

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 07-248

Complainant: No. 1242010319A

Judge: No. 1242010319B

ORDER

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge. The issue raised is legal or appellate in nature, and the more appropriate remedy would have been to appeal the judge's decision to a court with proper jurisdiction.

The commission is not an appellate court and cannot change a judge's decisions; therefore, the complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: October 10, 2007.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on October 10, 2007.

This order may not be used as a basis for disqualification of a judge.

CJC-07-248

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

COMPLAINT AGAINST A JUDGE

Your name: Sidney R. Keaton Judge's name: Donna J. Grimsley Date: 11 Sept 07

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.

For the record, it should be noted that I have filed two previous complaints against Judge Grimsley NO's 1242010319A and 1242010319B.

Judge Grimsley was appointed as presiding judge in Apache County after Judge Michael C. Nelson resigned rather than be removed from office. See In re Nelson, JC-03-0002 (April 22, 2004). Judge Nelson had presided over defendant's first trial which the Court of Appeals, Div one, reversed and remanded because of trial error that denied defendant his constitutional right to be present at approximately two-thirds of the in chamber voir dire over defendant's objection. Defendant had been charged with Counts 1-6 of sexual contact with a minor and Counts 7 & 8 of sexual conduct with a minor. The jury found that defendant was not guilty in Count 1 of Child Molestation and guilty of Counts 2-6 of child Molestation even though the charging document only charged sexual contact, the jury verdict forms only mentioned Child Molestation. Defendant was also acquitted of Counts 7 & 8. On Remand Judge Nelson, again, presided over defendant's case. Defendant was to be tried on counts 2-6 of sexual contact with a minor but the state amended the information to read counts 1-5 of Child Molestation. Defendant was convicted of Counts 1-3 and acquitted of Counts 4 & 5 by a jury and Defendant was sentenced to 17 years in Prison. Now, a factor in this complaint is the

(Attach additional sheets as needed)

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defendant was acquitted of Count one in the first trial and convicted of Count one in the second trial and both counts read the same. As far as that goes, Counts 1-6 at the first trial read the same as Counts 1-5 at the second trial, with no distinguishing elements. No time, date, location, event or situation, they were all identical. Without the Count number you cannot distinguish which charge is which. This is important to a couple of issues defendant will be addressing.

To begin with, Judge Grimsley issued an invalid Writ of Habeas Corpus, Ad Prosequendum, ^{see exhibit #1,} to obtain personal jurisdiction over defendant to attend a rule 32, Evidentiary Hearing. A Writ of Habeas Corpus Ad Prosequendum as defined in Black's Law Dictionary: "A writ used in criminal cases to bring before a court a prisoner to be tried on charges other than those for which the prisoner is currently being confined." Defendant was not being tried on different charges, it was for a Rule 32, Evidentiary Hearing. The Court lacked jurisdiction to bring the defendant before it under a false pretense and any judgement is a nullity. See *Peterson v Jacobson*, 2 Ariz. App. 593, AT 595, 411 P.2d 31 (1966) "... In order to render a valid judge-

ment and sentence in a criminal prosecution, the court must have jurisdiction both of the offense and of the defendant's person... Jurisdiction of a court to try and punish an individual of a crime cannot be acquired by the court's mere assertion of jurisdiction, but must be invoked or acquired in the mode prescribed by law. If not so invoked, any judgement is a nullity..."

Hooker V Boles, 346 F.2d 285, 286 (1965) ([N]o authority need be cited for the proposition that, when a court lacks jurisdiction, any judgement rendered by it is void and unenforceable.)

The Evidentiary Hearing of Nov. 9, 2006, starts off with the first of many violations of Statutory and Procedural law, which ultimately became a Federal and State Due Process Violation.

Judge Grimsby was aware that the state failed to file a response to the defendant's Amended Rule 32 petition, in violation of Arizona Revised Statute, § 13-4236^(A) and Ariz. R. Crim. P., Rule 32.6(a). Which reads in part; "forty-five days after the filing of the petition, the state shall file with the court and send to the defendant or counsel for the defendant, a response. ..." The use of the word shall indicates mandatory intent. When the state failed to respond it violated defendant's procedural right to file a reply. See Exhibit #2, p. 5;

12-24. The exchange went:

The Court: Ms Leib, go ahead. And you didn't respond to the supplemental petition; is that correct?

