IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

DAVID SHINN, IN HIS CAPACITY AS DIRECTOR OF THE ARIZONA DEPARTMENT OF CORRECTIONS, REHABILITATION AND REENTRY, *Petitioner*,

v.

THE HONORABLE KERSTIN LEMAIRE, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA, *Respondent Judge*,

ELISEO VALDEZ RENTERIA (A) and STATE OF ARIZONA,
Real Parties in Interest.

No. 1 CA-SA 21-0185
FILED 2-15-2022

Petition for Special Action from the Superior Court in Maricopa County
No. CR1995-007011
The Honorable Kerstin LeMaire, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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MEMORANDUM DECISION

Presiding Judge Peter B. Swann delivered the decision of the Court, in which Judge David B. Gass and Judge Jennifer M. Perkins joined.

S W A N N, Judge:

¶1 This special action arises from the superior court's injunction ordering David Shinn in his official capacity as Director of the Arizona Department of Corrections, Rehabilitation, and Reentry ("ADOC") to begin parole proceedings for Eliseo Valdez Renteria. We accept jurisdiction because this is a purely legal issue of statewide importance that is likely to recur. We deny relief because the State failed to appeal Renteria's illegally lenient sentence and may not use the special action process after the appeal time has run to circumvent a final order.

FACTS AND PROCEDURAL HISTORY

¶2 In 1993, the Arizona legislature amended A.R.S. § 41-1604.09 to remove parole as a sentencing option for all felony offenses committed by adult defendants on or after January 1, 1994. *See Chaparro v. Shinn*, 248 Ariz. 138, 140, ¶ 3 (2020); *see also* 1993 Ariz. Sess. Laws, Ch. 255, § 88 (41st Leg., 1st Reg. Sess.). In 1996, a jury convicted Renteria of first-degree murder for a shooting committed on July 16, 1995. On January 7, 1997, Renteria was sentenced to "life in prison without *release* until 25 calendar years." (Emphasis added.)

¶3 On April 14, 2020, Renteria filed his second Rule 32 petition. As relevant here, Renteria sought post-conviction relief under Rule 32.1(g), arguing that *Chaparro v. Shinn*, which held that illegally lenient sentences become final absent a timely appeal by the state, constituted a significant change in applicable law. 248 Ariz. at 142, ¶ 19. Judge Michael J. Herrod presided over Renteria's second Rule 32 proceeding. In May 2020, in a single order ("May 2020 Order"), Judge Herrod (1) dismissed all of Renteria's Rule 32 claims, finding that *Chaparro* does not support a Rule 32.1(g) claim, and (2) ordered ADOC to initiate parole proceedings once Renteria served 25 years in prison. The State did not appeal or otherwise seek relief from this final order.

¶4 On May 31, 2019, Renteria sent a letter to ADOC regarding parole proceedings in anticipation of completing 25 years in prison the next year. ADOC told Renteria that he did not meet the eligibility requirements under A.R.S. § 13-718 because he had not entered into a plea agreement. Renteria completed service of 25 years in prison on July 17, 2020.

¶5 On April 20, 2021, Renteria filed a pro per "Motion for Order to Show Cause" in the superior court. He requested the court compel ADOC and David Shinn—in his official capacity as director—to explain their failure to comply with Judge Herrod's May 2020 Order. Renteria also argued that ADOC's refusal to initiate parole proceedings constituted contempt. Judge Kerstin LeMaire affirmed the May 2020 Order, directing ADOC to start parole proceedings. She did not hold the State in contempt.

¶6 The State sought to appeal Judge LeMaire's August 24, 2021 order and "all related prior rulings." We dismissed for lack of jurisdiction. Shinn petitions for special action review.

JURISDICTION

¶7 We accept jurisdiction. Special action jurisdiction is particularly appropriate when the issue presented is one of statewide importance, as is the case here. *See State ex rel. Romley v. Fields*, 201 Ariz. 321, 323, ¶ 4 (App. 2001); *Vo v. Superior Court*, 172 Ariz. 195, 198 (App. 1992). This issue is likely to arise again, further warranting special action review. *Mendez v. Robertson*, 202 Ariz. 128, 129, ¶ 1 (App. 2002). Finally, the purely legal nature of the issue at hand weighs in favor of accepting jurisdiction. *Arpaio v. Steinle*, 201 Ariz. 353, 354, ¶ 3 (App. 2001).

DISCUSSION

I. UNDER ARIZONA LAW, ILLEGALLY LENIENT SENTENCES BECOME FINAL WHEN THE STATE FAILS TO APPEAL IN A TIMELY MANNER.

¶8 In *Chaparro v. Shinn*, our supreme court considered a certified question from the United States District Court for the District of Arizona:

> Whether, in light of A.R.S. § 41-1604.09, a person convicted of first degree murder following a jury trial for actions that took place on or after January 1, 1994, is parole eligible after 25 years when the sentencing order states that he is sentenced to "life without possibility of parole for 25 years."

248 Ariz. at 139, ¶ 1.

¶9 Chaparro was convicted of a murder committed in 1995 and sentenced to prison for "the rest of [his] natural life without the possibility of parole for 25 years, followed by a consecutive term of community supervision equal to one day for every seven days of sentence imposed." *Id.* at 140, ¶ 3 (alteration in original). The trial court in 1996 issued a *nunc pro tunc* order clarifying that Chaparro's sentence meant "Life without possibility of parole for 25 years." *Id.* Because parole had been abolished in 1994, Chaparro's sentence was illegally lenient. *See id.* at 142, ¶ 18. The State did not appeal this illegally lenient sentence. *Id.* at 140, ¶ 3. After serving 24 years in prison, Chaparro sued ADOC to initiate parole proceedings. *Id.* at ¶ 5. Our supreme court ruled Chaparro was entitled to parole proceedings because "[i]llegally lenient sentences are final under Arizona law absent timely appeal or post-judgment motion." *Id.* at 142–43, ¶¶ 19, 23.

