NOTICE: THIS DECISION DOES NOT CREATE EXCEPT AS AUTHORIZED B		BE CITED
See Ariz. R. Supreme Cour Ariz. R. Crim	t 111(c); ARCAP 28(c);	
IN THE COURT STATE OF DIVISIO	ARIZONA	DIVISION ONE FILED: 05-20-2010 PHILIP G. URRY,CLERK BY: PJL
STATE OF ARIZONA,) No. 1 CA-CR 09-0652	
Appellant,) DEPARTMENT C	
V.) MEMORANDUM DECISION	
ARNOLD CHARLES NORIEGA,	 (Not for Publication Rule 111, Rules of Arizona Supreme Con 	the
Appellee.)	
)	

Appeal from the Superior Court in Yuma County

Cause No. CR-2008-01077

The Honorable Lawrence C. Kenworthy, Judge

APPEAL DISMISSED

John R. Smith, Yuma County Attorney	Yuma
By Roger Nelson, Chief Deputy County Attorney	
Deann L. Sandry, Deputy County Attorney	
Attorneys for Appellant	
Michael Breeze, Yuma County Public Defender By Edward F. McGee, Deputy Public Defender	Yuma
Attorneys for Appellee	

DOWNIE, Judge

¶1 Arnold Charles Noriega was charged with various offenses, including possession of marijuana for sale and possession of drug paraphernalia. He moved to suppress evidence seized during a search of his home, arguing the search warrant

was not supported by probable cause. The superior court granted Noriega's suppression motion in a written, signed ruling filed July 23, 2009. Although the court considered dismissing the charges with prejudice, it ultimately dismissed them without prejudice. The State then appealed from both the suppression order and the dismissal order.

¶2 An appeal must be pursued within the time and manner provided by law. State v. Dawson, 164 Ariz. 278, 281, 792 P.2d 741, 744 (1990) (citation omitted); State v. Berry, 133 Ariz. 264, 266-67, 650 P.2d 1246, 1248-49 (App. 1982). Although the State may appeal a suppression order, see Arizona Revised Statutes ("A.R.S.") section 13-4032(6) (2010),¹ pursuant to Arizona Rule of Criminal Procedure ("Rule") 31.3, "a notice of appeal in a criminal action must be filed within 20 days after the entry of the order from which the appeal is taken." State v. Fayle, 114 Ariz. 219, 220, 560 P.2d 403, 404 (1976).

¶3 The superior court filed its signed suppression order on July 23, 2009. The State did not file its notice of appeal until August 25, 2009--more than thirty days later. The appeal is thus untimely as to the suppression order.²

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¹ We cite to the current statute as no versions material to this appeal have occurred.

² The State did not file a reply brief and therefore has not addressed Noriega's jurisdictional challenge. Because the suppression order was specifically appealable under A.R.S. § 13-

¶4 The State's appeal *is* timely as to the order of dismissal. However, even assuming *arguendo* that the trial court improperly relied on Rule 16.6(b) in dismissing the charges, we fail to see how the State is aggrieved. Moreover, the State itself says it is not "ask[ing] that the dismissal order be reversed." It is clear the State's primary goal on appeal is to attain reversal of the suppression order. As we have previously explained, that relief is unavailable.

¶5 Because the State did not timely appeal the suppression order, and it is not aggrieved by the order dismissing the charges without prejudice, we dismiss this appeal.

/s/ MARGARET H. DOWNIE, Presiding Judge

CONCURRING:

<u>/s/</u> DONN KESSLER, Judge

<u>/s/</u> PETER B. SWANN, Judge

4032(6), it is not appealable pursuant to A.R.S. § 13-4032(1). See, e.g., Berry, 133 Ariz. at 267, 650 P.2d at 1249 (since an order of dismissal is specifically made appealable under A.R.S. § 13-4032(1), an order denying reconsideration of that dismissal is not appealable as "an order made after judgment affecting the substantial rights of the state" under A.R.S. § 13-4032(5).

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