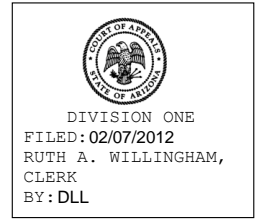


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



JESSIE GALVIN,) 1 CA-SA 12-0014
)
Petitioner,) DEPARTMENT C
)
v.) Maricopa County Superior
) Court No. CR 1992-00465 DT
THE HONORABLE ARTHUR ANDERSON,)
Judge of the SUPERIOR COURT OF) **DECISION ORDER**
THE STATE OF ARIZONA, in and for)
the County of MARICOPA,)
)
Respondent Judge,)
)
STATE OF ARIZONA, ex rel,)
WILLIAM MONTGOMERY, the)
Maricopa County Attorney)
)
Real Party in Interest.)
_____)

In this special action, petitioner, Jessie Galvin, joined by the State of Arizona through William G. Montgomery, Maricopa County Attorney ("State"), essentially asks us to vacate orders entered by the superior court refusing to dismiss this criminal prosecution against him. Because Galvin has no adequate remedy by appeal from the orders entered by the superior court, special action jurisdiction is appropriate. See *State ex rel. Romley v. Superior Court (Flores)*, 181 Ariz. 378, 380, 891 P.2d 246, 248 (App. 1995). Accordingly,

IT IS ORDERED the court, Presiding Judge Patricia K. Norris, and Judges Margaret H. Downie and Donn Kessler participating, accepts special action jurisdiction and, as discussed below, grants the relief requested.

In October 1992, Galvin pled guilty to burglary in the third degree, a class 3 felony. The superior court accepted Galvin's plea. Galvin failed to appear at his December 8, 1992 sentencing hearing, and the court issued a bench warrant.

In 1996, the State attempted to extradite Galvin from Illinois. As noted by the superior court, for reasons not clear from the record, Illinois did not complete the extradition process. Thereafter, the State did not take any additional steps to extradite Galvin. In September 2010, Galvin contacted the superior court and asked it to dismiss the case, explaining the State had taken no action to extradite him even though he had been "living openly in Illinois" for many years. The State did not oppose Galvin's motion and, instead, asked the court to dismiss the prosecution, noting it had not taken any steps between 1996 and 2010 to obtain custody of Galvin. It also noted the court had been presented with no evidence that Galvin had used a different name or concealed his location during that time. The State further explained it had been unable to contact the victim and addressed other difficulties it would face in pursuing the case against Galvin.

The superior court, however, denied Galvin's request to dismiss the prosecution, concluding the State could still extradite him. We agree with Galvin and the State, however,

that the superior court abused its discretion in refusing to dismiss this prosecution. See *State v. Wassenaar*, 215 Ariz. 565, 571 ¶ 16, 161 P.3d 608, 614 (App. 2007). As the State explained in its response to Galvin's petition for special action:

The State is concerned about the speedy trial (or in this case speedy sentencing) issue. However, it has numerous other reasons for not extraditing Galvin which would not be allayed even if Galvin's Constitutional rights were not a concern. As pointed out in its memorandum [submitted to the superior court], the State has limited resources with which to accomplish its statutory duties and must make decisions on how best to utilize those resources. The factors the State considered in deciding not to extradite Galvin are the age of the case, the amount of restitution (which does not meet policy criteria for extradition), the defendant's lack of any criminal record since 1992, the fact that Galvin is apparently employed and supporting a family in Illinois and the fact that the State cannot locate the victim.

For the foregoing reasons, we grant the relief requested by Galvin, vacate the orders entered by the superior court refusing to dismiss this matter, and direct the superior court to dismiss the case against him with prejudice.

_____/s/_____
PATRICIA K. NORRIS, Presiding Judge