

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: 09/16/2010  
RUTH WILLINGHAM,  
ACTING CLERK  
BY: GH

ROBERT EARL KRONCKE, ) 1 CA-SA 10-0177  
)  
Petitioner, ) DEPARTMENT E  
)  
v. ) MARICOPA County  
) Superior Court  
MICHAEL K. JEANES, Clerk of the ) Nos. CV 2007-006489  
SUPERIOR COURT OF THE STATE OF ) and CV 2008-002783  
ARIZONA, in and for the County )  
of Maricopa, )  
)  
Respondent, )  
)  
CITY OF PHOENIX; CITY OF MESA; ) D E C I S I O N  
COY H. JOHNSTON; TERRY JENNINGS, )  
Maricopa County Attorney; )  
RAYMOND VACA; MARICOPA COUNTY ) O R D E R  
BOARD OF SUPERVISORS; WILLIAM )  
RAYMOND KRONCKE, )  
)  
Real Parties in Interest. )  
\_\_\_\_\_ )

This special action came on regularly for conference this 14th day of September, 2010, before Presiding Judge Philip Hall, Judges Sheldon H. Weisberg and Peter B. Swann.

Petitioner Kroncke has requested special action relief on the ground that he lacks an adequate appellate remedy and raises novel issues of law that are of statewide importance. Petitioner is the subject of an administrative order entered by the Maricopa County Superior Court finding him to be a vexatious

litigant and restricting his ability to file new causes of action as well as pleadings, motions, and other documents in other cases. Petitioner now alleges that:

- (1) In CV 2007-006489, the Maricopa County Superior Court Clerk, Michael K. Jeanes, refused to accept his Notice of Appeal and destroyed the Notice. Petitioner has supplied no reliable evidence from which we can conclude that he timely mailed or that the Clerk's Office received and destroyed his Notice and thus has failed to demonstrate any abuse of discretion by the Clerk.
- (2) in CV 2008-002783, Judge J. Richard Gama declined to accept for filing numerous motions, notices, and objections, including a motion for relief from judgment. The administrative order requires Petitioner to seek leave to file post-trial motions but allows him to timely file notices of appeal, thus providing an adequate remedy for his challenge to a final judgment and precluding the need for special action jurisdiction.
- (3) In CV 2008-020850, Petitioner mailed a motion for new trial to the Maricopa County Superior Court Clerk who destroyed it and later sought leave to file other motions but that Judge Robert H. Oberbillig denied leave and ordered all motions shredded. The record reveals that the court accepted for filing a motion to vacate the

judgment dismissing the City of Phoenix and a motion to sign and enter judgment in compliance with Arizona Rule of Civil Procedure 54(b); the court ordered that a motion for relief from void judgment and an index of appendices be shredded. From the incomplete record Petitioner has provided, it appears that no final judgment has issued, but when it does, he may appeal.

(4) In July 2009, Petitioner sought leave to file a new complaint pursuant to 42 U.S.C. § 1983 against two of his former attorneys, whom he had already sued, and never received a ruling. To the contrary, Judge Gama found the complaint frivolous and lacking an arguable basis in law or fact and denied leave in his order of February 24, 2010. Petitioner had a right to appeal that order and thus possessed an adequate appellate remedy.

(5) That the administrative order imposed criminal contempt sanctions without due process. The record indicates that the Superior Court made no findings of criminal contempt pursuant to Arizona Revised Statutes section 12-861 (2003) but it did schedule a hearing in which Petitioner could dispute the bases for the order. A court has "inherent power . . . to protect its jurisdiction from conduct that impairs its ability to carry out [its] functions." *Jones v. Warden of*

*Stateville Corr. Ctr.*, 918 F. Supp. 1142, 1152 (N.D. Ill. 1995). Moreover, the initial order was entered nearly two years ago and the second amended order issued sixteen months ago. The extreme delay justifies application of the doctrine of laches to preclude acceptance of special action jurisdiction. See *Cicoria v. Cole*, 222 Ariz. 428, 430, ¶ 8, 215 P.3d 402, 404 (App. 2009) (four month unexplained delay "typically . . . unreasonable").

IT IS ORDERED that the Court of Appeals, in the exercise of its discretion, declines jurisdiction of Petitioner's claim in CV 2008-020850 as premature; with respect to all other claims for relief, Petitioner has or had an adequate remedy by appeal or has unreasonably delayed in seeking relief and thus we accept jurisdiction but deny relief.

/s/ \_\_\_\_\_  
SHELDON H. WEISBERG, Judge