

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 24-128

Judge: Jo Lynn Gentry

Complainant: Commission on Judicial Conduct

ORDER

The Commission initiated an investigation into a delayed ruling by a superior court judge hearing a criminal case.

Maricopa County Superior Court Judge Jo Lynn Gentry presided over a criminal case, *State v. Joel Carson*, CR2022-006384-001, Maricopa County Superior Court. On July 17, 2023, defendant Joel Carson filed a motion for reconsideration regarding an earlier decision of the court. Judge Gentry failed to rule on the motion within sixty days of its submission to the court. On December 6, 2023, Mr. Carson filed a “Notice of Time Limits” reminding the court of the pending motion for reconsideration, filed on July 17, 2023, and the court’s obligation to rule within sixty days. On February 2, 2024, Mr. Carson filed a petition for special action requesting an order from the Arizona Court of Appeals, Division One, directing Judge Gentry to issue a ruling on the July 17, 2023, motion. On February 12, 2024, the Court of Appeals issued an order staying the special action and directing Judge Gentry to make a ruling on Mr. Carson’s pending motion within 30 days. Judge Gentry did not comply with this order from the Arizona Court of Appeals, Division One. Judge Gentry ultimately issued a ruling on Mr. Carson’s motion for reconsideration on March 19, 2024, that was filed with the clerk on March 20, 2024.

In her response, Judge Gentry acknowledged the delayed ruling. Judge Gentry noted that she rotated from the criminal docket to a new assignment on July 3, 2023. Judge Gentry acknowledged, however, that Mr. Carson’s motion for reconsideration was forwarded to her for ruling. She stated there was “no excuse” for the untimely ruling and further stated she was focused on keeping current in her new assignment. Judge Gentry also acknowledged signing payroll certifications that did not reflect Mr. Carson’s motion had been pending for more than sixty days.

The Commission found that Judge Gentry’s conduct violated the following provisions of the Code of Judicial Conduct and Arizona law:

- Rule 1.1 which states, “A judge shall comply with the law, including the Code of Judicial Conduct.”

- Rule 1.2 which states, “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”
- Rule 2.5(A) which states, “A judge shall perform judicial and administrative duties competently, diligently, and promptly.”
- Article 2, Section 11 of the Arizona Constitution which states, “Justice in all cases shall be administered openly, and without unnecessary delay.”
- Article 6, Section 21 of the Arizona Constitution which states, “Every matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the date of submission thereof. The supreme court shall by rule provide for the speedy disposition of all matters not decided within such period.”
- Rule 91(e), Arizona Rules of Supreme Court which states, “Every matter submitted for determination to a judge of the superior court for decision shall be determined and a ruling made not later than sixty days from submission thereof, in accordance with Section 21. Article VI of the Arizona Constitution. Each superior court clerk shall report to the Administrative Director of the Courts, in writing, on the last day of March, June, September and December, in each year, all matters in that court submitted for decision sixty days or more prior to the date of such report and remaining undecided on the date of the report. The report shall contain the title of each action or proceeding, the matter submitted, the judge to whom submitted, and the date of submission.”
- A.R.S. §12-128.01 which states:

Receipt of salary by judges and commissioners; affidavit; pending and undetermined causes; violation; classification

- A. A superior court judge or commissioner shall not receive his salary unless such judge or commissioner either certifies that no cause before such judge or commissioner remains pending and undetermined for sixty days after it has been submitted for decision or there is submitted by the chief justice of the Arizona supreme court a certification that such superior court judge or commissioner has had a physical disability during the preceding sixty days or that

good and sufficient cause exists to excuse the application of this section to particularly identified litigation then pending.

- B. Any certification submitted by the chief justice pursuant to subsection A shall set forth in detail the nature and duration of the physical disability involved or the reason why subsection A should not apply to the specified pending litigation.
- C. Any person who issues or causes to be issued any check, warrant or payment to a judge or commissioner knowing that, pursuant to this section, such judge or commissioner should not receive his salary is guilty of a class 3 misdemeanor.

Accordingly, Maricopa County Superior Court Judge Jo Lynn Gentry is hereby publicly reprimanded for the conduct described above and pursuant to Commission Rule 17(a). The record in this case, consisting of the complaint, the judicial officer's response, and this order shall be made public as required by Commission Rule 9(a).

Commission member Michael J. Brown did not participate in the consideration of this matter.

Dated: May 29, 2024

FOR THE COMMISSION

/s/ Christopher P. Staring
Hon. Christopher P. Staring
Commission Chair

Copies of this order were distributed to all appropriate persons on May 29, 2024.



