

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 13-121

Judge:	No. 2710012694A
Complainant:	No. 2710012694B

ORDER

The complainant alleged a superior court judge violated his due process rights by engaging in an improper ex parte sidebar conversation with a deputy county attorney in 1999 that adversely affected his prison sentence.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After reviewing the information provided by the complainant, the complainant's prior complaint about the same judge in 2005, and Commission Administrative Policy 4 (Investigation of Old Complaints), the commission dismissed the complaint in its entirety pursuant to Rules 16(a) and 23. Separate and apart from the complaint being completely stale under Commission Administrative Policy 4, the commission does not have jurisdiction to review legal claims.

Dated: June 20, 2013.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on June 20, 2013.

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

COMPLAINT ATTACHMENT:

FOLLOWING TRIAL THE DEFENDANT WAS FOUND GUILTY OF, FIVE COUNTS OF FRAUDULENT SCHEMES AND ARTIFICES, INCLUDING, FIVE COUNTS OF THEFT, THE LESSER INCLUDED OFFENSE. EACH FRAUD COUNT, A CLASS 2 FELONY, HAD A CORRESPONDING THEFT COUNT, A CLASS 3 DESIGNATED FELONY. ON NOVEMBER 18, 1997, THE TRIAL COURT IMPOSED AN AGGRAVATED 10 YEAR SENTENCE PER EACH COUNT OF FRAUD, THESE COUNTS WERE ALL RUN CONCURRENT TO EACH OTHER. THEN, THE TRIAL COURT IMPOSED AN AGGRAVATED 10 YEAR SENTENCE PER EACH COUNT OF THEFT. THESE COUNTS WERE RUN CONCURRENT TO ONE ANOTHER, BUT WERE TO BE RUN CONSECUTIVE TO THE FRAUD COUNTS, THUS TOTALING A 20 YEAR PRISON TERM. THE DEFENDANT APPEALED. SEE: REPORTER'S TRANSCRIPTS, "R.T.", NOVEMBER 18, 1997, ID.

ON NOVEMBER 10, 1998, THE DEFENDANT SUCCESSFULLY EXERCISED HIS RIGHT TO APPEAL. THE APPELLATE COURT STATED THAT THE FRAUD CHARGES, AS WELL AS THE THEFT CHARGES CONSTITUTE A "SINGLE ACT" WITHIN THE MEANING OF ARIZONA REVISED STATUTE, "A.R.S." SECTION 13-116, AND THE SUPREME COURTS HOLDING IN STATE V. GORDON. A.R.S. 13-116 MAKES IT CLEAR, ALTHOUGH THE STATE MAY CHARGE MULTIPLE OFFENSES IN A SINGLE INDICTMENT, ALL THE COUNTS MUST BE RUN CONCURRENT AT THE TIME OF SENTENCING. SEE: A.R.S. SECTION, 13-116; ALSO, DIVISION 1, COURT OF APPEALS, NOV. 10, '98, REMAND DECISION; STATE V. GORDON.

ON FEBRUARY 26, 1999, THE DEFENDANT APPEARED BEFORE HONORABLE JUDGE _____ FOR A RESENTENCING PROCEEDING. AT THE BEGINNING OF THE PROCEEDING THE COURT MADE IT PERFECTLY CLEAR THAT DUE TO UNITED STATES SUPREME COURT PRECEDENT HELD IN _____, AS WELL AS, THE COURT OF APPEALS, NOVEMBER 10, '98, REMAND ORDER, IT MUST IMPOSE CONCURRENT SENTENCES ON ALL COUNTS IN THIS CASE. *id.* THE COURT THEN PRO-
- NOUNCED THE FOLLOWING PRISON TERM:

" AS TO ALL COUNTS, YOU ARE SENTENCED TO THE AG-
- GRAVATED TERM OF TEN YEARS. ALL COUNTS WILL RUN CONCURRENT TO EACH OTHER." SEE: R.T., 2/26/99, *id.*

6.. AFTER IMPOSING SENTENCE AND EMPLOYING THE SAME RESTITUTION AND TERMS FOR COMMUNITY SER-
- VICE PREVIOUSLY IMPOSED DEFENDANT WAS TOLD TO STEP BACK. *id.* SUDDENLY, THE STATES DEPUTY COUN-
- TY ATTORNEY, _____, REQUESTED A SIDE BAR WITH THE COURT OFF THE RECORD. DEFENSE COUN-
- SEL OBJECTED TO ANYTHING HAPPENING, OFF RECORD, BUT THE COURT STATED IT WOULD HEAR IT FIRST. *id.*

AFTER A LONG EX PARTE DISCUSSION, _____ RETURNED AND, THE COURT MOTIONED TO THE DEFEN-
- DANT TO COME FORWARD AGAIN. *id.* 7.. JUDGE _____ THEN ALLOWED THE STATE TO BEGIN RE-
- LITING THE NEWLY IMPOSED SENTENCE.

