

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: 10-28-2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JOHN P. BAKER,)
)
Petitioner,) No. 1 CA-SA 10-0133
)
v.) DEPARTMENT C
)
THE HONORABLE BETHANY G. HICKS) Maricopa County
and THE HONORABLE GEORGE H.) Superior Court
FOSTER, JR., Judges of the) No. CV 2008-018832
SUPERIOR COURT OF THE STATE OF)
ARIZONA, in and for the County)
of MARICOPA,) **DECISION ORDER**
)
Respondent Judges,)
)
STATE OF ARIZONA,)
)
Real Party in Interest.)
_____)

The Court, Presiding Judge Diane M. Johnsen and Judges Patricia K. Norris and Donn Kessler participating, has received and considered Petitioner's motion to reinstate the special action filed on June 9, 2010, the response and the reply.

With his "Motion to File Late (Second) Notice of Appeal," filed in the superior court on July 8, 2010, petitioner provided a declaration under penalty of perjury that he mailed his notice of appeal on November 16, 2009. In response to petitioner's "Motion," real party in interest State of Arizona did not object

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to the relief petitioner sought. To the contrary, the State noted that former defense counsel received a copy of petitioner's notice of appeal on November 18, 2009, and the envelope indicated the notice of appeal had been mailed on November 17, 2009. With its response to the "Motion," the State filed a copy of "legal outgoing mail logs" for the prison complex in which petitioner resided and observed that they showed that petitioner mailed unspecified items to defense counsel, the court of appeals and the superior court on November 16, 2009. (The mail logs also showed that petitioner mailed 41 different pieces of legal mail from November 1, 2009 through December 1, 2009, and the State represented that at that time, petitioner had six different cases pending against defendants represented by the Attorney General's Office.)

Pursuant to *Mayer v. State*, 184 Ariz. 242, 245, 908 P.2d 56, 59 (App. 1995), petitioner has established a colorable claim that he timely filed his notice of appeal by delivering it to proper prison authorities within the required timeframe. Accordingly, the court "shall hold an evidentiary hearing on this issue." *Id.*

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We exercise our discretion to accept jurisdiction of the petition for special action because petitioner has no adequate remedy by appeal.

For the reasons stated above, **IT IS ORDERED** granting relief insofar as we direct the superior court to set an evidentiary hearing to determine whether petitioner timely filed his notice of appeal by delivering it, properly addressed, to proper prison authorities within the time for appeal.¹

DIANE M. JOHNSEN, Presiding Judge

¹ On its own motion, the court has modified the caption of the special action to include as a respondent the superior court judge that denied petitioner's "Motion to File Late (Second) Notice of Appeal."