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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

RUPERT EDWARD GAFFNEY,) 1 CA-CV 08-0825
)
Petitioner/Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
HONORABLE MARIA DEL MAR VERDIN,) Rule 28, Arizona Rules
) of Civil Appellate
Respondent Judge/Appellee,) Procedure)
)
STATE OF ARIZONA; MARICOPA)
COUNTY ATTORNEY,)
)
Real Parties in Interest/)
Appellees.)

Appeal from the Superior Court in Maricopa County

Cause No. LC2008-000681-001 DT

The Honorable Joseph Kreamer, Judge

AFFIRMED

Rupert Edward Gaffney Phoenix
Petitioner/Appellant
In Propria Persona

Andrew P. Thomas, Maricopa County Attorney Phoenix
By Terri L. Clarke, Deputy County Attorney
Attorneys for Appellees, Real Parties in Interest

K E S S L E R, Judge

¶1 Appellant Rupert Edward Gaffney ("Gaffney") appeals from the superior court's dismissal of his special action

petition. For the reasons stated below, we affirm the dismissal.

FACTUAL AND PROCEDURAL HISTORY

¶12 Gaffney was indicted on a charge of burglary in the third degree stemming from a theft of equipment from a Phoenix ice manufacturing plant. Gaffney claimed his trial counsel was failing to pursue the case properly and requested a new attorney on a number of occasions. The court repeatedly denied his requests. Gaffney then filed a special action petition in superior court challenging these denials.

¶13 In reviewing Gaffney's petition, the court held that one superior court judge does not have the jurisdiction to review the decision of another superior court judge. Accordingly, the court dismissed Gaffney's petition on the grounds that "only an appellate court has jurisdiction to consider special action petitions" seeking review of a superior court decision.

¶14 Gaffney timely appealed¹. This court has jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21 and -2101(A) (2003).

¹ Gaffney originally appealed from an unsigned minute entry. We revested jurisdiction in the superior court to permit Gaffney to request a final signed judgment. See *Eaton Fruit Co. v. Cal. Spray-Chemical Corp.*, 102 Ariz. 129, 426 P.2d 397 (1967). Gaffney requested, and received, a final signed judgment from the superior court giving this Court jurisdiction pursuant to

DISCUSSION

¶15 The only issue on appeal is whether the superior court erred in dismissing Gaffney's special action petition for lack of jurisdiction. We review the superior court's determination to accept or decline jurisdiction in a special action for an abuse of discretion. See e.g., *Pima County Assessor v. Ariz. State Bd. of Equalization*, 195 Ariz. 329, 332, ¶ 8, 987 P.2d 815, 818 (App. 1999); *Amos v. Bowen*, 143 Ariz. 324, 327, 693 P.2d 979, 982 (App. 1984). We focus solely on the dismissal of the special action petition and do not consider the underlying merits of Gaffney's claim.

¶16 "An abuse of discretion occurs when 'the reasons given by the court for its action are clearly untenable, legally incorrect, or amount to a denial of justice.'" *State v. Fish*, 222 Ariz. 109, 114, ¶ 8, 213 P.3d 258, 263 (App. 2009)(quoting *State v. Chapple*, 135 Ariz. 281, 297, n.18, 660 P.2d 1208, 1224 n.18 (1983)). Abuse of discretion "also occurs when a discretionary finding of fact is not based on any evidence." *Fish*, 222 Ariz. at 114, ¶ 8, 213 P.3d at 263.

¶17 Both the Arizona Constitution and the Arizona Revised Statutes limit the appellate jurisdiction superior courts possess. See Ariz. Const., art. 6, § 16 (2001) ("The superior

A.R.S. § 12-2101(B) (2003). We reinstated jurisdiction in an order dated May 15, 2009.

court shall have appellate jurisdiction in cases arising in justice and other courts inferior to the superior court as may be provided by law."); A.R.S. § 12-124(A) (2003) ("The superior court shall have appellate jurisdiction in all actions appealed from justices of the peace, inferior courts, boards and officers"); A.R.S. § 12-124(B) (2003) ("The superior court may issue writs of certiorari to inferior courts, boards or officers to compel a return of their proceeding, examine or try such proceedings and give any judgment or make any order necessary in furtherance of justice."). Neither the Arizona Constitution nor state statutes confer jurisdiction on the superior court to rule on a petition for special action emanating from another superior court. Accordingly, a special action filed in superior court is only proper if it challenges the ruling of an inferior body.

¶18 The appellate jurisdiction of superior courts is analyzed, with respect to special actions, in both *Green v. Thompson*, 17 Ariz. App. 587, 590-91, 499 P.2d 715, 718-19 (1972) and *Dunlap v. Super. Ct.*, 169 Ariz. 82, 817 P.2d 27 (App. 1991). In *Green* this Court held a superior court judge lacks jurisdiction to review the decision of a superior court commissioner through a special action. *Green*, 17 Ariz. App. at 591, 499 P.2d at 719. We stated that while a superior court commissioner's "jurisdiction is narrower than that of a regular superior court judge, [] within the confines of that authority,

he acts as a superior court judge." *Id.* at 718, 499 P.2d at 590. We then reviewed the Arizona Constitution and state statutes, finding that "there is no indication of an intent to give the superior court appellate jurisdiction over its own commissioners. The commissioners' acts have the same force and effect as if done by a superior court judge." *Id.* at 719, 499 P.2d at 591. While *Green* does not state so expressly, it clearly stands for the proposition that if a superior court cannot review the decision of a superior court commissioner through a special action petition, a *fortiori*, it cannot review the decision of a superior court judge under the same circumstances.

¶19 In *Dunlap*, the issue was whether the "superior court has jurisdiction to accept a special action challenge to the decisions of a superior court judge acting as a committing magistrate." *Dunlap*, 169 Ariz. at 84, 817 P.2d at 29. This court distinguished *Green*, which involved a superior court commissioner, by pointing out that "a magistrate is not an officer of the superior court, but is an inferior officer whose authority and powers are separate from any court." *Id.* at 86, 817 P.2d at 31. Because we found that the office of magistrate is inferior to the superior court we held that "the superior court has jurisdiction to accept a special action challenge of a decision by a superior court judge sitting as a magistrate."

Id., 817 P.2d at 31. The fact the magistrate in *Dunlap* also happened to be a superior court judge was immaterial because “[a]ll judicial officers sitting as magistrates have equal rank. . . . ‘[A] judge when exercising the functions of a magistrate has only the jurisdiction and power conferred by law on magistrates.’” *Id.* at 85, 817 P.2d at 30 (quoting from *Sheridan v. Super. Ct.*, 91 Ariz. 211, 214, 370 P.2d 949, 951 (1962)).

¶10 The decisions in *Green* and *Dunlap* delineate a clear line regarding when superior courts may hear special action petitions. Petitions must come from inferior courts or bodies to confer jurisdiction on a superior court. In this case Gaffney’s special action petition asked one division of the superior court to review the decision of another division of the superior court. To find jurisdiction in such a situation would have been a clear violation of both state statute and established case law. The reviewing court correctly determined that it lacked jurisdiction to consider the special action and properly dismissed the petition.

CONCLUSION

¶11 For the forgoing reasons, we affirm the superior court's judgment dismissing Gaffney's special action petition.

/s/
DONN KESSLER, Judge

CONCURRING:

/s/
PATRICK IRVINE, Presiding Judge

/s/
MICHAEL J. BROWN, Judge