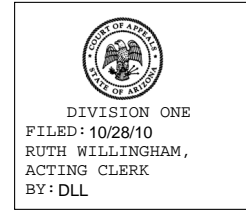


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



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

CHRIS R. CAPLANIS,) 1 CA-CV 09-0519
)
Petitioner/Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
HONORABLE GEORGE T. ANAGNOST, Judge) Rule 28, Arizona Rules
of the Municipal Court of the City) of Civil Appellate
of Peoria; STATE OF ARIZONA, Real) Procedure)
)
Party in Interest,)
)
Respondents/Appellees.)

Appeal from the Superior Court in Maricopa County

Cause No. LC2009-000429-001 DT

The Honorable Paul J. McMurdie, Judge

AFFIRMED

Chris R. Caplanis Black Canyon City
Petitioner/Appellant in propria persona

Office of the City Attorney City of Peoria Peoria
By Stephen M. Kemp, City Attorney
Michael S. Wawro, Assistant City Attorney
Attorneys for the City of Peoria

I R V I N E, Judge

¶1 Petitioner/Appellant Chris R. Caplanis appeals the superior court's refusal to accept jurisdiction over his special action. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 On April 12, 2009, Caplanis was convicted of disorderly conduct in the City of Peoria Municipal Court. Caplanis filed a notice of appeal from the conviction on May 4, 2009. That same day, Caplanis filed a financial statement with the city court and requested that the court grant him a waiver of the cost of preparing a transcript of his trial. The city court noted that Caplanis' request did not establish a prima facie showing of indigence and denied his request for a waiver of the costs of a transcript.

¶3 On June 18, 2009, Caplanis filed a petition for special action in the superior court. He alleged that because the city court had refused his request for a waiver, and he was unable to afford a certified transcript, he could not seek appellate review of his conviction. Before Respondent/Appellee the Honorable George T. Anagnost, Judge of the City of Peoria Municipal Court, or Real Party in Interest/Appellee State of Arizona filed a response, the superior court declined jurisdiction over Caplanis' special action. Caplanis timely appealed.

DISCUSSION

¶4 Caplanis alleges the superior court erred in refusing to accept jurisdiction of his special action. When the superior court declines jurisdiction of a non-statutory special action

and therefore does not reach the merits of the case, we determine only whether the court abused its discretion in declining jurisdiction. *Files v. Bernal*, 200 Ariz. 64, 65, ¶ 2, 22 P.3d 57, 58 (App. 2001).¹ Special action jurisdiction is appropriate when there is no "equally plain, speedy, and adequate remedy by appeal." Ariz.R.P.Spec.Act. 1(a).

¶15 Caplanis contends the superior court abused its discretion because, as an indigent, he is entitled to a waiver of the fee for a certified copy of the criminal trial transcript and without such transcript he cannot properly challenge his conviction on appeal. Arizona Rule of Criminal Procedure 31.5 allows a defendant who did not proceed as an indigent in the trial court to do so on appeal if he files in the trial court a request to proceed as an indigent and a sworn questionnaire regarding his financial resources. Ariz.R.Crim.P. 6.4(b) & 31.5(a)(2). The rule states that the court shall require the defendant to appear for an inquiry regarding his ability to pay and shall grant or deny the request within three days. Ariz.R.Crim.P. 31.5(a)(2).

¹ Although Caplanis sometimes refers to his action as a "statutory special action," in his appellate brief, no statute expressly authorizes proceedings under certiorari, mandamus, or prohibition for the issue raised in his petition, and it was therefore a non-statutory special action. Ariz.R.P.Spec.Act. 1(a) & (b); *Circle K Convenience Stores, Inc. v. City of Phoenix*, 178 Ariz. 102, 103, 870 P.2d 1198, 1199 (App. 1993).

¶6 Caplanis argues that once the trial court denied his request, he had no other remedy and the denial jeopardized his appeal from his conviction because he needs the transcript for that proceeding. Rule 31.5(c) provides a prompt review procedure when a trial court does not allow a defendant to proceed as an indigent. The rule allows a defendant whose petition to proceed as an indigent on appeal has been rejected by the trial court to file a petition to so proceed, supported by a sworn financial questionnaire, in the appellate court. *Id.* Thus, Caplanis has an equally plain, speedy, and adequate remedy, and special action jurisdiction would not be appropriate. Ariz.R.P.Spec.Act. 1(a). The superior court did not abuse its discretion when it declined jurisdiction over Caplanis' petition for special action.

CONCLUSION

¶7 For the foregoing reasons, we affirm.

/s/

PATRICK IRVINE, Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Presiding Judge

/s/

PATRICIA K. NORRIS, Judge