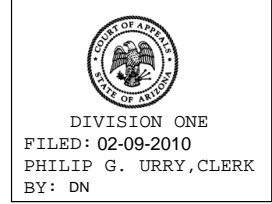


eNOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CV 09-0208
)
Plaintiff/Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication
KRISTINE M. MURPHY,) - Rule 28, Arizona
) Rules of Civil
Defendant/Appellant.) Appellate Procedure)
)

Appeal from the Superior Court in Maricopa County

Cause No. LC 2008-000750-001 DT

The Honorable Joseph C. Kreamer, Judge

AFFIRMED

Andrew P. Thomas, Maricopa County Attorney Phoenix
By Elizabeth Burton Ortiz, Former Appeals Bureau Chief
and Jeffrey W. Trudgian, Appeals Bureau Chief
Attorneys for Plaintiff/Appellee

Daniel W. Evans Gilbert
Attorney for Defendant/Appellant

N O R R I S, Judge

¶1 This appeal arises out of an order entered by the superior court declining to accept special action jurisdiction from an order entered by the justice court denying a motion to suppress the results of a breath test filed by

defendant/appellant Kristine M. Murphy. The superior court refused to accept special action jurisdiction because Murphy's challenges to the breath test could be raised, assuming her conviction, on appeal. See generally Ariz. Rev. Stat. ("A.R.S.") § 22-371(A) (2002). In so ruling, the superior court did not consider the merits of Murphy's challenges to the breath test.

¶2 When a party appeals from a special action initiated in the superior court, we conduct a bifurcated review. *Bilagody v. Thorneycroft*, 125 Ariz. 88, 92, 607 P.2d 965, 969 (App. 1979). We must first determine whether the superior court exercised its discretion to assume jurisdiction over the merits of the claim. *Id.* If so, we may consider the claim's merits. *Id.* If not -- which is the case here -- the sole issue for our review is whether the superior court abused its discretion in declining to accept jurisdiction. *Id.*

¶3 Acceptance of special action jurisdiction is highly discretionary. *Pompa v. Superior Court*, 187 Ariz. 531, 533, 931 P.2d 431, 433 (App. 1997). "Jurisdiction is generally accepted only in those cases in which 'justice cannot be satisfactorily obtained by other means.'" *Id.* (quoting *King v. Superior Court*, 138 Ariz. 147, 149, 673 P.2d 787, 789 (1983)).

¶14 In this case, the superior court correctly recognized special action relief should be reserved for situations in which there is no other equally plain, speedy, or adequate remedy. The superior court also correctly noted a remedy does not become inadequate merely because more time would transpire by pursuing the issue through an appeal. *Neary v. Frantz*, 141 Ariz. 171, 177, 685 P.2d 1323, 1329 (App. 1984). Because Murphy may challenge the justice court's denial of her motion to suppress, assuming a conviction, on appeal, we cannot say the superior court abused its discretion in declining to accept special action jurisdiction.

¶15 We therefore affirm the order of the superior court declining to accept special action jurisdiction. We express no opinion on the merits of Murphy's challenge to the breath test results.

/s/

PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

/s/

DANIEL A. BARKER, Judge

/s/

PETER B. SWANN, Judge