State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-023

Complainant: No. 1384300271A

Judge: No. 1384300271B

ORDER

The complainant alleged a superior court judge was biased and issued erroneous rulings. The commission reviewed the matter and found no evidence of bias on the part of the judge. The remaining issues raised involved legal and procedural matters outside the jurisdiction of the commission. The commission is not a court and cannot review evidence to determine whether or not a judge ruled correctly. Therefore, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: April 19, 2010.

FOR THE COMMISSION

\s\ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on April 19, 2010.

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

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

FOR OFFICE USE ONLY

2010-023

COMPLAINT AGAINST A JUDGE

Your name: _ **_ Judge's name:** _ **_ Date:** 1-25-10

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

JUDGE HAS DISPLAYED JUDICIAL BIAS AND A COMPLETE LACK OF IMPARTIALITY BY ELAGARENTLY DISREGARDING EXISTING LAW IN VIOLATION OF THE STARE DECISIS DOCTRINE IN ORDER TO AVOID GRANTING ME RELIEF.

IN 1990 I WAS CHARGED WITH TWO COUNTS OF SEXUAL ASSAULT AND ONE COUNT OF ATTEMPTED MURDER, KIDNAPPING AND BURGLARY. I WAS CONVICTED ON ALL COUNTS IN 1991 BUT MY CONVICTIONS WERE REVERSED ON APPEAL DUE TO PROBLEMS WITH THE STATISTICAL EVIDENCE GENERATED FROM THE DNA TESTING CONDUCTED BY CELLMARK LABORITORIES. STATE V. CLARK, 181 ARIZ. 42, 887 P.2d 572 (APP. 1995).

ON REMAND JUDGE TOOK ON MY CASE BECAUSE JUDGE COULTER HAD RETIRED. I WAS APPOINTED ALEX D. GONZALEZ TO REPRESENT ME. THE STATE FIRST SOUGHT A LIMITED FRYE HEARING REGARDING THE STATISTICAL EVIDENCE GENERATED BY CELLMARK'S NEW DATABASE. HOWEVER, THEY LATER SOUGHT TO HAVE ALL OF THE EVIDENCE "RETESTED" BY THE AZ. DPS. THE STATE TOLD JUDGE THAT THE DPS HAD "ALREADY AGREED" TO RETEST

(Attach additional sheets as needed)

THE EVIDENCE. ALEX AND I BOTH OBJECTED TO THIS SUDDEN CHANGE BY THE STATE DUE TO THE DELAY INVOLVED. JUDGE OVERRULED THE OBJECTION AND GAVE THE STATE ONE MONTH TO CONDUCT THE RETESTING BY THE AZ. DPS.

WHEN WE APPEARED BACK IN COURT A MONTH LATER IT WAS LEARNED THAT THE DPS HAD NOT EVEN BEGUN TO CONDUCT THE DNA RETESTING. JUDGE THEN ORDERED A STATUS CONFERENCE TO FIND OUT WHY THE DNA TESTING HAD NOT YET COMMENCED AND DIRECTED THE STATE TO HAVE TWO DPS EMPLOYEES PRESENT FOR THE HEARING.

AT THE HEARING, HOWEVER, NOT ONLY DID THE TWO DPS WITNESSES NOT SHOW UP BUT A DIFFERENT PROSECUTOR SHOWED ON BEHALF OF THE STATE. HE PRESENTED A LETTER FROM ONE OF THE DPS WITNESSES WHEREIN JUDGE STATED THAT SHE WAS "FLABBERGASTED" BY THE CONTENTS OF THE LETTER "BASED UPON THE REPRESENTATIONS MADE IN COURT" (RT. 10/3/95 AT P. 2-3).

BY THE END OF THE HEARING, HOWEVER, THE PROSECUTOR CONVINCED JUDGE TO GRANT THE STATE ANOTHER CONTINUANCE, OVER DEFENSE OBJECTION, AND HAD HER ORDER THE CLERK TO RELEASE EVIDENCE TO THE STATE SO THAT THE DPS MAY CONDUCT ADDITIONAL DNA TESTING.

ON MARCH 7, 1996 I EXERCISED MY FARETTA RIGHTS AND BECAME PRO PER. ALEX GONZALEZ STAYED ON AS ADVISORY COUNSEL.

WHILE ACTING PRO PER I LEARNED THAT THE REASON THE DPS ORIGINALLY REFUSED TO TEST THE EVIDENCE IN THIS CASE WAS BECAUSE THEY HAVE A "POLICY AGAINST RETESTING ANY EVIDENCE PREVIOUSLY SUBMITTED TO ANOTHER LABORITORY." I ALSO LEARNED THAT THE REASON THAT THE DPS EVENTUALLY DID RETEST THIS EVIDENCE WAS BECAUSE THE STATE HAD TOLD THEM THAT THEY WERE UNDER "COURT ORDER" TO CONDUCT THE TESTING AND THAT THEY NEVER AGREED TO CONDUCT THE RETESTING PRIOR TO THIS SO-CALLED COURT ORDER AS REPRESENTED TO THE

COURT BY THE STATE. FURTHERMORE, THIS SO-CALLED COURT ORDER WAS NOTHING MORE THAN AN ORDER DIRECTING THE CLERK TO RELEASE EXHIBIT 118 SO THAT THE DPS "MAY" CONDUCT THE DNA TESTING (MINUTE ENTRY 10/3/95).

