

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 13-139

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Judge:	No. 1000414694A
Complainant:	No. 1000414694B

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**ORDER**

The complainant alleged a superior court judge violated his due process rights by imposing an illegal sentence.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After reviewing the information provided by the complainant and court records, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission does not have jurisdiction to review the legal sufficiency of court rulings. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: July 3, 2013.

FOR THE COMMISSION

/s/ George Riemer

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George A. Riemer  
Executive Director

Copies of this order were mailed to the complainant and the judge on July 3, 2013.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2013-139

COMPLAINT AGAINST A JUDGE

Your Name:

Judge's Name:

Date: 5-23-13

Instructions: Describe in your own words what the judge did that you believe constitutes misconduct. Please provide all of the important names, dates, times, and places related to your complaint. You can use this form or plain paper of the same size to explain your complaint, and you may attach additional pages. Do not write on the back of any page. You may attach copies of any documents you believe will help us understand your complaint.

MY DUE PROCESS RIGHTS UNDER THE 14TH AMENDMENT OF THE U.S. CONSTITUTION WERE VIOLATED ON JULY 11, 2012 BY MARI-COPA COUNTY SUPERIOR JUDGE WHEN HE ISSUED THE ILLEGAL SENTENCE OF 7.5 YEARS.

UNDER ARIZONA LAW, THE COURT MUST FIND TWO CLEARLY ENUMERATED AGGRAVATING CIRCUMSTANCES BEFORE IT CAN IMPOSE A SENTENCE IN EXCESS OF THE MAXIMUM. MY AGGRAVATED SENTENCE OF 7.5 YEARS IS NOT SUPPORTED BY TWO CLEARLY ENUMERATED AGGRAVATING CIRCUMSTANCES.

ON MARCH 9, 2012 I WAS CHARGED BY INDICTMENT WITH 5 COUNTS OF ROBBERY, CLASS 4 FELONIES. LATER, ON APRIL 4, 2012, THE STATE AMENDED THE INDICTMENT IN THIS MATTER TO ALLEGE SEVERAL HISTORICAL PRIOR FELONY CONVICTIONS. ALSO ON APRIL 4, 2012, THE STATE ALLEGED THREE AGGRAVATING CIRCUMSTANCES PURSUANT TO A.R.S. §13.701.

ON JUNE 8, 2012, I ENTERED INTO A PLEA AGREEMENT WITH THE STATE AND AGREED TO PLEA GUILTY TO COUNTS 1 AND 2, ROBBERY, CLASS 4 FELONIES, AND COUNT 3, ROBBERY, A CLASS 4 FELONY WITH ONE PRIOR FELONY CONVICTION. MY PLEA AGREEMENT PROVIDED THAT I WOULD BE PLACED ON PROBATION ON COUNTS 1 AND 2, AND SENTENCED TO THE DEPARTMENT OF CORRECTIONS FOR AN AGGRAVATED TERM OF 7.5 YEARS ON COUNT 3. ALTHOUGH THE PARTIES STIPULATED TO A GREATER THAN MAXIMUM SENTENCE, THE PLEA AGREEMENT DID NOT PROVIDE A STIPULATED TO ANY AGGRAVATING CIRCUMSTANCES. MY PLEAS OF GUILTY WERE ACCEPTED BY THE JUDGE ON JUNE 8, 2012.

SENTENCING PROCEEDINGS WERE CONDUCTED ON JULY 11, 2012. IN SUPPORT OF ITS REQUEST FOR IMPOSITION OF AGGRAVATED SENTENCE, THE STATE INFORMED JUDGE THAT, "THERE ARE SEVERAL AGGRAVATING FACTOR THAT WARRANT THE SEVEN AND A HALF YEARS." (TR. 7/11/12 PP. 2, 3,) BUT THE STATE DID NOT ELABORATE ON WHAT THOSE AGGRAVATING CIRCUMSTANCES MIGHT BE. MY ATTORNEY PRESENTED MITIGATING CIRCUMSTANCES AS STATED ON THE RECORD (ID. PP. 6-8). AFTER THE PARTIES CONCLUDED THEIR PRESENTATIONS, THE JUDGE FOUND THE EXISTENCE OF ONE AGGRAVATING FACTOR - MY TEN PRIOR FELONY CONVICTIONS (ID. P. 9,) THE JUDGE FURTHER FOUND THAT THE AGGRAVATING FACTOR OF TEN PRIOR FELONY CONVICTIONS OUTWEIGHED MY MITIGATION AND SENTENCED ME TO AN AGGRAVATED TERM OF 7.5 YEARS IMPRISONMENT IN THE DEPARTMENT OF CORRECTIONS. THE JUDGE PLACED ME ON PROBATION ON COUNTS 1 AND 2 FOR A TERM OF 2 YEARS. (ID. PP. 9, 10.)

THEFORE JUDGE DENIED ME MY RIGHT TO DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION WHEN HE IMPOSED AN AGGRAVATED SENTENCE OF 7.5 YEARS WITHOUT MAKING THE NECESSARY FINDINGS REQUIRED BY A.R.S. §13-703(D) AND (F).

UNDER STATE AND FEDERAL LAW, THE STATUTORY MAXIMUM SENTENCE FOR AN OFFENSE BASED ON THE CONVICTION ALONE IS THE PRESUMPTIVE SENTENCE. STATE V. SCHMIDT, 220 ARIZ. 563, 208 P.3D 214 (2009) (CITING STATE V. MARTINEZ, 210 ARIZ. 578, 115 P.3D 618 (2005)) A SENTENCE IN EXCESS OF THE PRESUMPTIVE MAY BE IMPOSED IF THE COURT FINDS ONE OR MORE AGGRAVATING CIRCUMSTANCES LISTED UNDER §13-701(D). §§13-702(A), 703(D). ADDITIONALLY, THE COURT MAY IMPOSE A GREATER THAN MAXIMUM SENTENCE IF THE COURT FINDS AT LEAST TWO AGGRAVATING CIRCUMSTANCES LISTED UNDER §13-701(D). §§13-702(C), -703(F).

THE JUDGE, HOWEVER, MAY NOT INCREASE A SENTENCE IN EXCESS OF THE PRESUMPTIVE BASED SOLELY ON THE FINDING OF A CATCH-ALL AGGRAVATOR PURSUANT TO §13-701(D)(24). IN SCHMIDT, THE ARIZONA SUPREME COURT HELD THAT THE CATCH-ALL AGGRAVATOR WAS "PATENTLY VAGUE" AND COULD NOT BE USED AS THE SOLE MEANS TO INCREASE THE STATUTORY MAXIMUM PENALTY. 220 ARIZ. AT 566, 208 P.3D AT 217. SIMILARLY, IN STATE V. PERRIN, THE ARIZONA COURT OF APPEALS HELD THAT THE COURT MUST FIND THE EXISTENCE OF TWO CLEARLY ENUMERATED AGGRAVATING CIRCUMSTANCES BEFORE IMPOSING A SENTENCE IN EXCESS OF THE MAXIMUM. 222 ARIZ. 375, 214 P.2D 1016 (APP. 2009).

THEREFORE, AS PREVIOUSLY STATED, JUDGE VIOLATED MY DUE PROCESS RIGHT UNDER THE FOURTEENTH AMENDMENT WHEN HE HANDED DOWN THE ILLEGAL SENTENCE OF 7.5 YEARS AND IT IS FOR THESE REASONS THAT HE SHOULD BE HELD ACCOUNTABLE.