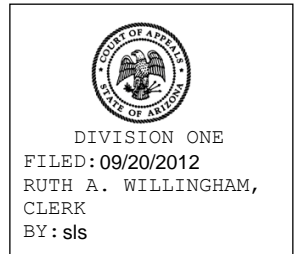


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



STATE OF ARIZONA, ) No. 1 CA-CV 11-0806  
)  
Plaintiff/Appellee, ) DEPARTMENT D  
)  
v. ) Maricopa County  
) Superior Court  
BERNARD M. BANAHAN, ) No. LC2011-000492-001  
)  
Defendant/Appellant. ) **DECISION ORDER**  
)  
)  
\_\_\_\_\_ )

This matter was scheduled for conference on October 3, 2012 before Presiding Judge Michael J. Brown, Judge Andrew W. Gould and Judge Donn Kessler. While preparing for the scheduled conference, we determined that we lack jurisdiction over this appeal. See *Sorensen v. Farmers Ins. Co.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997) (stating this court has an independent duty to determine whether it has appellate jurisdiction).

Bernard Banahan filed a notice of appeal from the superior court's judgment affirming a municipal court decision finding him responsible for committing a civil traffic offense, in violation of Arizona Revised Statutes ("A.R.S.") section 28-701(A) (2012). Banahan argues that the superior court erred by

(1) by refusing to reach the merits of his appeal because he failed to cite to the record in his brief, and (2) finding him guilty of a traffic offense without sufficient evidence. Before considering Banahan's substantive claims, however, "[t]his court has the duty to *sua sponte* raise the question of its subject matter jurisdiction." *State v. Poli*, 161 Ariz. 151, 153, 776 P.2d 1077, 1079 (App. 1989).

The subject matter jurisdiction of this court is defined by statute. *Id.* We have jurisdiction "in all actions and proceedings originating in or permitted by law to be appealed from the superior court, except criminal actions involving crimes for which a sentence of death has actually been imposed." A.R.S. § 12-120.21(A) (2003). As this case involves neither a proceeding originating in the superior court nor a criminal action, our appellate jurisdiction must be "permitted by law." A defendant may appeal "from a final judgment of the superior court in an action appealed from a justice of the peace or police court, if the action involves the validity of a tax, impost, assessment, toll, municipal fine or statute." A.R.S. § 22-375(A) (2002). Except as explicitly provided by that section, however, "there shall be no appeal from the judgment of the superior court given in an action appealed from a justice of the peace or a police court." A.R.S. § 22-375(B). Based on the language in § 22-375, because Banahan does not challenge the

validity of any statute or fine, as a matter of law he is not entitled to appeal the superior court's judgment.

Furthermore, as Banahan is appealing from a judgment regarding a civil traffic violation, his rights to appeal are defined by A.R.S. § 28-1600 (2012). That section, in pertinent part, provides that "[a] party may appeal the judgment of the court . . . to the superior court in the same manner as provided by rules adopted by the supreme court." There is no provision in § 28-1600, however, permitting an additional appeal to our court. In fact, our court has previously found that we lack jurisdiction to review the adjudication of a civil traffic violation. See *Poli*, 161 Ariz. at 153, 776 P.2d at 1079.

For the foregoing reasons, we lack subject matter jurisdiction over Banahan's appeal. Accordingly,

**IT IS ORDERED** dismissing this appeal.

/s/

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MICHAEL J. BROWN, Presiding Judge