DIVISION ONE
 FILED: 03/26/2024
 AMY M. WOOD,
 CLERK
 BY: JT

**IN THE COURT OF APPEALS
 STATE OF ARIZONA
 DIVISION ONE**

JOEL CARSON,	}	Court of Appeals
	}	Division One
Petitioner,	}	No. 1 CA-SA 24-0028
	}	
v.	}	Maricopa County
	}	Superior Court
THE HONORABLE JO LYNN GENTRY,	}	No. CR2022-006384-001
Judge of the SUPERIOR COURT OF	}	
THE STATE OF ARIZONA, in and for	}	
the County of MARICOPA,	}	
	}	
Respondent Judge,	}	
	}	
STATE OF ARIZONA ex rel. RACHEL	}	
MITCHELL, Maricopa County	}	
Attorney,	}	
	}	
Real Party in Interest.	}	

Comp
MAR 26 2024

2024-128

**AMENDED ORDER LIFTING STAY AND DECLINING SPECIAL ACTION
 JURISDICTION**

The court, Presiding Judge Samuel A. Thumma, Judge Jennifer B. Campbell and Judge Michael J. Brown, has considered the petition for special action filed on February 2, 2024. Petitioner asks this court to order Respondent Judge, The Honorable Jo Lynn Gentry, Arizona Superior Court in Maricopa County, to rule on a pending motion for reconsideration Petitioner filed on July 17, 2023.

This special action arises out of a criminal case where Petitioner apparently has been incarcerated, pretrial, from before he filed this motion for reconsideration to the present. The general background of Petitioner's current criminal case, which focuses on various rulings about his competency, is outlined in

State ex rel. Mitchell v. Lemaire, 255 Ariz. 544, 549, ¶ 29 (App. 2023), a special action proceeding where this court set aside an order dismissing charges against Petitioner. In remanding for further proceedings, this court explained that a defendant seeking to “to challenge a court’s determination that the State has sufficiently alleged a reasonable basis to believe that the defendant is currently competent may either move for reconsideration or challenge the ruling by special action to an appellate court.” *Id.* at ¶ 28.

Four days after the *Mitchell* opinion issued, on July 17, 2023, Petitioner moved for reconsideration of Judge Gentry’s earlier decision that permitted the State to refile charges previously dismissed based on lack of Petitioner’s competency. After four months without a ruling, Petitioner notified Judge Gentry’s division of Arizona’s time limits for rendering a decision and repeatedly “emailed the court seeking clarification.” In December 2023, Petitioner was informed by court staff that Judge Gentry “was working on [the motion.]” On January 22, 2024, however, court staff informed Petitioner that the motion was still pending.

Given this delay, on February 2, 2024, Petitioner filed this special action petition, asking this court not to rule on the motion to reconsider but, instead, asking this court to “order the superior court” to rule on his July 17, 2023 motion, which had been pending for more than six months. Petitioner noted that Judge

Gentry had violated the Arizona Constitution and the Rules of the Arizona Supreme Court, both of which require superior court judges to rule on each matter submitted and ready for determination within 60 days. See Ariz. Const. art. 6, § 21; Ariz. R. Sup. Ct. 91(e). In its response, the State explained it would take "no position" in this special action.

On February 12, 2024, this court issued an order staying the special action and directing Judge Gentry to make a ruling on Petitioner's pending motion within 30 days. A copy of that order was sent directly to Judge Gentry as well as to the Criminal Presiding Judge, and the Family Court Presiding Judge (given a judicial rotation and that Judge Gentry was now assigned to family law matters) of the Arizona Superior Court in Maricopa County. No ruling was issued in that 30-day period.

On March 19, 2024, Petitioner filed with this court a Motion for Order to Show Cause, stating that Judge Gentry had not complied with this court's order, and noting he has been waiting for a ruling, while incarcerated, for more than eight months. The next day, Petitioner filed a Notice of Ruling, confirming that the superior court had ruled on his motion for reconsideration and asserting that the petition for special action is now moot.¹

¹ Petitioner's filing did not include a copy of Judge Gentry's ruling, but this court takes judicial notice of her ruling, which was obtained through the superior court's case management

We agree that the petition for special action is now moot, given Judge Gentry's ruling dated March 19, 2024 and filed March 20, 2024, denying Petitioner's July 17, 2023 motion for reconsideration. Issuance of that ruling was the relief requested in the special action petition.

