

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 22-332

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Judge:

Complainant:

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**ORDER**

The complainant alleged a delayed ruling by a superior court judge hearing a post-conviction relief 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.

After review, the Commission found the judge issued a delayed ruling. The judge's conduct violated Rules 1.1 and 2.5(A) of the Code of Judicial Conduct, along with Art. 2, §11, and Art. 6, §21 of the Arizona Constitution. The judge's conduct also violated A.R.S. §12-128.01, relating to payroll and certifications of compliance. The Scope Section of the Code provides that not every transgression will result in the imposition of discipline. The Commission decided, after considering all the facts and circumstances, to dismiss the Complaint pursuant to Commission Rules 16(b) and 23(a), but to issue a warning letter to the judicial officer to remind the judge of the obligation to issue timely rulings.

Commission members Denise K. Aguilar and Michael J. Brown did not participate in the consideration of this matter.

Dated: August 30, 2023

FOR THE COMMISSION

/s/ Christopher P. Staring

Hon. Christopher P. Staring  
Commission Chair

Copies of this order were distributed to all appropriate persons on August 30, 2023.

2022-332

Before The Presiding Disciplinary Judge

(

Chief Bar Counsel)

In the matter of

Motion R. 54(b)

Court of Arizona.

Hon.

Judicial violation  
violation

County Hon

case number for

File in

County

Court on that was denied which violate  
 Canon R.1.1 Compliance with the law. Doctrine of 2012 pending-  
 action canon gave clear instruction on how the court must function  
 for pending-action canon when statutory law is altered. And Violated  
 14<sup>th</sup> Amendment equal protection of the law.

1) A delayed minute entry was sent a year later saying count 3  
 was dismissed. The delayed ruling is a clear violation of my  
 14<sup>th</sup> Amendment and Arizona Const. Article 2 §4 due  
 process of law which is a serious crime of interference with  
 the administration of Justice

2) Violation of Canon 1 R.1.1. Compliance with the law by not allowing  
 court to function properly when clear instruction on how court  
 must function under the (2012) doctrine of pending-action canon  
 which is a serious crime of interference with administration of justice.

COURT OF ARIZONA  
COUNTY

2022-332

HONORABLE

CLERK OF THE COURT

v.

JUDGE

**RULE 33 PROCEEDING DISMISSED**

*The Court previously issued the minute entry in this matter on [redacted] but due to an administrative processing error, it did not issue. The court now issues the Minute entry:*

Pending before the Court is Defendant's Notice Requesting Post-Conviction Relief filed on [redacted] This is his first Rule 33 proceeding.

Defendant entered into a plea agreement and pled guilty to sale or transportation of narcotic drugs, a class 2 felony, and conspiracy to commit sale or transportation of marijuana, a class 3 felony. In the plea agreement, the parties agreed to dismiss a third count for possession or use of drug paraphernalia, a class 6 felony. On [redacted] the Court entered judgment and sentenced him to concurrent 6- and 4.5-year terms of imprisonment. He received 80 days of pre-sentence incarceration credit for each sentence. These sentences run concurrently with his sentence in [redacted] At sentencing the Court provided Defendant with a form titled "Notice of Rights of Review After Conviction and Procedure." He acknowledged receipt by signing the form.



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COUNTY

In his submission, Defendant argues that a significant change in law has occurred that, if applicable to his case, would change the outcome under Ariz. R. Crim. P. 33.1(g) (Notice at 3). Such claims are “not subject to preclusion under Rule 33.2(a)(3).” Ariz. R. Crim. P. 33.2(b)(1). The Rule 33.1(g) claims must be filed “within a reasonable time after discovering the basis for the claim.” Ariz. R. Crim. P. 33.4(b)(3)(B). Rule 33.1(g) does not define “a significant change in the law.” *State v. Shrum*, 220 Ariz. 115, 118, ¶ 15, 203 P.3d 1175, 1178 (2009). The Arizona Supreme Court construes the rule to require “some transformative event, a ‘clear break from the past.’” *Id.* (quoting *State v. Slemmer*, 170 Ariz. 174, 182, 823 P.2d 41, 49 (1991)). This change occurs, for example, when an appellate court overrules previously binding authority. *Id.* at ¶ 16. Defendant does not supply a case to support his Rule 33.1(g) claim, and relies instead on a law that “doesn’t come to effect until July 12th, 2021.” (Notice at 3) He thus appears to rely upon the enactment of proposition 207.

In passing Proposition 207 Arizona voters authorized the recreational use of marijuana under certain conditions. One provision of the law, effective authorizes the expungement of convictions for certain offenses committed before its passage. Under A.R.S. § 36-2862(A)(1-2), a person may apply on or after for expungement of convictions for possessing, consuming, or transporting 2.5 ounces or less of marijuana (of which no more than 12.5 grams was in the form of marijuana concentrate) or possessing, transporting, cultivating, or processing no more than six marijuana plants. Likewise, an individual may apply for expungement of a conviction for possession of paraphernalia relating to the “cultivation, manufacture, processing or consumption of marijuana” under A.R.S. § 36-2856(A)(3). Defendant does not explain why an application for expungement may be brought as a Rule 33.1(g) claim. More importantly, Proposition 207 has no bearing on Defendant’s conviction for transportation or sale of narcotic drugs. Nor does Defendant show that the law applies to his conspiracy to commit sale or transportation of marijuana offense. According to the direct complaint, this offense involved “ of marijuana, and nowhere in his submission does Defendant specify what amount, if any, was marijuana concentrate. In addition, a third count for possession or use of drug-related paraphernalia was dismissed. The Court must also consider A.R.S. § 36-2862(D). In addressing the effect of expungement, the statute provides: “An arrest, charge, adjudication, conviction or sentence that is expunged pursuant to this section may not be used **in a subsequent prosecution** by a prosecuting agency or court for any purpose.” A.R.S. § 36-2862(D). (emphasis added) The statute does not provide relief for prior convictions and the resulting sentencing that occurred before the expungement.

In sum, Defendant has failed to state a claim for which Rule 33 can provide relief. A Defendant filing an untimely Rule 33 proceeding must assert substantive claims and adequately explain why the claims are untimely. Ariz. R. Crim. P. 33.2(b)(1). He has failed to meet this standard. Although the Court would normally grant the request for appointment of counsel for a

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COUNTY

first Rule 33 proceeding, appointment is not required when, as here, the Notice Requesting Post-Conviction Relief is "facially non-meritorious." *State v. Harden*, 228 Ariz. 131, 133-34, ¶ 11, 263 P.3d 680, 682-83 (App. 2011).

**IT IS THEREFORE ORDERED** dismissing Defendant's Notice Requesting Post-Conviction Relief pursuant to Ariz. R. Crim. P. 33.2(b)(1) and Ariz. R. Crim. P. 33.11(a).

IT IS FURTHER ORDERED denying the request for appointment of counsel.

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