

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-164

Complainant: No. 1365510809A

Judge: No. 1365510809B

ORDER

The commission reviewed the complaint filed in this matter and found no evidence of ethical misconduct on the part of the judge. The investigation revealed that the complainant did not file his notice of post-conviction relief properly and that the matter is now on track for ruling. Accordingly, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: August 10, 2009.

FOR THE COMMISSION

 \s\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on August 10, 2009.

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

STATEMENT OF FACTS

Your Name: _____

Judges' Name: _____

Date: _____

ON April 1, 2009, I filed a "Motion To Expedite Rule 32 Ruling", "Notice of Post-Conviction Relief", and "Petition for Post-Conviction Relief" with my trial court before Commission⁸

in Case No. _____, claiming that I fall within the scope of Rule 32.1(d) and that I should otherwise be free. As of March 31, 2009, I had 2,435 actual days served, plus 1,217 earned Release credit days, which equalled the 10 year sentence imposed. (3,652 days) The ARIZONA Dept. of Corrections ("ADOC") is refusing to correctly calculate my earned Release credit days, which has resulted in my NOW UNCONSTITUTIONAL detainment in excess of 60 days beyond my statutorily required Release date. As of this date, Judge _____ has NOT performed his duties in either Ruling ON my motion to expedite my Rule 32 ruling, NOR my Rule 32 petition itself. Judge _____ has failed to even issue a Rule 32 scheduling order in excess of 60 days.

Judge _____ has willfully and persistently failed to perform his duties regarding my sentencing pursuant to 1987 "old code" guidelines, as he has repeatedly failed to specifically order that I am eligible for Release after serving $\frac{1}{2}$ of my sentence, and thereby am also eligible to earn $\frac{1}{2}$ time earned release credits. The result - which has been addressed formally before Judge _____ in at least one other, unrelated Rule 32 - has been that the ADOC has calculated my sentence as "flat" time, and has denied my ERCD Release date (or my Release) unless or until the sentence is formally and specifically addressed by my trial court.

Judge _____ has repeatedly, willfully and persistently failed to do anything more regarding my sentence beyond an ambiguous reference to "old code" and/or "1987 laws", particularly after being informed by myself and my counsel of the ADOC's poor history of correctly and willingly computing a PRISONER'S earned credit Release days without a specific eligibility order from the court. AS I have now formally addressed my "non-release" to Judge _____ in my Rule 32, he is bringing the judicial office into disrepute by knowingly and intentionally delaying my Rule 32 proceedings so that I may remain in the custody of the ADOC when I should otherwise be free.