

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 20-131

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Judge:

Complainant:

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**ORDER**

July 23, 2020

The Complainant alleged a superior court judge was biased against him and improperly enhanced his sentence.

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 Michael J. Brown and Christopher P. Staring did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on July 23, 2020.



state for an offense that if committed in this state would be punishable as a felony is a felony conviction for the purposes of this paragraph, the case presented from the state was over the years immediately preceding the date of the offense. The misconduct and prejudice is that the defendant was twice put in jeopardy at trial for a case that he was already convicted and sentenced the case No. \_\_\_\_\_ the misconduct of the judge is obvious

when stated at the sentence "I don't see anything in the statute, sir that limits to a predicate felony under \_\_\_\_\_ see (RT sentence) \_\_\_\_\_ doing omission of the A.R.S. 13-701 that define incarceration, aggravation and minor human conduct offenses including \_\_\_\_\_ the double jeopardy was obvious see State v. Solomon (1980) 125 Ariz. 18, 607 P. 2d 1 and Jones v. Kiser (App. Div. 1 1999) 114 Ariz. 523, 984 P. 2d 1161 Jeopardy

attaches as soon jury is empaneled and sworn. Here the whole trial was compromised for the double jeopardy (see RT July 11, 2011 P. 146-147, RT July 12, 2011 P. 117-121 and RT July 12, 2011 P. 146-148). The Article 2 § 10 of the Arizona Constitution double jeopardy The constitution affords protection to the double jeopardy the clause provides three distinct guarantees to a criminal defendant (1) Freedom from re-prosecution following acquittal (2) Freedom from re-prosecution following conviction (3) Freedom from multiple punishment for the same offense. And the Fifth Amendment double jeopardy provision is applicable to the state through Fourteenth Amendment. see Benton v. Maryland, 395 U.S. 784, 794, 89 S. Ct. 2056, 206 to 23 L. Ed. 2d 707 (1969). McLaughlin v. Fulbright, 150 Ariz. 274, 277, 723 P. 2d 92, 95 (1989).

the misconduct and prejudice was constitutional. The double jeopardy clause provides protection against second prosecutions for the same offense after conviction and against multiple punishments for the same offense, at trial defendant was punished with \_\_\_\_\_ counts instead of \_\_\_\_\_. For the misconduct of the predicate prior case

From \_\_\_\_\_ there was a double jeopardy also in indict the defendant with multiple punishments. see State v. Bollender (1975) 112 Ariz. 35, 537 P. 2d 22 double jeopardy applies where individual has been convicted and sentenced and to attempt is then made to increase the sentence. and see State v. Brown 191 Ariz. 102, 103, 952 P. 2d 746, 747 (App. 1998) "we do find fundamental error in trial court's imposition

of enhanced sentence the state alleged pursuant 13-604.01 that count line was predicate to remaining counts, count to less a predicate to the remaining counts and so on!!

the prosecution also used to indict and convict the defendant the A.R.S. 13-702 and 13-702.01 see State v. Brown, 97 P. 3d 15, 2004 WL 2390005 (Ariz) the supreme court held that application of statutes 13-702 and 13-702.01 was unconstitutional and the aggravated elements must be submitted to a jury before a sentence can be aggravated. this would be a fundamental error if the judge alone found aggravating circumstances to enhance the defendant sentence and a sixth Amendment violation right to have jury decided factual issues. Here there was a misconduct indict, prosecute and sentence (convict) applying A.R.S. 13-604, 13-604.01, and 13-702, 13-702.01 (see exhibit 2 indictment) the misconduct of the judge is obvious the judge may not consider aggravating factors upon sentencing aggravating factors must be presented to the jury see Blawie v. Washington, 124 S. Ct. 2531, 151 L Ed 2d 403; 2004 U.S. LEXIS 4573; 72 U.S. LW 4546; Fla L Weekly Fed. S. 430. the judge misconduct is clear and obvious

the trial court didn't explained the A.R.S. 13-701. D. 11. to the jury, that over Breec-  
citing the offense the state can't use the case see Larson v.

Forbey, 106 Ariz. 114, 471 P. 2d 731 (1970) A statute should be explained in conjunction with other statutes which relates to the same subject or have the same general purposes.

Here A.R.S. 13-701. D. 11 relate to the same subject of A.R.S. 13-604.01, 13-702, 13-702.01. it was the same general purposes and same subject, the jury didn't hear about the 13-701. D. 11. Here there is issues of misconduct (1) the 13-701. D. 11. not was explained to the jury (2) the judge not was allowed to consider the aggravating factors only the jury.

