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DOCKETED BY: 

2011 MAR 22 PM 12: 33

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APACHE COUNTY SUPERIOR COURT

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF APACHE

STATE OF ARIZONA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
JOSEPH DOUGLAS ROBERTS,)	CR 2010-00047
)	
Defendant.)	STATE'S MOTION TO RECONSIDER
)	FINDING OF NO JURISDICTION
)	REGARDING MOTION TO RECONSIDER
)	DISMISSAL
)	
)	(Honorable Donna J. Grimsley)
)	

The State of Arizona, by undersigned counsel, respectfully requests this Court to reconsider the Court's finding, as set forth in the minute entry of March 16, 2011, that this Court does not have jurisdiction to address the State's Motion to Reconsider Dismissal, as set forth in the Court's ruling on January 18, 2011.

Pursuant to Rule 31.11, Arizona Rules of Criminal Procedure, this Court retains jurisdiction until 15 days *after* the record on appeal has been filed. Rule 31.11 states: "No new matter, other than a petition for post-conviction relief not precluded under Rule 32.2, may be

filed in the trial court by any party to an appeal later than 15 days after the record on appeal has been filed.”

The “record on appeal” referred to in Rule 31.11 is defined in Rule 31.10, Arizona Rules of Criminal Procedure. Specifically, Rule 31.10 describes that the clerk of the Appellate Court gives Notice that all portions of the record have been received and the record is complete. It is this Notice that marks the record on appeal. As of this writing, and certainly as of March 16, 2011, when the Motion to Reconsider Dismissal was filed, the record on appeal has yet to be filed. This Court will continue to retain jurisdiction for 15 days after that record on appeal is complete and filed.

The timeframe delineated in Rule 31.11 is specifically designed to allow the trial court time to take corrective action at the trial court level. This is explained in the Comment to Rule 31.11, which is reproduced here from Westlaw:

Perfection of an appeal is delayed to give the parties an adequate opportunity to file corrective motions in the trial court. This section delays the perfection of the appeal until the due date for the first filing which directly affects the course of the appeal and which can only be decided by the appellate court--the request to file briefs. See Rule 31.12. This gives parties who appeal about the same time to file corrective motions as they had under the former rules--about 60 days--and equalizes the time for filing motions under Rule 24.2 for those who do and those who do not appeal. Formerly, an appeal was perfected upon the filing of the notice of appeal and payment of the docketing fee. [* * *]

Perfection, under this section, merely designates to what court new matters relating to the appeal must be addressed. *It does not remove the trial court's jurisdiction to decide motions filed before the cut-off date*, or petitions for post-conviction relief based upon issues which are not raisable on appeal and were not raised in a post-trial motion. See Rule 24.2; 24.3; 32.1; 32.2. Thus, a Rule 24 motion which was filed before perfection may be decided by the trial court after perfection whether or not the appeal has been stayed under Rule 31.4(a).

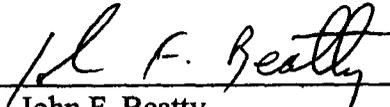
The phrase “15 days after the record of appeal has been filed” refers to 15 days after the date on which the parties are notified under Rule 31.10.

16A A.R.S. Rules Crim.Proc., Rule 31.11 (emphasis added).

This Court retains jurisdiction over the State's Motion to Reconsider Dismissal because the record on appeal has not been filed.

Submitted March 18, 2011.

WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY

BY 
John F. Beatty
Deputy Maricopa County Attorney

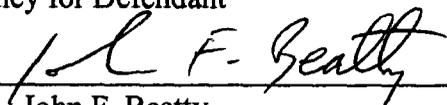
ORIGINAL mailed/delivered
March 18, 2011, to:

Clerk of the Court
Apache County Superior Court
70 W. 3rd South
St. Johns, AZ 85936

COPY mailed/delivered
March 18, 2011, to:

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