after the offer expires or is withdrawn does not violate Rule 15.8(a) as long as the disclosure did not exist when the offer was extended.

~~bc. Upon motion of the defendant, the court shall consider the impact of the prosecutor's failure to comply with Rule 15.8(a) on the defendant's decision to accept or reject a plea offer. If the court determines that the prosecutor's failure to provide such disclosure materially impacted the defendant's decision and the prosecutor declines to reinstate the lapsed or withdrawn plea offer, then the presumptive minimum sanction shall be preclusion from admission at trial of any evidence not disclosed as required by Rule 15.8(a). Disclosure of evidence, including the results of any scientific testing, after the offer expires or is withdrawn does not violate Rule 15.8(a) as long as the disclosure did not exist when the offer was extended.~~

~~COMMITTEE COMMENT TO 2003 ADDITION OF THE NEW RULE 15.8~~

~~Although there is no constitutional right to a plea bargain, see United States v. Osif, 789 F.2d 1404, 1405 (9th Cir. 1986); State v. McKinney, 185 Ariz. 567, 575, 917 P.2d 1214, 1222 (1996), once the State engages in plea negotiations, certain constitutional protections attach that allow the Court to ensure the process is fair. See State v. Donald, 198 Ariz. 406, 413, 10 P.3d 1193, 1200 (App. 2000).~~

~~It has become common, especially in high-volume jurisdictions, for a prosecutor to impose a deadline by which a defendant must accept a plea offer. Such deadlines are imposed in order to optimize scarce criminal justice resources and minimize impact to victims. However, when the plea deadline occurs before material discovery is provided to the defense, such deadlines may impact a defendant's constitutional rights. Defense counsel may not have~~

* Additions to text are indicated by underscoring and deletions by ~~strikeouts~~.

~~adequate information about the prosecution's case to provide effective assistance to the defendant in making the decision whether to accept a plea offer or proceed to trial, resulting in a plea not knowingly and intelligently made.~~

~~New Rule 15.8 balances these interests by requiring that all material discovery listed in Rule 15.1(b) be provided to the defense well enough in advance of any plea deadline to enable the defendant to make an informed decision on the plea offer with the effective assistance of counsel.~~

~~Rule 15.8 is not triggered by a failure to comply with Rule 15.1(b), but by the failure to provide the materials or information listed under Rule 15.1(b) at least 30 days prior to the plea deadline. For example, a lab result may be material to the defendant's decision whether to accept or reject a plea offer. Under Rule 15.1(b), the prosecution does not have to provide the result to the defendant until it is "then existing" and may not even order the report until after the plea deadline. This would not violate Rule 15.1(b). However, under Rule 15.8, the court, upon motion by the defendant, would consider the impact of the failure to provide the lab report on the defendant's decision to reject the plea offer, and impose a sanction, if appropriate.~~

~~Rule 15.8 does not automatically preclude evidence that is disclosed within thirty days of the plea deadline. It applies only to discovery that the court finds material to the defendant's decision whether to accept or reject a plea offer. Whether discovery is material or not must be determined by the court after considering all of the circumstances of the case.~~