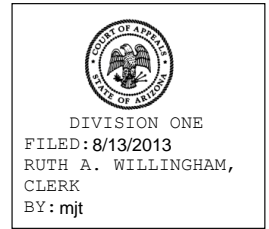


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ERIC C. BROWN,) 1 CA-SA 13-0179
)
Appellee,) DEPARTMENT A
)
v.) Maricopa County
) Superior Court
THE HONORABLE JERRY BERNSTEIN,) No. CR2011-112863-001 DT
Judge Pro Tem of the SUPERIOR)
COURT OF THE STATE OF ARIZONA, in) **DECISION ORDER**
and for the County of MARICOPA,)
)
Respondent Judge Pro Tem,)
)
STATE OF ARIZONA,)
)
Real Party in Interest.)
_____)

The court, Presiding Judge Peter B. Swann and Judges Kent E. Cattani and John C. Gemmill, has considered the special action petition filed by Eric C. Brown. Brown seeks relief from the superior court's order denying his counsel's request to withdraw from representation. The State, as real party in interest, has filed a notice of intent to not file a response.

We accept jurisdiction of Brown's special action petition because the order denying counsel's request to withdraw is not a final order and is thus not immediately appealable, leaving Brown no equally plain, speedy, or adequate remedy by appeal.

See Riley, Hoggatt & Suagee, P.C. v. Riley, 165 Ariz. 138, 138, 796 P.2d 940, 940 (App. 1990); Ariz. R.P. Spec. Act. 1(a).

In March 2013, Brown's counsel filed a motion to withdraw as counsel of record with Brown's consent, citing Brown's inability "to comply with the representation agreement which was reached at the time that Defense Counsel was retained." The reply to that motion indicated Brown anticipated requesting a determination of indigency and proceeding to trial with appointed rather than retained counsel. Although not included in our record, Brown apparently filed a financial statement with the superior court "to determine whether any public defender services reimbursement will be required for appointed defense services" while the motion to withdraw remained pending.

The superior court denied counsel's request to withdraw on the sole ground that "Counsel has not provided a statement from another [substituting attorney] avowing readiness." See Ariz. R. Crim. P. 6.3(c); Ariz. Local R. Prac. Super. Ct. (Maricopa) 4.5(b).¹ Such an avowal by successor counsel was, however, a practical impossibility without a determination as to indigency and potential appointment of successor counsel if appropriate. It is not clear whether the superior court considered Brown's financial statement and potential eligibility for appointment of

¹ Although the Maricopa County Superior Court Local Rules have since been amended, we refer to the version that was in effect at the time of the superior court's June 2013 ruling.

successor counsel before denying defense counsel's request to withdraw. Accordingly,

IT IS ORDERED accepting jurisdiction of Brown's special action petition.

IT IS FURTHER ORDERED vacating the superior court's minute entry order filed June 17, 2013 denying Brown's counsel's request to withdraw.

IT IS FURTHER ORDERED remanding the cause for a determination of whether Brown is indigent and thus eligible for appointment of successor counsel and, in that context, for reconsideration of Brown's current counsel's motion to withdraw.

IT IS FURTHER ORDERED lifting the stay of proceedings issued by this court July 22, 2013.

IT IS FURTHER ORDERED that the clerk of this court provide a copy of this Decision Order to the Honorable Jerry Bernstein, a Judge *Pro Tempore* of the Superior Court, and to each party appearing herein.

/S/

KENT E. CATTANI, Judge