Ms. Leib: Yes, Your honor.

The Court: I double checked on the docket this morning, and I think there was some discussion about whether that was necessary or not.

Ms. Leib: There was some discussion in August, and in fact I did want to apologize to the court on the record. I did indicate that I would be answering, but our office has just been undergoing a significant turnover and it was not until last night when I was preparing for this hearing that I realized I had in fact not responded, but I agree with Mr. Wood that it is a matter of law.

President law leaves no doubt as to the legislative intent was when they enacted A.R.S. § 13-4236(A). See STATE V Perez, (App. Div. 1 1976) 26 Ariz. App. 500, 549 P.2d 595, VACATED 115 Ariz. 30, 563 P. 2d 285 (State, by failing to respond or to object to defendant's first amended petition for postconviction relief filed in the trial court, and thus failing to raise preclusion issue, i.e. that matter raised by petition was raised or could have been raised on defendant's direct appeal, failed to comply

with provisions of this rule requiring that prosecutor plead and prove any ground of preclusion by preponderance of evidence; ...); also in *STATE V. THOMPSON* (App. Div. I 1978) 120 ARIZ. 202, 584 P.2d 1193. (Failure of the state to file a responsive pleading in a postconviction proceeding is not to be condoned.)

Judge Grimsley, compiled issue #3, of the Rule 32 petition with the issue in the Amended petition and initially ruled on both as a single issue. See Exhibit #2, p. 96, L. 5 - p. 98, L. 6 "First of all, whether or not it's a proper issue to be before this court in a Rule 32 petition. Ms. Davies testified she did not raise that issue, but if we're talking due process and double jeopardy, then that certainly would be a fundamental issue that ought to have been raised on appeal. And I think I could safely find that Mr. Yeaton didn't raise them and is precluded from raising them now, ..."

The state did not argue preclusion. See Exhibit #5, p. 637, issue #2 in State's Response to issue #3 in Defendant's petition for Rule 32, nor did the state argue preclusion of Defendant's Amended Rule 32 petition, as the state failed to respond. See *STATE V. CURTIS*, (App. Div. I 1995) 185 ARIZ. 112, 912 P.2d 1341, review denied. (When the state responds to petition for postconviction relief (PCR) it must

plead and prove preclusion by preponderant evidence, and when state fails to assert preclusion in its response, court cannot reach issue on its own.)

Additionally, when the state fails to file a responsive pleading it violates defendant's due process. The defense cannot mount a defense to an issue that the state confesses error and the court still allows the state an opportunity to argue after the fact. Defendant has a right under Ariz. R. Crim. P., Rule 32.6 (b) and A.R.S. § 13-4236 (B) to file a reply to the state's argument. See *Lopez v. Barraza*, 150 Ariz. 291, 723 P.2d 109 (Ct. App. 1986) (where an appellant raised debatable issues, the failure to file an answering brief generally constitutes a confession of error.); *Bland v. California Department of Corrections*, 20 F.3d 1469, 1474 (9th Cir. 1994) "... When the state's return fails to dispute the factual allegations in the petition, it essentially admits those allegations." also see, *In re U.S. Currency in Amount of \$26,980.00*, 199 Ariz. 291, 297 P.2d 18 P.2d 85, 91 (App. 2000) (When the state does not respond to an issue it is thereby a confession of error.)

Judge Grimsley went on to make further rulings on the same issues, stating, "but I'll go on and make some findings so we have some specific rulings. I'm concerned that perhaps they are not properly before the court at this time and

I think that was the state's initial argument. In the sense that they are couched within the realm of ineffective assistance of Counsel, I'll deal with that here today.

