

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

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

---

STATE OF ARIZONA, *Appellee*,

*v.*

MARIE LOUISE CUSENZA, *Appellant*.

No. 1 CA-CR 22-0145  
FILED 11-1-2022

---

Appeal from the Superior Court in Yavapai County  
No. P1300CR202200041  
The Honorable Debra R. Phelan, Judge *Pro Tempore*

**JURISDICTION ACCEPTED; RELIEF DENIED**

---

APPEARANCES

Yavapai County Attorney's Office, Prescott  
By Josh Butner  
*Counsel for Appellee*

Marie Louise Cusenza, Skull Valley  
*Appellant*

---

**MEMORANDUM DECISION**

Vice Chief Judge David B. Gass delivered the decision of the court, in which  
Presiding Judge Samuel A. Thumma and Judge Cynthia J. Bailey joined.

---

STATE v. CUSENZA  
Decision of the Court

**G A S S**, Vice Chief Judge:

¶1 Marie Cusenza seeks review of the superior court's order affirming the Prescott Justice Court's finding she violated Yavapai County Ordinance 2020-2 (the Ordinance). *Sua sponte* treating her putative appeal as a petition for special action, and accepting special action jurisdiction, because the Ordinance and Rule 2.3, Arizona Rules of Criminal Procedure (Rules) are constitutional, we deny relief.

**FACTUAL AND PROCEDURAL HISTORY**

¶2 A deputy from the Yavapai County Sherriff's Office (YCSO) issued Cusenza a traffic ticket and complaint for violating the Ordinance by burning weeds on her property with a propane torch in June 2021. Cusenza's property is located within the unincorporated area of Yavapai County. Before citing her, the YCSO, as well as the Skull Valley Fire Department, warned Cusenza about burning weeds in violation of the Ordinance.

¶3 Following a bench trial, the Prescott Justice Court found Cusenza guilty of violating the Ordinance and ordered her to pay a fine. Cusenza timely appealed to the superior court, which affirmed and dismissed the appeal. Cusenza seeks review of the superior court's decision.

**ANALYSIS**

¶4 Cusenza makes two arguments: (1) the Ordinance violates the Arizona Constitution and (2) Rule 2.1 violates the United States Constitution.

**I. Special action jurisdiction is appropriate.**

¶5 This court's appellate jurisdiction is purely statutory. Ariz. Const. art. VI, § 9; *Hall Family Props., Ltd. v. Gosnell Dev. Corp.*, 185 Ariz. 382, 386 (App. 1995). If this court reviews a case beyond its statutory jurisdiction, the decision "is of no force and effect." *State v. Avila*, 147 Ariz. 330, 334 (1985). This court, therefore, has an independent duty to determine whether jurisdiction is appropriate. *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465 (App. 1997).

¶6 The parties provide no basis for appellate jurisdiction. Without deciding whether this court has appellate jurisdiction, we elect to exercise special action jurisdiction. *See State v. Bayardi*, 230 Ariz. 195, 197,

STATE v. CUSENZA  
Decision of the Court

¶ 7 (App. 2012) (accepting, *sua sponte*, special action jurisdiction when the basis for appellate jurisdiction was unclear). This court appropriately exercises its discretion to accept special action jurisdiction when the matter involves a purely legal question of first impression, is of statewide importance, and is likely to recur. *See State ex rel. Adel v. Covil*, 252 Ariz. 40, 41, ¶ 2 (App. 2021).

¶7 Because a challenge to the constitutionality of the Ordinance is a purely legal question of first impression, we exercise special action jurisdiction. *See City of Tucson v. Grezaffi*, 200 Ariz. 130, 134, ¶ 5 (App. 2001) (“The constitutionality of an ordinance is a question of law subject to [the court of appeals’] *de novo* review.”).

**II. The Ordinance is constitutional.**

¶8 Cusenza argues the Ordinance violates the Arizona Constitution—specifically the Preamble, article II, section 2, and article IV, section 1, because it restricts the individual’s acts on their private property. To support her contention, Cusenza argues the Ordinance has no “subject matter jurisdiction over her [acts] on her private property,” and Yavapai County has no authority to “create laws which control individuals’ acts on their private property.”

¶9 This court reviews *de novo* the constitutionality of an ordinance. *State v. Putzi*, 223 Ariz. 578, 579, ¶ 4 (App. 2010). An ordinance carries a strong presumption in favor of constitutionality. *State v. Singer*, 190 Ariz. 48, 50–51 (App. 1997).

¶10 The Ordinance authorizes the “staged restriction and prohibition of combustion, open fires, campfires, and fireworks on designated lands in the unincorporated area of Yavapai County.” Yavapai County, Ariz., Ordinance 2020-2, at 1 (Dec. 2, 2020). In article IV, the Ordinance establishes Stage 1 restrictions, making it unlawful to “[i]nitiate facilitate, maintain, cause or contribute to . . . an open fire.” *Id.* at 2. In article XV, the Ordinance classifies violations as class 1 misdemeanors, subject to a fine, a term of imprisonment, or both. *Id.* at 6.

¶11 The State has broad authority to “prevent, manage or suppress any wildfires on State and **private lands** located outside incorporated municipalities.” *See* A.R.S. § 37-1303.A (emphasis added). That authority extends to subdivisions of the State, including counties. *See* A.R.S. § 37-1002(1). The legislature lawfully delegated authority to counties to create and enforce ordinances concerning open fires, and the Arizona Constitution does not prohibit that delegation. *See* A.R.S. § 11-251(63).

STATE v. CUSENZA  
Decision of the Court

Yavapai County, thus, properly exercised its authority to create and enforce the Ordinance concerning open fires, including controlling Cusenza's acts on her private property.

¶12 Cusenza further contends the Ordinance violates article IV, section 19 of the Arizona Constitution because it levies a fine as punishment. Article IV, section 19 prohibits the creation of special laws. Cusenza provides no basis to show how the Ordinance is an unconstitutional special law. And the legislature expressly authorizes county boards of supervisors to prescribe punishment by fine, imprisonment, or both. A.R.S. § 11-251.05.A.2.

**III. Rule 2.1 is constitutional.**

¶13 Cusenza argues Rule 2.1 violates the United States Constitution because it eliminates the requirements prescribed by Rule 2.3 and deprives individuals of due process. This court reviews the constitutionality of a rule *de novo*. See *State v. Rose*, 231 Ariz. 500, 509, ¶ 40 (2013).

¶14 Rule 2.1 does not conflict with Rule 2.3's requirements. Under Rule 2.1(a)(1), the State may commence a misdemeanor action by filing a traffic ticket and complaint. Rule 2.3(a) specifies a complaint must be "(1) signed by a prosecutor; (2) sworn before a magistrate; or (3) made in compliance with A.R.S. § 13-3903." A.R.S. § 13-3903.E, consequently, expressly authorizes the use of a traffic ticket and complaint.

¶15 Because Cusenza does not explain how Rule 2.1 deprives individuals of due process, we will not explicitly address her argument.

**FEES**

¶16 Cusenza, a self-represented litigant, asks for an award of fees. In doing so, Cusenza (1) cites no authority for an award of fees and (2) is not the successful or prevailing party, as most provisions addressing fees require. Accordingly, we deny her request.

STATE v. CUSENZA  
Decision of the Court

**CONCLUSION**

¶17 We accept special action jurisdiction but deny relief.



AMY M. WOOD • Clerk of the Court  
FILED: AA