

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-397

Judge:

Complainant:

ORDER

June 28, 2023

The Complainant alleged improper rulings and failure to follow procedure by a superior court judge hearing 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. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Commission members Colleen E. Concannon and Scott C. Silva did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on June 28, 2023.

2022-397

Commission on Judicial Conduct

% Executive Dir

1501 W. Wash. St., Suite 229

Phoenix, Az 85007

cc:

Re: Hon.

- Complaint (Exhibits Attached)

My name is

I am a prisoner of The

I am filing this complaint against the

Court of

County Judge

Not for his

ruling but the way the ruling violated our adversarial system of judicial review. I have filed a Petition for Review with the

(No

). I have

enclosed the Petition if you feel inclined to review it, along with relevant briefs. In the Petition I argued an abuse of discretion; but it goes beyond that, as I shall try to show this commission, and why it must act. The following is true and done to the best of my abilities, I do so swear.

I am currently attempting to show I am innocent and wrongly convicted. In summary I filed a Petition to have my case reopened on . The Court found my arguments persuasive enough to Order the State to file a response (The norm is the Court generally issues summary dismissals sua sponte). (See Petition for a full history)

The State chose to file a Response that did not follow the Courts Order or State Court Rules. It contained no authorities and did not address any of the issues I presented. (See ME). I stated these facts to the Court in my Reply. However, the State Court (Judge) chose to frame the States position and made a ruling denying me relief.

I filed a reconsideration explaining our adversarial process and why the Court acted as bidder. Further, how the " " and the " " applied in my case. The Court then issued another Order to the State to Respond to my Reconsideration issues.

The State did not address my issues. Instead used the Courts arguments in denying me relief - almost verbatim. I filed a limited Reply. Stating how the State failed to address the actual issues. It instead wanted a second bite of the original apple.

Judge acknowledged the States failures but stated:
" " "he would not grant me relief" "

" (ME.). Denying me an Unconditional Release with prejudice. Violating Caselaw precedent and adversarial system.

It is for these reasons that I file this complaint. As a layman I see this Judges Court is now an inquisitional one. As Judge became both bidder for the State and the decision maker. As I read the law a Court cannot override a States deliberate waiver. It was deliberate because the State is in a better position to know the law. It must be held to that standard. Especially, when I'm being held to that standard. *Wood v. Milyard*, 566 U.S. 463 (2012) (a court may not "override a state's deliberate waiver"); *Day v. McDonough*, 547 U.S. 198 (2006); *Greenlaw v. U.S.*, 554 U.S. 237 (2008). . . . The Supreme Court made clear that "We...assign

courts the role of neutral arbiter of matters the parties present." "If a court engages in what may be perceived as the bidding of one party by raising claims or defenses on its behalf, the court may cease to appear as a neutral arbiter, and that could be damaging to our system of justice".)

Smith v. Zant, 867 F.2d 1407, 1438 (11th Cir. 1989) ("The State selected its defenses and arguments on appeal, and it must accept the ramifications of those choices. Waiver of claims is not a principle that works only to the detriment of petitioners") also: Jones v. Secretary, 2019 U.S. App. Lexis 17871 at 16 (11th Cir 2019).

State v. Alford, 157 Ariz. 101 (App. 1988) ("Refusal to argue particular issues constituted a waiver that was binding").

As our Circuit stated. "Ours is supposed to be an adversarial and even-handed system of justice." Woolery v. Arave, 8 F.3d 1325, 1329 (9th Cir. 1993).

I also included: In the Matter of the Appeal In Navajo County Juvenile Action No. J-3206, 121 Ariz. 407, 590 P.2d 946 (App. 1979) in which our Court applies the confession of error standard to criminal cases and if "serious and substantial questions raised by appellant, we may appropriately reverse this case without deciding the merits". I had clear serious and substantial questions in all three petitions;

I have been hammered in the past for " "issues I did not present in a timely manner. I did not do it purposely, but because of IAC and lack of legal material access. Thus, once the State also waived its objections or improper (unlawful) and inadequate briefs I must have gotten relief. Esp. after the Court gave the State a second/third chance. Thus, we have an inquisitorial Court.

Conclusion

I am asking this Commission to review my case and how the Court acted in making its decision.

The key question is: Did Judge _____ act as a neutral arbiter and not as bidder for the State? In other words, did the Court adhere to the adversarial process of which our system is founded upon? I firmly believe he did not. And the Courts have decided that a Judge cannot be both the bidder for one party over another. The State and I had an obligation to formulate our own arguments, and defenses. The Court has yet to assist me (an indigent, minority, who has no education in the law whatsoever). It certainly had no reason to assist the States' attorneys who are highly educated, experienced in the law (that is their job), and full access to legal materials and others help.

It also shows that the Court is holding me to a strictness to the law while giving the State leniency and multiple chances. This is contrary to all our Constitution and caselaw precedence stands for.

I have filed a previous complaint to no avail. I hope this commission will take this complaint seriously, as it affect our system of justice and a plethora of defendants, similarly situated. Otherwise, we are no better than other courts we frown upon, like _____. I still firmly believe in the end I will be exonerated, hopefully before it is too late. I've already spent yrs trying to fight my case. Each time I discovered the wrongfulness, I've been denied. Not on the merits but on my "_____ " but it was not willful nor intentional, like the "_____ ". Relief: This Court cannot assist in my release, I know that, however, it can sanction Judges who do not adhere to the rule of law and precedence. I ask you to do so. This is a true complaint done to the best of my abilities, I do so swear & -

ARIZONA COURT

COUNTY

STATE OF ARIZONA,
Plaintiff,

No.

v.

MOTION FOR RECONSIDERATION

Petitioner.

(Assign. Hon.

)

I, Petitioner, pro per do hereby file this MOTION FOR RECONSIDERATION pursuant to Ariz. R. Crim. Proc. Rule 32.14. The following Memorandum of Points and Authority shall establish why this Court should grant a rehearing.

Memorandum of Points and Authority

1. Inadequate Brief by the State.

The State chose to file a brief that did not address the actual claims I presented. In none of the States brief did the State address the intervening caselaw of State v. Starks, 492 P.3d 326 (App. 2021), as such the State waived any defense.

a. ARCP. Rule 32.9 (a)(2) requires the state to "include a memorandum that contains citations to relevant portions of the record and to relevant legal authorities, and must attach any affidavits, records, or other evidence that contradicts the petition's allegations. The State must plead and prove any ground of preclusion by a preponderance of the

**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.**