IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

NEKO ANTHONY WILSON, *Petitioner*,

v.

THE HONORABLE ROBERT HIGGINS, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of NAVAJO, *Respondent Judge*,

STATE OF ARIZONA ex rel. BRAD CARLYON, Navajo County Attorney, *Real Party in Interest*.

No. 1 CA-SA 20-0095

FILED 6-30-2020

Petition for Special Action from the Superior Court in Navajo County
No. S0300CR20050518
The Honorable Robert J. Higgins, Judge

JURISDICTION ACCEPTED; RELIEF GRANTED; REMANDED

COUNSEL

Law Office of Lee Phillips, P.C., Flagstaff
By Lee B. Phillips
Counsel for Petitioner

Navajo County Attorney's Office, Holbrook
By Joel H. Ruechel, Michael R. Shumway
Counsel for Real Party in Interest

OPINION

Judge Maria Elena Cruz delivered the opinion of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge David B. Gass joined.

C R U Z, Judge:

¶1 Neko Anthony Wilson ("Wilson") seeks special action relief from a superior court order holding him without bail pending disposition of a petition to revoke his probation. Because Arizona Rule of Criminal Procedure ("Rule") 27.7(c) no longer requires the court to apply Rule 7.2(c) when it determines whether to release a probationer arrested pursuant to a petition to revoke probation, we accept jurisdiction, grant relief, and remand for further proceedings.

FACTUAL AND PROCEDURAL HISTORY

¶2 In 2006, Wilson was placed on four years of probation after he was convicted of transportation of marijuana for sale, a Class 3 felony.

¶3 Three years later, Wilson absconded from probation supervision. Around that same time, he was arrested and charged with felony murder and robbery in California. Shortly after Wilson was arrested in California, the State of Arizona filed a petition to revoke his probation, and the Arizona Superior Court issued a warrant for his arrest. In 2018, a California court dismissed the felony murder charges against Wilson. He pleaded guilty to two counts of armed robbery, was sentenced to time served, granted parole, and was released.

¶4 A few months later, Wilson appeared before the Arizona Superior Court and denied the allegations in the petition to revoke his probation. The State asked the court to order Wilson be held without bail pending disposition of the petition pursuant to Rule 7.2(c)(1)(A). The court agreed, ordering Wilson "shall be held without bail pursuant to Rule 7.2(c)." He was taken into custody and has remained in jail since then. After filing various unsuccessful motions for release, Wilson filed an emergency motion for temporary release pending special action review and/or disposition of probation revocation proceedings, alleging the worldwide COVID-19 pandemic and his own health conditions required he be released. The superior court ruled that Wilson's petition for review of

the denial of his motion to dismiss the petition to revoke probation, currently pending before the Arizona Supreme Court, divested the superior court of jurisdiction to hear any matter and affirmed its prior orders holding him without bail pursuant to Rule 7.2(c).

¶5 Wilson timely filed this petition for special action review from the superior court's order to hold him in custody without bail.

SUPERIOR COURT JURISDICTION

¶6 Although not raised by either party, we address as a threshold matter the superior court's ruling that it lacked jurisdiction to hear Wilson's request for expedited release from custody because his petition for review of the denial of his motion to dismiss the petition to revoke probation was pending before the Arizona Supreme Court.

¶7 As a general rule, "when an appeal to a higher court has been perfected, the trial court loses all jurisdiction except for actions in furtherance of the appeal." *In re Estate of Killen*, 188 Ariz. 569, 572 (App. 1996) (citing *State v. O'Connor*, 171 Ariz. 19, 21 (App. 1992) ("A trial court may not render any decision that would defeat or usurp an appellate court's jurisdiction of a case on appeal.")). In *Continental Casualty Co. v. Industrial Commission*, 111 Ariz. 291 (1974), however, the Arizona Supreme Court held the general rule does not prevent the superior court from proceeding in any respect while an appeal is pending. Quoting *Castillo v. Industrial Commission*, 21 Ariz. App. 465, 467-69 (1974), the *Continental Casualty* court explained "this general principle is subject to many equally well established exceptions," noting the following:

> A review of the[se] 'exceptions' . . . reveals that in actuality they are not exceptions, but are well-reasoned applications of the rationale which led to the formulation and adoption [b]y the courts of the general principle in the first instance. This rationale is . . . as follows:
>
> The jurisdiction of this court when properly invoked must be protected. It cannot be defeated or usurped to the extent that its decision when rendered be nugatory.
>
> By allowing the trial court to proceed with issues not directly involved in, or the subject matter of the appeal, the jurisdiction of the appellate court is adequately protected, and at the same time the trial court proceedings are not inordinately delayed pending the appellate decision.

Cont'l Cas. Co., 111 Ariz. at 294 (citations omitted).

¶8 Wilson's request for review of his release conditions does not relate to and will not interfere with the supreme court's resolution of the issues in his petition for review of the denial of his motion to dismiss the petition to revoke his probation. Because the superior court's ruling on release conditions would not defeat or usurp the supreme court's ultimate decision on the motion to dismiss, the filing of the petition for review did not divest the superior court of jurisdiction to entertain Wilson's request for release.

SPECIAL ACTION JURISDICTION

¶9 Special action review is proper when a party has no "equally plain, speedy, and adequate remedy by appeal." Ariz. R.P. Spec. Act. 1(a). Our decision to accept special action jurisdiction is discretionary. *State ex rel. Montgomery v. Rogers*, 237 Ariz. 419, 421, ¶ 5 (App. 2015). The exercise of jurisdiction is "appropriate in matters of statewide importance, issues of first impression, cases involving purely legal questions, or issues that are likely to arise again." *State ex rel. Romley v. Martin*, 203 Ariz. 46, 47, ¶ 4 (App. 2002).

¶10 Wilson is being held without bail pending the disposition of the petition to revoke his probation. As the State concedes, once the petition to revoke is resolved, Wilson's detention without bail will be a moot issue. For that reason, Wilson has no adequate remedy by appeal. *See Fragoso v. Fell*, 210 Ariz. 427, 429, ¶ 3 (App. 2005). Additionally, whether the superior court may hold a probationer who has allegedly violated his probation conditions without bail is a question of law and a matter of first impression under Rule 27.7(c), as amended effective January 1, 2018. Accordingly, we accept special action jurisdiction.