I have reviewed the Amended Information, and just for purposes of the record it's important to note that count one alleges some time during the months of February or March, 2000, and at a separate and distinct time from that alleged in counts two, three, four and five, Sydney Keeton intentionally or knowingly molested Christina Stonehart, a child under the age of 15 by engaging in or causing Christina Stonehart to engage in sexual contact, to wit: direct or indirect touching, fondling or manipulating any part of the genital or anus of Christina Stonehart by any part of the body or object or by causing Christina Stonehart to engage in such conduct, a class 2 felony.

Each of the charges then alleges the same substantive, I don't know if that's the correct word, the same statutory scheme, the same alleged act but at a time separate and distinct from that alleged in the other counts in the information. I think that was the proper way for the state to charge this offense.

So in terms of the amended petition, I don't think that Mr. Keeton was ineffective in not objecting

to that particular information on the basis that it was multiplicitous within itself. The charging is a reflection on what evidence the state had that proceeded to trial. Mr. Keaton's confession and the evidence of the child about numerous incidents and descriptions of those things and the propimate time-frame in which they happened, I don't think the information itself on its own violates due process by failing to put the defendant on notice or make it impossible to defend against the allegations.

I don't think Mr. Keeter was ineffective in not raising that issue. Certainly I think that is the state of law and permissible in this state.

The second portion of that is that Mr. Keeter was ineffective in failing to object to evidence relevant to separate charges introduced at the second trial which the defendant had been acquitted of during the first trial, thus exposing him to double jeopardy. The defendant has not met the burden of showing me that that is the case here and so I will deny that allegation as well."

To begin with Judge Gumsley had initially ruled both issues were precluded then ruled counsel was effective.

Defendant has to go to the minute entry to ascertain what the court's ruling was, and

Judge Grimley has authorized that. See Exhibit #2, p. 98, L 8-11. "and unless Mr. Leib strenuously objects to a signed minute entry as my order in this case." The minute entry states: "The Court will find that they are not properly before this Court at this time." See Exhibit #6, Minute Entry: Hearing November 9, 2006, p. 3. This goes right back to the ruling of preclusion and violates ARS, § 13-4232^(c), ARCP, 32.2(c).

For the sake of argument. The Amended Information recited by Judge Grimley, is not what the jury saw nor what the jury read, it was an earlier Amended Information and not the one the state asked the court to take judicial notice of as it was dated July 1, 2000 and did not include the wording, intentionally or knowingly "molested Christina Stenebeck" nor did it have by an "object". See Exhibit #2 p. 37, and Exhibit 7 & 8. The point is, the state submitted for judicial notice a very early amended Information and the Court recited another Amended Information and neither were relevant. The juries only saw the Amended Informations that are submitted as Exhibit 7 & 8. This was prejudicial to the issues presented to the court by defendant.

The court was aware the issues were fundamental errors stated in Exhibit #2, p 96, L 5-11, "First of all, whether or not it's a proper issue to be before this court

in a Rule 32 petition. Ms. Davies testified she did not raise that issue, but if we're talking due process and double jeopardy, then that certainly would be a fundamental issue that ought to have been raised on appeal. And I think I could safely find that Mr. Heaton didn't raise them and is precluded from raising them now. The question is, was the issue's developed enough at trial to raise fundamental issues in the Court of Appeals when there was no evidence of what trial counsel's strategies and tactics were. This was not brought into evidence till the Evidentiary Hearing, Rule 32. Judge Grimsby must have been unaware that she had a ^{legal} duty to hear and rule on the issue's of "Due Process and Double Jeopardy pursuant to Ariz. R. Crim. P., Rule 32, 1 (a) and A.R.S. § 13-4231 (1). Both Rule and statute state, relief may be secured if "The conviction or the sentence was in violation of the Constitution of the United States or of the State of Arizona;" See also, STATE V. HERRERA, 183 Ariz. 642, 905 P.2d 1377 (Ct. App. 1995) (an allegation of ineffective assistance of counsel is encompassed within this rule as a claim that a defendant's conviction or sentence was in violation of the Constitution of the United States or the State of Arizona.)

