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 09-0850
	)	
Appellant,	)	DEPARTMENT D
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
ANTONIO RAMOS,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellee.	)	
	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR 2002-021620

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 Terry J. Reid, 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 Antonio Ramos ("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 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 June 20, 2003, Appellee entered into a plea agreement. Appellee pled guilty to Count 1, sexual abuse, a class three felony, and Amended Count 3, attempted sexual conduct with a minor, also a class three felony. Both offenses were committed on or between March 17, 1997 and March 17, 1998. The court accepted the plea agreement, and on July 22, 2003, it sentenced Appellee to two and a half years' imprisonment on Count 1 and placed him on lifetime probation on Amended Count 3.

¶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 under Amended Count 3 based on the holding in *Peek* and Appellee filed a Memorandum in Support of Probation Termination. The range of dates in which the offense in Amended Count 3 occurred straddled the *Peek* period, extending beyond the end of the *Peek* period by approximately ten months.

¶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 Count 3 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, decreasing the term of probation from lifetime to 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.

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

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

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 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