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

MARK STEVEN CZUPRYN, Plaintiff/Appellant, v. HONORABLE THOMAS BRADY, Justice of the Peace of the Bullhead City Justice Court of the State of Arizona, Respondent Judge/Appellee, and STATE OF ARIZONA, Real Party in Interest/ Appellee.	No. 1 CA-CV 10-0892 DEPARTMENT A **MEMORANDUM DECISION** (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Mohave County

Cause No. CV2010-01544

The Honorable Lee Frank Jantzen, Judge

REVERSED AND REMANDED WITH INSTRUCTIONS

John A. Pecchia, Mohave County Public Defender — Kingman
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T I M M E R, Presiding Judge

¶1 Mark Steven Czupryn appeals the superior court's judgment declining jurisdiction over his special action complaint, which challenges a justice court's order that he serve time in the Mohave County Jail. For the reasons that follow, we hold that the superior court erred by declining jurisdiction. We therefore reverse and remand with instructions for the court to accept jurisdiction and consider the merits of Czupryn's special action complaint.

BACKGROUND

¶2 On April 17, 2009, Czupryn pled guilty to super extreme driving under the influence in violation of Arizona Revised Statutes ("A.R.S.") section 28-1382(A)(2) (Supp. 2009). Among other things, a person convicted under this provision must spend at least forty-five consecutive days in jail and is not eligible for probation or suspension of sentence until completion of the jail term. A.R.S. § 28-1382(D)(1). The Bullhead City Justice Court imposed sentence on Czupryn, including a forty-five day jail term.[1] An order of commitment directed to the Mohave County Sheriff contained a notation by

[1] According to the State, the court also sentenced Czupryn to twelve months unsupervised probation, participation in alcohol counseling in California, and payment of a $3,198.40 fine plus fees and assessments. The record provided with the special action complaint does not reflect these aspects of Czupryn's sentence.

the court that Czupryn, "MAY DO JAIL TIME IN L.A. COUNTY JAIL IF THEY ACCEPT HIM. IF NOT, MUST RETURN TO MOHAVE COUNTY FOR A NEW JAIL COMMIT." The court additionally checked a box indicating that Czupryn was work-release eligible and that "[i]t is the jail staff who will make a final determination if work release is granted." Nothing in the order reflected that Czupryn was ineligible for early release or directed work-release conditions.[2] The order further directed Czupryn to present the order when he reported to the jail.

¶3 On May 19, Czupryn reported to the Los Angeles County Jail ("Jail") and presumably presented the order of commitment. The Jail accepted him, they entered into a "Work in Lieu of Confinement Agreement," and Czupryn paid a fee of $519.43 to the Jail. The Jail allowed Czupryn to spend his non-working hours in home confinement. Czupryn served twenty-three days under this arrangement before the Jail granted him twenty-two days off for good time credits. On July 24, the Los Angeles County Sheriff's Office sent a letter to the Bullhead City Justice Court informing it that Czupryn had been booked into the Jail to serve an eleven-day sentence, and had "successfully completed

[2] The justice court could have imposed appropriate restrictions on Czupryn's confinement by making notations in the order of commitment. For example, as Czupryn points out, the superior court in Mohave County uses a form entitled, "ATTACHMENT – JAIL TIME" that contains conditions to check as applicable, such as ineligibility for good time credits and a requirement to serve a jail sentence in a consecutive block.

his sentence as ordered by the Court." The Sheriff's Office notified the justice court on May 18, 2010 that Czupryn had actually served twenty-three days in jail and that "certain inmates are allowed to do only part of their jail sentence unless it's specified directly in the jail commit order that an individual needs to do straight/complete time."

¶4 On May 19, the justice court ordered Czupryn to both appear and demonstrate how he did not violate the original order of commitment or spend twenty-two additional days in jail.[3] Five days later, Czupryn responded he had completed his sentence in Los Angeles County and referred the court to papers sent by the Jail to reflect completion of the sentence. On June 15, the court entered another order to show cause stating that Czupryn's failure to spend time in the Jail during non-working hours and his early release violated A.R.S. § 28-1382(D)(1). The court directed Czupryn to appear on July 2 and explain how he had served the sentence. The court further stated that, assuming it determines he did not comply with the order of commitment, it would order him to serve forty-five consecutive days in the Mohave County Jail. Czupryn attests and the State does not directly dispute that at the July 2 hearing, the court orally

[3] The order to show cause asks Czupryn to justify his disobedience of the court's "Order of 05-19-2010," which is actually the date of the order to show cause. Like the parties, we presume the court referred to the April 17, 2009 order of commitment.

ordered him to serve forty-five consecutive days in the Mohave County Jail (the "July 2 Order").[4] The court stayed the order pending the outcome of Czupryn's planned special action.

