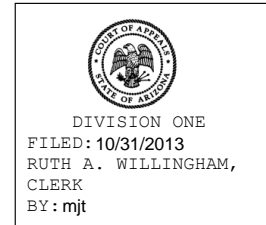


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-SA 13-0259
) 1 CA-SA 13-0260
Petitioner,) (Consolidated)
)
) Maricopa County
THE HONORABLE JOSEPH C. WELTY,) Superior Court
Judge of the SUPERIOR COURT OF) No. CR 1998-004885
THE STATE OF ARIZONA, in and for) CR 2008-128068-001-DT
the County of MARICOPA,)
)
Respondent Judge,) **DECISION ORDER**
)
WAYNE PRINCE and PETE J.)
VANWINKLE,)
)
Real Party in Interest.)
_____)

This matter was considered by Presiding Judge Maurice Portley and Judges John C. Gemmill and Samuel A. Thumma. After consideration, and for the reasons that follow,

IT IS ORDERED, in the exercise of the court's discretion, declining special action jurisdiction in these matters.

IT IS FURTHER ORDERED denying as moot the motion to strike the petitions for special action, filed by real party in interest Wayne Benoit Prince, Jr., and joined by real party in interest Pete J. VanWinkle.

I. Procedural Background.

A jury found Prince guilty of, inter alia, first degree murder, committed in 1998, and sentenced him to death. After intervening appeals and remands, his conviction and sentence were affirmed and the mandate has issued. *State v. Prince*, 226 Ariz. 516, 250 P.3d 1145, cert. denied, 132 S. Ct. 582 (2011). A jury found VanWinkle guilty of first degree murder, committed in 2008, and sentenced him to death. His conviction and sentence were affirmed and the mandate has issued. *State v. VanWinkle*, 230 Ariz. 387, 285 P.3d 308 (2012), cert. denied, 133 S. Ct. 909 (2013).

Prince and VanWinkle have filed notices of intention to seek post-conviction relief pursuant to Ariz. R. Crim. P. 32 in Maricopa County Superior Court, but neither has filed a petition for post-conviction relief. As described in the special action Petitions, in both cases,

[i]n an effort to stem unauthorized and unsupervised post-verdict juror contact by defense attorneys, and consistent with Arizona laws and rules protecting jurors from post-verdict attorney contact, the State filed a motion seeking [to] ensure that no member of [Prince's or VanWinkle's] defense team contact any juror or venire member absent court permission based on a showing of good cause. The trial court denied the State's motion, concluding that because the defendant had not requested disclosure of any juror contact or biographical information, *Canion v. Cole*, 210 Ariz. 598, 115 P.3d 1261 (2005), did not

apply, and the court otherwise had no authority to grant the State's motion:

In *Canion*, the Supreme Court held that a trial judge could grant discovery requests in PCR proceedings upon a showing of good cause. The "good cause" could only be shown in the context of the claims made in a Rule 32 petition. 210 Ariz. at [600-01,] ¶¶ 12,14.

The Court finds that *Canion* is inapposite because the defendant has made no request for discovery here. The State has not cited any authority, and the Court has found none, requiring the Court to preclude the defendant from independently investigat[ing] potential PCR claims.

The superior court denied the State's motions for reconsideration in both cases. The State then filed these special actions, claiming an abuse of discretion in denying the State's motions because the superior court has authority, including inherent authority, to regulate post-verdict juror contact.

II. Special Action Jurisdiction.

Special action jurisdiction is highly discretionary, and is not appropriate "where there is an equally plain, speedy, and adequate remedy by appeal." Ariz. R.P. Spec. Act. 1(a). In these consolidated cases, VanWinkle states that no juror contact will be attempted without prior superior court involvement:

The VanWinkle team has no intention of contacting jurors without court involvement. We are investigating a claim that the trial judge improperly ordered the defendant to wear a stun belt and a leg brace during trial and improperly permitted the presence of an armed Special Response Team in the vicinity of the courtroom. . . . Based upon this claim, we are prepared to ask the Superior Court to establish appropriate procedures for contacting and questioning former jurors.

Although it is unclear whether Prince adopts this approach, Prince adds there was no evidence before the superior court that any member of the Prince team currently "intended to contact, much less attempted to contact any jurors." Accordingly, accepting special action jurisdiction at this time could result in addressing legal issues "on a situation that may never occur." *Kool Radiators, Inc. v. Evans*, 229 Ariz. 532, 536, ¶ 13, n.6, 278 P.3d 310, 314 n.6 (App. 2012) (citation omitted; discussing ripeness and standing).

For these reasons, on this record, this court declines special action jurisdiction in these matters and denies as moot the motion to strike the petitions for special action.

 /S/
SAMUEL A. THUMMA, Judge