

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

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 09/07/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

GARY PAGE,) 1 CA-SA 10-0171
)
Petitioner,) DEPARTMENT E
)
v.) Maricopa County
) Superior Court
THE HONORABLE PAUL MCMURDIE,)
Judge of the SUPERIOR COURT) No. CR2009-006062-001DT
OF THE STATE OF ARIZONA, in)
and for the County of MARICOPA,)
)
Respondent Judge,) **DECISION ORDER**
)
)
STATE OF ARIZONA)
)
Real Party in Interest.)
_____)

This special action came on regularly for conference this 31st day of August, 2010, before Presiding Judge Sheldon H. Weisberg and Judges Peter B. Swann and Jon W. Thomson participating and the matter was taken under advisement.

This special action involves an order of the trial court granting in part Petitioner's third motion to remand to the grand jury for a redetermination of probable cause, but denying his motion to dismiss the indictment with prejudice.

Because Petitioner has no equally plain, speedy and remedy by appeal, we grant review. Ariz. R. Spec. Act. 8.

The parties have set forth in detail the procedural background of this case. Petitioner seeks relief from the trial court's order denying his motion to dismiss the third indictment with prejudice on the ground of prosecutorial misconduct. Petitioner claims the State's alleged misconduct during this grand jury proceeding was "continuous," "extensive" and "blatant" and that the State "willfully disregarded" a prior order of this Court. Petitioner contends that the only appropriate remedy is to impose the "extreme sanction of dismissal with prejudice" and requests that this court reverse the trial court's order denying his motion to dismiss with prejudice.

Generally this court does not accept special action review of a denial of a defendant's motion to dismiss a charge filed against him. *Snow v. Superior Court*, 183 Ariz. 320, 322, 903 P.2d 628, 630 (App. 1995). We review a trial court's decision whether to dismiss an indictment with prejudice on the ground of prosecutorial misconduct for an abuse of discretion. *State v. Trani*, 200 Ariz. 383, 384, ¶ 5, 26 P.3d 1154, 1155 (App. 2001). In order to dismiss an indictment with prejudice based on prosecutorial misconduct, the misconduct must be consistent or egregious. *Maretick v. Jarrett*, 204 Ariz. 194,

199, n. 5, ¶ 20, 62 P.3d 120, 125 (2003). See also *Pool v. Superior Court*, 139 Ariz. 98, 109, 677 P.2d 261, 272 (1984) (holding that dismissal of indictment warranted when prosecutor intentionally engaged in misconduct that was egregious and did so with intent to prejudice the defendant).¹

Our review of the record supports the trial court's order granting the motion to remand to the grand jury for a redetermination of probable cause on the ground stated. The record does not support Petitioner's claim that the State engaged in alleged misconduct during the third grand jury proceeding that was continuous, willful or egregious. The trial court did not abuse its discretion in denying Petitioner's motion to dismiss the indictment with prejudice.

IT IS ORDERED accepting jurisdiction of this special action, but denying relief.

 /s/
SHELDON H. WEISBERG
Presiding Judge

¹The duty of a grand jury is to determine whether probable cause exists to believe that a crime was committed and that the individual being investigated committed it. *State v. Baumann*, 125 Ariz. 404, 409, 610 P.2d 38, 43 (1980). Grand jurors have a right to hear all relevant, non-protected evidence that bears on a case. *Maretick*, 204 Ariz. at 197, ¶ 9, 62 P.3d at 123. However, a grand jury is not required to consider all exculpatory evidence as that would "put grand juries in the business of holding minitrials." *Baumann*, 125 Ariz. at 408-09, 610 P.2d at 42-43.