¶5 On July 14, Czupryn sought special action relief in the superior court. The court denied jurisdiction but stated nevertheless that "[p]etitioner did not serve a sentence in California consistent with the sentence ordered" and "that the [p]etitioner has not raised a colorable claim." This timely appeal followed. We have jurisdiction pursuant to A.R.S. § 12-2101(B) (2003).[5]

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[4] In responding to Czupryn's double jeopardy argument, the State contends the justice court "is seeking 22 more days of incarceration with a potential credit for the days where the defendant completed work release." A subsequent order to show cause attached to the State's brief, however, states the justice court is seeking forty-five days' incarceration in the Mohave County Jail. Regardless, whether the justice court has entered the July 2 Order or stated its intention to do so at the July 2 hearing but stayed the matter before entry of the order, the analysis of the special action issues remains the same. *See* Ariz. R.P. Spec. Act. 3(b) (providing that proper question in special action is "[w]hether the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority").

[5] The State argues we lack jurisdiction in light of A.R.S. § 22-375 (2002), which specifies what cases originating in justice court can be appealed further to this court. That statute is inapplicable because Czupryn appeals from a *special action* complaint filed in the superior court and not an *appeal* to the superior court. *See* Ariz. R.P. Spec. Act. 8(a) ("A decision of a Superior Court in a special action shall be reviewed by appeal where there is an equally plain, speedy, and adequate remedy by that means.").

DISCUSSION

¶6 The scope of our review on appeal from a special action judgment depends on whether the superior court exercised discretion to accept jurisdiction. *Bilagody v. Thorneycroft*, 125 Ariz. 88, 92, 607 P.2d 965, 969 (App. 1979). If the superior court accepted jurisdiction, this court properly reviews the merits of the special action. *Id.* If not, as is the case here, the sole issue before us is whether the superior court abused its discretion by declining jurisdiction. *Id.* The court abused its discretion if it acted in an unreasonable manner or rested its decision on untenable grounds. *Quigley v. Tucson City Court*, 132 Ariz. 35, 37, 643 P.2d 738, 740 (App. 1982).

¶7 A special action is only available when there is no "equally plain, speedy, and adequate remedy by appeal." Ariz. R.P. Spec. Act. 1(a). Because Czupryn waived his right to appeal as part of his plea agreement, a special action complaint is his only method of pursuing relief. A.R.S. § 13-4033(B) (2010) ("In noncapital cases a defendant may not appeal from a judgment or sentence that is entered pursuant to a plea agreement . . . ."). Further, whether a judicial officer is acting in "excess of his jurisdiction or legal authority" - as Czupryn argues the justice of the peace did by issuing the July 2 Order - is a proper issue for special action relief. Ariz.

R.P. Spec. Act. 3(b). Although Czupryn facially meets the criteria for a permissible special action, we must determine whether he presents a meritorious claim for relief in order to decide whether the superior court erred by declining to accept jurisdiction.

¶8 Czupryn initially alleges in his special action complaint that the justice court exceeded its jurisdiction by entering the July 2 Order because it effectively modified his sentence in violation of Arizona Rule of Criminal Procedure ("Rule") 24.3. Rule 24.3 provides that an unlawful sentence, or one imposed in an unlawful manner, can be corrected by the court only within sixty days of entry of judgment. Czupryn contends the justice court imposed an unlawful sentence by failing to specify in the order of commitment that he must serve forty-five consecutive days in jail as mandated by A.R.S. § 28-1382(D)(1). *See State v. Dawson*, 164 Ariz. 278, 281, 792 P.2d 741, 744 (1990) (stating that "failure to impose a sentence in conformity with the mandatory provisions of the sentencing statute makes that sentence 'illegal.'"). Because the justice court entered the July 2 Order more than sixty days after imposition of sentence, Czupryn argues the court violated Rule 24.3. We disagree.