All this misconduct occurred for allowed the double jeopardy in presenting a case that is unconstitutional see Fitzgerald v. Superior Court in and for the County of Maricopa (App. Div. 1 1992) 173 Ariz. 539, 84 S.P. 2d 465 Double Jeopardy Provide Protection against Second Prosecutions for the same offense after conviction and against multiple punishments for the same offense.

the trial court misconduct and abuse of discretion is obvious see State v. Randy Lee Green 200 Ariz. 496, 29 P. 3d 271, 2001 Ariz. LEXIS 119, 354 Ariz. Adv. Rep. S Aug 17, 2001 Filed.

Little v. Little, 193 Anz. 518, 520, 975 P. 2d 108, 110 (1999) An Abuse of discretion exists in the light of the record viewed most favorable to upholding the trial court decision is devoid of competent evidence to support the decision. see also Faught v. Faught, 94 Anz. 187, 188, 382 P. 2d 667, 668 (1963) Here the judge Mickelthut was obliged the A.R.S. 13-701. D. II, was information to the jury and evidence to support the jury decision. The double jeopardy, the indictment prosecuting, convicting and sentenced the defendant with unconstitutional A.R.S. was unfair in defendant's trial. the judge was bias and prejudice in the case see State v. Brown, 124 Anz. 97, 102 P. 2d 478 (1979) Right to a fair trial is a foundation stone upon which the judicial system rests. there is an indispensable right to trial presided over by judge who is impartial and free of bias and prejudice. see also State v. Channey (1984) 141 Anz. 295, 686 P. 2d 1265 Defendant is entitled to a fair trial and impartial neutral judge is one of the most basic due process protections and see State v. Jordan, 126 Anz. 283, 286, 614 P. 2d 825, 828 (1980) U.S. v. Hankley, 432 F. 3d 779 (7th Cir. 2005) A defendant has due process right to be sentenced on basis of accurate information. it was not accurate information to the jury about A.R.S. 13-604.01, 13-702, 13-702.01 and not information at all about 13-701. D. II. Consecutive sentences imposed by trial judge must state his reasons for the sentence on the record see State v. Vangum, 147 Anz. 28, 708 P. 2d 453 (1985) Here is the clear misconduct by judge violating the Arizona code of judicial conduct rule 1.1. not complying with the law, rule 2.2. the improprieties of the judge and rule 2.3(B) Bias and prejudice. the judge state his reasons for the sentence on the record being totally omission of the double jeopardy or judge didn't have knowledge of the A.R.S. 13-701 and 13-701. D. II, when he stated "I don't see anything in the statute sir that limits to a ten year period for a predicate felony under 13-705 ( the prejudice at trial for double jeopardy at trial is a clear misconduct of the judge. the judge didn't applied the constitutional requirements, statutes and the right decision of law. see Rule 2.2 - , rule 2.3

and didn't comply with the Arizona Constitution Article 6 § 26. The Judge didn't support the Constitution of the U.S. and the Constitution of the state of Arizona. Presiding the defendant and convicting him and sentencing him to a total of \_\_\_\_\_ when the double jeopardy is obvious. \_\_\_\_\_ is

Showing and demonstrating to this Honorable Commission, the willful Misconduct and Persistent Failure to perform his duties of the Judge.

## AFFIDAVIT

The AFFIRANT comes respectfully to this Honorable Commission to AFFIRM the issues based on the statements of FACTS above:

1. THE JUDGE ALLOWED THE INTRODUCTION OF THE \_\_\_\_\_ FROM THE \_\_\_\_\_ WAS OVER THE \_\_\_\_\_ YEARS PRECEDING THE OFFENSE CAUSING DOUBLE JEOPARDY | THE AFFIRANT AFFIRMS THAT THE MISCONDUCT OF THE ALLEGED CASE IS CLEAR DOUBLE JEOPARDY

2. THE AFFIRANT AFFIRMS THAT FOR THE DOUBLE JEOPARDY THE TRIAL WAS COMPROMISED AND WAS INVALID, BECAUSE JEOPARDY ATTACHES AS SOON AS JURY IS EMPANELLED AND SWORN.

3. THE AFFIRANT AFFIRMS THAT FOR THE DOUBLE JEOPARDY INDICT THE DEFENDANT WITH A.R.S. 13-604.01, 13-702, 13-702.01 WAS UNCONSTITUTIONAL. (SEE EXHIBIT 2)

4. THE AFFIRANT AFFIRMS THAT THE ARTICLE 2 § 10 OF THE ARIZONA CONSTITUTION DOUBLE JEOPARDY, AND THE STATEMENTMENT OF THE U.S. CONSTITUTION PROVISION APPLICABLE TO THE STATE THROUGH THE FOURTEENTH AMENDMENT AFFORDS PROTECTION TO THE DOUBLE JEOPARDY

**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.**