

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-349

Complainant: No. 1408610551A

Judge: No. 1408610551B

ORDER

The complainant alleged that a superior court judge intentionally disregarded the law by substantially mitigating a sentence without notifying the prosecutor and by refusing to impose the requested fine as required by law. After analyzing the allegations and the judge's response in which she admitted her mistakes, the commission decided to dismiss the complaint by issuing an advisory letter reminding the judge to follow procedures even when they do not appear to be practicable. The complaint is dismissed with comments pursuant to Rules 16(b) and 23.

Dated: April 18, 2011.

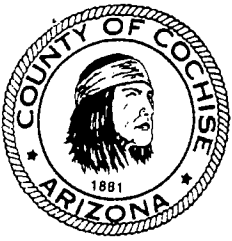
FOR THE COMMISSION

/s/ Louis Dominguez

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on April 18, 2011.

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



OFFICE OF THE
COCHISE COUNTY ATTORNEY

P.O. Drawer CA
Bisbee, Arizona 85603

2010-349

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DEC 27 2010

December 22, 2010

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

Re: IN THE MATTER OF JUDGE

Dear Sir or Madam,

This is a formal complaint against Hon. _____ a judge of the Superior Court of Arizona, Cochise County, Division 4. Her professional address is Office of Court Administration, PO Box _____ Bisbee, AZ 85603-0001.

The undersigned, _____ is a deputy county attorney in the above office and is assigned as a prosecutor in the general crimes unit. Contact information is set forth above.

In my capacity as a Deputy County Attorney, I covered a sentencing for Deputy Cochise County Attorney Faisal Ullah, a drug prosecutor in this office, on December 21, 2010, at 9:00 a.m. Said sentencing was before the above named judge in the case of State v. Jose Peraza, Cochise County Superior Court no. CR2010 _____. The said Faisal Ullah had previously tried the case to a jury and the defendant was at all times represented by Thomas C. Holz, Assistant Cochise County Legal Defender, Bisbee, Arizona.

The defendant was convicted, following a jury trial, of possession of marijuana for sale, a class 2 felony, carrying a mandatory prison sentence as set forth hereinafter.

The above named judge intentionally and knowingly (1) refused to abide by ARS §13-702 by providing notice to the State of her intent to impose a substantially mitigated prison term before impose such a term and (2) refused to impose a fine of three time the value of the drug possessed by the defendant as required by ARS §13-3405(D), falsely stating that no

evidence of the drug's value had ever been presented to the court. Judge knowing and willful failure to impose sentences as required by Arizona statute constitutes malfeasance *per se* pursuant to ARS §13-701(I).¹

All of said judge's conduct complained about herein is a matter of record; completion of transcripts and receipt of relevant Minute Entry Orders are pending.

1. REFUSAL TO IMPOSE A LEGAL PRISON SENTENCE

Possession of Marijuana for Sale of more than four pounds is a class 2 felony.² Upon conviction for such offense, a prison sentence is mandatory,³ as is a fine equal to three times the value of the marijuana, or \$750.00, whichever is greater.⁴

As to the prison sentence, the state neither alleged nor proved any aggravating factors to the jury at trial. Consequently, the most the judge could have sentenced the defendant to was the presumptive term of five years in DOC.⁵ Of course, the mitigated term of four years was available to her as was the substantially mitigated term of three years. Before legally sentencing the defendant to the substantially mitigated term, however, ARS §13-702(E)⁶ requires the judge to provide notice to the State of her intent to impose the substantially mitigated term.

In the instant sentencing, Judge began to sentence the defendant to the substantially mitigated term of three years. I objected vigorously on several occasions and cited to and even read 13-702(E) to the court. My purpose in doing so was to give the prosecutor assigned to the case, Mr. Ullah, an opportunity, as contemplated by 13-702(E), to present evidence to the court which might persuade the court not to impose the substantially mitigated term.

¹ ARS §13-701(I). The intentional failure by the court to impose the mandatory sentences or probation conditions provided in this title is malfeasance.

² ARS § 13-3405A(2), B(6)

³ ARS § 13-3405C

⁴ ARS § 13-3405

⁵ ARS § 13-702D, *Blakely v. Washington*, 542 U.S. 296 (2004)

⁶ ARS § 13-702E "The court shall inform all of the parties before sentencing occurs of its intent to increase or decrease a sentence to the aggravated or mitigated sentence pursuant this section. If the court fails to inform the parties, a party waives its right to be informed unless the party timely objects at the time of sentencing."

Judge flatly refused to provide the required notice to the State and proceeded to sentence the defendant to the substantially mitigated term of three years in the Department of Corrections. In response to my reading of 13-702(E), her inexplicable reason for refusing to abide by 13-702(E) was that it "...doesn't make sense."

This constitutes malfeasance pursuant to ARS §13-701(I).⁷

2. REFUSAL TO IMPOSE A MANDATORY FINE

As to the fine mandated by ARS §13-3405(D), I argued to Judge that my understanding was that the value of the marijuana had been established at \$300.00 to \$400.00 per pound. I stated that, giving the defendant the benefit of the doubt, and taking the \$300.00 per pound figure, multiplied by the weight of 186 pounds, the court was obligated to impose a fine of 186 times \$300.00 times 3. At that time, both Mr. Holz and Judge both falsely stated that no evidence of the value of the marijuana had ever been presented to the court. As can be seen by the Affidavit of Mr. Ullah, Det. Ramon Barrallardos, the case officer, testified under oath at trial that the value of the marijuana was \$300.00 to \$400.00 per pound. The trial transcript which will be provided once it is prepared, will verify this. Contrary to the evidence and after falsely claiming that no evidence of value had been presented, Judge imposed the minimum fine of \$750.00. This also constitutes malfeasance pursuant to ARS §13-701(I).⁸

My affidavit, as well as the affidavit of Deputy Cochise County Attorney Faisal Ullah, are attached hereto.

COCHISE COUNTY ATTORNEY

⁷ ARS §13-701(I) "The intentional failure by the court to impose the mandatory sentences or probation conditions provided in this title is *malfeasance*."

⁸ Id.