On further argument, both issue's were raised as ineffective assistance of trial counsel. The Court ruled, "they are not properly before this Court at

this time." See *STATE V GEOTIS* (App. Div. 1, 1996) 187 Ariz. 521, 930 P.2d 1324, review denied 189 Ariz. 109, 938 P.2d 1110. (Claims of ineffective assistance of counsel are properly raised under rule pertaining to postconviction relief rather than on direct appeal.); *STATE V ALLGOOD* (App. Div. 1 1992) 171 Ariz. 522, 831 P.2d 1290, redesignated as opinion. (Claim of ineffective assistance of counsel may not be asserted for the first time on appeal; it must be first presented to trial court by petition for postconviction relief before Court of Appeals can consider it.); *STATE V SUAREZ* (App. Div. 2 1975) 23 Ariz. App. 45, 530 P.2d 402. (Claim in motion for postconviction relief of ineffective assistance of counsel must be determined in a hearing if such claim is colorable); also see *STATE V SPREITZ*, 202 Ariz. 1, 2-3, 11 11 5-9, 39 P.3d 525, 526-27 (2002) (reviewing case law and holding that ineffective assistance claims must be brought in a petition for post-conviction relief prior to appellate consideration).

Judge Grimsley's ruling on these issues and her statements there of were personal opinion with no legal basis. Defendant was prejudiced by the Judge's rulings as the outcome of trial would have been different if trial counsel had any jury trial experience at all. I'll cover that aspect further on. These rulings put into question a couple of factors. 1) Does Judge Grimsley know the law? If so, why is she making erroneous rulings. If

not then she shouldn't be a Superior Court Justice.
 2) Is judge Gurnaley bias or prejudice. Judge Gurnaley has, since the arrest of the defendant, has presided over defendant's Divorce #D099-184 of Jun 2, 2000, Custody over defendant's 2 minor children, refused to rule on defendant's motion to recuse and defendant has filed 2^{previous} complaints with the judicial commission.

The actual or apparent judicial prejudice that seems to exist here would make a reasonable person question the judge's motives. U.S. V Brooks, 145 F.3d 466 (1st Cir. 1998) (Judge must not only be scrupulously fair in the administration of justice, but also must foster an aura of fairness); State V Carver, 160 Ariz. 167, 771 P.2d 1382 (1989) (There is a positive obligation on the part of the judge not only to be impartial, but to be seen as impartial.) The standard of judging impartiality has long been recognized through most if not all Circuit and District Courts. U.S. V Hernandez, 109 F.3d 1450, 1453 (9th Cir. 1997) (Whether reasonable person with knowledge of all the facts would conclude that judge's impartiality might reasonably be questioned); BANNISTER V DeLo, 100 F.3d 100 F.3d 610, 614 (8th Cir. 1996); U.S. V WILKERSON, 208 F.3d 794, 797 (9th Cir. 2000); MATTERTON V Lynch, 174 F.3d 549, 571 (5th Cir. 1999); and U.S. V DeTemple, 162 F.3d 279, 286 (4th Cir. 1998) SAME.

I have gotten ahead of myself there are still more issues.

The Court Ruled "The Court will not be inclined to grant relief based on the Blakely issue." Exhibit #6, p. 1. The Blakely case was only mentioned in defendant's argument, "Sentence Exceeding that prescribed by law; Petitioner sentenced to a prison term using aggravating factors not admitted by him or found by the jury." as clarifying the holdings in Appendi. See Exhibit #3, p. 25-30. But also see Exhibit #5, p 9 & 10. The state argued "There is no Blakely issue for the reason that the Petitioner was sentenced to a presumptive term of 17 years."

The state argues there is ~~no~~ Blakely issue, this I would not argue. I would however argue there was a violation to holdings in Appendi, for defendant was sentenced to the presumptive term after the trial judge found the aggravating and mitigating factors balanced out. But 4 of 5 aggravating factors were subjective and defendant firmly believed the prior convictions were also illegal, but that was not argued and I'll not argue it here. The logic is simple, ^{the} less aggravators, the less the sentence should have been. Additionally, the cases quoted by the state, such as state v Munnigoe was abrogated 6 months prior to the state's filing their response, STATE v Henderson, was overruled on other grounds by state v Pena, 140 Ariz. p. 2d 743 (1984) and state v Brown was misquoted, the state conveniently left out the first eight words, "after weighing and balancing

aggravating and mitigating factors," this changed the whole context of what the state presented as an argument.