DISCUSSION

¶11 Rule 7.2(c)(1)(A) states that "[b]efore sentencing," when "a defendant is convicted of an offense for which the defendant will, in all reasonable probability, receive a sentence of imprisonment, the court may not release the defendant on bail or on the defendant's own recognizance unless" the following circumstances exist:

> (i) the court finds that reasonable grounds exist to believe that the conviction may be set aside on a motion for new trial, judgment of acquittal, or other post-trial motion; or

> (ii) the parties stipulate otherwise and the court approves the stipulation.

Ariz. R. Crim. P. 7.2(c).

¶12 The State argues the superior court did not err in denying bail to Wilson under this provision. Wilson, however, contends Rule 7.2 has no application here. He argues the court erred in ordering him held pursuant to Rule 7.2(c) because Rule 27.7(c) requires the court to "make a release determination" at the initial appearance of a probationer arrested on a petition to revoke probation without regard to the conditions imposed by Rule 7.2. [1]

¶13 We review the interpretation of the Arizona Rules of Criminal Procedure *de novo*, "using principles of statutory construction." *Fragoso*, 210 Ariz. at 430, ¶ 7. "We interpret statutes and rules in accordance with the intent of the drafters, and we look to the plain language of the statute or rule as the best indicator of that intent." *Id.* "If the language of a rule is ambiguous, however, we may consider 'a variety of elements, including the rule's context, the language used, the subject matter, the historical background, the effects and consequences, and its spirit and purpose,' to determine the framers' intent." *Haroutunian v. Valueoptions, Inc.*, 218 Ariz. 541, 544, ¶ 6 (App. 2008) (quoting *State ex rel. Romley v. Superior Court*, 168 Ariz. 167, 169 (1991)).

¶14 Until January 1, 2018, Rule 27.7 stated the following:

> At the initial appearance, the court must advise the probationer of the probationer's right to counsel under Rule 6, inform the probationer that any statement the probationer makes before the hearing may be used against the probationer, set the date of the revocation arraignment, and *make a release determination under Rule 7.2(c).*

Ariz. R. Crim. P. 27.7 (2007) (emphasis added). When the Arizona Supreme Court amended the rule effective January 1, 2018, however, it deleted the

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[1] Wilson argues Rule 7.2(c) is unconstitutional because it categorically bars a probationer from being released pending disposition, entitling him to a hearing under *Simpson v. Miller*, 241 Ariz. 341 (2017). Because we hold Rule 7.2(c) does not apply to probationers and grant relief under Rule 27.7, we need not address this issue.

phrase "under Rule 7.2(c)" from the provision requiring the court to make a release determination. As a result, Rule 27.7 now reads as follows:

> At the initial appearance, the court must advise the probationer of the probationer's right to counsel under Rule 6, inform the probationer that any statement the probationer makes before the hearing may be used against the probationer, set the date of the revocation arraignment, and *make a release determination*.

Ariz. R. Crim. P. 27.7(c) (emphasis added). When language from a rule is deleted, we infer that it was done purposefully, to make clear that the omitted phrase no longer has any effect. *See, e.g., Gravel Res. of Ariz. v. Hills*, 217 Ariz. 33, 37, ¶ 11 (App. 2007).

¶15 Our supreme court's decision to remove the reference to Rule 7.2(c) from Rule 27.7(c) is sensible given that the former applies to the release of a convicted defendant awaiting sentencing or appeal, while the latter applies to release of a probationer awaiting a hearing on a petition to revoke probation. In other words, the predicate of Rule 7.2(c) is that the defendant has been convicted of an offense that has resulted in his or her detention. *See* Ariz. R. Crim. P. 7.2(c) ("After Conviction."). By contrast, a probationer facing a petition to revoke has been charged with violating probation, but has not been convicted of a violation.

¶16 Nor is it logical to apply Rule 7.2(c) to a probationer simply because once probation has been imposed, any subsequent petition to revoke necessarily comes "[a]fter [c]onviction." Ariz. R. Crim. P. 7.2(c). The exceptions listed in Rule 7.2(c)(1)(A)(i) simply have no application in such a situation. Once a person has been placed on probation and is facing revocation violation proceedings, the time for filing a motion for a new trial, for judgment of acquittal, or other post-trial motion on the conviction resulting in probation will typically have expired. Here, Wilson was convicted of his offense over fourteen years ago. As such, any post-trial motion on that conviction is now time-barred.

¶17 For these reasons, and given the amendment effective January 1, 2018, we hold that when a probationer is arrested on a petition to revoke probation, Rule 7.2(c) has no application to the superior court's determination of release conditions under Rule 27.7(c). We express no opinion as to what conditions the superior court ultimately should impose on Wilson. The release determination is left to its sound discretion.

CONCLUSION

¶18 We hold the superior court erred when it failed to make a release determination and instead ruled Wilson must be held without bail pursuant to Rule 7.2(c). We accept jurisdiction, grant relief by vacating the superior court's order and remand for further proceedings consistent with this decision.

AMY M. WOOD • Clerk of the Court
FILED: AA

IN THE

SUPREME COURT

STATE OF ARIZONA

NEKO ANTHONY WILSON, Petitioner, v. HON. ROBERT HIGGINS, Judge of the Superior court of the State of Arizona in and for the County of Navajo, Respondent Judge, AND STATE OF ARIZONA, ex rel. Brad Carlyon, Navajo County Attorney, Real Party in Interest.	Arizona Supreme Court No. Arizona Court of Appeals Division One No. CA-SA 20-0095 Navajo County Superior Court Case No. CR2005-518

PETITION FOR REVIEW

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I. ISSUE PRESENTED FOR REVIEW

Did the Court of Appeals err when it ignored Rule 7.2(c)'s plain language and concluded that it does not apply to a convicted felon in a probation revocation proceeding?

II. ISSUES PRESENTED TO BUT NOT DECIDED BY THE COURT OF APPEALS

Whether a hearing pursuant to State v. Simpson, 241 Ariz. 341 (2017) is required if a defendant in revocation proceedings is held non-bondable pursuant to Rule 7.2(c).

III. MATERIAL FACTS[1]

A. Trial Court Proceedings

On January 30, 2006, Wilson pleaded guilty to Transportation of Marijuana For Sale, a class 3 felony. Ex.1.[2] The trial court ordered him placed on standard probation for four years. Ex. 2. On September 1, 2009, the State filed a Petition to

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[1] Although not material to a consideration of the issue presented for Review, for the Court's information, on July 2, 2019, Wilson filed a Motion to Dismiss Petition to Revoke Probation with Prejudice. The trial court denied the motion on August 9, 2019. The denial of Wilson's Motion to Dismiss is currently pending before this Court. *See Wilson v. Hon. Higgins/State*, CR 20-0029-PR.

