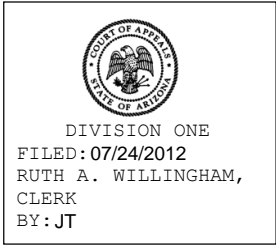


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

CHRISTINA ACKER,) 1 CA-CV 11-0620
)
Petitioner/Appellant,) Department B
)
v.) Maricopa County
) Superior Court
) No. LC2011-000199
RICHARD W GIERLOW; SERGEANT)
SPRINGER; CAPTAIN WILLIAMS;)
BARBARA DANIELS; JOHN MARQUEZ;)
CORRECTIONAL OFFICER III MORRIS;) **MEMORANDUM DECISION**
CORRECTIONAL OFFICER IV BACHES;) (Not for Publication
LACY SCOTT; TOM LYERLA; KARYN) Rule 28, Arizona Rules
KLAUSNER; SERGEANT COGLIANESE;) of Civil Appellate
JUDY FRIGO; CORRECTIONAL OFFICER) Procedure)
II HAZELTON; TERRY GODDARD;)
STATE OF ARIZONA) (Amended per order filed 8/16/12)
)
Defendants/Appellees.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. LC2011-000199-001DT

The Honorable Mark H. Brain, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Michael E. Gottfried, Assistant Attorney General
Attorneys for Defedants/Appellees

Christina Acker Goodyear
In Propria Persona

T H O M P S O N, Judge

¶1 Inmate Christina Acker (Acker) appeals the superior court's order declining jurisdiction and dismissing her petition for special action filed against fifteen individual defendants in their official capacities and the State of Arizona. For the following reasons, we affirm.

¶2 On March 17, 2011, Acker filed a forty-five page petition for special action in superior court arising from two prison "tickets" (#01B020031 and #00B040417) issued more than ten years earlier between March 2000 and January 2001. The petition sought "declaratory judgment and injunctive relief to order respondents to cease their unconstitutional conduct . . . petitioner further seeks expungement . . . i.e. favorable termination of the two (2) tickets herein described and restoration of 766 days of good time taken, petitioner also seeks an award of reasonable atty. fees and costs." In her eighteen enumerated causes of action, Acker alleged various constitutional violations including retaliation for her prior prison escape, failure to produce hearing witnesses and denial of neutral hearing officers. In the petition, Acker "puts the court on notice" that the issues are being raised in a federal §

1983 case, in both state and federal habeas corpus actions and in another state action seeking punitive damages.¹

¶3 The superior court declined jurisdiction and dismissed Acker's petition concluding: (1) the petition violated Rule 8, Arizona Rule of Civil Procedure, requiring a short and plain statement of the claims; (2) the petition was primarily based "on events that took place a decade ago" and "[a]lthough plaintiff's complaint refers to equitable tolling (at ¶ 31), there is nothing to suggest that plaintiff's claims for events dating back a decade are timely--indeed they are patently untimely," and (3) Acker's traditional cause of action in the federal courts was more appropriate than a state court petition for special action.

¶4 Arizona recognizes two distinct types of special actions. See Ariz. R.P. Spec. Act. 1. Under Arizona Rule of Procedure for Special Actions 1(a), special actions may be brought to seek the traditional relief provided for by writs of certiorari, mandamus, or prohibition. The non-statutory special actions are simply referred to as "special actions." *Circle K Convenience Stores, Inc. v. City of Phoenix*, 178 Ariz. 102, 103,

¹ Acker did not specifically identify the state or federal actions that she filed. We do note that this court in *Acker v. Paralegal Chacon, et al.*, 1 CA-CV 10-0643 (October 11, 2011) affirmed the dismissal of a similar petition for review in underlying case number LC2010-00492-001.

870 P.2d 1198, 1199 (App. 1993). Under Rule 1(b), special actions may be brought where the action is expressly authorized by statute. These special actions are referred to as "statutory special actions." *Circle K Convenience Stores*, 178 Ariz. at 103, 870 P.2d at 1199. Statutory special action review is not discretionary. *Id.*

¶5 To the extent Acker seeks mandatory judicial review of an administrative action under Rule 1(b), such relief is not available for review of prison disciplinary proceedings. *Rose v. Ariz. Dep't of Corr.*, 167 Ariz. 116, 118-121, 804 P.2d 845, 847-50 (App. 1991) (affirming dismissal of a prisoner's claim of violation of Administrative Review Act in prison disciplinary action for failure to state a claim upon which relief may be granted). Acker's only available potential relief is under Rule 1(a). *See id.* at 120, 804 P.2d at 849.

¶6 Special actions under Rule 1(a) are reserved for cases where there is no other equally plain, speedy or adequate remedy by appeal. Ariz. R.P. Spec. Act. 1(a). A petition for special action seeks extraordinary relief, and jurisdiction is accepted only when justice cannot be obtained by any other means. *Haag v. Steinle*, 227 Ariz. 212, 213-14, ¶ 4, 255 P.3d 1016, 1017-18 (App. 2011). When the superior court exercises its discretion to decline jurisdiction, we will not review the case's merits on appeal; the only issue is whether the court abused its

discretion in declining jurisdiction. *Bilagody v. Thorneycroft*, 125 Ariz. 88, 92, 607 P.2d 965, 969 (App. 1979). In evaluating whether the superior court abused its discretion, we must determine whether it "exceeded the bounds of reason by performing the challenged act." *Toy v. Katz*, 192 Ariz. 73, 83, 961 P.2d 1021, 1031 (App. 1997).

¶7 As Acker herself admits, she has raised or planned to raise these constitutional issues contemporaneously in a federal 42 U.S.C. § 1983 action and in habeas corpus actions. Recognizing that Acker is seeking relief in federal court, the superior court reasonably declined jurisdiction. We find no abuse of discretion given Acker's own statements regarding the procedural history and basis of her claims.²

² Because we affirm the decision to decline jurisdiction on other grounds, we need not address the applicability of Rule 8, Arizona Rules Civil Procedure, to Acker's petition, whether the superior court should have allowed her to amend her complaint, or whether her claims against the State of Arizona and government officials acting in their official capacities could survive a review of the statute of limitations or notice of claims statutes. See, e.g., A.R.S. §§ 12-541(1) (2003) (malicious prosecution and false imprisonment), -821 (2003) (notice of claim), -904 (2003) (commencement of administrative review action within thirty-five days of final administrative decision).

CONCLUSION

¶8 For the foregoing reasons, the superior court's order is affirmed.

/s/

JON W. THOMPSON, Acting Presiding Judge

CONCURRING:

/s/

SAMUEL A. THUMMA, Judge

/s/

DIANE M. JOHNSEN, Judge