The Court ruled, "The Court does not need any evidence regarding the voluntariness. Hearing the Court has already ruled on that matter, Exhibit #6, p. 1. Also see additional ruling on p. 2 of Exhibit #6, "The Court addresses number four which is failure to introduce evidence that called into question the credibility of a material witness for the state. That is connected with the voluntariness issue in number five.

The Court thinks this issue was extensively dealt with on appeal and is not properly before the Court today."

There is two problems with the Court's ruling. First, ineffective assistance of counsel was not dealt with on appeal concerning this issue and the Court is ruling preclusion when the state didn't argue preclusion in their response. State v Curtis, A.R.S. § 13-7232 (C) and Ariz. R. Crim. P., Rule 32.2 (C).

Judge Gumsby failed to make any ruling on ineffective assistance of Appellant Counsel. Rule 32.6, Comment specifically states "Section (C) makes clear that plenary consideration is available for petitions raising factual issues, legal issues or both. It also instructs the court to make a final adjudication of

all the petitioner's claims -- those lurking in the background as well as those specified."

This comment under Rule 32.6 (c), allows defendant to address the trial transcript that was admitted into evidence by the defense at the Rule 32 Evidentiary Hearing as exhibit (B). See Exhibit #9, Transcript of trial, 21 June 2002, p. 807. This single page has a multitude of constitutional violations. Judge Gromley accepted this page into evidence and did nothing to address the issues. Trial counsel's ineffective assistance is more than evident and so pronounced, defendant can't believe the judge ignored it, and ruled the issue in the Amended Petition for Post-conviction Relief was not properly before the Court. The issue in the Amended petition is directly tied in with the information contained on Exhibit #9 and clearly demonstrates that, Trial Counsel, Prosecutor and the Trial Judge, knew the information was fatally flawed and did nothing to correct it.

Any Court of competent jurisdiction would question trial counsel's motivations in abandoning his clients, in furtherance of constitutional violations. His simple statement to the jury's question, if we answer this it will only get us in trouble.

The Trial Judge's response to the jury question was, "So I'll put on this you have to work with the charges as listed in the Amended Information

and the evidence presented. There is no other information available." This was an erroneous response to a pivotal factual issue and was a key to the jury's finding of guilt on three of the five charges that all read the same. See U.S. V ADCOX, 19 F.3d 290 (5TH Cir. 1994) (When trial court answers jury question, it has a duty to answer with concrete accuracy); U.S. V. FREGA, 179 F.3d 793 (9TH Cir. 1999) (When a jury makes explicit its difficulty a trial judge should clear them away with concrete accuracy.)

The trial judge failed to respond to jury question in open court. See U.S. V CARTER, 965 F.2d 804 (10TH Cir. 1992) (Question from jury must be answered in open court and only after providing counsel an opportunity to be heard.); People of The Territory of Guam V. MAQUEZ, 963 F.2d 1311 (9TH Cir. 1992) (It was not harmless error, where the trial court sent a set of written instructions to the jury, but did not read these instructions aloud "It is impossible to know whether any of the jury members read the instructions on the elements of the charged offenses.") The transcript only says: "I will have the bailiff take it back." There is no record as to what the bailiff did with the written instruction. In light of the circumstances the jury mutually settled the issue by guess work, not facts. ROMBERG V NICHOLS, 953

F.2d 1152 (7th Cir. 1992) (When jury compromises its verdict, verdict shall not stand.)

What prompted the jury question was the fact that the Trial Judge told the jury at the beginning of trial, "Count Three and Count Four and Count Five read the same, except that they indicate at a time different than the other counts these events took place." See Exhibit #10, p. 318 ; 319 Trial transcript of June 19, 2002. Then the prosecutor stated in her closing argument that "He's been charged with five counts for dates of on or between February and March of 2000." See Exhibit #9, p. 787, L 21 ; 22.