[2] Because this Petition stems from a Petition for Special Action, there is no record on appeal. The State includes exhibits necessary for the consideration of the question presented in Appendix 1 & 2 pursuant to Rule 31.21(e)—including the briefing presented to the court of appeals. The State cites directly to the exhibit number in lieu of citing to either Appendix at the exhibit number.

Revoke Probation ("PTR") based, in part, on Wilson's arrest in California on new felony charges. Ex. 3.

The PTR remained pending until Wilson resolved, and was released from custody on his California cases and on July 2, 2019, he was arraigned. Ex. 4. At arraignment, and after considering argument from both sides, the trial court determined that holding Wilson pursuant to Rule 7.2(c) was appropriate and ordered that he be remanded into custody. Ex. 4.

Subsequently, there was extensive litigation concerning Wilson's release. Ex. 5. On May 19, 2020, Wilson filed a Petition for Special Action with the court of appeals. Ex. 6. He argued 1) that he was entitled to a hearing on the trial court's determination that he was non-bondable pursuant to this Court's decision in *State v. Simpson*, 241 Ariz. 341, 349–50, ¶ 31 (2017); 2) that Rule 7.2(c) does not apply in revocation proceedings; and 3) that any rule that categorically makes probationers non-bailable is unconstitutional. Ex. 6. The State responded in opposition arguing 1) that Wilson could not argue for the first time on appeal that he was entitled to a *Simpson* hearing; 2) that *Simpson* does not apply; 3) even if *Simpson* applied, the trial court complied with it when it made an individualized determination regarding Wilson's ability to be granted bail pursuant to Rule 7.2(c); and 4) that the trial court properly harmonized Rules 27.7 and 7.2(c). Ex. 7.

B. The Court of Appeals' Opinion

The court of appeals accepted jurisdiction and granted relief. *Wilson v. Higgins*, No. 1 CA-SA 20-0095, 2020 Ariz. App. LEXIS 645 (Ct. App. June 30, 2020); Ex. 8. In a published opinion, the court of appeals concluded that "Rule 7.2(c) has no application to the superior court's determination of release conditions under Rule 27.7(c)" in revocation proceedings. *Id.* at 9, ¶ 17.

The court noted that its charge was to determine the drafter's intent and that the rule's plain language is best indicator of that intent. *Id.* at 6–7, ¶ 13. It then explained that it could turn to "a variety of elements" if the rule was ambiguous. *Id.* at 7 ¶ 13. However, despite the court never expressly finding that either Rule 27.7(c) or Rule 7.2(c) was ambiguous, it turned to secondary methods of construction. *Id.* at 6–9, ¶¶ 13–17.

Using secondary methods of construction, the court of appeals focused on the 2018 changes to Rule 27.7(c)—specifically the deletion of the phrase "under Rule 7.2(c)" from the requirement that the trial court make a release determination at an initial appearance on a PTR. *Id.* at 7–8 ¶¶ 13–14. Citing *Gravel Res. of Ariz. v. Hills*, 217 Ariz. 33, 37, ¶ 11 (App. 2007), the court inferred that the deletion "was done purposefully, to make sure that the omitted phrase no longer has any effect." *Wilson*, at 8, ¶ 14.

The court also noted it was "not logical" to apply Rule 7.2(c) simply because revocation proceedings occur "[a]fter [c]onviction" because the "exceptions listed in Rule 7.2(c)(A)(1) simply have no application" in a revocation proceeding . *Id.* at 8, ¶ 16. It reasoned that the time for filing post-trial motions will "typically have expired" by the time a revocation proceeding will have commenced. *Id.* at 8–9, ¶ 16.

IV. THIS COURT SHOULD GRANT REVIEW BECAUSE THE COURT OF APPEALS INCORRECTLY DECIDED AN IMPORTANT ISSUE OF LAW OF STATEWIDE IMPORTANCE.

This Court should grant review because the court of appeals incorrectly decided this matter of statewide importance. The court of appeals decided this matter with a published opinion—accordingly, it affects every revocation proceeding in the state. Additionally, this is a matter of pure statutory interpretation and an issue of first impression. This Court's guidance is critical.

A. RULE 27.7(C) IS UNAMBIGUOUS

This Court reviews the interpretation of court rules *de novo*. *State v. Burns*, 237 Ariz. 1, 28, ¶ 124 (2015). The rules of criminal procedure "shall be construed to secure simplicity in procedure, fairness in administration, the elimination of unnecessary delay and expense, and to protect the fundamental rights of the individual while preserving the public welfare." *State ex rel Romley v. Superior Court*, 168 Ariz. 167, 168 (1991). Court rules are interpreted in the same manner as statutes. *Id.* To interpret a rule, a court "may look at a variety of elements, including

the rule's context, the language used, the subject matter, the historical background, the effects and consequences, and its spirit and purpose." *Id.* at 169.

However, the goal of statutory interpretation is to "fulfill the intent" of the drafting body. *State ex rel. Montgomery v. Harris*, 237 Ariz. 98, 100, ¶ 8 (2014) (quoting *Bilke v. State*, 206 Ariz. 462, 464, ¶ 11 (2003)). "[W]hen the rule's language is not subject to different interpretations, we need look no further than that language to determine the drafters' intent." *Romley*, 168 Ariz. at 169. The rule's language is given its "ordinary meaning unless doing so creates an absurd result." *Id.* "Rules and statutes should be harmonized wherever possible and read in conjunction with each other." *City of Phx. v. Johnson*, 220 Ariz. 189, 191, ¶ 9 (App. 2009) (internal quotation marks and citation omitted).

Rule 27.7(a) governs a probationer's initial appearance after arrest. At their initial appearance, the court must: 1) advise the probationer of their right to counsel under Rule 6; 2) that any statement made before a hearing could be used against them; 3) set the date of the revocation arraignment; and 4) make a release determination. Ariz. R. Crim. P. 27.7(c).

Rule 27.7(c) is unambiguous. It requires a release determination but does not provide the procedures or findings a court must make. Notably, the court of appeals did not conclude that it was ambiguous; rather, it determined that this Court's deletion of the phrase "under Rule 7.2(c)" was intentional "to make clear that the

omitted phrase no longer has any effect." *Wilson*, at 8, ¶ 14. It then held that Rule 7.2(c) is inapplicable in a revocation context. *Id.* at 9, ¶ 17.

