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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 09/25/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

MATTHEW VORIS,) No. 1 CA-CV 11-0639
)
Petitioner/Appellant,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) Not for Publication
HONORABLE MARK ANDERSON, West) (Rule 28, Arizona Rules
Mesa Justice Court,) of Civil Appellate Procedure
)
Respondent Judge/Appellee,)
)
and)
)
STATE OF ARIZONA,)
)
Real Party in Interest/)
Appellee.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. LC2011-000117-001

The Honorable Joseph C. Kreamer, Judge

AFFIRMED

Jeffery Mehrens Phoenix
Attorneys for Petitioner/Appellant

William G. Montgomery, Maricopa County Attorney Phoenix
By: Lisa Marie Martin
Attorneys for Real Party in Interest/Appellee

G E M M I L L, Judge

¶1 Matthew Voris filed a petition for special action in superior court seeking relief related to a prosecution against him pending in West Mesa Justice Court. In his petition, Voris argued he was denied a speedy trial; and in his reply in support of his petition, Voris argued he was not properly arraigned. The superior court accepted jurisdiction of the petition for special action but denied relief. Voris appeals. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 On January 15, 2010, Voris was cited for two counts of driving under the influence of intoxicating liquor ("DUI"), two counts of extreme DUI, and one count of exceeding a reasonable and prudent speed. The arraignment date was scheduled for March 10, 2010.

¶3 Five days prior to the scheduled arraignment date, Attorney Jeffery Mehrens submitted a notice of appearance as Voris's attorney and filed a motion to dismiss without prejudice pursuant to Rule 14.1 of the Arizona Rules of Criminal Procedure, arguing that the delay of Voris's scheduled arraignment prejudiced his right to a speedy trial. The motion was denied. Due to a variety of circumstances and requested continuances from both Voris and the State, the justice court ultimately set a firm trial date of March 25, 2011.

¶14 On February 23, 2011, Voris filed a petition for special action in the superior court, claiming a speedy trial violation under Rule 8.2(a). The superior court stayed the trial pending the resolution of the special action and set a schedule for briefing and oral argument. Following the State's response, Voris's reply in support of his special action conceded that the "speedy trial time under Rule 8 has not expired." Voris newly asserted, however, that the case should still be dismissed without prejudice because he was never arraigned, a violation of Rule 14. In a minute entry dated August 8, 2011, the superior court accepted jurisdiction of the petition for special action and denied the requested relief, finding as follows:

Petitioner has conceded that his initial argument that his speedy trial rights were violated was incorrect for the reasons set forth in the State's Response. His Reply then shifted his argument, claiming that he actually was never arraigned, and raising a host of "procedural defects" he claims "demand dismissal without prejudice."

The Court disagrees and instead agrees with the State that Petitioner's counsel's appearance and entry of a plea eliminated any prejudice from the lack of a formal arraignment. Further, nothing in the various attacks launched by Petitioner against the Justice of the Peace provides a basis for dismissal - especially when raised in the context of a Reply that completely

retreated from the arguments made in the original Petition.

Accordingly, the Court accepts jurisdiction but denies relief. The Petition is dismissed.

¶15 Voris timely appeals the superior court's ruling. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) (2003) and 12-2101(A)(1) (Supp. 2011).¹ See also Ariz. R.P. Spec. Act. 8(a).

ANALYSIS

¶16 "When a special action initiated in superior court is appealed to this court, we must conduct a bifurcated review to consider first, the superior court's acceptance or refusal of jurisdiction, and second, its decision on the merits." *Hamilton v. Mun. Court of Mesa*, 163 Ariz. 374, 376-77, 788 P.2d 107, 109-10 (App. 1989). Here, the superior court exercised its special action jurisdiction and neither party argues the court abused its discretion in so doing. Therefore, our analysis will focus on whether the superior court abused its discretion in denying special action relief. See *id.* We observe, however, that the superior court would have been acting within its considerable discretion to decline to exercise special action jurisdiction in

¹ Unless otherwise specified, we cite current versions of statutes when no material revisions have been enacted since the events in question.

this proceeding, because Voris petitioned for relief on the basis of a speedy trial violation and then abandoned that argument altogether.

¶7 In Voris's appeal to this court, the issue presented is whether the superior court abused its discretion in denying relief on Voris's petition for special action. "Generally, a court abuses its discretion where the record fails to provide substantial support for its decision or the court commits an error of law in reaching the decision." *Files v. Bernal*, 200 Ariz. 64, 65, ¶ 2, 22 P.3d 57, 58 (App. 2001). After reviewing this matter, we conclude that the record amply supports the decision of the superior court to deny relief to Voris.²

¶8 First, as already noted in ¶¶ 4 and 6 above, Voris's petition for special action in superior court asserted a speedy trial violation. After the State's response, Voris in his reply dropped the speedy trial claim and began arguing that he had not been arraigned. Voris's acknowledgment that he does not have a valid speedy trial argument is sufficient to support the

² Voris did not cite to the record in the opening brief except for a single citation to the superior court's minute entry denying the petition for special action. Therefore, we have relied on our own review of the limited record and on the answering brief's cited facts. Failure to cite proper authority may constitute abandonment and waiver of a claim. See *State v. Moody*, 208 Ariz. 424, 452 n. 9, ¶ 101, 94 P.3d 1119, 1147 n. 9 (2004). Because of our preference to decide appeals on the merits, however, we have chosen to address Voris's substantive arguments.

superior court's denial of special action relief on this record. See *Glaze v. Marcus*, 151 Ariz. 538, 540, 729 P.2d 342, 344 (App. 1986) (affirming trial court if its ruling was "correct for any reason, even if that reason was not considered" by trial court).

