

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-156

Judge:

Complainant:

ORDER

November 17, 2022

A superior court judge self-reported a delayed ruling.

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 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 member Barbara Brown did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on November 17, 2022.

Attachments:

From:

Sent:

To:

Subject: Possible 60-day violation

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To: _____, _____, Commission of Judicial Conduct

From: _____ County _____ Court Judge

Date:

Dear

My name is _____. I am a _____ Court judge in _____ County. My current position is _____ of the _____ bench. I am sending you this email to self-report a possible 60 – day violation on a successive Rule 32 matter.

The case in question is _____ . This case was tried by my predecessor, Judge _____, in _____. _____ was found guilty of murdering her child. She was sentenced to life in prison on the murder count with the possibility of parole after 35 years. She received additional sentences totaling 27 years. Her sentence was affirmed in a memorandum decision on _____. A lengthy Rule 32 petition was filed on _____ and denied by Judge _____ in a ruling dated _____. Defendant filed a successive petition which also denied by Judge _____ on _____.

Judge _____ retired in _____ and I took over _____ on _____. On _____, the _____ County Clerk's office received a pleading on a preprinted form titled NOTICE REQUESTING POSTCONVICTION RELIEF. At the bottom of the first page is a stamp indicating, among other things, that a copy of the document was sent to my division. The distribution stamp is not dated. The distribution stamp bears initials that I don't recognize as mine, my Judicial Administrative Assistant's or my bailiff's. I am assuming the initials are from an employee of the Court Clerk's office.

The _____ filing wasn't brought to my attention until yesterday in response to a subsequent filing by the defendant requesting the court record. Upon receipt of this request, my bailiff opened the electronic court file, saw the

filing, printed out and gave it to me. I discussed it with my staff and none of us recall seeing the document prior to its discovery yesterday.

My division has its own internal record keeping process. This includes logging all Rule 32 notices into a spreadsheet program and the creation of a hard copy file. If I have ruled on previous Rule 32/Rule 33 pleadings filed in a specific case, hard copies of the new pleadings are placed in the existing file and logged in. In a new case or in a case such as this where any previous Rule 32 rulings had been made by my predecessor, a new hard copy file is created upon receipt of the successive notice/petition and the notice is logged in to the spreadsheet program. We searched our internal records and confirmed no file was ever logged in or generated in this case. In short, after a diligent search we have found no indication that my division ever received a copy of the

filing. I don't know why we received a copy of the subsequent filing and not the original notice.

While looking into a different matter in my capacity of the , I came across an unrelated case involving the filing of an 86 page handwritten habeas corpus petition that is assigned to a different division yet the undated distribution stamp shows it was delivered to my division. I never received that pleading and it makes me question whether the undated distribution stamp can be considered presumptive on the question of receipt of the document by the indicated division.

I have discussed the matter with my staff and I cannot figure out how this happened. I did not know the notice had been filed when I signed the compliance affidavits in .

I have now ruled on the notice, having determined that it is more accurately interpreted as a Rule 32 petition. That being the case, my ruling arguably wouldn't be due until because would have 45 days to respond following the filing. However, because I didn't see the notice/petition until yesterday, would not have known my intention to treat it as a petition as opposed to a notice. I will attach a copy of my ruling to this email.

Regarding remedial efforts, I asked my Judicial Administrative Assistant to order a date stamp which we will use upon receipt on all future paper filings in my office. In other words, in addition to the date stamp from the clerk's office and the undated distribution stamp, any filing my office receives will have our own unique stamp showing when we received it. I have also reviewed our document intake protocols with my Judicial Administrative Assistant and my bailiff to ensure that we have a record of every document received by my division. I have emphasized to my staff the importance of tracking pleadings we receive and have reminded them how critical it is for parties to receive timely rulings. I have also talked with the clerk's office regarding the distribution stamp.