The timing of that ruling, however, was not in compliance with the obligations imposed upon superior court judges by Arizona's Constitution and by rules adopted by the Arizona Supreme Court. See *Wustrack v. Clark*, 18 Ariz. App. 407, 408-09 (1972) (explaining, under special action review, that by taking a matter "under advisement for a period of almost seven months, rather than ruling on it promptly," the superior court commissioner failed to comply with the requirement "that any matter submitted to the Superior Court for determination be decided within 60 days after submission").

The record provided to us, including Judge Gentry's March 20, 2024 ruling, does not include any explanation or suggest any justification for why Petitioner's motion for reconsideration was not ruled on for more than more than eight months, all while he was incarcerated. No responsive briefing was requested or ordered and no oral argument was held on that motion. The two-page ruling

system. See Ariz. R. Evid. 201; *State v. Valenzuela*, 109 Ariz. 109, 110 (1973) (explaining that appellate courts may take judicial notice of superior court records).

itself is not complicated. The analysis of the merits of Petitioner's motion is the following:

IT IS ORDERED DENYING the Motion to Reconsider filed July 17, 2023. After he was placed under a court order for treatment on July 12, 2022, the Defendant was released from Valleywise Behavioral Health Center. Upon his release just weeks later, the State refiled charges. Prior to filing new charges, the state need not prove the defendant's competence. The new case provides the state an opportunity to redetermine the defendant's competence. Upon a new determination of the defendant's competence, the defendant may then move to dismiss the case if an evaluation shows he is incompetent.

Considering the seemingly straightforward nature of Petitioner's motion to reconsider (including the relief requested), and as a matter of fundamental fairness, Petitioner was entitled to a timely ruling. Petitioner's counsel made several inquiries to Judge Gentry's division about the pending motion and was repeatedly informed that a ruling was forthcoming. Thus, this is not a circumstance where a judge was unaware of the pendency of an unresolved motion. Moreover, as noted by Petitioner, the delayed ruling violates the constitutional and rule requirements noted in the petition. See Ariz. Const. art. 6, § 21; Ariz. R. Sup. Ct. 91(e). Based on the foregoing, and recognizing that the specific relief requested in the special action petition is now moot, but that the concern about the timing of that ruling remains,

IT IS ORDERED lifting the stay of this special action.



Resp (Gentry)
4/17/24
24-128

Judge Jo Lynn Gentry
Maricopa County Superior Court
201 West Washington, Suite 602
Phoenix, Arizona 85003

Commission on Judicial Conduct
1501 West Washington, Suite 229
Phoenix, Arizona 85007

RE: Case No. 24-128

Members of the Commission,

I am responding to a complaint forwarded by the Arizona Court of Appeals, Div. 1.

In CR2022-006384-001, the Defendant filed a Motion to Reconsider a prior court ruling. The motion was filed on July 17, 2023.

As of July 3, 2023, I rotated off my criminal assignment but the motion was forwarded to me for ruling on or about the date of filing and I accept that this is a ruling that I should have completed by September 17, 2023. I have no excuse as to why it was not timely completed except that I was preoccupied with keeping current in my new assignment and I lost track of the deadline for ruling on the motion. I certainly did not intend to leave the matter pending for so long and I sincerely apologize that my manner of handling this matter resulted in such a delay.

Sincerely,

Jo Lynn Gentry

Jo Lynn Gentry

From: Jo Lynn Gentry (SUP)
Sent: Monday, April 22, 2024 3:21 PM
To: Worth, Ariel
Subject: Re: Commission on Judicial Conduct Case No. 24-128

Caution! This message was sent from outside your organization.

Thank you for the follow up question.
I indicated in my letter that I was preoccupied with keeping current in my new assignment and I lost track of the deadline for ruling on the motion. Since I was unaware that a ruling was outstanding, I signed the certification each month attesting that I had no matter pending more than 60 days.

Would you like me to supplement my letter with this reponse or is this email sufficient?

Thank you

From: Worth, Ariel
Sent: Wednesday, April 17, 2024 4:47 PM
To: Jo Lynn Gentry (SUP)
Subject: Commission on Judicial Conduct Case No. 24-128

You don't often get email from [\[redacted\]](#). [Learn why this is important](#)

Good afternoon,

Thank you for your response to the Commission. In reviewing your response, I noted a brief follow-up question.

During the time that the ruling in case CR2022-006384, Maricopa County Superior Court, was overdue did you complete regular salary certifications that you had no matters pending older than sixty days?

Please feel free to call me directly at [redacted] if you have any questions about this email.

Regards,

Ariel I. Worth

Disciplinary Counsel
Arizona Commission on Judicial Conduct
1501 W. Washington St., Ste. 229
Phoenix, AZ 85007

Phone: (602) 452-3200