

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 20-279

Judge:

Complainant:

ORDER

December 23, 2020

The Complainant alleged a superior court judge had failed to issue a timely ruling in a criminal matter.

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 Commission Rules 16(a) and 23(a).

Commission members Barbara Brown and Joseph C. Kreamer did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on December 23, 2020.

2020-279

COMPLAINT AGAINST A JUDGE

Your Name:

Judge's Name:

Date:

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.

On _____ I filed a petition to vacate orders for restitution, fines, surcharges and assessments. On _____ The state responded and I filed a reply on _____ which was all after the court gave a decision.)

On _____ the court denied my petition, without response & reply. Then on _____ I filed a motion for reconsideration on minute entry dated _____ with request for facts and conclusions of law be issued and signed pursuant to Rule 54 A.R.C.V.P. The court did not answer this and on _____ I filed a notice that matters had been pending over sixty days as required by Arizona Constitution Art. 6 § 21 and Arizona Supreme Court Rule 81, Code of Judicial Conduct, Canon 3 (A), (B)(1)(5). (The Judge violated these provisions)

I have attached, the motion/petition; minute entry; motion for Reconsideration; and notice of matter pending.

The judge should have responded to the motion for reconsideration, so the case may proceed if its appealed. At this time, I cannot appeal an unsigned minute entry or the failure to rule on a motion.

(Attach additional sheets as needed.)

Petitioner/Defendant, ProSe

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF

NO. _____

Petitioner - Defendant

V.

Respondent - Plaintiff

PETITION TO VACATE ORDERS
FOR RESTITUTION, FINES, SURCHARGES,
AND ASSESSMENTS

Pursuant to A.R.S. §§ 13-804 (E) & (M); 13-805 (A); and 13-825, Petitioner, pro se, hereby moves the court to vacate orders for Fines, Restitution, Surcharges and assessments entered in this case based on the following memorandum of points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITY.

In _____, this court entered an order for restitution, fines, surcharges and assessments.^{1/} To date, the petitioner - Defendant has been unable to pay these amounts due

^{1/} #

to his indigency. His failure to pay these amounts has prevented him from obtaining an absolute discharge and to be free from the disabilities resulting in recidivism and continual incarceration.

Under the law, once a defendant has paid his fines, restitution, surcharges and assessments, in addition to completing his prison sentence he can move for an absolute discharge, or have his charge(s) dismissed under A.R.S. §13-907 and would therefore be released from all penalties and disabilities resulting from the offense(s).

These statutes for restitution, fines, surcharges and assessments however punishes indigent defendants in a way that it does not punish wealthier defendants.

Petitioner-Defendant in this case is currently incarcerated, semi-disabled and unemployed. As such he lacks the ability to pay any restitution, fines, surcharges or assessments. He is indigent. A defendant who successfully completes his sentence and pays his fines, restitution, surcharges and assessments has an opportunity to obtain an absolute discharge and a right to seek to have the charge dismissed. But a defendant who is indigent and lacks the ability to pay cannot ever avail himself of these rights. This results in a statutory scheme that provides unequal treatment between wealthy and indigent defendants solely and exclusively on the latter's poverty.

Under Griffin v. Illinois, 352 U.S. 12 (1956) the United States Supreme Court stated that the "constitutional guarantees

^{2/} A.R.S. §13-906 A defendant who has obtained an absolute discharge may seek restoration of his civil rights. See A.R.S. §13-904,

of Due Process and equal protection both call for procedures in criminal trials which allow no invidious discrimination between persons and different groups of persons.^{3/} As such, a state may not inflict punishment on indigent criminal defendants solely on the basis of their poverty.

Currently, petitioner is being punished in the following ways, solely due to his poverty:

1. His employment opportunities are disrupted, as half of his prison wages (.15 to .35 per hour) is subject to confiscation/attachment.
2. Prevents future employment opportunities, due to criminal record.
3. A lien is placed against petitioner which subjects him to garnishment, attachment or confiscation of tax refunds or court judgements.
4. Right to have civil rights restored [opportunity]
5. Opportunity to have charges dismissed/set aside
6. Inability to obtain absolute discharge
7. Interferes with petitioner's ability to obtain hygiene items.
8. Interferes with petitioner's ability to participate in rehabilitation under the prisons. Integrated housing program or other educational programs.
9. Interferes with support obligations of his aging parents and child support obligations

All of which leads to financial insecurity and recidivism. It discourages employment opportunities. It is clearly a hardship on

^{3/}

This applies to non-criminal imprisonment cases as well. *Mayer v. City of Chicago*, 404 U.S. 189 (1971).

the petitioner to keep the status quo.

Based upon the above, petitioner moves this court to conduct an ability to pay hearing, telephonically, to ascertain petitioner's ability to pay, even though A.R.S. § 13-804 prohibits consideration of a defendant's ability to pay. Petitioner believes that ARS § 13-804(c) is unconstitutional due to Griffin v. Illinois, supra.

Therefore, petitioner prays this court hold the hearing and upon finding petitioner's inability to pay restitution, fines, surcharges and assessments, vacate all orders for restitution, fines, surcharges and assessments.

Respectfully Submitted

Petitioner-Defendant, Pro Se

**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.**