

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 20-257

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Judge:

Complainant:

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**ORDER**

December 11, 2020

The Complainant alleged a pro tem appellate court judge issued an erroneous ruling and had unduly delayed taking action on his case.

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 Denise K. Aguilar and Michael J. Brown did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on December 11, 2020.

Comp  
2020-257

Commission on Judicial Conduct  
Supreme Court of Arizona  
Attn. Executive Director  
Phoenix, Arizona

#### FORMAL COMPLAINT BY

This formal complaint is made by \_\_\_\_\_ Hereinafter Complainant, and is made against the Arizona Court of Appeals pursuant to Rule 6, Rules of the Commission on Judiciary Conduct, in that this Formal Complaint address violations of the Code of Judicial Conduct, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and continued trespass against the liberty of complainant without lawful authority, in the form of continued unlawful confinement.

#### STATEMENT OF RELEVANT FACTS

On \_\_\_\_\_ a Writ of Habeas Corpus ad Subjiciendum was executed and caused to be filed by Complainant with the \_\_\_\_\_ located in County of \_\_\_\_\_. The Writ aforesaid set out the fact Complainant has been and is currently being made to suffer unlawful confinement due to the sentence imposed upon Complainant being served in full, but Complainant remains in custody.

On \_\_\_\_\_ the \_\_\_\_\_ of Arizona, located in County of \_\_\_\_\_ entered an order dismissing the Writ of Habeas Corpus ad Subjiciendum, which the said court construed to be a Petition for Post Conviction Relief.

The Order dismissing the filing by Complainant did not cite any authority for the said dismissal nor otherwise comply with Rule 32.11, Arizona Rules of Criminal Procedure.

On \_\_\_\_\_ Complainant executed and caused to be filed with the Arizona

No response was made by Respondent \_\_\_\_\_ leaving the contentions raised by Complainant uncontested. On \_\_\_\_\_ Complainant executed and caused to be filed a \_\_\_\_\_ wherein Complainant called out the fact that no response or objection was made by Respondent \_\_\_\_\_ and that the record and black letter law advocate for relief to be granted to Complainant.

Or \_\_\_\_\_ and \_\_\_\_\_ after the matter had been fully briefed \_\_\_\_\_ a Motion for Expedited Ruling of Decision was executed and caused to be filed by Complainant with the \_\_\_\_\_

In the said motion, Complainant advised the \_\_\_\_\_ that the record, uncontested facts and historical authority evidence that Complainant has been and is continuing to be deprived of has liberty without any just or lawful authority, and in violation of the State and Federal Constitutions.

On \_\_\_\_\_ the said \_\_\_\_\_ and specifically \_\_\_\_\_ Judge \_\_\_\_\_ denied the Motion for Expedited Ruling of decision and advised Complainant \_\_\_\_\_

The said \_\_\_\_\_ has now had the fully briefed cause for \_\_\_\_\_ without taking any action. It is a maxim of law that justice delayed is justice denied, and no justification exist for the delay here as the courts continue to function while observing proper safety measures for health.

### CLAIM ONE RULE 81 IS VIOLATED BY UNDUE DELAY

Rule 81, Arizona Code of Conduct, provides in its "Scope" section that "the canons state overarching principals of judicial ethics that all judges must observe." and "the blackletter of the rules is binding and enforceable."

Rule 1.1 of Canon 1 of Rule 81 provides that a judge shall comply with the law, including the Code of Judicial Conduct. Rule 2.5 of canon 2 of Rule 81 provides that a judge shall perform judicial duties diligently and promptly.

The comment to Rule 2.5 provides in subpart 4 that, "in disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and have issues resolved without unnecessary cost or delay." (See also Art. 2 511, Arizona Constitution [requiring justice in all cases to be administrated without unnecessary delay.])

The most fundamental right vested in all people is the right to liberty. So sacred is this rights that courts are tasked with and trusted to jealously protect it; and any trespass against this sacred fundamental right must be lawfully justified. Where no lawful justification exists, the trespass must be remedied without delay.

As briefed by Complainant to the \_\_\_\_\_ and uncontested or rebutted by Respondent \_\_\_\_\_ the sentence imposed against Complainant by the \_\_\_\_\_ Arizona expires as fully served on \_\_\_\_\_ or \_\_\_\_\_ ago.

As set out in the briefs by Complainant, and uncontested or un rebutted by Respondent, \_\_\_\_\_, there exists no lawful justification for the continued confinement of Complainant. Ergo, the failure or refusal by the \_\_\_\_\_ to promptly dispose of the matter before it violates Rule 81, and subjects Complainant to continued trespass against the sacred right to liberty vested in Complainant.

CLAIM TWO  
THE FACTS AND LAW REQUIRE  
PROMPT AND ADEQUATE REMEDY

In the instant cause, pending before \_\_\_\_\_ there is no material issue in dispute which requires extensive argument or deliberation. The record is clear that after \_\_\_\_\_ no credit was given to Petitioner against the \_\_\_\_\_ sentence as that sentence had \_\_\_\_\_ remaining to be served.

The record also shows that Petitioner remained in custody until \_\_\_\_\_, a total of \_\_\_\_\_ which were not applied to the \_\_\_\_\_ sentence, and thus must be credited toward the remaining \_\_\_\_\_ sentence of \_\_\_\_\_ Complainant was removed from \_\_\_\_\_ and placed in the \_\_\_\_\_ where Complainant has remained in the continuous confinement to the present day, resulting on an additional \_\_\_\_\_ months of unlawful confinement of \_\_\_\_\_

The record shows the release by \_\_\_\_\_ of Petitioner to parole supervision effective \_\_\_\_\_ which also supports the fact the \_\_\_\_\_ served by Petitioner between \_\_\_\_\_ must be applied to the remaining Arizona sentence of 1.

(*State v. Reynolds* (1992) 170 Ariz. 233; *State v. Vasquez* (App Div. 2, 1987) 153 Ariz. 320; *Bush v. Gore* (2000) 531 U.S. 98)

The record also shows that the instant cause was fully briefed and ready for decision by the court on \_\_\_\_\_ with Respondent \_\_\_\_\_ not contesting or otherwise objecting to relief by the court. Given the foregoing, which has been acquiesced to by Respondent \_\_\_\_\_ he sentence expiration date for the Arizona sentence is \_\_\_\_\_; and Petitioner has been and is currently being confined without lawful authority, in violation of the State and Federal constitutions.

For these reasons, \_\_\_\_\_ should act swiftly to intercede and remedy the unlawful confinement of Petitioner.

By failing or refusing to act promptly to resolve the matter before Complainant is forced, under color of law, to suffer confinement which the law and State and Federal constitutions do not allow.

CONCLUSION

For the reasons set out herein and above, this Honorable Court must intercede to protect the sacred fundamental right of liberty vested in Complainant where chooses to unjustly delay the lawful resolution of this matter without cause.

Date:

Respectfully

Complainant /