I BROUGHT ALL OF THIS TO JUDGE ATTENTION IN A MOTION IN LIMINE RE: DPS (ITEM #773). DESPITE ALL THIS EVIDENCE OF PROSECUTORIAL MISCONDUCT BY THE STATE, JUDGE REFUSED TO ALLOW ME TO CONDUCT AN EVIDENTIARY HEARING FOR APPELLATE PURPOSES OR PRECLUDE THE DPS TEST RESULTS FROM MY RETRIAL. IN FACT, AFTER BEING MADE AWARE OF THE STATE'S DECEPTION TO BOTH HER AND THE DPS SHE REWARDED THE STATE BY ALLOWING THEM TO PRESENT THE DNA EVIDENCE FROM BOTH CELLMARK AND THE DPS.

I ALSO CHALLENGED THE EVIDENCE SEIZED BY THE STATE DURING THE AUGUST 10, 1990 SEARCH OF MY APARTMENT BECAUSE THE STATE

COULD NOT PRODUCE "SIGNED" COPIES OF THE SEARCH WARRANT, AFFIDAVIT AND RETURN EXECUTED IN THIS CASE.

I FIRST ARGUED THAT THE UNSIGNED COPIES WERE THEMSELVES PRIMA FACIA EVIDENCE THAT THE WARRANT WAS NOT VALID AND, THEREFORE, I HAD MET MY BURDEN UNDER THE RULES. HOWEVER, AFTER JUDGE RULED AGAINST ME I CALLED THE JUDGE ALLEGED TO HAVE ISSUED THE WARRANT, A CLERK FROM THE TEMPE JUSTICE COURT WHERE IT WAS ALLEGED TO HAVE BEEN ISSUED FROM, A CLERK FROM THE MARICOPA COUNTY SUPERIOR COURT WHERE THIS CASE WAS BEING TRIED, TWO CLERKS FROM THE TEMPE POLICE DEPT. AND ALL FOUR POLICE OFFICERS WHO EXECUTED THE SEARCH.

DET. REMIKIS WAS THE ONLY WITNESS WHO STATED THAT A SIGNED WARRANT WAS EVER ISSUED BUT HIS TESTIMONY WAS HIGHLY SUSPECT IN LIGHT OF ALL OTHER TESTIMONY REGARDING POLICY AND PROCEDURE TO SECURE A WARRANT.

FURTHERMORE, DET. REMIKIS COULD NOT EXPLAIN HOW DET. ANDERSON'S SIGNITURE GOT ON THE COPY OF THE RETURN DISCLOSED BY THE STATE WHEN HE DID NOT SIGN IT UNTIL THEY EXECUTED THE SEARCH <u>AFTER</u> THE JUDGE WOULD HAVE SIGNED THE ORIGINAL. OR WHY DET. ANDERSON'S SIGNITURE WAS ON THE RETURN WHEN IT WAS ESTABLISHED THAT DET. REMIKIS CLAIMS TO HAVE BEEN THE ONE WHO RETURNED THE WARRANT TO THE COURT.

ONCE AGAIN, DESPITE ALL OF THIS TESTIMONY JUDGE RULED THAT I FAILED TO MAKE A PRIMA FACIA CASE THAT A SIGNED SEARCH WARRANT WAS NEVER ISSUED IN THIS CASE.

JUDGE KNEW THAT THE STATE COULD NEVER MEET THEIR EVIDENTIARY BUROEN ONCE I MET MINE BECAUSE THEY HAD ADMITTED THAT THEY HAD THOROUGHLY SEARCHED THEIR RECORDS AND COULD NOT FIND A SIGNED COPY. THEREFORE, SHE THREW THE SUPPRESSION HEARING BECAUSE SHE DID NOT

LIKE THE CONSEQUENCES OF GRANTING ME RELIEF.

FINALLY, WHILE ALEX GONZALEZ WAS REPRESENTING ME BEFORE I BECAME PRO PER IT WAS LEARNED FOR THE FIRST TIME THAT THE STATE HAD MADE AN OFFER FOR A 15-YEAR PLEA BARGAIN PRIOR TO MY FIRST TRIAL TO MY ORIGINAL ATTORNEY, LEONARD BROWN. ALEX TOLD ME THAT THIS WAS AN ISSUE THAT I SHOULD RAISE IN A RULE 32 IF I WAS RECONVICTED.