The jury never heard any dates during trial or anything that would make the five charges "separate and distinct" from one another. When the jury sent a note to the judge requesting, "Clarification of the counts, which time or date is each?" they were asking for what was promised. And the Court, Prosecutor and Defense Counsel failed to follow the law and give the jury the guidance they need to make an informed decision. U.S. v PETERSON, 236 F.3d 848 (7th Cir. 2001) (1) To render a guilty verdict, jury must hear sufficient evidence to avoid resorting to excessively strained inferences or guesswork. 2) When a verdict may have rested on any of several grounds, one of which was improper, the conviction cannot

be upheld.) and U.S. V DAVIS, 965 F.2d 804 (10th Cir. 1992) (Failure to instruct jury as to required element of offense charged would mandate reversal.); also see Ho V Carey, 332 F.3d 587 (9th Cir. 2003) (When a jury instruction omits a necessary element of the crime, constitutional error occurred.)

Judge Grimsley, at the request of the special prosecutor Ms. Leib, "Judge, if I may just for the record, ask the court to take judicial notice of the state's attachments as well as Mr. Heeter's affidavit that was attached to our response." see Exhibit #2, p 12, 4.10-13.

First, Mr. Heeter's affidavit was nothing more than a self-serving sworn affidavit that was full of false statements, suppositions, hearsay and personal opinions. Judge Grimsley took this affidavit as fact because the prosecutor said it was. Mr. Heeter testified under oath as to its contents, see Affidavit of C. Curtis Heeter, Exhibit #11. In Mr. Heeter's affidavit p. 1 #5, first paragraph, "The first assertion is that I failed to introduce expert testimony in regard to the mental state of the victim, particularly to a reported history of her expressing on repeated occasions interactions and communications with imaginary friends. First, the judge of the trial did not permit me to introduce such evidence, ruling that it was improper evidence to bring to trial under the rule limiting

character evidence of victim of sexual abuse. This was a consequence of a motion in limine presented by the prosecution. ... This was just not true!

The Trial Judge ruled on June 7, 2002, "Now, as far as the Motion In Limine To Preclude The Evidence Concerning The Imaginary Friends, The Imaginary Dad, I'm going to deny the state's motion in limine to preclude introduction of this material in the event that the defendant takes the stand. If he does not then, it doesn't come in," see Exhibit #12, p 55, L 5-10. I did in fact take the stand and was questioned by trial counsel about the alleged victim's imaginary friends just as all the other witnesses were. The transcripts of all the colloquy's are ^{to} extensive to include in this complaint. Mr. Heeter purjured himself when he testified at the evidentiary hearing. See Exhibit # 2, p. 32 L. 6-19, the exchange went:
Mr. Leib, Q. "In fact, wasn't there a motion in limine filed by the state with regard to evidence about the victim's character?"

Mr. Heeter, A. "Yes I think if we were able to get in information about the imaginary friends, that would be very helpful to Sydney Victor's case and I think it would be very important for the jury to hear. And we were specifically told we could not bring in any information or testimony about the imaginary

friends.

I was able to cross-examine the victim on it because that would go to her credibility as a witness, but we were not allowed to say to the jury, hey, would you consider this event as something in her mind because of all of this testimony."

Mr. Heeter, submitted false testimony, not only in his affidavit but mischaracterized what the Trial Court's ruling was as far as the alleged victim's character went.

The Court's only ruling on the alleged victim's "state-of-mind" was "the Court: That's an important point. All right. I'm going to allow the defense to present evidence of the defendant's state-of-mind only. That there were allegations against Walter and that influenced the defendant in his confessing to these acts." See Exhibit #12, p 20, L 1-5.

Trial counsel made his objection and after much discussion the trial judge upheld his ruling, which went directly to the alleged victim's state-of-mind and her character traits. See Exhibit #13, p, 43-48.

The State Bar of Arizona has found that the Prosecutor for Rule 32, Mr. Leib used two inaccurate statements in his responsive pleading, relying solely on Mr. Heeter's affidavit, see Exhibit #14.

How could I have had a full and fair

hearing required by *Townsend V Sain*, 372 U.S. 293 (1963).

