

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 06-105

Complainant: No. 1283610170A

Judge: No. 1283610170B

ORDER

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge. Although the judge may have made a legal error in allowing a defendant to serve his mandatory jail time under home detention, the commission noted that both the state and the defendant's attorney stipulated to the sentence. The commission is not a court, and cannot change or correct a judge's decisions. If the prosecutor had an objection, the correct remedy would have been through an appeal.

The complaint is dismissed pursuant to Rule 16(a).

Dated: July 11, 2006.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on July 11, 2006.

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

COMPLAINT AGAINST A JUDGE

Complainant: [] Justice of the Peace: [] Date: 04/13/06

Just a bit of background as to why the following [] case is relevant in my complaint against Justice of the Peace []

I covered [] Superior Court Case: []
[] as a [] for the []
[] The case involved [] who was beat
up by [] Police Officer [] in [] Because
[] feared for his life and tried to defend himself against [] he ended up
in prison. [] was sentenced on [] to [] years in prison after a
jury found him guilty, in his third trial, of aggravated assault against a police
officer.

Because Judge [] and those before him were bound by mandatory sentencing laws, they went out of their way to try to mitigate the sentence imposed.

This case is a long story, some of which I [] as has []
[] so I won't go into all the details, only some brief background as to
how it ties to Justice of the Peace []

[] has maintained through all [] trials, although he didn't testify in the
[] trial, that he acted in self-defense when [] began punching him, pepper-
spraying him and then taken to the ground in a choke hold. While in a choke hold
on his stomach, [] believed [] who at one point had his gun drawn and
aimed at the back of [] head, was trying to kill him, although he didn't
know why. [] reached out and grabbed whatever he could, which happened
to be a 2 X 4, and swung the board backwards over his head and the released
board hit [] on the head causing a minor injury.

Judge [] who believed [] was neither a criminal nor deserved a
prison sentence, met with the [] County Attorney, in an attempt to have
the dangerousness allegation dropped, which was the only way [] could be
released on time served (he already served more than two years in prison after
he was found guilty during the first trial for resisting arrest).

[] was told it was up to the "victim," [] and [] refused. However, []
would agree to a shorter sentence for [] only if [] signed a plea
agreement that required he serve [] years in prison, pay [] for a

thumb injury incurred while punching [] written and verbal apologies from [] and require him to drop any civil suits against the police department.

With full knowledge he was facing a [] year prison sentence, [] refused to plead guilty to, or apologize for, something he didn't do, which would also forfeit his right to appeal.

During [] sentencing hearing on [] [] dramatized how he was a victim and insisted [] receive the harshest sentence possible.

What I learned from listening to the testimony during this trial was, [] never turned his lights on to indicate he was pulling [] over until after [] had turned into an alley and was already walking away from his vehicle toward a [] shop ([] delivers [] parts and was working at the time) when [] said he wanted to talk to him. [] never told him why he wanted to talk to him, never asked to see his driver license, registration or insurance. [] lied on the stand, contradicted testimony he gave in previous trials and told to fellow police officers that respond to the scene, as to what actually happened.

Only after his arrest did [] learn [] cited him for running a stop sign. Not only did [] contest the violation, it was dismissed by the court when it was proven [] wouldn't have been able to see the stop sign from where he was parked.

The stop sign violation appeared to be an after-the-fact excuse for making the traffic stop, since [] had no warrants, no tickets, no drugs, no weapons and no record.

What I also learned, when this incident took place, [] had an extreme DUI pending from [] stemming from an evening of drinking at strip bars.

[] who had a BAC of at least .15, got on I-10 to drive home when he blacked out and drove into the guard rail. He received a concussion and lacerations to his head and knee. On the night of his DUI, [] was a member of the [] and was scheduled to start a paid standby shift within about two hours.

Records reveal [] would have still been legally drunk at the time his shift started.

[] was cited by DPS, claimed Garrity protection during the internal investigation by [] Police Department and was suspended for [] hours and then transferred from [] to patrol duty.

[] DUI case fell under the jurisdiction of the [] Justice Court over which Justice of the Peace [] was presiding.

Represented by Attorney [] [] requested and was granted continuance after continuance for his pretrial conference before deciding to request a jury trial. He then requested numerous continuances for his jury trial, which caused the court to have to re-subpoena all the witnesses and re-summons all the jurors.

After the last jury trial continuance was granted, [] decided to change his plea to guilty and was set for a change of plea hearing. Continuances were then requested and granted for his change of plea hearings as well. It appears, from looking at the [] trial docket, [] was attempting to avoid having a criminal conviction on his record until after the [] case concluded.