¶9 The order of commitment is not a sentencing judgment; rather, it is an order entered to implement the jail-time aspect

of the sentence. Indeed, Czupryn's sentence purportedly included terms other than jail time, *see supra* note 1, and these terms are not reflected in the order of commitment. Czupryn did not include the judgment imposing sentence with his special action complaint. Thus, the superior court could not know whether the justice court imposed a sentence in violation of § 28-1382(D)(1). Ariz. R.P. Spec. Act. 7(e) (petition "shall be supported by an appendix of documents in the record before the trial court that are necessary for a determination of the issues raised by the petition[]. Because Czupryn did not present a meritorious claim that the justice court violated Rule 24.3, the superior court did not err by declining jurisdiction to consider this claim.

¶10 Czupryn also alleges in his special action complaint that the justice court exceeded its authority because Czupryn had completed his sentence, and the July 2 Order therefore effectively increased his sentence and violated double jeopardy principles. *See State v. Welch*, 198 Ariz. 554, 555, ¶ 6, 12 P.3d 229, 230 (App. 2000) (citations omitted) (holding that the state and federal constitutions both forbid "multiple punishments for the same offense"). The State counters that Czupryn never completed his sentence, so the July 2 Order was merely a reaffirmation of the jail term originally imposed, and double jeopardy principles are not implicated.

¶11 The Arizona Supreme Court's decision in *Schwichtenberg v. State*, 190 Ariz. 574, 578, ¶ 21, 951 P.2d 449, 453 (1997), is instructive in deciding whether Czupryn completed his sentence. In *Schwichtenberg*, a criminal defendant was convicted of committing burglary offenses while on parole from a prison sentence imposed for embezzlement. *Id*. at 575, ¶ 2, 951 P.2d at 450. The court revoked his parole and ultimately sentenced the defendant to a prison term for the burglary convictions to be served consecutively with the embezzlement sentence. *Id*. By mistake on the part of the court or the Department of Corrections ("DOC"), the sentencing order for the burglary convictions was not followed, the DOC released the defendant after completion of the embezzlement sentence and later discharged him from DOC supervision. *Id*. at ¶ 3. When the mistake was discovered nearly ten years later, the DOC ordered the defendant to report to serve his burglary sentence. *Id*. at 575-76, ¶¶ 4-5, 951 P.2d at 450-51.

¶12 The superior court accepted jurisdiction of the defendant's subsequently filed special action complaint but denied relief because the defendant "knew or reasonably should have known that his release was premature," and this court affirmed. *Id*. at ¶¶ 6-7, 9. The supreme court vacated the court of appeals' decision and reversed the superior court's judgment. *Id*. at 579, ¶ 26, 951 P.2d at 454. The court

reasoned that under the "installment theory" followed in Arizona, an inmate mistakenly released through no fault of the inmate must be credited with the time he was illegally paroled and granted any good time credits that would have been earned had he remained incarcerated. *Id*. at 578, ¶¶ 20-21, 951 P.2d at 453. An inmate's failure to point out the error to DOC at the time of premature release is not considered "fault" that would deny him credit. *Id*. at 579, ¶ 24, 951 P.2d at 454. Because the defendant's time at liberty exceeded his sentence, the *Schwichtenberg* court held that DOC was barred from reincarcerating him. *Id*. at ¶ 25.

¶13 Like the defendant in *Schwichtenberg*, Czupryn was prematurely released from his jail term and the Jail reported he had completed his sentence. The record does not reflect that this premature release occurred due to any fault by Czupryn. Similarly, the record does not reflect that the Jail's conditions for work release, i.e., home confinement during non-working hours, were mistakenly imposed through any fault of Czupryn. As stated in *Schwichtenberg*, Czupryn was under no legal obligation to inform the Jail it had incorrectly carried out the conditions of his sentence. The time since Czupryn's release until the July 2 Order exceeded the forty-five day jail term. If the release occurred through no fault of his, Czupryn has served his jail term, and the justice court cannot impose

additional jail time without violating principles of double jeopardy. Consequently, Czupryn's allegation that the justice court exceeded its authority by entering the July 2 Order is meritorious on its face and as reflected in the limited record before us.

¶14 Based on the foregoing, we decide the superior court erred by declining jurisdiction over the special action complaint because Czupryn is constitutionally entitled to relief absent evidence of fault on his part. We therefore reverse and remand with instructions for the court to accept jurisdiction, develop the record as necessary, and decide the merits of the complaint as it concerns the alleged double jeopardy violation.

/s/
Ann A. Scott Timmer, Presiding Judge

CONCURRING:

/s/
Daniel A. Barker, Judge

/s/
Patrick Irvine, Judge