This reasoning is flawed. Prior to January 1, 2018, Rule 27.7(c) directed the trial judge to make a release determination pursuant to Rule 7.2(c). *Id.* at 7, ¶ 14. The deletion of "under Rule 7.2(c)" removed superfluous language in Rule 27.7(c); it did not, however, prohibit a trial court from using Rule 7.2(c)'s guidance in making a release determination. Instead of reading Rule 27.7(c) to simply require a release determination be made, the court of appeals created a requirement that Rule 7.2(c) not be used. This interpretation contradicts Rule 27.7(c)'s plain language.

This interpretation also runs contrary to the *Hills* court's reasoning. 217 Ariz. at 37, ¶ 11. There, the court of appeals faced the deletion of the statutory requirement that a receiver only be appointed "when no other adequate remedy is given by law." *Id.* at ¶ 10. The court did not conclude that a receiver could not be appointed if there was no other adequate remedy at law—rather, it read the deletion to expand the situations in which a receiver could be appointed. *Id.* at ¶ 11 (holding that the "the Legislature made it clear by deleting the omitted language that the lack of an adequate legal remedy is no longer a requirement for obtaining the appointment of a receiver"). The court did not read into the deletion a directive that a receiver could not be appointed if there was a lack of an adequate legal remedy, it simply dropped the requirement that it be the only available remedy.

Here, following the reasoning in *Hills*, the court could simply have found that the deletion of "under Rule 7.2(c)" removed the requirement that release conditions be set considering only Rule 7.2(c) without precluding the use of Rule 7.2(c).

Had this Court intended for the deletion of "under Rule 7.2(c)" to mean that Rule 7.2(c) was inapplicable in revocation proceedings, the simplest and clearest way to achieve that result would have been to insert language prohibiting the use of Rule 7.2(c) in the text of Rule 27.7. Alternately this Court could have provided criteria upon which a trial judge should make a release determination within the amended text of Rule 27.7(c). A more reasonable interpretation of the amendment is that this Court deleted the phrase because it was superfluous. It strains credulity that this Court set superior court judges adrift without a compass by providing them unfettered discretion in the granting or setting of bail in revocation proceedings.

Accordingly, Rule 27.7(c) unambiguously applies in this case and Wilson was entitled to have the trial court make a release determination—which it did. However, the rule's text provides no guidance or structure upon which that determination is made.

B. RULE 7.2(C)'S PLAN LANGUAGE APPLIES TO PROBATION REVOCATION PROCEEDINGS.

Rule 7.2(c) unambiguously applies to probation revocation proceedings. It explains that after a conviction prior to sentencing, if the defendant will likely be sentenced to prison, "the court may not release the defendant on bail or on [their]

own recognizance" unless one of two exceptions are met. Therefore, Rule 7.2(c) must apply in revocation proceedings if they occur "after conviction" but "prior to sentencing."

"One is convicted when there has been a determination of guilt by verdict, finding, or the acceptance of a plea." *State v. Thompson*, 200 Ariz. 439, 441, ¶ 7 (2001). However, "[p]robation is not a sentence." *State v. Muldoon*, 159 Ariz. 295, 298 (1988); *but see State v. Falco,* 162 Ariz. 319, 321 (App. 1989) (distinguishing *Muldoon* and stating that an order of probation falling outside of statutory provisions was an "unlawful sentence" that could be modified pursuant to Rule 24.3, Ariz. R. Crim. P.). Under Rule 26.1(b), trial court is directed to "[e]xplain to the defendant the terms of the sentence **or** probation." (emphasis added). A defendant's sentence is suspended to allow them to be placed on probation. A.R.S. § 13-901(A). "Probation is a judicial order allowing a criminal defendant a period of time in which to perform certain conditions and thereby avoid imposition of a sentence." *Muldoon*, 159 Ariz. at 298. Additionally, "[b]ecause to order probation is to suspend the imposition of sentence, a defendant whose probation has been revoked is essentially in the position of never having been sentenced." *State v. Holguin*, 177 Ariz. 589, 592 (App. 1993).

After conviction, sentence is not carried out—it is suspended in order to place the guilty defendant on probation. Accordingly, Rule 7.2(c) unambiguously applies to revocation proceedings.

Here, the court of appeals reasoned that Rule 7.2(c) "applies to a defendant awaiting sentencing of appeal, while [Rule 27.7(c)] applies to release of a probationer awaiting a hearing on a petition to revoke probation." *Wilson*, at 8 ¶ 15. It explained that the predicate to the application of Rule 7.2(c) is that a defendant has been convicted of an offense resulting in their detention; while a probationer facing a petition to revoke has not been "convicted" of a violation. *Id.*

This reasoning is flawed. Although the court of appeals correctly stated that Rule 27.7(c) applies to a probationer who is awaiting a hearing on a PTR, it incorrectly concluded that the probationer *is not also* a defendant who has been convicted of an offense and is awaiting sentencing. There is nothing in the text of either Rule 7.2(c) or Rule 27.7(c) that precludes release conditions being set for a probationer using Rule 7.2(c).

The court of appeals' reasoning that Rule 7.2(c) cannot apply in revocation proceedings because its exception does not apply is similarly flawed. *Wilson*, at 8, ¶ 16. The exception to a no bail hold applies if the trial judge reasonably believes that the conviction may be set aside on any post-trial motion. Ariz. R. Crim. P. 7.2(c)(1)(A)(1). The court of appeals concluded that the exception "simply [has] no

application" in revocation proceedings. *Wilson*, at 8, ¶ 16. Yet the court also stated that the time period for filing such a post-trial motion "will **typically have expired**." *Id.* at 9, ¶ 16 (emphasis added)

By utilizing this reasoning, the exception now defines the rule's application. The court acknowledged that the exception could apply. Furthermore, even if the exception never applied, because Rule 7.2(c)'s plain language applies, the most reasonable explanation is that the drafters intended that the exception not apply in revocation proceedings.

Here, Wilson was convicted—he entered into a guilty plea, it was accepted by the court, and entered of record. Ex. 1. Wilson's sentence was suspended so that he could be placed on probation. Ex. 2. Because Wilson has been convicted and had his sentence suspended, he is awaiting sentencing. Accordingly, Rule 7.2(c)'s plain language controls.

C. THE TRIAL COURT PROPERLY HARMONIZED RULE 27.7 AND RULE 7.2.

"Rules and statutes should be harmonized wherever possible and read in conjunction with each other." *Johnson*, 220 Ariz. at 191, ¶ 9 (internal quotation marks and citation omitted). When "statutes relate to the same subject or have the same general purpose . . . they should be read in connection with, or should be construed together with other related statutes, as though they constituted one law." *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122 (1970). If two provisions appear

to conflict, the more specific provision prevails. *State v. Davis*, 119 Ariz. 529, 534 (1978).

