

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 08-213

Complainant: No. 1342710606A

Judge: No. 1342710606B

ORDER

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge. A judge may sentence a defendant within the sentencing guidelines established by the legislature.

The commission cannot change a judge's decisions; therefore, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: October 2, 2008.

FOR THE COMMISSION

Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on October 2, 2008.

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

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I am writing to you on behalf of my husband that is a Vietnam Veteran. He served in the US navy on the river patrol boats in Vietnam 66-67. He was diagnosed with Post Traumatic Stress Disorder in 2000. I do not believe he was treated fairly in the AZ court. He is a responsible citizen and highly decorated veteran. The reason for my letter is they used his disability against him in court to portray him as a crazy Vietnam veteran and said he was a time bomb waiting to go off. The neighbor that claimed my husband was a time bomb was the person that physically assaulted and harmed my husband as I will try to explain.

we purchased a home in our neighbor, one house down, had a problem with my husband because my husband asked if he wanted to have a bag to pick up his dog's feces. The neighbor became very upset and started calling him a retard and was very abusive. He claimed that he was not friendly to his cousin that had parked in front of our home one evening.

On the day of incident my husband pulled up a tree stick that was supporting a tree in our front yard, and held it horizontal to defend himself from the neighbor coming to close. The neighbor grabbed the stick to push it toward my husband. Then my husband turned the stick toward the neighbor with the pointed end toward the neighbor's belly, and told him to go home as he was going to call the police. The neighbor had his 6 year old son with him at the time. The child started crying asking his father to stop and go home. My husband told him to listen to his son and go home. The neighbor retreated to his home.

My husband thought the incident was over, but soon the neighbor came walking at a fast pace toward my husband. My husband thought he had gone home to get a weapon and so he went into his garage and got his rifle down, which was unloaded, and pointed to the ceiling and told the neighbor to stay away or he would blow him away. My husband was back inside of his the garage. (This was considered self defense after the attorney general reviewed the case.)

The police were called by the neighbor and they arrested my husband. My husband admits he was very upset when the police started accusing him of being in the wrong because of what the neighbor has told them. The police did release him four hours later after he explained what had happened. There was a tape of the police station conversation but it was not used in trial. The incident was sent up to the attorney generals office and they ruled it should be tried as a misdemeanor and that it was self defense to use his gun. So almost one year later the trial took place.

But before the trial this same neighbor followed my husband into another neighborhood while my husband was walking our dog. This assault was At this time the neighbor jumped out of his car and beat my husband in the back of the head. There was an unbiased witness that testified at the trial. My husband is 64 and the neighbor is 33. My husband was taken to the hospital for head injuries. The trial was heard before my husband's trial and they gave the neighbor one night in jail with none suspended, \$568.00 fines, and 40 hrs community services and it was ordered to pay up to \$5000.00 in restitution. (Which has never been paid and we have requested it several times and they said it is set aside.) This traumatized my husband and made his PTSD escalate. He had talked to his therapist extensively about his fears regarding the neighbor.

At my husband's trial the neighbor lied about the incident and said he was never on our property and there were no dog feces. The officers that investigated the incident detained my husband, handcuffed him and placing him in the police car and would not allow him to show the officer the stick had been pulled up or the location of the dog feces. The arresting officer is no longer with the police department.

Because they found my husband guilty; they gave him a sentence of 90 days in jail suspended, 3 years probation, \$1000.00 fines, 100 hours community service, and anger management classes plus we were ordered to pay \$322.00 restitution for the neighbors lost wages. My husband satisfied this entire request.

The same Judge said that if he ever saw my husband in court again he would give him a year in jail, which was the request of the neighbor at the time of sentencing. The same neighbor then placed cameras on his house and then stocked my husband in the neighborhood. Constantly giving him the middle finger and calling him names. He had family members call police and make reports but they were not justified. They said my husband violated an order of protection

Although there is no audio on his tapes he said my husband yelled at his step son. The tape shows my husband did not yell anything, but they insisted that he did it when the camera was not on my husband.

Our lawyer told my husband he needed to get proof of what the neighbor was doing and advised my husband to tape the neighbor from our drive way. I felt it was a bad idea due to my husbands PTSD history, but the lawyer convinced my husband and son to go ahead with it. When my husband placed the camera in our car in the driveway he was getting our neighbor on film when they called the police and said my husband was in violation of his probation and sent a policeman to our home. They arrested my husband. My husband was confused and did not understand why they were arresting him.

Our lawyer told us because he could not defend us against two charges on violation of probation; so we should take a plea bargain. He said they did not have to prove beyond a reasonable doubt and he would get less time. My husband took the plea bargain recommended by our lawyer because he was afraid of loosing his VA entitlement which is major form of income. My husband admitted himself to the VA mental ward because of mental and financial stress this neighbor has caused. He was released from the VA mental health ward for that day to attend this hearing. He then returned back to the hospital after court until he reported to the jail five days later. The court gave him 5 months in jail for a misdemeanor and 3 years probation, \$6000.00 for jail cost and fines; also he has to attend more anger management classes. The judge also told my husband he could not return to our neighborhood after he got out of jail. So we

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are faced with paying for a home that we can not sell or live in. He is currently serving his time at jail. We currently are trying to rent our home.

Our neighbor assaulted my husband and he was sentenced very lightly in comparison to what the same judge sentenced my husband. How can they claim my husband is so violent when the only true unbiased witness saw and testified to the assault of my husband? While my husband was walking alone with our dog in different neighborhood the neighbor jumped from his car and began to beat my husband until he was sent by ambulance to the hospital for head injuries. The witness called the police.

They have used their children to make the court believe they would be at risk, but they have never proved any psychological evaluation on the children or family members that they are traumatized or at risk.

Once again thank you for reviewing my letter and please advise how I can have this case looked into further.