### State of Arizona

## COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 13-139	
Judge:	No. 1000414694A
Complainant:	No. 1000414694B

#### 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

George A. Riemer Executive Director

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

## **CONFIDENTIAL**

Your Name:

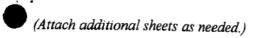
State of Arizona Commission on Judicial Conduct 1501 W. Washington Street, Suite 229 Phoenix, Arizona 85007

FOR OFFICE USE ONLY

2013-139

# COMPLAINT AGAINST A JUDGE

Your Name:	Judge's Name:	Date: 5-23-13	
plain paper of the same size	your own words what the judge did that you be names, dates, times, and places related to your to explain your complaint, and you may attach attach copies of any documents you believe will	r complaint. You can use this form or	
	SO RIGHTS UNDER THE 14TH		
U.S. CONSTITUT	ION WERE VIOLATED ON JU	LY 11, 2012 BY MARI-	
COPA COUNTY SL		WHEN HE	
ISSUED THE ILLEG	AL SENTENCE OF 7.5 YEARS		
UNIDER ARIZONA	LAW, THE COURT MUST FIND	TWO CLEARLY ENUMER	
ATED AGGRAVATING	G CIRCUMSTANCES BEFORE	TCAN IMPOSE A SEN-	
TENCE IN EXCESS	OF THE MAXIMUM MY ACGRAVA	ATED SENTENCE OF 7.5	
YEARS IS NOT SUP	PORTED BY TWO CLEARLY ENLIM	ERATED AGGRAVATING	
CIRCLIMSTANCES.			
	2 I WAS CHARGED BY INDICTM	ENT WITH 5 COUNTS OF	
ROBBERY, CLASS 4	FELONIES. LATER, ON APRIL 4	4,2012, THE STATE AMEND	
ED THE INDICTMENT	INTHIS MATTER TO ALLEGE SE	EVERAL HISTORICAL PRIOR	
	S. ALSO ON APRIL 4, 2012, THE		
AGGRAVATING CIRC	LIMSTANCES PURSUANT TO A.	R.S. § 13.701.	
ON JUNE 8, 2012,	I ENTERED INTO A PLEA AGRE	FEMENT WITH THE GIATE	
AND AGREED TO PLE	EA GUILTY TO COUNTS I AND Z,	ROBBERY, CLASS 4	
FELONIES, AND COUN	IT 3, ROBBERY, A CLASS 4 FELO	MY WITH ONE PRIOR FE-	
LCHY CONVICTION. N	Y PLEA AGREEMENT PROVIDED	THAT I WOULD BE PLACED	
ON PROBATION ON	COUNTS I AND Z, AND SENTENCE	ED TO THE DEPARTMENT	
OF CORRECTIONS FO	RANAGGRAVATED TERM OF 7.5	S YEARS ON COUNT 3.AL-	
THOUGH THE PARTIE	S 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			



SENTENCING PROCEEDINGS WERE CONDUCTED ON JULY 11, 2012. IN SUPPORT OF ITS REQUEST FOR IMPOSITION OF AGGRAVATED SENTENCE, THE STATE INFORMED JUDGE THAT, "THERL ARL SEVERAL AGGRAVATING FACTOR THAT WARRANT THE SEVEN AND A HALF YEARS." (TR. 7/11/12 PP. 2,8) BUT THE STATE DID NOT ELABORATE ON WHAT THOSE AGGRAVATING CIRCUMSTANCES MIGHT BE. MY ATTONEY PRESENTED MITIGATING CIRCUMSTANCES AS STATED ON THE RECORD (ID. PP. 6-6), AFTER THE FARTIES CONCLUDED THIER 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 I AND 2 FOR A TERM OF 2 YEARS. (ID. PP. 9,10.)

THE FOURTE CATH AMENDMENT TO THE U.S. CONSTITUTION WHEN HE IMPOSED AN AGGRAVATED SENTE INC. OF 7.5 YEARS WITHOUT MAKING THE NECESSARY FINDINGS REQUIRED

SYA.R.S. §13-703(D) AND(F).

UNDER STATE AND FEDERAL LAW, THE STATUTORY MAXIMUM SENTENCE FOR AN OFFENSE BASED CNTHE 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 UNDE §18-701(D). §§18-702(A),
103(D). ADDITIONALLY, THE COURT MAY IMPOSE A GREATER THAN MAXIMUM SENTENCE
§18-701(D). §§18-702(C),-703(F).

THE JUDGE, HOWEVER, MAY NOT INCREASE A SENTENCE INTEXCESS OF THE PRESUMPTIVE BASE DEOLELY ON THE FINDING OF A CATCH-ALL AGGRAVATOR PURSUANT TO § 18-701 (D)(24). IN SCHMIDT, THE ARIZONA SUPPLIME COURT HELD THAT THE CATCHALL AGGRAVATOR WAS PATENTLY VAGUE AND COULD NOT BE LISED 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 ASENTENCE IN EXCESS OF THE MAXIMUM, 222 ARIZ, 375, 214 P.2d 1016 (APP. 2009).

THERE FORE, AS PREVIOUSLY STATED, JUDGE

WY 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.