Here, this Court should harmonize Rule 27.7(c) and Rule 7.2(c) as if they are one body of law. Rule 27.7(c) requires the trial court to "make a release determination" at a defendant's initial appearance. Rule 7.2(c), which specifically addresses release, requires a convicted defendant to be held without bail under certain circumstances and permits release or bail if those circumstances are not satisfied. Without Rule 7.2(c), the trial judge has unfettered discretion to set release conditions.

These rules do not conflict. As illustrated above, both Rule 27.7(c) and Rule 7.2(c) apply to a probationer in revocation proceedings. Rule 27.7(c)'s plain language requires a release determination to be made—it, however, does not specify how it is to be made. Rule 7.2(c) specifies the factors a court must consider when determining a defendant's release conditions after a criminal conviction.

Here, the trial court harmonized Rule 27.7(c)'s requirement that a release determination be made, with Rule 7.2(c)'s requirement that a defendant be held without bail once they are convicted and likely to receive a prison sentence.

D. THE AMENDMENT'S HISTORICAL BACKGROUND CONTRADICTS THE COURT OF APPEALS' CONCLUSION.

When construing a rule, if a rule's plain language is not determinative, this Court may look to its "historical background." *Romley*, 168 Ariz. at 169.

The Note to the Arizona Rules of Criminal Procedure includes a "Prefatory Comment to 2018 Amendments." Ariz. R. Crim. P. Note. The comment explains that the 2018 amendments make extensive changes to rules and are intended as a restyling. *Id.* The comment then includes a list, with "including but not limited to" language, of substantive changes to 11 rules—neither 7.2 nor 27.7 are included in the list of substantive changes. *Id.*

In addition, the Rule Change Petition explains that "Appendix B . . . contains a detailed, rule-by-rule explanation of the amendments, *including any proposed substantive changes*." Ex. 9 at 1–2 (emphasis added). Addressing Rule 27.7, Appendix B states that the changes to the rules "are stylistic" with two exceptions—those changes to proposed Rule 27.7(a) and Rule 27.7(b). Ex. 10 at 43–44.[3]

Accordingly, the drafters of the 2018 amendments did not consider the deletion of "under Rule 7.2(c)" a substantive change to Rule 27.7(c).

CONCLUSION

Here, the court of appeals published an opinion that changed Arizona law. It ignored Rule 7.2(c)'s plain language and concluded that the deletion of "under Rule

[3] Because Appendix B is 68 pages and only pages 43 and 44 are relevant, the state includes only the cover page and pages 43–44 as Exhibit 10. Both the Rule Change Petition and Appendix B are available for download at https://www.azcourts.gov/Rules-Forum/aft/661.

7.2(c)" from Rule 27.7(c) demonstrates that Rule 7.2(c) cannot apply in revocation proceedings. However, Rule 7.2(c) is unambiguous and can be harmonized with Rule 27.7(c). Finally, even if Rule 27.7(c) is ambiguous, the Rule Task Force indicated that the 2018 amendment was stylistic.

Accordingly, this Court should grant review.

DATED this 27th day of July 2020.

NAVAJO COUNTY ATTORNEY

By: */s/ Michael R. Shumway*
Michael R. Shumway
Deputy County Attorney

IN THE

SUPREME COURT

STATE OF ARIZONA

NEKO ANTHONY WILSON, Petitioner, v. HON. ROBERT HIGGINS, Judge of the Superior court of the State of Arizona in and for the County of Navajo, Respondent Judge, AND STATE OF ARIZONA, ex rel. Brad Carlyon, Navajo County Attorney, Real Party in Interest.	Arizona Supreme Court No. Arizona Court of Appeals Division One No. CA-SA 20-0095 Navajo County Superior Court Case No. CR2005-518 **CERTIFICATE OF SERVICE**

On July 27, 2020, undersigned provided copies of the State's Petition for Review, Appendix 1 & 2, Certificate of Compliance, and Certificate of Service each electronically filed with the Arizona Supreme Court via Arizona TurboCourt, to the following individuals:

Lee Phillips, Esq.
via Turbo Court and Email — leephillips@leephillipslaw.com

DATED this 27th day of July 2020.

NAVAJO COUNTY ATTORNEY

By: */s/ Michael R. Shumway*
Michael R. Shumway
Deputy County Attorney

IN THE

SUPREME COURT

STATE OF ARIZONA

NEKO ANTHONY WILSON, Petitioner, v. HON. ROBERT HIGGINS, Judge of the Superior court of the State of Arizona in and for the County of Navajo, Respondent Judge, AND STATE OF ARIZONA, ex rel. Brad Carlyon, Navajo County Attorney, Real Party in Interest.	Arizona Supreme Court No. Arizona Court of Appeals Division One No. CA-SA 20-0095 Navajo County Superior Court Case No. CR2005-518 **CERTIFICATE OF COMPLIANCE**

Counsel undersigned certifies that the State's Petition for Review with Rule 7(e) Ariz. R. Crim. P., and states that the Petition uses Times New Roman type, 14 point, is double spaced, contains 3,069 words, and does not exceed the word limits set by applicable rule.

DATED this 27th day of July 2020.

NAVAJO COUNTY ATTORNEY

By: */s/ Michael R. Shumway*
Michael R. Shumway
Deputy County Attorney

SUPREME COURT OF ARIZONA

Neko Anthony Wilson, *Petitioner*, v. The Honorable Robert Higgins, Judge of the Superior Court of the State of Arizona in and for the County of Navajo, *Respondent Judge*, and The State of Arizona, ex rel. Brad Carlyon, Navajo County Attorney, *Real Party in Interest.*	ASC N0. CR-20-0254-PR Court of Appeals Division One No. 1 CA-SA-20-0095 Navajo County Superior Court No. S0300CR2005-0518 **RESPONSE TO PETITION FOR REVIEW OF A SPECIAL ACTION DECISION OF THE COURT OF APPEALS** **(Rule 8(d) Ariz. R. P. Spec. Act.)** **(Expedited Processing Requested)**

