

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-191

Judge:

Complainant:

AMENDED ORDER

June 14, 2023

The Complainant alleged a superior court judge violated his constitutional rights in a criminal case.

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. This Amended Order reflects the Complainant's correct name. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Copies of this order were distributed to all appropriate persons on June 14, 2023.

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ORDER

April 5, 2023

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CONFIDENTIAL

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

FOR OFFICE USE ONLY

2022-191

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.

Complaint of Misconduct

the Complainant hereby with facts, evidence, State law, and Federal law assert that Judge of the County Superior Court has knowingly and willfully engaged in "Misconduct" that include deceit and dishonesty in violation of the "Rules of the Supreme Court; Code of Judicial Conduct: Canon 1: 'A Judge shall uphold the Integrity and Independence of the Judiciary'. Canon 2: 'A Judge shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities'.

A) A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Brief Summary of the Constitutional Claim Raised

In the criminal matter the Complainant filed a petition for writ of Habeas Corpus in the County Superior Court raising the claim that the Complainant is being deprived of liberty in violation of the United States Constitution and laws, and the Arizona Constitution and State law by virtue of an invalid, and insufficient indictment that as a matter of State law, and Federal laws negate the trial Court's "Jurisdiction" over the "Subject-Matter".

The "charging instrument" (indictment) charges crimes pursuant to a "series" of criminal statutes previously "deemed" unconstitutional by the Supreme Court, and "others" that had been "Ruled" Unconstitutional by the Supreme Court namely; A.R.S. 13-604.01,

13-702, and 13-702.01 respectively. The petition for Writ of Habeas Corpus was purposefully "mischaracterized" as a "Rule 32" by County Superior Court and transferred to County Superior Court.

The facts and evidence provided in the "Habeas" petition in support of the claim the trial Court lacked "Jurisdiction" over the "Subject-Matter" by virtue of a "fatally" defective charging instrument the Complainant included a copy of the indictment that invoke the previously "Ruled" unconstitutional statute A.R.S. 13-702 and or 13-702.01 more than twenty, see State v Brown, 99 P.3d 15, 2004 WL 2390005 (Ariz.) Same, State v Super. Ct., 209 Ariz. 200, 203 n.3, 11, 99 P.3d 15, 18 n.3 (2004). Further, the indictment invoke the previously "Deemed" unconstitutional statute A.R.S. 13-604.01 more than times, see Apprendi v New Jersey, 530 U.S. 466, 490 (2000), and Blakely v Washington, 542 U.S. 296, 303-04 (2004).

Other evidence included was the " filed in the trial Court of explicitly putting the trial Court on notice that the would be seeking enhanced sentencing under A.R.S. 13-604, and or sentencing for "predicate" felonies under A.R.S. 13-604.01. In addition was the " that point out to the trial Court previous convictions that are identified under Arizona law, A.R.S. 13-604.01 subsection K(2) as "predicate" felonies.

At sentencing in , the trial Court complying with the request for sentencing for "predicate" felonies under A.R.S. 13-604.01 imposed a super-aggravated sentence of natural life imprisonment.

The trial Court's flagrant violations of "Apprendi", "Blakely", the Fifth and Fourteenth Amendment right to "Due Process of Law", and the Sixth Amend-

ment right to "trial by jury" are the direct results of a "charging instrument," an indictment that is on its face "fatally" defective and void. "If a criminal statute is unconstitutional, the Court lacks subject matter jurisdiction and cannot proceed to try the case." 22 C.J.S., "Criminal Law" § 157, p. 189; citing People v Katinak, 185 Cal. Rpt. 869, 136 Cal. App. 3d 145 (1982). O'Meara v Superior Court in and for County of Maricopa, 842 P. 2d 1368, Ariz. 355. Cimmins v Superior Court in and for Maricopa County, 137 Ariz. 39, 43, 668 P. 2d 882 (1983). State v Horner, 112 Ariz. 432, 543 P. 2d 118 (1975).

"An indictment or complaint in a criminal case is the main means by which a Court obtains subject matter jurisdiction, and is the "Jurisdictional" instrument upon which the accused stands trial." State v Chatmon, 671 P. 2d 531, 538.

Therefore, pursuant to State and Federal authorities and law "Jurisdiction" over the "Subject-matter" is brought to the Superior Courts by way of a sufficient and valid charging instrument, i.e., Complaint, information or indictment, without which a Court does not acquire "Subject-matter" jurisdiction.

That there is no ambiguity regarding the complaint being made against Judge " " , it should be clearly understood the complaint is not about the wrongfulness of the Judge's decision. The complaint is exclusively about Judge " " evasiveness, deceit and dishonesty that constitutes the Court's subterfuge. Intended to distract and muddle the credible and valid claim with frivolous, irrelevant, and inapplicable laws and facts that form the fundamental basis of the Court's flagrant decisions. Such as the Court's suggestion by implication of Article 6, section 14(4), (A.R.S. § 12-123(A)) of the Arizona Constitution that vests "original" jurisdiction in the Superior Courts. Judge " "

clearly intend to have the Complainant to wrongfully believe this include, and as is "Subject-matter" jurisdiction as well that is vested in the Superior Courts.

When Judge [redacted] categorically know that is not a legal fact, the Judge knew that the two; "Original" jurisdiction, and "Subject-matter" jurisdiction are not one and the same, period!

The Complainant will address each material falsehood, whether implicit or explicitly made by Judge [redacted] in his order dismissing the Habeas Corpus petition, the Court's order is enclosed.

A. Rule 32.1(b) Claims

"In his current submission, Defendant contends that the Court lacked subject matter jurisdiction and therefore he is entitled to Ariz. R. Crim. P. 32.1(b) relief. (Petition at 2-9). Defendant argues that jurisdiction was lacking because the indictment cited the following invalid sentencing laws: A.R.S. §§ 13-604.01, 13-604, 13-702, and 13-702.01. (Id. at 3) Based upon these citations, he contends that the indictment was defective. The Court disagrees. Subject matter jurisdiction refers to a Court's power to hear a case.

Article 6, Section 14(4) of the Arizona Constitution vests original jurisdiction in the Superior Courts over "[c]riminal cases amounting to a felony" A.R.S. § 12-123(A). Accordingly, the Court had subject matter jurisdiction to adjudicate Defendant's felonies."

The above underlined words are unambiguous and they are not speaking of "Subject-Matter Jurisdiction" being vested in Superior Courts, the words are speaking to "original" jurisdiction. Complainant has previously established with law, State and Federal the manner in which "Subject Matter Jurisdiction" is brought to the Superior Courts. This half truth made

**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.**