Judge Grimsley admits reading the case six months prior to the evidentiary hearing, Exhibit #2, p 22 & 23. Why she didn't take the time to refresh her memory was prejudicial to my case.

Ms Leib, the prosecutor asked Judge Grimsley to take judicial notice of state's attachments, see Exhibit #2, p 12, L 10-13. This included Emily Donis, Affidavit, which was unsigned and unnotarized. See Exhibit 15, included is the filed copy of the first page of the state's Response. This is what I received straight from the Court's file on April 2, 2007.

I filed a Motion for "Request leave to file for Rehearing/stay of time/appointment of New Counsel. This was denied. My reasoning was, it would give Judge Grimsley a chance to correct any errors which took place during the Evidentiary Hearing. Evidently Judge Grimsley didn't feel I had a right to have a rehearing. See Exhibit #16.

I filed another, "Motion For Extension of Time to File petition for Review of Rule 32 Hearing."

Filed May 14, 2007. Exhibit #17 (A). Judge Grimsley ruled granting the Motion until July 5, 2007. ^{Exhibit #7 (B)} Being it took Judge Grimsley till Jun 6, 07 to make this ruling, I feared I would be precluded under the time limit, so I mailed my Petition for Review

to the Court of Appeals on May 25, 2007. The Court of Appeals dismissed the Petition for Review as untimely. The Court of Appeals Order was invalid. First, it was indicated that the case originated out of "Maricopa County Superior Court" my case is out of Apache County Superior Court. Second, the order states, "the trial court denied the petition for post-conviction relief on May 9, 2006, ...". This was just not true, the evidentiary hearing did not convene till Nov. 9, 2006. Third, "and the petition for review was not filed until May 29, 2007." see Exhibit #17, (C). The court had granted a stay "until 30 days after the transcripts are filed." Exhibit #17 (D). After the Court received a copy of the Court of Appeals Order, the court rescinded its order of June, 6, 07. Exhibit #17, (E). Even to a lay person, it is obvious that Judge Grimsley lacked jurisdiction to make any rulings ^{based} on an invalid order from another Court. To back up a little, my Petition for Review was in fact filed in a timely manner. The transcripts of the Rule 32, Evidentiary Hearing was (according to the Court of Appeals) filed on April 26, 07. Now if Judge Grimsley followed the law, specifically, Ariz. R. Civil P. Rule 5 (c) (2)(C), (D) or (E), she would have realized that "five calendar days shall be added to the prescribed

period,..." also defined in Ariz. & Crim. P., Rule 1.3, both rules are mandatory in their language, these rules are backed by precedent law. See STATE V RABUN, 162 ARIZ. 261, 782 P.2d 737 (1989) (this rule applies to rule 31.3 just as it does to rule 10.2 and 32.9, both which also prescribe time running from an event.) So, on Jun 11, 07, exhibit #7 (E) when the Court Ordered "The Court having just received the Court of Appeals Ruling and finds that Defendant did not present any information of evidence regarding late filing, Therefore the Court rescinds its Order of June 6, 07, Defendant's request for late filing of Petition for Review is denied." That is as the Defendant could not present evidence regarding late filing, for the simple fact, the filing was not late. Second, Defendant had not put a request before the trial court for "late filing of Petition for Review..." It was a "Motion for Extension of time..."

Now, I'm not an attorney and have never studied the law, but I do know that my rights have been violated and will continue till this mess is cleaned up. Judge Grimsley is relatively new to the Bench and it is human to err, but when the Judge ignores those errors, when they are brought to her attention and continues to punish an individual knowingly in violation of

the law and constitutional provisions then the whole judicial system suffers and public opinion dwindles.

The Court has a duty to apply the correct legal standards at all times. Failure to do so denies the defendant his constitutional guarantee to Due Process. In light of the recent history in Apache County, I would expect Judge Grimsby to be very fastidious in her actions and ruling.

There is more that I could include but I don't know how to bring the issue out.

The foregoing is true and factual to the best of my knowledge and declared under the penalty of perjury. Respectfully submitted
this 11TH day of Sept. 2007.

Audrey R. Heaton

Copy to:
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