

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 23-348

Judge:

Complainant:

ORDER

February 12, 2024

The Complainant alleged a superior court judge ignored the appellate court's mandate for an evidentiary hearing on a claim of ineffective assistance of counsel.

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 Regina L. Nassen did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on February 12, 2024.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2023 - 348

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.

Made law is common law under A.R.S. § 1-201

Judge made law is the law that all other courts must follow. See also Arizona Code of Judicial Conduct Canon 2, Rule 2.3. Impartiality and Fairness: A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially.

Moreover the defendant has a due process right under the 14th Amendment to the United States Constitution and Arizona Constitution.

Art. 2, § 4 For the judge to follow the judge made law or common law

In this case, on _____ The Arizona Court _____

filed a mandate, and full and accurate copy of the memorandum decision filed on _____ (Exhibit 1). In

the mandate directed to: the _____ County _____

court and the Honorable Judge in relation to cause no. _____

Now, therefore, you are commanded to conduct such proceedings as required to comply with the memorandum decision of this court. On _____

a status conference

(Attach additional sheets as needed.)

WAS SET ON THE DEFENDANT'S
PETITION FOR POST-CONVICTION RELIEF
AFTER THE ARIZONA COURT
REMANDED THE CASE TO THE TRIAL
COURT ON THE ISSUE OF INEFFECTIVE
ASSISTANCE OF TRIAL COUNSEL ON THE
ISSUE OF THE

THE ARIZONA COURT
HELD DEFENDANT IN FACT,
DID PRESENT A COLORABLE CLAIM OF
INEFFECTIVE ASSISTANCE OF TRIAL
COUNSEL RELATED TO THE

, AND HE WAS
ENTITLED TO A HEARING.

THE DEFENDANT IS GENERALLY
ENTITLED TO AN EVIDENTIARY HEARING
IF THE PETITION PRESENTS A COLORABLE
CLAIM FOR RELIEF - THAT IS, ONE THAT,
IF THE ALLEGATIONS ARE TRUE, WOULD
PROBABLY HAVE CHANGED THE OUTCOME.
STATE V. AMARAL, 239 ARIZ. 217, 220, 111
(2016).

THERE WAS A DISCUSSION HELD
REGARDING THE JUDGMENT OF GUILT AND
SENTENCE FOR COUNT 2: THEFT, A CLASS
6 FELONY.

STATES COUNSEL INDICATES THAT
IT WILL AGREE TO HAVE THE COURT
VACATE THE JUDGMENT OF GUILT
AND THE SENTENCE FOR THE COUNT
OF THEFT IN ITS ENTIRETY. (SEE EXHIBIT
#2; ME: ; p. 2) (SEE ALSO EXHIBIT
#3; R.T. ; p. 6 lines 12, 13).

RATHER THAN HAVE A HEARING ON
THE ISSUE OF WHETHER COUNSEL WAS
INEFFECTIVE, THE HONORABLE

believed he could merely
DISPOSE OF THE MATTER BY VACATING
BOTH THE CHARGE AND SENTENCE
RELATING TO THE

DEFENDANT FURTHERS ARGUES

"

... (SEE EXHIBIT
#3; R.T. ; p. 9 lines 22-24).

THE HONORABLE
SAYS "

?" (SEE Exhibit # 3; R.T.
p. 10, lines 11-16).

THE DEFENDANT FURTHER ARGUES
"

(SEE Exhibit # 3; R.T.
20-25).

;" p. 10, lines

THE HONORABLE
GOES ON TO SAY "

(SEE Exhibit # 3; R.T.
; p. 11, lines 1, 2).

HONORABLE

NEW

HE HAD TO ANSWER TO THE ARIZONA COURT ... BUT INSTEAD HE DID WHAT EVER HE WANTED TO DO AND IGNORED THE COURT ORDER TO GIVE THE DEFENDANT AN EVIDENTIARY HEARING, BUT INSTEAD HE GOT THE STATE TO AGREE TO HAVE THE COURT TO VACATE THE JUDGMENT OF GUILT AND SENTENCE FOR THE COUNT OF THEFT IN ITS ENTIRETY

THAT WAS THE COMMON LAW AND MANDATE UPON THE LOWER COURT TO FOLLOW TO CONDUCT SUCH PROCEEDINGS AS REQUIRED TO COMPLY WITH THE MEMORANDUM DECISION OF THE COURT ... , INSTEAD ON

THE HONORABLE IGNORED THE LAW AND THE MANDATE OF THE ARIZONA COURT ... TO HOLD AN EVIDENTIARY HEARING AND DISMISS THE THEFT CONVICTION.

WHERE A MANDATE HAS ISSUED GIVING THE TRIAL COURT SPECIFIC DIRECTIONS, THE COURT IS GENERALLY NOT FREE TO DEVIATE FROM 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.**