

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-028

Judge:

Complainant:

ORDER

June 19, 2019

The Complainant alleged a superior court judge abused his discretion in denying his petition for writ of habeas corpus.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Rules 16(a) and 23(a).

Commission member Diane M. Johnsen did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on June 19, 2019.

2019-028

COMPLAINT AGAINST A JUDGE

Name: _____ Judge's Name: _____

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

In A minute entry dated (Exhibit 7) Judge _____ on Page _____ stated: to the extent he believes that his release date has been incorrectly calculated he shall first seek a time calculation from the _____ and if not satisfied, seek relief in a separate filing -- clearly setting forth the basis of the claim. Defendant should raise any such claim in a new civil habeas proceeding, not as a Rule 32 proceeding under his criminal case number.

Claimant knew the error did not lie with the _____ but with the sentencing court.

Claimant proceeded with the filing of a new civil habeas proceeding challenging if the requirements of law were complied with when the sentences were imposed, pursuant to State v. Grantman (1979) 30 Ariz. 591; Workman v. Mitchell, 502 F.2d 1701 (9th Cir. 1974); and State v. Manning, 143 Ariz. 139.

Judge _____ gave Respondent until _____ to answer if they so choose to do so. No answer was filed except a notice the Attorney General does not deal with the issues raised.

Judge _____ proceeded and ruled on the habeas petition and erred in his ruling by abusing his discretion multiple times in a minute entry dated (Exhibit 7).

1) The first appears in exhibit B pg. 1, para 2 stating:

" See Exhibit C.

Judge in exhibit C did not abdicate the two issues, but stated the two issues should be filed in a new civil habeas proceedings.

The new claim was the requirements of law were not complied with and were ignored in when deciding the civil habeas proceeding and Judge ... abused his discretion by erroneously declaring Judge ... adjudicated the claims when judge ... did not. Exhibit C.

2) The 'second' abuse of discretion in Exhibit A on pg. 1, para. Judge ... stated there is no such thing as a median sentence.

In Exhibit ~~B~~D (former A.R.S. §13-604(B)(D) & (G) §14, CL-11985) all state:

Subsections (B)(D)(F) states the median shall be the presumptive.

At sentencing, Exhibit C, ^{L*} at 56, Lines to Judge ... failed to recognize the sentencing Judge. Errored by omitting specific performance the judge was required to perform. (^{L*} sentencing transcript not available, [2] change of plea shown)

3) The 'third' abuse of discretion in exhibit A.M.E.

Judge Page Paragraph Stated:

"

This is a clear abuse of discretion by Judge statement since Petitioner/Defendant clearly stated in his Pleadings no ex post facto claim is being raised but an abuse of discretion since the original sentence was imposed on more than before the law was changed, since the court was in violation at the time of Rule 36 A.R.C.P., by changing the language of the rule the court had no authority to perform, thus the requirements of law were not complied with. Had the court at the original sentence was imposed, consecutive sentences were still available, but the sentencing Judge failed to recognize which Judge also failed to recognize.

Under Canon sec. the rulings by Judge was not a good faith error, but of legal error and/or an intentional disregard of the law(s) which may constitute misconduct.

Based on the sections above, Judge ruling is based on error's of law, not determining the

Statements of facts and conclusions of law, and deciding issues were raised by Petitioner/Defendant were adjudicated by another Judge when in fact they were not. ~~2*~~

Once ~~again~~ the requirements of law were not complied with which is an abuse of discretion.

Pursuant to A.R.C.P. Rule 80(c) Claimant declares the foregoing is true and correct under the penalties of perjury.

Dated this day of _____

By: _____

(claimant, prose)

Exhibits:

Charge of Plea by Judge
not available. 2FS (sentencing transcript same but

1985 version of ARS §13-604(6) 114, 11-1
by Judge

~~2*~~ see CONN Rule 1.2(5) "...violations of law, court rules..."

Pending before the Court is the States' Notice of Non-Compliance (filed) and the Defendant's Reply (filed). At issue is the State's attempt to comply with the Court's direction "

was tested and destroyed in " The State notes that the

Defendant's Reply attaches a transcript of testimony that purportedly contradicts the State's assertion that no testing was done. That transcript does not convince the Court anything further can or should be ordered in this case. Indeed, the transcript appears to relate to a person who was not a victim In any and all events, the Court--- after the tome of filings made and without any showing of how or why the destruction of the kit referenced in the transcript provides a basis for relief, will deny relief.

Similarly, the Defendant filed a " (filed). He argues that the State had an obligation to retain custody of the and because of advances in technology "

**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.**