

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 17-029

Judge:

Complainant:

ORDER

The complainant alleged a superior court judge improperly denied his petition for post-conviction relief and other motions in a criminal case.

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.

The commission does not have jurisdiction to review the legal sufficiency of the judge's rulings. In addition, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23(a).

Commission member Margaret H. Downie did not participate in the consideration of this matter.

Dated: March 1, 2017

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer

Executive Director

Copies of this order were distributed to all appropriate persons on March 1, 2017.

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

In And For

Plaintiff/Respondent,
 vs.
 Defendant/Petitioner. (

COMES NOW Defendant/Petitioner in proper respectfully requests, pursuant to Rule 32.1(c), Arizona Rules of Criminal Procedure, that this Court grant an order allowing him to amend, at

"to correct errata for the court's convenience in this extraordinary case of proceedings in the manner and, on the grounds below.

1.

Law: Rule 32.1(c) encompasses claims of ineffective assistance of counsel. Comment to Rule 32.1. Effective assistance of counsel is guaranteed by the Sixth and Fourteenth Amendments because it is "essential to a fair trial." Teague v. Texas, 390 U.S. 400, 403, 85 S.Ct. 1065, 1067, 13 L.Ed.2d 923 (1965). In Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), the U.S. Supreme Court set forth a two-part test to determine whether error by an attorney rendered the performance constitutionally ineffective. First, the petitioner must show that counsel's perform-

ance was deficient as measured according to a standard of reasonableness under prevailing professional norms. *Id.*, pp. 637-38, 124 S.Ct. at 2069. Second, the petitioner must show that the deficient performance so prejudiced the defense that it deprived him of a fair trial. *Id.*; Maplefield v. Woodford, 270 F.3d 915, 934 (9th Cir. 2001). See also, State v. Lee, 142 Ariz. 210, 689 P.2d 153 (1984) (adopting the Strickland test)

Rule 241, Arizona Rules of Criminal Procedure, provides in pertinent part that when the defendant has been found guilty, the court on motion of the defendant, or on its own initiative with the consent of the defendant, may order a new trial when the verdict is contrary to law or to the weight of the evidence. Rule 241(a), (c)(2). That the prosecutor has been guilty of misconduct. Rule 24.2(a)(2). That newly discovered material facts exist, under the standards of Rule 321.

Argument: Trial Counsel is an experience trial attorney. He should have been aware that the evidence and prosecutor's misconduct did not support Petitioner's convictions for the underlying offenses charged and that some investigation was required to produce the newly discovered material facts existing at the time of petitioner's trial and alleged commission of the crime. He should have, therefore, filed a motion pursuant to Rule 24.1(c), (d)(2) and 24.2(c)(2) arguing that the verdict was contrary to the weight of the evidence. Trial Counsel's failure to do so constitutes ineffective assistance of counsel. Petitioner was prejudiced because he was convicted, and is incarcerated, for offenses for which there was prosecutor misconduct using false testimony and trial counsel's failure to investigate and produce the petitioner's medical/mental history of the newly discovered material facts that probably would have altered the outcome at his trial or sentencing. Petitioner has met both prongs of the Strickland test for ineffective assistance of counsel. He is, therefore, entitled to the relief requested in his

CONCLUSION

Petitioner has presented a colorable claim for relief, and therefore, respectfully requests that this Court grant leave allowing him to amend and he is entitled to an evidentiary hearing, after which this court should reverse his convictions and dismiss all his charges with prejudice or order new trial; alternatively, the court should re-sentence him to no more than concurrent presumptive terms

Respectfully Submitted this

Original and Copy mailed to:

No

AFFIDAVIT OF

STATE OF ARIZONA

§§§

under oath deposes and states:

1.

2.

Further Affiant Sazeth Naught,

DATED This

The above instrument was acknowledged before me this

by

Witness my hand and official seal.

My Commission Expires

(SEAL)

In And For

Plaintiff/Respondent,

vs.

Defendant/Petitioner. (

COMES NOW Defendant/Petitioner in person, in opposition to the State's motion opposing reinstatement claiming he failed to show good cause to reinstate. (See New-Discovered Evidence-Medical Reports, attached).

In two separate instances, the Arizona Supreme Court proceeded to determine whether the defendant had established a colorable claim entitling him to a Rule 34 evidentiary hearing in that case; as this Court, must also determine in this case. Id. at 52-53, 181 P.2d at 29-30.

Here, the Petitioner certainly meets the first requirement that the evidence be newly-discovered easily; because for the first time he only obtained the attached material a and b) was not diagnosed until well after his trial and was not recognized a mental condition at the time of his trial. Like this petitioner may have been aware that his mental condition was not stable, he was not aware that he suffered from. Second, petitioner was diligent in pursuing this remedy. He brought his condition to the

**THE COMMISSION'S POLICY IS
TO POST ONLY THE FIRST FIVE
PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**