Additionally, in my capacity as , I have been working with and the heads of the appellate units for and

on addressing delays in Rule 32 proceedings in our court. We have developed the tentative plan to assign a Rule 32/33 Judge, very much along the lines _____ County _____ Court has adopted, to streamline the logistical processing of these pleadings. We hope to have our judge in place by the end of this year, along with a staff attorney. We shall see.

I'm sending you this email in an abundance of caution. I don't think my division received _____ pleading. However, I do recognize that there was a delay and I want to be as forthcoming as possible. Please let me know if you need anything else for me. Rest assured that I take this matter very seriously. Thank you for taking the time to read this email.

Very truly yours,

COUNTY

HON.

CASE NO.

DATE:

Plaintiff,

vs.

Defendant.

R U L I N G

IN CHAMBERS RULING REGARDING NOTICE REQUESTING POSTCONVICTION RELIEF

Defendant filed a pleading in this matter using a preprinted form titled **NOTICE REQUESTING POSTCONVICTION RELIEF**. However, in addition to filing the form in compliance with Rule 32.4 of the Arizona Rules of Criminal Procedure, defendant attached several handwritten pages which included a history of the events leading to the charges, a procedural history, factual arguments with a supporting exhibit and citation to a reported case with the suggestion that it should be examined to determine whether it would provide her relief.

The Court recognizes that defendant filed the pleading in a pro per capacity and has made allowances in terms of the manner of presentation such that the pleading can be considered a Rule 32.7 petition for postconviction relief as opposed to a Rule 32.4 notice. Consequently, the Court will accept the pleading in its current form rather than returning it to the defendant for correction per Rule 32.7(f).

The Court has reviewed the pleading with the attachments and concludes that it may be ruled upon summarily pursuant to Rule 32.2 and Rule 32.11 as follows:

A. Significant change in the law

In her pleading, defendant twice asks if the decision of *State v. Nieves*, 207 Ariz. 438, 87 P.3d 851 (App. 2004) applies in her situation. The Court interprets this reference as an argument that there was a significant change in the law following her conviction that would afford her relief, pursuant to Rule 32.1(g). Relief pursuant this argument is unavailable for two reasons. First, on _____ the Hon. (retired) ruled on this very question in response to a previous Rule 32 petition filed by defendant. Specifically,

Judicial Administrative Assistant

RULING

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Date:

Case No.:

Judge ruled that the *Nieves* decision was “ ” and that the “ ”.

B. Ineffective assistance of counsel

Defendant also contends that she recently discovered her attorney misinformed her about eligibility for parole after rejecting a plea offer. Defendant provides no other specifics to support the claim, much less explain how first came to her attention approximately later. Additionally, in a previous petition for postconviction relief filed on , defendant, through counsel, listed numerous claims of ineffective assistance of counsel. Judge addressed these claims and found that they did not warrant relief in a ruling dated .

Generally, when ineffective assistance of counsel claims are raised, or could have been raised, in prior Rule 32 postconviction relief proceedings, subsequent claims of ineffective assistance of counsel will be deemed waived and precluded. *State v. Spreitz*, 202 Ariz. 1, 2, 39 P.3d 525, 526 (2002). Additionally, defendant specifically indicated in one of the handwritten attachments that she “ , ”. Consequently, regardless of any advice received by counsel about parole eligibility (which could have been raised decades earlier), defendant, by her own admission, acknowledges that she would not have taken the plea and, as a consequence, was not prejudiced.

C. Claims previously considered on appeal

In the attached a handwritten summary of events, defendant references a ten-hour interrogation and a claim that she was not read her *Miranda* rights until after the interrogation. Defendant also suggests that her opportunity for a bench trial was somehow infringed upon. These claims were addressed and rejected by the in a memorandum decision dated . Consequently, they are precluded.

D. Newly discovered evidence

Although defendant did not check the bracketed section on the preprinted form indicating she believed newly discovered material facts probably exist, in the handwritten pages attached to the form she indicated that while in prison she “ ”. Defendant attached an undated article, purportedly from , which documents .

Judicial Administrative Assistant

**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.**