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INTRODUCTION

Respondent Neko Wilson ("Neko") opposes the State's Petition for Review because the Court of Appeals has ruled that he has been illegally detained in the Navajo County Jail with no conditions of release since July 2, 2019. On June 30, 2020, the Appellate Court remanded this matter to the trial court with instructions to set reasonable release conditions without undue delay. The trial court has set a conditions of release hearing for Monday, August 3, 2020 at 10:30 a.m. The State filed its Petition for Review on July 27, 2020 but has not sought a stay of the lower court proceedings from this Court. Instead, on July 28, 2020 it filed a request to stay or vacate Neko's release conditions hearing with the trial court. Neko further asks this Court to deny the State's Petition for Review because the decision of the Appellate Court should not be overturned.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Neko was originally arrested in this case on November 1, 2003, and charged with transportation of less than 5 lbs. of marijuana for sale. (Exhibit 1 at p. 2) No complaint was filed, and Neko returned to California. On September 13, 2005, Neko was indicted by the Grand Jury and appeared in Navajo County Superior Court ("Superior Court") for his arraignment on October 3, 2005. (Exhibit 2 at p. 4). On January 30, 2006, Neko appeared in court for his change of plea hearing and

was released pending sentencing. (Exhibit 2 at p. 4). On March 2, 2006, Neko appeared in court for his sentencing and was sentenced to four years of standard probation. (Exhibit 1 at p. 2; Exhibit 2 at p. 4). Neko's probation was transferred to his home state of California pursuant to the Interstate Compact.

On August 5, 2009, Neko was arrested and charged with felony murder in a case where he and several others were involved in a robbery of a couple who were selling marijuana and were killed during the robbery. (Exhibit 3). Neko was incarcerated in the Fresno County Jail. (Exhibit 3).

On September 1, 2009, the State of Arizona filed a petition to revoke Neko's probation with the Superior Court in Navajo County. (Exhibit 2 at p. 3). On September 3, 2009, the Superior Court ordered a warrant for Neko's arrest (Exhibit 2 at p. 3; Exhibit 4) and on September 15, 2009, the warrant was issued alleging Neko had violated his probation. (Id.). The arrest warrant was an ACIC (Arizona Crime Information Center) warrant, not an NCIC (National Crime Information Center) warrant. (Exhibit 4). The State should have entered a NCIC warrant into the system but failed to do so. (Exhibit 4). At no time while Neko was in custody in California did Arizona make any efforts to obtain a NCIC warrant, place a detainer on Neko, or otherwise prosecute the 2009 petition to revoke probation until Neko was released on October 18, 2018. (Exhibit 4).

In 2018, the felony murder rule in California was modified, which resulted in Neko's felony murder charges being dismissed because he was not present at, and did not participate in, the murders. (Exhibit 5; Exhibit 6). On October 18, 2018, Neko pled guilty to two counts of armed robbery and was released pending his sentencing. (Exhibit 5; Exhibit 6). When Neko was released on October 18, 2018, he had no Arizona detainer or hold on him. (Exhibit 5; Exhibit 6). Neko's release attracted national attention. (Exhibit 6). On the very next day, October 19, 2019, after receiving communication from California authorities, Navajo County re-opened Neko's case by filing a petition to modify the original September 1, 2009 petition to revoke Neko's probation. (Exhibit 2 at p. 3). On April 2, 2019 an 'NCIC' arrest warrant for Neko was issued by the trial court. (Exhibit 2 at p. 3). On May 1, 2019, Neko was arrested in his hometown of Modesto, California on the NCIC warrant issued by the trial court on April 2, 2019. (Exhibit 2 at p. 2). Neko's family posted a $50,000 bond and Neko was released.

Neko voluntarily appeared before the trial court on May 14, 2019, for his initial appearance pursuant to Rule 27.7 A.R.Cr.P. (Exhibit 2 at p. 2). At that time, the trial court made a release determination quashing the NCIC warrant and releasing Neko on his promise to appear for his probation revocation arraignment. Id. The trial court also allowed Neko to return to California for his May 16, 2019,

sentencing in his California case. On May 16, 2019, Neko was sentenced in California to time served (10.5 years or 3866 total days) and placed on four years parole. (Exhibit 5; Exhibit 6).

On July 2, 2019, Neko appeared before the trial court for his probation revocation arraignment pursuant to Rule 27.8 A.R.Cr.P. and entered a denial to all of the allegations in the petition to revoke his probation. (Exhibit 2 at p. 2; Exhibit 7). At that time, Neko also filed a "motion to dismiss petition to revoke probation with prejudice" on "due process" grounds for the State's failure to comply with the Interstate Compact and timely prosecute the original September 1, 2009 petition to revoke his probation. (Id.). In response the State made an oral motion pursuant to Rule 7.2(c) alleging Neko was now non-bailable and must be taken into custody and held without bail or release conditions. (Id.)

The State made its oral motion without filing a verified petition to revoke Neko's release conditions as required by Rule 7.5 A.R.Cr.P.(a). The trial court then granted the State's oral motion to revoke release without conducting a hearing on the State's request to modify/revoke Neko's release as required by Rule 7.5(d) and without making any findings that 1) the proof of Neko's willful violation of his own recognizance release was evident or the presumption great or; 2) that Neko had committed a new offense while on release; 3) or that Neko posed a "substantial

risk" to others and no other conditions of release will reasonably assure the safety of another person or the community as required by Rule 7.5(d)(2)(A)(B) A.R.Cr.P. Neko has remained in custody without bond or release conditions since July 2, 2019.

On August 9, 2019, the trial court issued an order denying Neko's due process motion to dismiss. (Exhibit 2 at p. 2; Exhibit 8). On August 23, 2019, Neko moved to continue his revocation hearing and sought a stay of the proceedings to allow him to seek special action review of the trial court's decision. (Exhibit 2 at p. 2). On August 26, 2019, the trial court granted the motion to continue but did not issue a stay of the trial court proceedings pending special action review. (Exhibit 9).

On December 16, 2019 Neko filed his petition for special action (due process violation) with the Court of Appeals ("COA") in CA-SA 19-0286. (Exhibit 10). On December 19, 2019 the COA denied special action review. (Id.). On January 21, 2020, Neko filed his petition for review with this Court in CR-20-0029-PR. (Exhibit 11). Neko's petition for review is still pending a decision from this Court. (Id.)

On March 25, 2020 Neko filed another request for a hearing on release conditions (Exhibit 2 at p. 1; Exhibit 12). In his "Emergency Motion for

Temporary Release of Defendant Pending Special Action Review and/or Disposition of Probation Revocation Proceedings (Re: COVID-19 Public Health Concerns") Neko requested an emergency hearing on his request to be released, at least temporarily, due to the asthma and hypertension he suffers from which make him a high risk to suffer severe symptoms of COVID-19 if he becomes infected while in custody and without adequate medical care. (Id.)