STATED, WHAT HE BELIEVED THE COURT OF APPEALS SAID, WAS THAT, THE COURT CANNOT "STACK" THE SENTENCES

AS PREVIOUSLY EMPLOYED, BUT IF THE COURT CHOOSES, IT COULD STILL STACK THE SENTENCES, ALL IT NEEDED TO DO WAS REARRANGE THE COUNTS.

CONTINUED TO GIVE HIS ASSESSMENT OF THE APPELLATE COURTS DECISION, AS WELL AS, HIS DEFINITION OF THE MEANING OF A.R.S. 13-116. AFTER LISTENING TO THE STATES ARGUMENT, THE COURT STATED IT WAS NOW GOING TO STRIKE IT'S PREVIOUS PRONOUNCEMENT OF SENTENCE, IMPOSE A DIFFERENT 20 YEAR CONSECUTIVE SENTENCE SUGGESTED BY id.

DEFENSE COUNSEL MADE IT CLEAR TO THE COURT, "THAT IT HAD ALREADY PRONOUNCED SENTENCE, AND HE WAS GOING TO OBJECT TO IT." JUDGE id. BECAME VERY UPSET AND POINTED HER FINGER AT DEFENSE COUNSEL STATING, "WELL I'LL TELL YOU..." BUT THEN SHE ABRUPTLY STOPPED. id. STATED, "THE

LAW IS VERY CLEAR...", THAT THE COURT HAD PRONOUNCED SENTENCE, AND AFTER HAVING DONE THAT, IT CANNOT NOW TURN AROUND AND CHANGE THE SENTENCE. id.

JUDGE id. STATED, "WELL I DISAGREE WITH YOU, THAT, THAT'S WHAT THE LAW SAYS...", THE COURT THEN STATED, IT WAS HER INTENT ON, NOVEMBER 18, 1988, TO SENTENCE THE DEFENDANT TO 20 YEARS, AND, "THATS WHAT MR. id. IS GOING TO GET." id.

THE COURT THEN IMPOSED ANOTHER ILLEGAL 20 YEAR CONSECUTIVE SENTENCE. id. STATED WE

WOULD APPEAL. SEE: R.T., 2/26/99, id. 7-13.

IN THE INTERIM, THE COUNTY ATTORNEY SUBMITTED A

NUNC PRO TUNC MOTION REQUESTING A CORRECTION OF SENTENCE. THE MOTION STATED THAT THERE WAS A MISTAKE MADE AT THE FEBRUARY 26, '99, PROCEEDING AND, THERE NEEDED TO BE A CORRECTION MADE. id.

THE COUNTY ATTORNEY CLAIMED, THAT THE COURT, COULD STILL IMPOSE A 20 YEAR CONSECUTIVE PRISON TERM AS IT ORIGINALLY INTENDED, BUT, IT COULD NOT STACK THE SENTENCES IN THE MANNER CURRENTLY EMPLOYED.

IN FACT, THE COUNTY ATTORNEY CLAIMED THE DEFENDANT COULD BE SENTENCED TO 50 YEARS IF THE COURT CHOSE TO DO SO BUT SUGGESTED THAT THE COURT JUST CHOOSE ONE OF THEIR OPTIONS LISTED IN THE MOTION.

SEE: NUNC PRO TUNC MOTION, FILED, APRIL 5, 1999.

ON JULY 1, 1999, THE DEFENDANT APPEARED BEFORE JUDGE TO BE SENTENCED FOR A FOURTH

TIME. AT THE BEGINNING OF THE PROCEEDING THE COURT ASKED THE STATE WHAT THEIR POSITION WAS.