II. JUDGE HERROD'S MAY 2020 ORDER WAS A FINAL AND ENFORCEABLE ORDER WITH WHICH THE STATE AND DIRECTOR SHINN MUST COMPLY.

¶10 Renteria's original sentence did not expressly authorize parole. In May 2020, however, Judge Herrod made the following order dismissing Renteria's second petition for post-conviction relief while granting him parole eligibility:

> IT IS THEREFORE ORDERED upon service of 25 years in CR 1995-007011, the Arizona Department of Corrections must institute parole proceedings. This order is not a finding of parole eligibility; rather, it entitles Defendant to a parole eligibility proceeding upon service of the term outlined above.

¶11 The State had the right to appeal the May 2020 Order. *See* A.R.S. § 13-4032(4), (5). It did not do so. When Renteria filed his Motion for Order to Show Cause over a year later, the issue presented to Judge LeMaire was whether ADOC's refusal to initiate parole proceedings constituted contempt.

¶12 Judge LeMaire did not hold the State or Shinn in contempt, finding their failure to comply with the May 2020 Order to be an oversight rather than a result of willful disobedience. But Judge LeMaire directed ADOC to comply with Judge Herrod's May 2020 Order and initiate parole

proceedings for Renteria. Shinn argues that Judge LeMaire erred in enjoining him to initiate parole proceedings for Renteria. We disagree.

¶13 Director Shinn reminds the court that A.R.S. § 31-201.01(A) bestows upon him an unqualified duty to "hold in custody all persons who are sentenced to the department under the law and [] hold such persons for the term directed by the court, *subject to law*." (Emphasis added.) Shinn argues that in ordering ADOC to initiate parole proceedings for Renteria "even though his sentence authorizes only 'release'—i.e., executive commutation or pardon—Judge LeMaire has 'proceeded . . . without or in excess of . . . legal authority.'" Judge LeMaire did not concoct an order for ADOC to initiate parole proceedings out of whole cloth. She simply ordered ADOC to comply with an existing order of the court.

¶14 Shinn believes that the May 2020 Order was based on Judge Herrod's confusion as to whether Renteria's original sentence authorized parole or release. Shinn reasons that Judge Herrod's order was not a final sentencing order that changed Renteria's lawful sentence into an illegally lenient one because "nothing in the record shows that Judge Herrod changed—or intended to change—Renteria's sentence." It may be that Judge Herrod concluded that the language contemplating release in the original sentence was intended to create a right to parole consideration. It may be that Judge Herrod concluded that he was bound by an illegally lenient sentence issued decades earlier. But we need not speculate about Judge Herrod's intent because his order is no longer subject to review. A.R.S. § 13-4032(5) allows the State to appeal a sentence on the grounds that it is illegal. And our authority "to *increase* an illegal sentence to conform to the judgment of conviction is predicated '[u]pon an appeal by the state.'" *State v. Dawson*, 164 Ariz. 278, 284 (1990) (citation omitted). Absent a timely appeal by the State, the May 2020 Order is final. *See Chaparro*, 248 Ariz. at 142, ¶ 19 ("Illegally lenient sentences are final under Arizona law absent timely appeal or post-judgment motion.").

¶15 Shinn claims that it was not Judge Herrod's order that aggrieved him, but Judge LeMaire's order "that finally resolved the underlying dispute." Shinn goes on say that because he was not a party to Renteria's post-conviction proceedings, the hearing on the order to show cause was his first and only opportunity to state his objections in the case. However, Judge Herrod's ruling directly ordered the State, through ADOC, to initiate parole proceedings for Renteria. And ADOC's time computation unit was a listed recipient on the minute entry. The contempt proceedings did nothing but reaffirm the May 2020 Order.

¶16 We disagree with Shinn's contention that "[i]f allowed to stand, Judge LeMaire's order will open the floodgates to improper demands for initiation of parole proceedings by inmates whose sentences authorize only 'release,' not 'parole.'" Renteria is entitled to parole proceedings because of the State's failure to appeal the illegally lenient sentence entered by Judge Herrod, not because of Judge LeMaire's enforcement of a final order.

¶17 Shinn argues that "it would lead to absurd results to treat any State official as an 'aggrieved party' required to challenge the grant or denial of a criminal defendant's petition for post-conviction relief from his conviction under Rule 32 or risk waiving the right to do so, in every criminal prosecution." We agree that Shinn was not the aggrieved party in Renteria's PCR proceeding and was therefore unable to challenge the court's decision. ADOC is a governmental entity and as such has no powers outside of those explicitly granted by its enabling statute. *McKee v. State*, 241 Ariz. 377, 384, ¶ 28 (App. 2016) ("Governmental entities have no inherent power and possess only those powers and duties delegated to them by their enabling statutes." (citation omitted)). The State, however, had a right to challenge the decision, yet failed to do so.

CONCLUSION

¶18 Because Judge LeMaire correctly upheld the May 2020 Order by directing ADOC to initiate parole proceedings for Renteria, we accept jurisdiction and deny relief.

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