On April 13, 2020 the trial court issued an order that it lacked jurisdiction to address Neko's emergency motion while his petition for review (due process) is pending before the Arizona Supreme Court. (Exhibit 2 at p. 1; Exhibit 13). On April 28, 2020 Neko filed a request for a reconsideration of the trial court's April 13, 2020 order declining to address Neko's emergency motion. (Exhibit 2 at p. 1; Exhibit 14). The request was supported by declarations of Neko and his father Mack Wilson. (Id.) The trial court again declined to address the emergency motion.

On May 19, 2020, Neko filed a second petition for special action re: right to conditions of release pursuant to rule 27.7 A.R.Cr.P. (Exhibit 15). On June 30, 2020 the COA accepted jurisdiction and granted Neko relief. (Exhibit 16). Specifically, the COA found the release issue was governed by Rule 27.7 not Rule

7.2(c) A.R.Cr.P. and remanded Neko's case to the trial court with instructions to set conditions of release. Id.

On July 2, 2020 the State filed a motion in the trial court to stay all hearings and proceedings to allow the State to seek review of COA's opinion from the Arizona Supreme Court. On July 9, 2020 the trial court set a release conditions hearing for August 3, 2020 without ruling on the State's motion for a stay. (Exhibit 17).

On July 27, 2020 the State filed a Petition for Review with this Court. On July 28, 2020 the State filed a request for a ruling on its July 2, 2020 motion for a stay with the trial court. (Exhibit 18). On July 29, 2020 Neko filed his response to the State's motion. (Exhibit 19). On July 30, 2020 the State filed its reply re: request for a stay, arguing that the trial court can issue a stay or vacate the August 3, 2020 hearing because the State has now filed its July 27, 2020 Petition for Review and because the COA has not "issued an official mandate" following the remand citing Rule 31.22(a) A.R.Cr.P. (Exhibit 20). To date the State has failed to seek a stay of the lower court proceedings from this Court pursuant to Rule 8(d) of the Arizona Rules of Procedure for Special Actions.

ARGUMENT

I. Rule 27.7 A.R.Cr.P. Governs Neko's Release Conditions Not Rule 7.2(c) A.R.Cr.P.

Rule 7.2(c)(1)(A) states that "[b]efore sentencing," when "a defendant is convicted of an offense for which the defendant will, in all reasonable probability, receive a sentence of imprisonment, the court may not release the defendant on bail or on the defendant's own recognizance unless" the following circumstances exist:

> (i) "the court finds that reasonable grounds exist to believe that the conviction may be set aside on a motion for new trial, judgment of acquittal, or other post-trial motion; or
>
> (ii) the parties stipulate otherwise and the court approves the stipulation."
>
> Ariz. R. Crim. P. 7.2(c).

The State argues the trial court did not err in denying bail to Neko under this provision. Neko, however, contends Rule 7.2 has no application here. He argues the court erred in ordering him held pursuant to Rule 7.2(c) because Rule 27.7(c) requires the court to "make a release determination" at the initial appearance of a probationer arrested on a petition to revoke probation without regard to the conditions imposed by Rule 7.2. Any effort to modify or revoke these release conditions must comply with Rule 7 A.R.Cr.P.

The COA reviewed the interpretation of the Arizona Rules of Criminal Procedure *de novo*, "using principles of statutory construction." citing *Fragoso v.*

Fell, 210 Ariz. at 427, 429, 430 ¶ 3 (App. 2005). The COA wrote it "interprets statutes and rules in accordance with the intent of the drafters, and we look to the plain language of the statute or rule as the best indicator of that intent." *Opinion at p. 5 ¶ 13.* (Exhibit 16). If the language of a rule is ambiguous, however, a court may consider 'a variety of elements, including the rule's context, the language used, the subject matter, the historical background, the effects and consequences, and its spirit and purpose,' to determine the framers' intent." *Haroutunian v. Valueoptions, Inc.*, 218 Ariz. 541, 544, ¶ 6 (App. 2008) (quoting *State ex rel. Romley v. Superior Court*, 168 Ariz. 167, 169 (1991)). *Id.*

The COA then noted that until January 1, 2018, Rule 27.7 stated the following: "At the initial appearance, the court must advise the probationer of the probationer's right to counsel under Rule 6, inform the probationer that any statement the probationer makes before the hearing may be used against the probationer, set the date of the revocation arraignment, and *make a release determination under Rule 7.2(c). Opinion at p. 6 ¶ 14* (emphasis in the original). Citing Ariz. R. Crim. P. 27.7. The COA then noted that the Arizona Supreme Court amended the rule effective January 1, 2018, however, it deleted the phrase "under Rule 7.2(c)" from the provision requiring the court to make a release determination. As a result, Rule 27.7 now reads as follows:

> "At the initial appearance, the court must advise the probationer of the probationer's right to counsel under Rule 6, inform the probationer that any statement the probationer makes before the hearing may be used against the probationer, set the date of the revocation arraignment, and *make a release determination*."

Ariz. R. Crim. P. 27.7(c) (emphasis added). The COA then found that when language from a rule is deleted, "we infer that it was done purposefully, to make clear that the omitted phrase no longer has any effect." *Citing Gravel Res. of Ariz. v. Hills*, 217 Ariz. 33, 37, ¶ 11 (App. 2007). *Opinion at p. 6 ¶14.*

The COA further found that the Supreme Court's decision to remove the reference to Rule 7.2(c) from Rule 27.7(c) is sensible given that the former applies to the release of a convicted defendant awaiting sentencing or appeal, while the latter applies to release of a probationer awaiting a hearing on a petition to revoke probation. "In other words, the predicate of Rule 7.2(c) is that the defendant has been convicted of an offense that has resulted in his or her detention. *See* Ariz. R. Crim. P. 7.2(c) ("After Conviction."). By contrast, a probationer facing a petition to revoke has been charged with violating probation, but has not been convicted of a violation." *Opinion at p. 6 ¶15.*

The COA found therefore that: is it logical

> "to apply Rule 7.2(c) to a probationer simply because once probation has been imposed, any subsequent petition to revoke necessarily comes "[a]fter [c]onviction." Ariz. R. Crim. P. 7.2(c). The exceptions

> listed in Rule 7.2(c)(1)(A)(i) simply have no application in such a situation. Once a person has been placed on probation and is facing revocation violation proceedings, the time for filing a motion for a new trial, for judgment of acquittal, or other post-trial motion on the conviction resulting in probation will typically have expired. Here, Wilson was convicted of his offense over fourteen years ago. As such, any post-trial motion on that conviction is now time-barred."