¶19 Second, we have a limited record on appeal in this case. We do not have the complete West Mesa Justice Court record, and we are unable to comprehensively review all of the filings by the parties in justice court. It is the responsibility of the appellant to provide all necessary portions of the record on appeal, and in the absence of a complete record, we will assume the record supports the findings and conclusions of the superior court. See *State v. Zuck*, 134 Ariz. 509, 512-13, 658 P.2d 162, 165-66 (1982) (presuming missing portions of the record support the action of the trial court); *State v. Lujan*, 124 Ariz. 365, 370, 604 P.2d 629, 634 (1979) (refusing to speculate as to content not located in the record). The superior court agreed with the State that "[p]etitioner's counsel's appearance and entry of a plea eliminated any prejudice from the lack of a formal arraignment." Based on the limited record available to us, the superior court did not abuse its discretion in concluding that an actual plea had been entered or that the record of this proceeding permits an implied finding that the functional equivalent of a not guilty plea had been asserted.

¶10 Third, we conclude that the superior court did not abuse its discretion in denying relief because Voris cannot establish the prejudice necessary to support a reversal (even if we assume there was a technical error). In accordance with our State Constitution, “[n]o cause shall be reversed for technical error in pleadings or proceedings when upon the whole case it shall appear that substantial justice has been done.” Ariz. Const. art. 6, § 27.

¶11 According to the Arizona Rules of Criminal Procedure, an arraignment shall be held after the filing of an indictment, information, or complaint. Ariz. R. Crim. P. 14.1(a). The purpose of an arraignment is “to ascertain whether the defendant wants to put the state to its proof of facts alleged in the information or whether he wishes to waive a jury trial and permit the court to find him guilty upon his plea.” *State v. Hodge*, 131 Ariz. 63, 64, 638 P.2d 730, 731 (App. 1981). An arraignment functions to formally “advise the defendant of [his] legal rights and of the charges against [him] and to begin the proceedings by assuring that counsel is provided and the date of trial set.” *State v. Leenhouts*, 218 Ariz. 346, 348, ¶ 7, 185 P.3d 132, 134 (2008) (citing Ariz. R. Crim. P. 14 cmt.).

¶12 Assuming, for the sake of argument only, that a formal arraignment is required in this case under Rule 14.1, Voris’s claim falls short because he cannot establish he has been

prejudiced. Rule 14 fails to define the sanction to be imposed, if any, when no timely arraignment occurs. *State v. Vassar*, 111 Ariz. 487, 489, 533 P.2d 544, 546 (1975). In the absence of such a sanction, "it is necessary that actual prejudice be shown." *Id.* "Prejudice exists if the failure to arraign a defendant deprives him or her of notice of the charges and thereby deprives the defendant of the opportunity to defend against those charges." *Leenhouts*, 218 Ariz. at 348, ¶ 9, 185 P.3d at 134; see also *State v. Dungan*, 149 Ariz. 357, 362, 718 P.2d 1010, 1015 (App. 1985) ("[T]here is no prejudice if the defendant had full and fair notice of the crime charged, is not surprised, confused or prejudiced in his defense, and is afforded a full and fair opportunity to defend the charge against him.").

¶13 In *State v. Leenhouts*, for example, the State failed to arraign the defendant and provide notice of an additional charge in a supervening indictment until the first day of trial. 218 Ariz. at 347, ¶¶ 3-4, 185 P.3d at 133. The supreme court held the lack of an arraignment on the supervening indictment resulted in prejudice to the defendant, warranting a reversal of the trial court. *Id.* at 349, ¶¶ 12, 16, 185 P.3d at 135. Voris, however, admits to knowledge of the complaint containing the charges against him, issued on January 15, 2010. Additionally, Voris moved to dismiss the charges contained in

the complaint on March 5, 2010, long before the trial date was set. Voris has not claimed a lack of notice of the charges brought against him nor has he claimed a deprivation of the opportunity to defend against the charges. Therefore, consistent with the superior court's conclusion, insufficient evidence exists to show the alleged lack of an arraignment caused Voris prejudice.

¶14 For all of these reasons, the superior court did not abuse its discretion in denying the relief requested.

CONCLUSION

¶15 We affirm the superior court's denial of relief and dismissal of Voris's petition for special action.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
ANN A. SCOTT TIMMER, Presiding Judge

_____/s/_____
MARGARET H. DOWNIE, Judge