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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 01-28-2010  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

RAYMOND J. CONROY, ) No. 1 CA-CV 09-0173  
)  
Plaintiff/Appellant, ) DEPARTMENT A  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
) Rule 28, Arizona Rules  
COUNTY OF MARICOPA, a political ) of Civil Appellate  
subdivision; MARICOPA COUNTY ) Procedure)  
BOARD OF SUPERVISORS; SERGEANT )  
HENRY, in her individual and )  
official capacity; SERGEANT )  
EVANS, in his individual and )  
official capacity; SERGEANT )  
JORDAN, in his individual and )  
official capacity; SERGEANT FAY, )  
in his individual and official )  
capacity; LT. NOBLE, in his )  
individual and official )  
capacity; and PAM WOODY, in her )  
individual and official capacity, )  
)  
Defendants/Appellees. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. LC 2008-000773-001 DT

The Honorable Andrew G. Klein, Judge

**AFFIRMED**

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Raymond J. Conroy,  
Plaintiff/Appellant *In Propria Persona*

Winslow

Andrew P. Thomas, Maricopa County Attorney  
By J. Scott Dutcher, Deputy County Attorney  
Bruce P. White, Deputy County Attorney  
Attorneys for Defendants/Appellees

Phoenix

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**D O W N I E**, Judge

¶1 Raymond J. Conroy appeals the dismissal of his special action complaint. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 Conroy was an inmate in the Maricopa County jail system. Between August 10 and September 19, 2008, using various inmate request and grievance forms, Conroy asked jail officials for documents and videotapes relating to an "incident" that "led to a 72 hour lock down of all inmates." Conroy received written responses in the staff comment sections of these forms, but he did not receive any records.

¶3 On September 5, 2008, Conroy made a written request to the Maricopa County Sheriff's Office ("MCSO") custodian of records for the same documents, specifying that the incident at issue occurred "[o]n or about August 9, 2008, while an inmate at Towers Jail, Tower 6B pod," when inmates were "subjected to a 72 hour lockdown." On September 22, 2008, the MCSO Legal Liaison responded to Conroy's request, stating she was "unable to locate the information [he] requested without additional information,"

and requesting the "time and POD involved" and "details" of the incident. In a response mailed September 30, Conroy described the incident as a "72 hour restriction at Towers Jail, 'B' pod." By letter dated October 10, the Legal Liaison again asked Conroy to "provide a date, approximate time and POD involved" and "any details you may have regarding 'the incident.'" Conroy did not respond to this request for additional information.

¶4 On October 14, 2008, the Maricopa County Board of Supervisors received Conroy's "Notice of Claim Against Maricopa County and/or Maricopa County Sheriff," alleging jail staff had denied his records requests in violation of Arizona Revised Statutes ("A.R.S.") section 39-121. Less than thirty days later, on November 12, 2008, Conroy filed a special action complaint in Maricopa County Superior Court pursuant to A.R.S. § 39-121.02(A) and Rule 3, Rules of Procedure for Special Actions. Conroy alleged his records requests had been "denied without a reason," and he sought monetary damages, fees, and costs, as well as production of the requested documents and video.

¶5 Defendants filed a motion to dismiss, arguing: (1) the superior court lacked jurisdiction because Conroy's public records request had never been denied and because he failed to "wait the requisite sixty days for his notice of claim to be resolved/rejected before initiating this action"; and (2) the

matter was moot because MCSO had since provided Conroy with all records in its possession.<sup>1</sup>

¶16 On January 9, 2009, in a signed minute entry, the trial court granted defendants' motion to dismiss, finding Conroy's petition was moot because the requested records had been provided. The court also denied Conroy's request for damages, fees, and costs. Conroy filed a Motion to Reconsider/Motion to Clarify Order of Dismissal, which the trial court denied.

¶17 Conroy timely filed a notice of appeal. We have jurisdiction pursuant to A.R.S. § 12-2101(F)(1) (2003).

#### DISCUSSION

¶18 An appellate court may affirm a trial judge's ruling if it is correct for any reason supported by the record. *State v. Robinson*, 153 Ariz. 191, 199, 735 P.2d 801, 809 (1987); *Wertheim v. Pima County*, 211 Ariz. 422, 424, ¶ 10, 122 P.3d 1, 3 (App. 2005). Although we do not disagree with the determination that Conroy's complaint was moot, there is a more fundamental basis for dismissal--namely, that Conroy did not establish the statutory predicate for his special action complaint. A.R.S. § 39-121.02(A) (Supp. 2009) provides:

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<sup>1</sup> A video surveillance tape was not provided because it had been recorded over by the jail's automatic system, which re-uses surveillance tapes every ninety days.

Any person who has requested to examine or copy public records pursuant to this article, *and who has been denied access to or the right to copy such records*, may appeal the denial through a special action in the superior court, pursuant to the rules of procedure for special actions against the officer or public body.

(Emphasis added.)<sup>2</sup>

¶9 Although the superior court dismissed the complaint on mootness grounds, it also found Conroy's records request had never been denied, stating:

Additionally, MCSO did not as Petitioner contends deny Petitioner access to the records. Rather, MCSO on September 22, 2008 and October 10, 2008, requested further information about the incident and the date/time it occurred in order to find the appropriate video footage to properly respond to Petitioner's request. This is hardly unreasonable given the fact that there are numerous cameras recording every second of activity in the jails, and it would have been extremely difficult to assign an individual to review all tapes for a 72 hour period and speculate as to whether it contained the footage petitioner sought.

¶10 We defer to the superior court's findings of fact unless they are clearly erroneous. *Scottsdale Unified Sch. Dist. No. 48 v. KPNX Broad. Co.*, 191 Ariz. 297, 302, ¶ 20, 955 P.2d 534, 539 (1998). We find no error here.

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<sup>2</sup> We cite to the current version of the applicable statute because no revisions material to this decision have occurred.

¶11 Conroy made only one cognizable public records request: the letter to the MCSO Custodian of Records dated September 5, 2008. Under A.R.S. § 39-121 (2001), "Public records . . . in the custody of *any officer* shall be open to inspection by any person at all times during office hours." (Emphasis added.) Section 39-121.01(1) (Supp. 2009) defines "officer" as "any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body." Jail staff are not "officers" within the meaning of A.R.S. § 39-121.01. The informal requests Conroy made on inmate grievance and request forms are not cognizable public records requests under A.R.S. § 39-121 and thus could not form the basis for a statutory special action.<sup>3</sup>

¶12 Conroy's request to the MCSO Custodian of Records, on the other hand, was a proper public records request, and it was treated as such. It, however, was never denied. On the contrary, the Legal Liaison, in an attempt to respond to the request, asked Conroy for additional information. Conroy admittedly ignored the second request for additional

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<sup>3</sup> Indeed, in his opening brief, Conroy characterizes these requests as "grievances," and states, "The grievance process was initiated due to the failure to comply with the *informal requests*." (Emphasis added.)

information, and the superior court's factual finding that the Legal Liaison acted reasonably is supported by the record.

**CONCLUSION**

¶13 Because Conroy did not establish the necessary predicates for a statutory special action, his complaint was properly dismissed.<sup>4</sup> We affirm the judgment of the superior court.

/s/  
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/  
MAURICE PORTLEY, Presiding Judge

/s/  
LAWRENCE F. WINTHROP, Judge

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<sup>4</sup> The superior court did not err in denying Conroy leave to amend his complaint. The fatal defect (i.e., the fact there had been no denial) could not have been remedied through an amended complaint, especially because, at that point, all records in MCSO's possession had been provided.