The COA concluded by writing:

> "we hold that when a probationer is arrested on a petition to revoke probation, Rule 7.2(c) has no application to the superior court's determination of release conditions under Rule 27.7(c). We express no opinion as to what conditions the superior court ultimately should impose on Wilson. The release determination is left to its sound discretion."
>
> *Opinion p. 7 ¶17.*
>
> "we hold the superior court erred when it failed to make a release determination and instead ruled Wilson must be held without bail pursuant to Rule 7.2(c). We accept jurisdiction, grant relief by vacating the superior court's order and remand for further proceedings consistent with this decision."
>
> *Opinion at p. 6-7 ¶17, 18.*

II. Trial Court's Jurisdiction

The COA also addressed the issue of what jurisdiction a trial court retains when a Special Action or Petition for Review is filed. The COA found that as a general rule trial courts lose jurisdiction once a Petition for Special Action or Petition for Review are filed with the Appellate courts. (*Opinion at p. 3 ¶7*). The

COA noted that there are numerous exceptions to the general rule which allow a trial court to retain jurisdiction over issues that are not related to the issue that is being challenged by the Petition for Special Action or Petition for Review. (Id.) The COA noted for example that the trial court initially retained jurisdiction over the release issue when Neko filed his Petition for Review of the due process violation. This is because the release issue is not addressed in the Petition for Review that Neko filed in January 2020 and which is currently pending a decision by the Arizona Supreme Court. (*Opinion at p. 4 ¶8*). COA wrote:

> As a general rule, "when an appeal to a higher court has been perfected, the trial court loses all jurisdiction except for actions in furtherance of the appeal." *In re Estate of Killen*, 188 Ariz. 569, 572 (App. 1996) (citing *State v. O'Connor*, 171 Ariz. 19, 21 (App. 1992) ("A trial court may not render any decision that would defeat or usurp an appellate court's jurisdiction of a case on appeal.")). In *Continental Casualty Co. v. Industrial Commission*, 111 Ariz. 291 (1974), however, the Arizona Supreme Court held the general rule does not prevent the superior court from proceeding in any respect while an appeal is pending. Quoting *Castillo v. Industrial Commission*, 21 Ariz. App. 465, 467-69 (1974), the *Continental Casualty* court explained "this general principle is subject to many equally well established exceptions,"

The COA also found that the jurisdiction of a court when properly invoked must be protected.

> "It cannot be defeated or usurped to the extent that its decision when rendered be nugatory. By allowing the trial court to proceed with issues not directly involved in, or the subject matter of the appeal, the

jurisdiction of the appellate court is adequately protected, and at the same time the trial court proceedings are not inordinately delayed pending the appellate decision."

Opinion at p. 3 ¶7.

The COA then concluded that "Neko's request for review of his release conditions does not relate to and will not interfere with the Supreme Court's resolution of the issues in his petition for review of the denial of his motion to dismiss the petition to revoke his probation (due process) Because the trial court's ruling on release conditions would not defeat or usurp the Supreme Court's ultimate decision on the motion to dismiss, the filing of the petition for review did not divest the trial court of jurisdiction to entertain Neko's request for release. *Opinion at p. 4 ¶8.*

III. Rule 8 Arizona Rules of Procedure for Special Actions Governs Requests for a Stay

If the State wishes to obtain a stay of the lower court proceedings, now that it has filed its Petition for Review, it must file a Motion for a Stay of these proceedings with this Court and not with the trial court. See Rule 8(d) Ariz. R.P. Spe. Act.

Although Rule 8 Ariz. R. P. Spe. Act. currently provides no guidance on the proper procedure, for seeking a stay, this Court has made clear that "a Petition for

Review normally is the proper and most efficient method to seek review from this Court's review of the Court of Appeals grant or denial of special action relief." See State ex rel. Neely v. Sherrill, 168 Ariz. 469 475, footnote 1, 815 P.2d 396, 402 (1991). See also Rule 8 Arizona Rules of Procedure for Special Actions.

Although Rule 8 currently provides no guidance on the proper procedure for requesting a stay of lower court proceedings in conjunction with a Petition for Review, this Court has stated that "the appropriate method for such a request would be to submit a copy of the Petition for Review that has been filed in the Court of Appeals to the Clerk of the Supreme Court when the Petition for Stay is filed." Id. See also https://www.azcourts.gov/clerkofcourt/Stay-Procedure Therefore, if the trial court were to stay Neko's August 3, 2020 conditions of release hearing, without a proper stay from this Court, it will in contravention of the Rules of Procedure for Special Actions and the June 30, 2020 Opinion of the Court of Appeals. (Exhibit 15).

CONCLUSION

This Court should deny the State's Petition for Review and any request for a stay of lower court proceedings and award Neko his reasonable attorney's fees and costs.

RESPECTFULLY SUBMITTED this 30th day of July, 2020.

Law Office of
LEE PHILLIPS, P.C.
/s/
Lee Phillips
Attorney for Petitioner

Supreme Court

STATE OF ARIZONA

ROBERT BRUTINEL
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JANET JOHNSON
Clerk of the Court

August 27, 2020

RE: NEKO ANTHONY WILSON v HON. HIGGINS/STATE
Arizona Supreme Court No. CR-20-0254-PR
Court of Appeals, Division One No. 1 CA-SA 20-0095
Navajo County Superior Court No. S0900CR20050518

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on August 25, 2020, in regard to the above-referenced cause:

ORDERED: Petition for Review = GRANTED.

FURTHER ORDERED: The case shall be set for oral argument.

FURTHER ORDERED: The parties may file simultaneous supplemental briefs, not to exceed 20 pages in length, no later than September 11, 2020. Any amicus briefs are due on or before September 21, 2020, and any responses to amicus briefs are due on or before October 2, 2020. Any amicus briefs or responses may not exceed 20 pages in length.

Counsel shall be advised of the date and time of oral argument at such time as the hearing date is determined.

The Clerk of the Court of Appeals, Division One, Phoenix, shall forward the remaining record to the Clerk of the Supreme Court.

Janet Johnson, Clerk

TO:
Michael O'Toole
Lee B Phillips
Bradley W Carlyon
Michael R Shumway
Hon Robert J Higgins
Amy M Wood
Deanne Romo
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