THE STATE STATED THAT THE COURT SHOULD JUST CHOOSE ONE OF THEIR OPTIONS PRESENTED IN THEIR MOTION. id. THE COURT THEN ASKED DEFENSE COUNSEL,

WHAT IS HIS POSITION REGARDING THE RE-SENTENCING PROCEEDING. THE DEFENSE COUNSEL STATED;

"OUR POSITION IS THE SAME AS IT WAS AT THE LAST HEARING, AND THAT IS, THAT YOU PRONOUNCED A VALID, LAWFUL SENTENCE AGAINST

THE DEFENDANT, THEN YOU CHANGED IT... ALTHOUGH THE MINUTE ENTRY DOESN'T REFLECT THAT'S WHAT YOU DID, BUT THE RECORD DOES." id.

AFTER LISTENING TO, THE COURT STATES IT'S POSITION BY CLAIMING, "THAT'S RIGHT BEFORE SENTENCING WAS COMPLETED I CHANGED THE SENTENCE." *id.* THE COURT WAS NOW GOING TO IMPOSE A NEW SENTENCE. JUDGE BELIEVED SHE HAD JURISDICTION IN THIS MATTER AND NOW SENTENCED THE DEFENDANT TO THE FOLLOWING; COUNTS 1, 2, 3, 4, 5, 6, 8, 9 AND 10, WILL RUN CONCURRENT TO EACH OTHER. COUNT 7, A THEFT COUNT, WILL NOW RUN CONSECUTIVE TO ALL OTHER COUNTS. EACH COUNT RECEIVED AN AGGRAVATED 10 YEAR PRISON TERM. THE COURT THEN ASKED R. IF THE STATE IS "NOW SATISFIED" THAT THIS IS A LAWFUL SENTENCE ACCORDING TO THE "APPLICABLE LAW". SEE: R.T., 7/1/99, *id.*, 1-9.

ON DEFENDANT'S SECOND APPEAL THE COURT OF APPEALS ORDERED AS FOLLOWS: CONVICTIONS AFFIRMED / SENTENCES MODIFIED AS FOLLOWS.

IN THE DECISION THE APPELLATE COURT STATED THAT NO PREJUDICE OCCURRED AS A RESULT OF THE FEBRUARY 26, '99, RESENTENCING OF THE DEFENDANT BECAUSE AT THE TIME OF SENTENCING THE JUDGE BELIEVED HER HANDS "WERE TIED" BY THEIR NOVEMBER 10, '98 DECISION. AS THE COURT BEGAN TO IMPOSE SENTENCE THE PROSECUTOR IMMEDIATELY INFORMED THE COURT THERE WAS AN ERROR AND THE JUDGE THEN "CHANGED HER MIND" BEFORE SHE COMPLETED THE SENTENCE. THE APPEALS COURT STATED, THAT THEY KNOW OF NO AUTHORITY WHICH PRECLUDES A JUDGE FROM

CHANGING HER MIND DURING SENTENCING. AS WELL, THE SENTENCE IMPOSED DOES NOT VIOLATE THE UNITED STATES' SUPREME COURT'S RULING IN, NORTH CAROLINA V. PEARCE, BECAUSE THE DEFENDANT'S SENTENCE WAS ORIGINALLY 20 YEARS, AND IT REMAINED 20 YEARS, AFTER BOTH HEARINGS, THEREFORE NO PREJUDICE HAS RESULTED AGAINST THE DEFENDANT. THE COURT FURTHER STATED THAT THE SENTENCE COMPLIES WITH THEIR NOVEMBER 10, '98, DECISION AND MEETS THE STATE SUPREME COURT'S DECISION IN STATE V. GORDON. id. SEE: COURT OF APPEALS, DIV. I, FEBRUARY 8, 2000, ORDER.

THE TRIAL COURT IN THIS CASE HAS DENIED THE DEFENDANT DUE PROCESS OF LAW WHICH IS "GUARANTEED" UNDER THE STATE AND FEDERAL CONSTITUTIONS. IT COMPLETELY IGNORED THE ARIZONA RULES OF CRIMINAL PROCEDURE, SPECIFICALLY, RULE 26.16(a) THAT MAKES IT CLEAR, STATING; "A SENTENCE IS COMPLETE AND VALID AS THE TIME OF THEIR ORAL PRONOUNCEMENT IN OPEN COURT." A.R.C.P., RULE 26.16(a).

