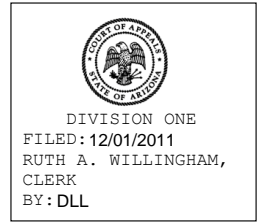


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



STATE OF ARIZONA, ) 1 CA-CR 10-0663  
)  
Appellee, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
SHAWN MICHAEL PETRIE, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Yavapai County

Cause No. P1300CR200901250

The Honorable Ralph Matthew Hess, Judge *Pro Tempore*

**APPEAL DISMISSED**

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Thomas C. Horne, Arizona Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel,  
Criminal Appeals/Capital Litigation Section  
And Melissa M. Swearingen, Assistant Attorney General  
Attorneys for Appellee

Abigail Jensen, P.C. Prescott  
By Abigail Jensen  
Attorney for Appellant

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**W I N T H R O P**, Chief Judge

¶1 Appellant, Shawn Michael Petrie, raises only one issue on appeal, which is whether the trial court erred "in attempting to retain jurisdiction over the award of restitution after

sentencing appellant to prison." For the reasons that follow, we conclude this issue is not ripe for consideration; accordingly, we dismiss this appeal.

¶12 A jury convicted Petrie of theft of property with a value of \$1,000 or more, but less than \$2,000, a class six felony. The trial court found that Petrie had two historical prior felony convictions and sentenced him to a mitigated term of three years in prison. Because of imprecise information about the amount owed in restitution, the court retained jurisdiction over restitution.<sup>1</sup> Insofar as the record on appeal reflects, the court has neither conducted a hearing to determine the amount of restitution owed nor ordered Petrie to pay any amount of restitution. Petrie filed a timely notice of appeal.

¶13 We would usually have jurisdiction to hear this appeal under A.R.S. §§ 12-120.21(A)(1) (2003) and 13-4033(A)(1) (2010). In the absence of any restitution order, however, Petrie's claim that the court erred in retaining jurisdiction over restitution is not ripe for our consideration; any opinion we might render would be premature and wholly advisory. Because Petrie has not yet suffered any actual injury from the court's retention of

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<sup>1</sup> The trial court relied on Arizona Revised Statutes ("A.R.S.") section 13-4436(B) (2010) to support the existence of continuing jurisdiction. We also note that A.R.S. § 12-123(B) (2003) provides the superior court and its judges "shall have all powers and may issue all writs necessary to the complete exercise of its jurisdiction."

jurisdiction over restitution, the issue he raises in this appeal remains theoretical, abstract, and hypothetical. "We will not render advisory opinions anticipative of troubles which do not exist; may never exist; and the precise form of which, should they ever arise, we cannot predict." *Velasco v. Mallory*, 5 Ariz. App. 406, 410-11, 427 P.2d 540, 544-45 (1967) (citations omitted). If the court later orders restitution, Petrie can appeal the restitution order as appropriate. See A.R.S. § 13-4033(A)(3) (providing that a defendant may appeal from "[a]n order made after judgment affecting the substantial rights of the party"); *State v. Vargas-Burgos*, 162 Ariz. 325, 327, 783 P.2d 264, 266 (App. 1989) ("A question regarding the court's lack of jurisdiction over the subject matter [] may be raised at any time, including on appeal." (citations omitted)). At this time, however, the issue is not ripe for consideration; accordingly, we decline to address it and dismiss this appeal.

\_\_\_\_\_/S/\_\_\_\_\_  
LAWRENCE F. WINTHROP, Chief Judge

CONCURRING:

\_\_\_\_\_/S/\_\_\_\_\_  
DIANE M. JOHNSEN, Presiding Judge

\_\_\_\_\_/S/\_\_\_\_\_  
PATRICIA A. OROZCO, Judge