

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: 04-13-2010  
PHILIP G. URRY, CLERK  
BY: GH

VIVIAN MARGARET MUNOZ-PERLIN, ) No. 1 CA-SA 10-0037  
)  
Petitioner, ) DEPARTMENT D  
)  
v. ) Yavapai County  
) Superior Court  
THE HONORABLE TINA AINLEY, Judge ) Cause No. V1300CR2010  
of the SUPERIOR COURT OF THE )  
STATE OF ARIZONA, in and for the ) **DECISION ORDER**  
County of Yavapai, )  
)  
Respondent Judge, )  
)  
STATE OF ARIZONA, )  
)  
Real Party in Interest. )  
\_\_\_\_\_ )

Petitioner pled guilty to driving under the influence, in violation of Arizona Revised Statutes ("A.R.S.") section 28-1381(A)(1) (Supp. 2009), and the Cottonwood Municipal Court imposed on her a fine of \$1,470. After reviewing Petitioner's evidence that she lacked the wherewithal to pay the fine, the court ordered that she could satisfy the fine by performing 147 hours of community service. The record shows the court arrived at the community service requirement by calculating that each hour of community service worked would pay down the fine by \$10. The State appealed the sentencing order to the superior court.

The State failed to seek a stay of the judgment, however, and Petitioner began the community service work. In a ruling issued after Petitioner had completed all of the required hours, the superior court held the municipal court erred by permitting the fine to be paid by way of community service. It reversed the sentence and remanded for re-sentencing.

We accept jurisdiction of this special action because Petitioner has no adequate remedy at law. When a court resentences a defendant after a determination that the original sentence was illegal, the court must credit the "punishment already exacted" on the defendant against the new sentence imposed. See *North Carolina v. Pearce*, 395 U.S. 711, 718-19 (1969) overruled on other grounds by *Alabama v. Smith*, 490 U.S. 794 (1989). Accepting for purposes of argument that the municipal court lacked the power to permit Petitioner to satisfy her fine by "paying" it in community service hours, but see A.R.S. § 13-810(D) (2010), because the State failed to seek a stay of the judgment pending appeal, it prevented the court from properly crediting the "punishment already exacted" against any new sentence that might be imposed on her.

Accordingly, the Court, Presiding Judge Patricia A. Orozco and Judges Diane M. Johnsen and Jon W. Thompson participating, accepts jurisdiction of the petition and grants relief by reversing the decision of the superior court.

/s/ \_\_\_\_\_  
DIANE M. JOHNSEN, Judge