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

DIVISION ONE
FILED: 12/16/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

STATE OF ARIZONA,	1 CA-CR 09-0848
Appellant,	DEPARTMENT D
v.	**MEMORANDUM DECISION**
GUILLERMO SAUZO FUENTES,	(Not for Publication – Rule 111, Rules of the Arizona Supreme Court)
Appellee.	

Appeal from the Superior Court in Maricopa County

Cause No. CR 1997-010462

The Honorable Warren J. Granville

AFFIRMED

William G. Montgomery, Maricopa County Attorney — Phoenix
By Lisa Marie Martin, Deputy County Attorney,
Attorneys for Appellant

James J. Haas, Maricopa County Public Defender — Phoenix
By Kathryn L. Petroff, Deputy Public Defender,
Attorneys for Appellee

W I N T H R O P, Presiding Judge

¶1 The State appeals from the trial court's October 29, 2009 order modifying the terms of probation for Guillermo Sauzo Fuentes ("Appellee") and ordering the Adult Probation Office ("the APO") to calculate whether probation has been completed and to submit an order of discharge if warranted. The State argues that the trial court abused its discretion and misapplied the law by failing to review the APO's petition to modify the term of probation under Rule 32 of the Arizona Rules of Criminal Procedure and then erred in actually modifying the order. For the following reasons, we affirm the trial court's order.

FACTS AND PROCEDURAL HISTORY

¶2 On November 17, 1998, Appellee entered into a plea agreement. Appellee pled no contest to Amended Counts 1 and 5, attempted child molestation, class three felonies, and guilty to Amended Count 14, attempted child molestation, a class three felony. The offense in Amended Count 1 was committed on or between August 1, 1997, and September 3, 1997; the offense in Amended Count 5 was committed on or between December 25, 1996, and May 31, 1997; and the offense in Amended Count 14 was committed on or between July 4, 1997, and July 31, 1997. The court accepted the plea agreement and on December 18, 1998, it sentenced Appellee to ten years' imprisonment for Amended Count 1 and suspended imposition of the sentence and placed Appellee on lifetime probation for Amended Counts 5 and 14.

¶3 In November, 2008, the Arizona Supreme Court held in *State v. Peek*, 219 Ariz. 182, 183, ¶8, 195 P.3d 641, 642 (2008), that lifetime probation imposed between January 1, 1994 and July 21, 1997, ("the *Peek* period") for convictions of attempted child molestation were unauthorized by statute, and therefore, illegal. *Peek*, 219 Ariz. at 185, ¶ 20, 195 P.3d at 644. Accordingly, the APO filed a petition to modify Appellee's probation based on the holding in *Peek*. The range of dates for the offense in Amended Count 5 occurred wholly within the *Peek* period, whereas the range of dates for the offense in Amended Count 14 straddles the *Peek* period, extending beyond the end of the *Peek* period by ten days. The sentence for Amended Count 1 is not before us on appeal.

¶4 A hearing was held on September 2, 2009, and the court ordered a subsequent hearing to allow the State to prove that Appellee's offense under Amended Counts 5 and 14 occurred outside of the *Peek* period. The subsequent hearing was held on October 23, 2009, and the State presented no further evidence.[1] Accordingly, on October 29, 2009, the court ordered a modification of Appellee's probation for both Amended Counts 5 and 14, decreasing the period of each probation from lifetime to

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[1] At this hearing, the fact that Appellee has since been deported was made of record.

five years.[2] The court also directed the APO to calculate whether the modified probation term had been completed, and if so, ordered that the probation be discharged. This appeal followed.

JURISDICTION

¶5 The State contends that we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4032(4) (2010). Without deciding whether we have jurisdiction under those statutes, we instead exercise our discretion to accept special action jurisdiction pursuant to A.R.S. § 12-120.21(A)(4) and Arizona Rules of Procedure for Special Actions 8(a). Special action jurisdiction is proper when "an issue is one of first impression of a purely legal question, is of statewide importance, and is likely to arise again . . . ." *Vo v. Superior Court In and For County of Maricopa*, 172 Ariz. 195, 198, 836 P.2d 408, 411 (App. 1992); *see also Summerfield v. Superior Court In and For County of Maricopa*, 144 Ariz. 467, 469, 698 P.2d 712, 714 (1985) (accepting special action jurisdiction when several pending cases involved the same issue and finding that "[n]ormal appellate procedures will result in unnecessary cost and delay to all litigants"). In the instant

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[2] A term of five years' probation was the maximum term of probation available for Appellee's offense during the *Peek* period.

case, the State asks us to resolve an issue of first impression that is a pure legal issue of statewide importance. Further, multiple cases involving the same issues are either presently before us or pending, rendering normal appellate procedures inefficient. Accordingly, these factors lead us to conclude that accepting special action jurisdiction in this case is appropriate.

ANALYSIS

¶6 In *State v. Dean*, 1 CA-CR 09-0705, 2010 WL 5014334 (Ariz. App. Dec. 7, 2010) (refiled as amended Dec. 9, 2010), this court already considered a similar fact scenario and rejected virtually identical arguments as those presented in this case. The State has not presented any new or unique arguments and we find no reason here to depart from our holding in *Dean*.

CONCLUSION

¶7 For the aforementioned reasons, we affirm the trial court's order modifying Appellee's periods of probation.

/S/
LAWRENCE F. WINTHROP, Presiding Judge

CONCURRING:

/S/
PATRICIA K. NORRIS, Judge

/S/
PATRICK IRVINE, Judge