THE TRIAL COURT WILLFULLY CHOSE TO IGNORE MANDATORY STATE LAW UNDER, A.R.S. SECTION 13-116, WHICH SPECIFICALLY STATES A COURT IS "PRECLUDED" AS WELL AS, IN "NO EVENT" CAN THE CHARGES, AS THEY APPLY TO THIS CASE, BE RUN OTHER THAN CONCURRENT. SEE: A.R.S. 13-116; STATE V. ARNOLD; STATE V. OLEA; STATE V. GORDON.

THE TRIAL COURT HAS BREACHED IT'S FIDUCIARY

DUTY BY ACTING OUTSIDE IT'S SCOPE OF AUTHORITY AND/OR JURISDICTION BY IMPOSING A VALID, LAW-FUL SENTENCE, TO THEN, STRIKE THAT SENTENCE AND INCREASE THE PUNISHMENT AGAINST THE DEFENDANT. THE COURT OF APPEALS STATES IN STATE V. SUNIGA; "A JUDGE DOES NOT HAVE THE AUTHORITY OR JURISDICTION TO CHANGE AN OTHERWISE LAWFULLY IMPOSED SENTENCE." SUNIGA; ALSO, STATE V. THOMPSON; MARKS V. MARKS.

THE TRIAL COURT HAS VIOLATED UNITED STATES SUPREME COURT PRECEDENT IN, NORTH CAROLINA V. PEARCE, WHEN IT CHANGED A CONCURRENT SENTENCE, COUNT 7, TO A CONSECUTIVE SENTENCE TO ENHANCE THE PUNISHMENT. THIS IS A PUNITIVE MEASURE AND CAN ONLY BE CONSTRUED AS VINDICTIVE. THE SUPREME COURT STATED; "ALTHOUGH A JUDGE HAS BROAD DISCRETION UPON REMAND, IT CANNOT IMPOSE A SENTENCE IN A VINDICTIVE MANNER." PEARCE.

THE UNITED STATES CONSTITUTION STATES;
 "THE FIFTH AMENDMENT APPLICABLE TO THE STATES THROUGH THE FOURTEENTH AMENDMENT 'GUARANTEES' THAT NO PERSON SHALL BE TWICE PUT IN JEOPARDY OF 'LIFE OR LIMB'... (THIS APPLIES TO PRISON SENTENCES AND CRIMINAL FINES AS WELL.)"
 SEE! U.S. V. JEFFERS; U.S. CONST. AMEND'S, V, XIV.

ON FEBRUARY 26, 1999, THE TRIAL COURT PRONOUNCED A VALID 10 YEAR CONCURRENT SENTENCE ON ALL THE COUNTS IN THIS CASE. THE DEFENDANT, AND COMPLAIN-
- TANT, STANDS "RES JUDICATA." THERE IS AN ABSO-
- LUTE BAR BY THE STATE OF ARIZONA, ET ALI., TO RE-
- LITIGATE A LAWFULLY IMPOSED SENTENCE AFTER A COURT OF COMPETANT JURISIDICITION HAS RENDERED A VALID, FINAL JUDGEMENT IN OPEN COURT. SEE: (BLACK'S LAW DICTIONARY.). THE COURT OF APPEALS ORDER ON FEBRUARY 8, 2000, IS VOID. IT LACKED AUTHORITY AND/OR JURISDICTION AND IS MERELY ACT-
- ING IN CONCERT WITH THE STATES ILLEGAL PROCESS.

THE COMPLAINTANT HAS NOW BEEN UNLAWFULLY IMPRISONED FOR OVER 10 YEARS. THERE IS NO LAWFUL AUTHORITY UNDER THE STATE OR FEDERAL CON-
- STITUTION'S THAT SUPPORTS HIS IMPRISONMENT. I AM BEING HELD AS A "POLITICAL PRISONER" AT THE HANDS OF STATE AUTHORITIES AND OFFICIALS PARTICIPATING IN AN ILLEGAL ACTIVITY. I HOPE AND PRAY THIS COMPLAINT BECOMES PUBLIC NOTICE ONLY TO PREVENT THE STATE OF ARIZONA, ET, ALI., FROM EXPOSING SOMEONE ELSE TO WHAT I BELIEVE CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT.