

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

BRIAN ALLEN WILKINS,
Petitioner,

vs.

HON. GARY DONAHOE, Criminal Presiding
Judge of the Superior Court of the State of
Arizona, In and For the County of Maricopa;

HON. TERESA SANDERS, HON. EMMET
RONAN, HON. DAVID K. UDALL, Judges
of the Superior Court of the State of Arizona,
In and For the County of Maricopa

Respondents,

And

STATE OF ARIZONA EX REL. NEHA
BHATIA, ELIZABETH ORTIZ, LYNN
KRABBE, N. VICTOR COOK; Maricopa
County Attorneys

Respondents-Real Parties in Interest

) Court of Appeals
) Division One
) No. 1 CA-SA 09-0210

) Maricopa County Superior Court
) Cause No. CR-2008-145947-001 SE

REPLY TO REAL PARTIES IN INTERESTS' RESPONSE

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In Propria Persona Petitioner

¶1 The Petitioner hereby replies to Real Parties in Interests' ("The State") response to the Petition for Special Action. The State makes several conclusory statements and has presented no valid, legal arguments supporting their desire for the Court to deny relief to the Petitioner. State statutes, criminal procedures, and both the U.S. and Arizona Constitutions support granting relief to the Petitioner.

SUBMITTED this 28th Day of September, 2009.

Brian Allen Wilkins
In Propria Persona Petitioner

CONCLUSORY STATEMENTS BY THE STATE

¶2 The State asserts, “Defendant’s sole claim is that the trial court has not processed his Petition for Post-Conviction Relief fast enough.” See Response, page 2. As the Petitioner states in the Petition for Special Action, the time frame the trial courts have to adjudicate PCR Petitions is purely a matter of law and Constitutional right. See *13 A.R.S. §§ 4231 & 4236, Ariz. R. Crim. P. 32(c), and Constitution of Arizona Art. 2 § 11* (“Justice in all cases shall be administered openly, and without unnecessary delay”).

¶3 Similarly, all Defendants in Arizona courts have time frames which they must follow in order to pursue post-conviction relief. See *Ariz. R. Crim. P. 32.4(a)* (“In a Rule 32 of-right proceeding, the notice must be filed within ninety (90) days after the entry of judgment and sentence...”). Both divisions of this Court, in several recent memorandum decisions, have made clear that Defendants must follow these timelines, or they automatically preclude all claims for relief, apart from the few exceptions under *Ariz. R. Crim. P. 32.1(e), (f), or (g)*. See generally *State v. Towery*, 204 Ariz. 386, ¶ 8, 64 P.3d 828, 831-32 (2003) (conviction final when availability of appeal or certiorari exhausted).

¶4 The State’s argument, in that trial courts are not required to follow statutory timelines, but Defendants are required to expeditiously follow said timelines,

presents an unconstitutional violation of due process clauses contained in the Arizona (*Article 2 § 4*) and U.S. (*Fourteenth Amendment*) Constitutions. However, if the State is dissatisfied with the way the law is written, they may petition the Arizona Supreme Court to amend the rule.

¶5 The State asserts, “while Rule 32.6 of the Arizona Rules of Criminal Procedure does provide timelines for the trial court to decide Defendant’s petition for post-conviction relief, there are other provisions in Rule 32 which of necessity extend those guidelines.” See Response, page 5-6. Further, the State asserts, “According to Rule 32.4(d), the time for filing a petition for post-conviction relief is tolled from the time a request for transcript is made until they are prepared.” *Id.*, page 6. The State cuts this sentence short in order to make Rule 32.4(d) read favorably in respect to their arguments. The sentence in its entirety reads, “The time for filing a petition for post-conviction relief is tolled from the time a request for transcript is made until they are prepared **or the request is denied.**”

¶6 Again, as Petitioner has stated, he filed a Request for Preparation of Post Conviction Relief Record on June 19, 2009, requesting, *inter alia*, the transcript from the January 12, 2009 hearing when Judge Emmet Ronan unconstitutionally revoked Petitioner’s right to trial by jury (Appendix A; note, said order does not indicate that Petitioner waived his right to a speedy trial). Judge Donahoe, in his July 2, 2009 order, denied Petitioner’s request for the January 12, 2009 transcript

when he failed to order it produced. The Petitioner then repeated his request for the January 12, 2009 transcript in a motion for clarification filed on July 13, 2009 (see State's response; Appendix B), along with the PCR Petition and a motion for discovery. The PCR Petition had to be filed before any requests for discovery could be made by the Petitioner. *Canion v. Cole*, 210 Ariz. 598, 600, ¶ 14, 115 P.3d 1261, 1263 (2005) ("Because no PCR petition has been filed in this case...we lack any context in which to assess Canion's request for discovery). It should be noted that the State responded to said PCR petition 15 days later, on July 28, 2009, even though it procedurally had 45 days to respond. *Ariz. R. Crim. P. 32.6(a)*. The State started the stopwatch 30 days early, thus had no problems with the statutory timelines at that point.

¶7 The motion for clarification (which raised several other issues as well), along with the motion for discovery filed the same day, were never ruled upon by Judge Donahoe and thus denied. Judge Donahoe, *sua sponte*, ordered the March 2, 2009 and March 30, 2009 transcripts to be produced by August 31, 2009 (see Donahoe Order from July 2, 2009), but these were also never produced by the trial court, thus Petitioner was procedurally denied these transcripts as well (note: Petitioner never requested a March 30, 2009 transcript).

¶8 Throughout the entire PCR proceedings, none of the *pro-se* Petitioner's motions or requests were ruled upon, and the PCR petition itself was not ruled

upon until this Special Action was initiated. On September 23, 2009, Judge Teresa Sanders, after receiving Notice of Special Action, and as Petitioner expected based on the discretionary abuses throughout this case, summarily dismissed the Petitioner's PCR Petition in a three-sentence order (Appendix B).

¶9 The State and Judge Donahoe falsely assert that the Petitioner "desires to proceed without the benefit of transcripts." See State's Response, page 5. Further, the State asserts, "It was the Defendant who did not have the COURTESY to inform the trial court he wished to proceed without transcripts." *Id.*, page 7. Again, Judge Donahoe himself ordered some of the transcripts to be produced by August 31, 2009, and the trial court never produced them as ordered by said date, leaving the Petitioner only to believe more abuses of discretion and unconstitutional delay were taking place. Judge Donahoe denied the Petitioner's request for further transcripts by his refusal to rule on any of Petitioner's motions.

¶10 The "manifest injustice" culminated with the trial court summarily dismissing the PCR Petition without ruling upon any requests or motions made by the *pro-se* Petitioner. To say the Petitioner wished to proceed without transcripts is categorically false and misrepresentative of the record in this case. The State concludes its Response by asserting the Petitioner is not "courteous," so relief should be denied. See State's Reponse, page 7. Because this assertion is meritless in every way, Petitioner will not respond to this.

CONCLUSION

¶11 Several matters of law have been presented in this Special Action, particularly a Defendant's right to a public speedy trial, "Faretta" rights, and due process rights, specifically, *inter alia*, unconstitutional delay in administering justice and prosecutor Lynn Krabbe using false evidence against the Petitioner. Krabbe alleged "multiple victims" - when the police report in this case clearly indicates only one victim (Appendix C & D) - and an arbitrarily conjured "prior criminal record," asserting the Petitioner had been arrested for "fraud," as aggravating factors .

¶12 The State offers meritless arguments in opposition to the relief requested. The trial court has prejudiced the Petitioner in an incredible display of "manifest injustice," in its continual abuses of discretion by unconstitutionally delaying adjudication of Petitioner's PCR Petition, not ruling on any motions or requests filed by the *pro-se* post-conviction Petitioner, several due process violations, ineffective State-provided counsel, and now reactively dismissing the *pro-se* Petitioner's PCR Petition in the face of this Special Action. The State has the burden of proving "beyond a reasonable doubt" that none of said abuses of discretion prejudiced the Petitioner, *Ariz. R. Crim. P. 32.8(c)*, which they obviously cannot do.

¶13 Therefore, Petitioner requests the Court accept jurisdiction and grant relief as outlined in the Special Action and PCR Petition, by reversing the conviction resulting from the expired plea agreement, and remanding to the trial court for dismissal with prejudice of said case.

DATED this 28th day of September, 2009.

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CERTIFICATE OF COMPLIANCE AND SERVICE

I, Brian A. Wilkins, hereby certify, pursuant to Ariz. Rules of Procedure for Special Actions 7 and ARCAP 14(a)(1), the attached document uses a proportionately spaced typeface: 14 point, Times New Roman font, is double-spaced, and contains 1,623 words.

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An original and six (6) copies of the foregoing were filed in the Court of Appeals, Division One on September 28, 2009, and one copy was mailed/delivered on the same day to:

Lisa Marie Martin
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Hon. Gary Donahoe
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201 W. Jefferson St.
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Hon. Teresa Sanders
Superior Court Judge
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Brian Allen Wilkins
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