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

DIVISION ONE
FILED: 12/16/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellant,	1 CA-CR 09-0851
v.	DEPARTMENT D
ANDREW ALLAN PROCTOR, Appellee.	**MEMORANDUM DECISION** (Not for Publication - Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR 1999-001027

The Honorable Warren J. Granville

AFFIRMED

William G. Montgomery, Maricopa County Attorney — Phoenix
By Lisa Marie Martin, Deputy County Attorney,
Attorneys for Appellant

James J. Haas, Maricopa County Public Defender — Phoenix
By Eleanor S. Terpstra, Deputy Public Defender,
Attorneys for Appellee

W I N T H R O P, Presiding Judge

¶1 The State appeals from the trial court's October 29, 2009 order modifying the terms of probation for Andrew Allan Proctor ("Appellee") and ordering the Adult Probation Office ("the APO") to calculate whether probation has been completed and to submit an order of discharge if warranted. The State argues that the trial court abused its discretion and misapplied the law by failing to review the APO's order of discharge under Rule 32 of the Arizona Rules of Criminal Procedure and then erred in actually modifying the order. For the following reasons, we affirm the trial court's order.

FACTS AND PROCEDURAL HISTORY

¶2 On September 22, 1999, Appellee entered into a plea agreement. Appellee pled guilty to Amended Counts 3 and 6, attempted sexual conduct with a minor, class three felonies. Both offenses were committed on or between August, 1995 and September, 1997. The court accepted the plea agreement and on November 2, 1999, it placed Appellee on lifetime probation for both Amended Counts 3 and 6 and, as a term of the probation, Appellee was required to serve a total of two years' incarceration in county jail.

¶3 In November, 2008, the Arizona Supreme Court held in *State v. Peek*, 219 Ariz. 182, 183, ¶8, 195 P.3d 641, 642 (2008), that lifetime probation imposed between January 1, 1994 and July 21, 1997, ("the *Peek* period") for convictions of attempted child

molestation were unauthorized by statute, and therefore, illegal. *Peek*, 219 Ariz. at 185, ¶ 20, 195 P.3d at 644. Accordingly, the APO requested an order of discharge of Appellee's probation based on the holding in *Peek*. Both Amended Counts 3 and 6 include a range of dates that straddle the *Peek* period, extending beyond the end of the *Peek* period by over a month.

¶4 A hearing was held on September 2, 2009, and the court ordered a subsequent hearing to allow the State to prove that Appellee's offenses under Amended Counts 3 and 6 occurred outside of the *Peek* period. The subsequent hearing was held on October 23, 2009, and the State presented no further evidence. Accordingly, on October 29, 2009, the court ordered a modification of Appellee's probation, decreasing the period of each probation from lifetime to five years.[1] The court also directed the APO to calculate whether the modified probation term had been completed, and if so, ordered that the probation be discharged. This appeal followed.

JURISDICTION

¶5 The State contends that we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-

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[1] A term of five years' probation was the maximum term of probation available for Appellee's offense during the *Peek* period.

4032(4) (2010). Without deciding whether we have jurisdiction under those statutes, we instead exercise our discretion to accept special action jurisdiction pursuant to A.R.S. § 12-120.21(A)(4) and Arizona Rules of Procedure for Special Actions 8(a). Special action jurisdiction is proper when "an issue is one of first impression of a purely legal question, is of statewide importance, and is likely to arise again . . . ." *Vo v. Superior Court In and For County of Maricopa*, 172 Ariz. 195, 198, 836 P.2d 408, 411 (App. 1992); *see also Summerfield v. Superior Court In and For County of Maricopa*, 144 Ariz. 467, 469, 698 P.2d 712, 714 (1985) (accepting special action jurisdiction when several pending cases involved the same issue and finding that "[n]ormal appellate procedures will result in unnecessary cost and delay to all litigants"). In the instant case, the State asks us to resolve an issue of first impression that is a pure legal issue of statewide importance. Further, multiple cases involving the same issues are either presently before us or pending, rendering normal appellate procedures inefficient. Accordingly, these factors lead us to conclude that accepting special action jurisdiction in this case is appropriate.

ANALYSIS

¶6 In *State v. Dean*, 1 CA-CR 09-0705, 2010 WL 5014334 (Ariz. App. Dec. 7, 2010) (refiled as amended Dec. 9, 2010),

this court already considered a similar fact scenario and rejected virtually identical arguments as those presented in this case. The State has not presented any new or unique arguments and we find no reason here to depart from our holding in *Dean*.

CONCLUSION

¶7 For the aforementioned reasons, we affirm the trial court's order modifying Appellee's periods of probation.

/S/
LAWRENCE F. WINTHROP, Presiding Judge

CONCURRING:

/S/
PATRICIA K. NORRIS, Judge

/S/
PATRICK IRVINE, Judge