The last motion to continue that was granted by [] on [] simply states: "Defendant is unavailable today to enter the plea. Defendant would like to enter the plea on [] at 10 a.m. ..."

[] happened to be testifying on []

Article 2, § 11 of the Arizona Constitution requires that "justice in all cases shall be administered openly, and without unnecessary delay." [] case was delayed unnecessarily and repeatedly for over a year; not in the interest of justice, but in the interest of []

On [], [] was ordered to serve the mandatory minimum of 24 consecutive hours in [] County Jail and was given 30 days to self-surrender.

A.R.S. 28-1381(I)1 requires anyone cited for a DUI "be sentenced to serve not less than ten consecutive days in jail and is not eligible for probation or suspension of execution of sentence unless the entire sentence is served."

Subsection J of the same statute states: "Notwithstanding subsection I, paragraph 1 of this section, at the time of sentencing the judge may suspend all but twenty-four consecutive hours of the sentence if the person completes a court ordered alcohol or other drug screening, education or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education or treatment program and has not been placed on probation, the court shall issue an order to show cause to the defendant as to why the remaining jail sentence should not be served."

To this day, [] has not served any jail time. Instead, court records include a fax dated [] from [] Attorney [] to a court clerk named [] that states: "Re: [] Jail Time Completed."

[] fax cover sheet states: "Per our conversation this afternoon please find attached proof of completion of [] hours of home confinement as ordered by this Court ..."

The court did not order "home confinement," nor does statute permit [] to do so. The paperwork returned to the court from [] County Jail is stamped "NO SHOW [] Jail."

However, there was no "Order to Show Cause" hearing for [] when he failed to complete his jail time by []. Instead, there was an after-the-fact "OK" written on the document [] faxed, dated [] initialed by either [] or someone signing [] initials, indicating [] spent [] hours under home confinement.

If home confinement were a statutorily accepted alternative to county jail confinement, no one would go to jail.

During the first week of [] I called the [] Justice Court and asked to speak with []. I was told he was unavailable and was transferred to his voice mail. I left a specific message requesting [] call me at his convenience about this case, believing the substitution of home confinement for jail could possibly be the actions of the court clerk without [] knowledge. I asked if he was aware of that action, if the court allows such substitutions, and, if not, I wanted to bring it to his attention. [] never returned my call.

After further review of [] court records, which included an [] Order by [] stating, "... in conjunction with the mandatory suspension ordered by MVD, that the defendant, [] ... be allowed a special suspension as ordered by this court in lieu of the 90 day straight suspension. It is therefore ordered that the above individual, [] receive a 30-day straight suspension, and a 60 day restricted to allow the defendant ... to travel to and from work."

It then began to appear that [] who served [] years with the [] Police Department, followed by [] years as [] was doing a favor for a fellow peace officer.

A few weeks after leaving the voice message for [] I received notification of a [] County Board of Supervisors agenda item to accept [] resignation and records reflect [] retirement became effective []

In a [] note to Supervisor [] [] wrote: "As I previously indicated to you last week it is my intentions to retire as the [] [] Justice of the Peace. I intend to make my retirement effective on [] [] That should provide sufficient time to name a replacement and provide the

necessary training to that replacement before I leave this office. I would appreciate your attention to this matter."

However, a more recent agenda showed the Board of Supervisors re-appointed [redacted] as a Justice of the Peace for a term beginning [redacted]

As a justice of the peace and a [redacted] career in law enforcement, [redacted] is expected to conduct himself according to the Canons of the Code of Judicial Conduct.

Commentary under Canon 1 states:

"Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. A judiciary of integrity is one in which judges are known for their probity, fairness, honesty, uprightness, and soundness of character. An independent judiciary is one free of inappropriate outside influences. Although judges should be independent, they must comply with the law and the provisions of this code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this code diminishes public confidence in the judiciary and thereby does injury to the system of government under law."

Canon 2 states: "A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES"

- A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Commentary:

"The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired."

- B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

Canon 3 states: "A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY"

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

Commentary:

"In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs, while preserving fundamental rights of parties, also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts. Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end."

Under the same section, 13.D (2) states:

"A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority."

This court case alone points to numerous violations of the Code of Judicial Conduct, Rules of Professional Conduct in concert with a law enforcement officer

CJC-06-105

who believes mandatory sentencing laws apply only to others, his attorney, who facilitated his skirting the law with the assistance of an unethical court clerk and a justice of the peace who, by all appearances, is unfit to dispense justice.