Arizona Supreme Court

Criminal Petition for Review - Special Action

CR-21-0397-PR STATE ex rel MITCHELL v HON. PALMER/DURAND

Appellate Case Information

Case Filed: 22-Dec-2021

Case Closed:

Dept/Composition

En Banc

Hon. Ann A. Scott Timmer
Hon. Clint Bolick
Hon. John R Lopez
Hon. James P Beene
Hon. Kathryn H. King

Side 1. STATE OF ARIZONA ex rel. RACHEL H. MITCHELL, Maricopa County Attorney, Petitioner

(Litigant Group) STATE OF ARIZONA ex rel. RACHEL H. MITCHELL, Maricopa County Attorney

- **State of Arizona**
- **Rachel H Mitchell, Maricopa County Attorney's Office**

Attorneys for: Petitioner

Rachel H Mitchell, Esq. (AZ Bar No. 14560)

Philip D Garrow, Esq. (AZ Bar No. 22458)

Side 2. HON. DAVID J. PALMER, JUDGE OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, Respondent Judge

(Litigant Group) HON. DAVID J. PALMER, JUDGE OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa

- **Hon. David J Palmer**

Side 3. TAMIRA MARIE DURAND, Real Party in Interest

(Litigant Group) TAMIRA MARIE DURAND

- **Tamira Marie Durand**

Attorneys for: Real Party in Interest

Michael P Denea, Esq. (AZ Bar No. 14768)

Side 4. Arizona Attorney General's Office, Amicus Curiae

(Litigant Group) Arizona Attorney General's Office

- **Arizona Attorney General's Office**

Attorneys for: Amicus Curiae

Mark Brnovich, Esq. (AZ Bar No. 14134)

Linley Wilson, Esq. (AZ Bar No. 27040)

Joshua C Smith, Esq. (AZ Bar No. 30229)

CASE STATUS

Apr 11, 2024	**Decision Rendered**	Sep 20, 2022	**Submitted**
May 3, 2022	Oral Argument Granted	Dec 22, 2021	Pending

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
1 CA	1 CA-SA 21-0241				
MAR	CR2019-005593-001		David J Palmer, Authoring Judge of Order Comments: (none)		
MAR	CR2020-001680-002		David J Palmer, Authoring Judge of Order Comments: (none)		

CASE DECISION

11-Apr-2024 **OPINION**

For the foregoing reasons, we reverse the trial court's order disqualifying MCAO, vacate the court of appeals' order, and remand to the trial court for further proceedings consistent with this Opinion.

James Beene.....Author
Ann Timmer.....Concur
Clint Bolick.....Concur
John Lopez.....Concur
Kathryn King.....Concur

Filed: **11-Apr-2024** Mandate:

Decision Disposition
CofA Vacated
Reversed
Remanded

Arizona Supreme Court

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23 PROCEEDING ENTRIES

1.	22-Dec-2021	FILED: State's Petition for Review of a Special Action Decision of the Court of Appeals; Certificate of Service; Certificate of Compliance (Petitioner State)
2.	22-Dec-2021	FILED: Request for Stay Expedited Review Requested; Certificate of Service; Exhibit A - C (Petitioner State)
3.	28-Dec-2021	On December 22, 2021, Petitioner State filed “State's Petition for Review of a Special Action Decision of the Court of Appeals” together with a request for stay and expedited ruling. On December 23, 2021, counsel for Real Party in Interest Tamira Marie Durand notified the Court that Durand did not object to a stay of the superior court’s order that the case be transferred to another prosecutorial agency by January 5, 2022. Counsel for Durand further notified the Court that Durand did not object to a stay regarding the trial in this matter scheduled for January 18, 2022. IT IS ORDERED the superior court’s order directing the State to transfer the case to another prosecutorial agency is stayed pending further action from this Court. IT IS FURTHER ORDERED the trial is stayed pending further action from this Court. IT IS FURTHER ORDERED the response to the Petition for Review shall be filed and served no later than Friday, January 14, 2022. (Hon. Kathryn H. King)
4.	28-Dec-2021	FILED: Record from CofA: Electronic Record
5.	14-Jan-2022	FILED: Defendant's Response to the State's Petition for Review; Certificate of Service; Certificate of Compliance; Index and Appendix to Defendant's Response to State's Petition for Review (Real Party Durand)
6.	7-Apr-2022	ORDERED: State's Petition for Review of a Special Action Decision of the Court of Appeals = CONTINUED. Chief Justice Brutinel and Justice Montgomery did not participate in the determination of this matter.
7.	3-May-2022	ORDERED: State's Petition for Review of a Special Action Decision of the Court of Appeals = 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 20 days from the date of this Court's Minute Letter. Any amicus briefs are due on or before June 7, 2022 and any responses to amicus briefs are due on or before June 27, 2022. Any amicus briefs or responses may not exceed 20 pages in length. Chief Justice Brutinel and Justice Montgomery did not participate in the determination of this matter.
8.	24-May-2022	FILED: State's Supplemental Brief to the Petition for Review of a Special Action Decision of the Court of Appeals; Certificate of Service; Certificate of Compliance (Petitioner State)
9.	24-May-2022	FILED: Defendant's Supplemental Brief; Certificate of Service (Real Party Durand)
10.	27-May-2022	NOTICE OF ORAL ARGUMENT: Set for Tuesday, September 20, 2022 at 10:15 A.M.. [twenty (20) minutes per side]
11.	31-May-2022	FILED: Notice of Filing Acknowledgment of Oral Argument (Krista Wood will argue) (Petitioner State)
12.	6-May-2022	FILED: Record from CofA: Electronic Record
13.	4-Jun-2022	FILED: Notice of Filing Acknowledgment of Oral Argument (Michael Denea to Argue) (Real Party Durand)
14.	7-Jun-2022	FILED: Amicus Curiae Brief of Arizona Attorney General; Certificate of Service; Certificate of Compliance (Amicus AAG)
15.	30-Jun-2022	Justice Montgomery is recused and will not participate in the above captioned matter. Therefore, pursuant to Article 6, Section 3 of the Arizona Constitution, IT IS ORDERED that the Honorable John Pelander, Justice (Retired) of the Arizona Supreme Court is designated to sit on the case until it is finally determined. IT IS FURTHER ORDERED notifying the parties that Chief Justice Brutinel will participate in this matter. (Hon. Robert Brutinel)

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23 PROCEEDING ENTRIES

16.	13-Sep-2022	On June 30, 2022, the Court ordered that the Honorable John Pelander, Justice (Retired) of the Arizona Supreme Court was designated to sit on the case for the recused Justice Montgomery and that Chief Justice Brutinel would participate in this matter. On the Court's own motion, IT IS ORDERED vacating the order of June 30, 2022. Chief Justice Brutinel is recused, and neither he nor the Honorable John Pelander, Justice (Retired) of the Arizona Supreme Court will participate in the decision of this case. IT IS FURTHER ORDERED that Justice Montgomery remains recused. (Hon. Ann A. Scott Timmer)
17.	19-Sep-2022	FILED: Notice to Court; Certificate of Service (Petitioner)
18.	19-Sep-2022	FILED: Defendant's Emergency Motion to Continue Oral Argument; Certificate of Service; Exhibit "A" (Petitioner)
19.	20-Sep-2022	FILED: Response to Real Party in Interest's Emergency Motion to Continue Oral Argument; Certificate of Service (Petitioner)
20.	20-Sep-2022	On September 19, 2022, Real Party in Interest Durand filed an emergency motion to continue oral argument in this matter and request for stay and remand to superior court. Petitioner State of Arizona filed a response. The court, en banc, has considered the motion and response and concluded that cause has not been shown to continue this matter. Accordingly, oral argument will be held as scheduled. IT IS ORDERED the motion is denied. (Hon. Ann A. Scott Timmer)
21.	20-Sep-2022	ORAL ARGUMENT - Submitted for decision en banc (Attorneys who argued: Krista Wood, Michael P. Denea)
22.	21-Aug-2023	On the Court's own motion, The caption in this matter is amended, pursuant to Arizona Rule of Civil Appellate Procedure 27(c)(2), to reflect that Rachel H. Mitchell has been automatically substituted as a party in her official capacity as Maricopa County Attorney. (Hon. Kathryn H. King)
23.	11-Apr-2024	OPINION - For the foregoing reasons, we reverse the trial court's order disqualifying MCAO, vacate the court of appeals' order, and remand to the trial court for further proceedings consistent with this Opinion. (Hon James P Beene - Author; Hon. Ann A. Scott Timmer - Concur; Hon. Clint Bolick - Concur; Hon. John R Lopez IV - Concur; Hon. Kathryn H. King - Concur)