WHEN I FILED MY RULE 32 JUDGE HILLIARD RULED THAT THIS ISSUE WAS "WAIVED" BECAUSE I FAILED TO RAISE IT PRIOR TO MY RETRIAL IN 1998 (MINUTE ENTRY OF 7/25/02).

THE AZ. SUPREME COURT HAS SINCE MADE IT ABSOLUTELY CLEAR THAT A DONAHUE-TYPE OF CLAIM FOR INEFFECTIVE ASSISTANCE OF COUNSEL CAN ONLY BE RAISED IN A RULE 32 PROCEEDING, "NOT BEFORE TRIAL, AT TRIAL OR ON DIRECT REVIEW." BECAUSE THE DEFENDANT MUST ESTABLISH PREJUDICE WHICH HE COULD NOT DO UNTIL AFTER HE

WAS CONVICTED. STATE V. REYES, 214 ARIZ. 411, 415, 153 P.3d 1040, 1044 (2007).

THEREFORE, I FILED A SUCCESSIVE RULE 32 PETITION ONLY TO HAVE JUDGE RULE THAT THIS ISSUE IS NOW "UNTIMELY" (MINUTE ENTRY OF 1/8/10). I HAVE JUST FILED A MOTION FOR RECONSIDERATION ALLEGING THAT THIS ISSUE IS NOT UNTIMELY BECAUSE EITHER REYES CONSTITUTES A SIGNIFICANT CHANGE IN THE LAW IF HER ORIGINAL RULING WAS CORRECT OR THAT HER FIRST RULING WAS CLEARLY ERRONEOUS AND A GROSS VIOLATION OF THE STARE DECISIS DOCTRINE CALLING FOR HER TO RECONSIDER HER ORIGINAL RULING. HOWEVER, I DO NOT EXPECT HER TO REVERSE HER PRIOR RULING, EVEN THOUGH I AM CLEARLY RIGHT, BECAUSE THAT WOULD ENTITLE ME TO RELIEF.

JUDGE HAS CONSISTENTLY IGNORED CRITICAL FACTS AND/OR PERTINENT CASELAW IN ORDER

TO AVOID GRANTING ME RELIEF. SHE HAS DISPLAYED A COMPLETE DISREGARD FOR MY CONSTITUTIONAL RIGHTS OVER THE YEARS BECAUSE SHE BELIEVES THAT THERE WILL BE NO CONSEQUENCES FOR HER ACTIONS AND THIS MUST STOP! THERE IS NO TELLING HOW MANY OTHER CRIMINAL DEFENDANTS SHE HAS VICTIMIZED BECAUSE OF HER BIAS AND PARTIALITY TO THE STATE WHO SOLELY ADVOCATES FOR VICTIMS RIGHTS.

JUDGES MUST NOT BE ALLOWED TO FLAGARENTLY DISREGARD FACTS OR CONTROLING CASELAW SIMPLY BECAUSE THEY DON'T LIKE A PARTICULAR DEFENDANT OR TYPE OF OFFENSE. IF THEY ARE ALLOW TO DO SO THERE IS NO NEED FOR A CONSTITUTION BECAUSE ULTIMATELY IT COMES DOWN TO WHETHER OR NOT THAT JUDGE LIKES YOU.

I BELIEVE THAT JUDGE IS EXTREMELY BIAS AND PREJUDICED BY THE NATURE OF THIS OFFENSE. I HAVE BEEN TOLD THAT SHE HAS

A DAUGHTER WHO WAS SEXUALLY ASSAULTED. I DO NOT NEED TO KNOW IF THIS IS TRUE BUT I MUST ASK THAT YOU CONSIDER THIS AS PART OF YOUR INVESTIGATION BECAUSE IT IS HIGHLY RELEVANT AND WOULD CERTAINLY EXPLAIN HER ACTIONS IN THIS CASE.

HOWEVER, EVEN IF THERE IS NO TRUTH REGARDING JUDGE DAUGHTER I DO HOPE THAT YOU WILL TAKE THIS MATTER SERIOUSLY BECAUSE AT THE VERY LEAST HER RULINGS OVER THE YEARS CALL INTO QUESTION HER COMPETENCY TO SIT ON THE BENCH AND SHOULD ALSO CAUSE YOUR OFFICE GREAT CONCERN.

I AM ALLEGING THAT JUDGE IS GUILTY OF 1) WILLFUL MISCONDUCT IN OFFICE 2) CONDUCT THAT BRINGS THE JUDICIAL INTO DISREPUTE, AND 3) VIOLATING THE CODE OF JUDICIAL CONDUCT; TO WIT, A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY AND

DILIGENTLY.
I AM REQUESTING THAT YOUR OFFICE FULLY INVESTIGATE THIS MATTER AS ALLEGED IN THE SUPERIOR COURT FILES AND TO MAKE A RECOMMENDATION TO THE AZ. SUPREME COURT THAT JUDGE BE REMOVED FROM THE BENCH.