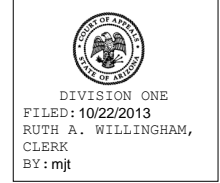


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 13-0117  
)  
Appellant, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
)  
DANIEL JOSEPH DERIENZO, ) (Not for Publication -  
) Rule 111, Rules of the  
Appellee. ) Arizona Supreme Court)  
)  
)

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Appeal from the Superior Court in Yavapai County

Cause No. P1300CR201300070

The Honorable Cele Hancock, Judge

**VACATED AND REMANDED**

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Sheila Sullivan Polk, Yavapai County Attorney Prescott  
By Cody W. Johnson, Deputy County Attorney  
Attorneys for Appellant

Law Office of Daniel DeRienzo, P.L.L.C. Prescott Valley  
By Daniel J. DeRienzo  
Attorney for Appellee

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**N O R R I S**, Judge

¶1 Appellant State of Arizona appeals the superior court's order dismissing a misdemeanor criminal prosecution against Appellee Daniel Joseph DeRienzo. As we explain, the

superior court should not have dismissed the prosecution. Accordingly, we vacate the dismissal and remand for further proceedings consistent with this decision.

#### **FACTS AND PROCEDURAL BACKGROUND**

¶12 The Prescott Valley Police Department issued DeRienzo an "Arizona Traffic Ticket and Complaint" for allegedly committing misdemeanor criminal damage in violation of Arizona Revised Statutes ("A.R.S.") section 13-1602(A)(1) (2010). DeRienzo appeared in Prescott Justice Court for arraignment on December 12, 2012 and entered a not guilty plea. A prosecutor was not present at the arraignment ("justice court case"). Five days later, on December 17, 2012, DeRienzo filed a "Notice of Defenses/Rule 15.2 Disclosure" and a motion for change of judge. Neither the notice nor the motion reflected service on the State. On December 26, 2012, the justice court granted DeRienzo's motion for change of judge.

¶13 On January 8, 2013, the State offered DeRienzo a plea agreement. The justice court held a pretrial conference on January 14, 2013; DeRienzo and a prosecutor from the Yavapai County Attorney's Office appeared. DeRienzo informed the court he had rejected the plea offer and intended to file a motion to determine counsel based on what he alleged was a conflict of interest with the Yavapai County Attorney's Office. The justice

court agreed to address the motion at a pretrial conference it scheduled for February 11, 2013.

¶14 On January 18, 2013, the State moved to dismiss the justice court case without prejudice because it "ha[d] been transferred to Superior Court." The State mailed a copy of its motion that same day to DeRienzo. The justice court granted the motion on January 22, 2013 and on January 24, 2013 mailed a copy of the dismissal order to the State but not to DeRienzo.

¶15 On the same day the State moved to dismiss the justice court proceeding, it re-filed the case in the superior court ("superior court case"). DeRienzo moved to dismiss asserting, as relevant here, the State had filed the superior court case because it feared the justice court might remove the State from the justice court case when it heard his motion to determine counsel and was, thus, improperly "forum shopping." The State did not respond to the motion.

¶16 At a February 5, 2013 early disposition hearing, the superior court did not directly address DeRienzo's motion, but, after confirming the general procedural history of the justice court case with the State, dismissed the superior court case without prejudice to the State re-filing it in justice court. The superior court denied the State's motion to reconsider, reasoning, "[t]he case was pending for over a month in City Court [sic]. As the case was originally filed in the Prescott

City Court [sic], that is where the case started and should remain.”

#### DISCUSSION

¶7 The State argues the superior court should not have dismissed the superior court case because, by statute and rule, it may file misdemeanor actions in the superior court. See generally A.R.S. § 12-123(A) (Supp. 2012) (superior court has original and concurrent jurisdiction with justices of the peace of misdemeanors when penalty does not exceed \$2500 fine or six months imprisonment); Ariz. R. Crim. P. 2.1(a) (misdemeanor actions may be “commenced” in superior court). On this record, we agree.

¶8 By rule and pursuant to its inherent authority, a superior court may dismiss a criminal prosecution over the State’s objection. *State v. Huffman*, 222 Ariz. 416, 420, ¶ 10, 215 P.3d 390, 394 (App. 2009); Ariz. R. Crim. P. 16.6(b) and comment thereto (court may dismiss criminal prosecution for legal insufficiency and “on any ground recognized by law”). When, as here, it does so, we review for an abuse of discretion. See *State v. Jones*, 222 Ariz. 555, 558, ¶ 9, 218 P.3d 1012, 1015 (App. 2009). A court abuses its discretion when “the reasons given by the court for its action are clearly untenable, legally incorrect, or amount to a denial of justice.” *State v. Chapple*, 135 Ariz. 281, 297, n. 18, 660 P.2d 1208, 1224 (1983),

*superseded by statute on other grounds* (citation omitted). And, a court abuses its discretion when it erroneously applies or interprets a rule of law. *State v. Gonzalez*, 216 Ariz. 11, 12, ¶ 2, 162 P.3d 650, 651 (App. 2007).

¶9 Arizona courts have recognized a variety of situations that would justify a court's dismissal -- over the State's objection -- of a criminal prosecution. In addition to the reasons for dismissal recognized under Arizona Rule of Criminal Procedure 16.6(b) and the comment to that rule, dismissal may be warranted when there has been prosecutorial misconduct, *State v. Young*, 149 Ariz. 580, 586, 720 P.2d 965, 970 (App. 1986); a due process violation, *id.* at 586, 720 P.2d at 971; bad faith by the prosecutor or acts prejudicial to the defendant, *c.f. State v. Superior Court*, 137 Ariz. 534, 536, 672 P.2d 199, 201 (App. 1983); or a facially invalid claim. *State v. Curtis*, 185 Ariz. 112, 114, 912 P.2d 1341, 1343 (App. 1995), *disapproved of on other grounds, Stewart v. Smith*, 202 Ariz. 446, 46 P.3d 1067 (2002). Although these situations vary, they share a common characteristic -- absent dismissal, continuation of the case would be contrary to the interests of justice.

¶10 Here, in dismissing the case, the superior court did not find any legal insufficiency, prosecutorial misconduct, a due process violation, bad faith by the prosecutor, acts prejudicial to DeRienzo, or the assertion of a facially invalid

claim. Instead, it dismissed the case because it had initially been filed in the "Prescott City Court" and had been pending there for "over a month." These reasons do not, as a matter of law, warrant dismissal; they are not analogous or similar to the grounds for dismissal recognized in Arizona. Although DeRienzo accuses the State of misconduct in filing the superior court case, the superior court did not make any such finding.<sup>1</sup>

¶11 Further, as noted above and as the State emphasizes on appeal, it is entitled to pursue misdemeanor prosecutions in the superior court, and indeed, in general, dismissal of a prosecution is without prejudice to the commencement of another prosecution -- which is what happened here. Moreover, "[t]he duty and discretion to conduct prosecutions for public offenses rests with the county attorney." *State v. Murphy*, 113 Ariz. 416, 418, 555 P.2d 1110, 1112 (1976) (citations omitted). In the absence of a reason that would warrant dismissal of a prosecution, it is within the sound discretion of the State to decide whether a misdemeanor charge should be prosecuted in either justice or superior court. On this record, therefore,

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<sup>1</sup>Most, if not all, of the "improprieties" DeRienzo alleges pertain to the dismissal of the justice court case. DeRienzo did not, however, challenge dismissal of the justice court case either through a motion for reconsideration or by special action. See generally *State v. Paris-Sheldon*, 214 Ariz. 500, 508, ¶ 23, 154 P.3d 1046, 1054 (App. 2007).

