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CHIEF JUDGE

PATRICK IRVINE  
VICE CHIEF JUDGE

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PETER B. SWANN  
JUDGES



## Court of Appeals

STATE OF ARIZONA  
DIVISION ONE  
STATE COURTS BUILDING  
1501 WEST WASHINGTON STREET  
PHOENIX, ARIZONA 85007

February 24, 2009

FILED *m*  
DOCKETED BY PHILIP G. URRY  
CLERK OF THE COURT  
2009 FEB 26 PM 12:02  
RUBA WILKINSON  
CHIEF DEPUTY  
SUE HALL, CLERK  
APACHE COUNTY SUPERIOR COURT  
(602) 542-4821

Sue Hall, Clerk  
Apache County Superior Court  
Apache County Courthouse  
P O Box 365  
St Johns AZ 85936

Dear Ms. Hall:

RE: 1 CA-SA 08-0294

STATE v. HON ROCA/C. R.  
Apache County Superior Court  
JV 2008-065

The following are enclosed in the above entitled and numbered cause:

Original MANDATE  
Copy of MEMORANDUM DECISION

There are no records to be returned.

PHILIP G. URRY, CLERK

By *GF*  
Deputy Clerk

Enclosures (as noted)

c:  
Christopher E Candelaria  
Bradley W Carlyon  
Michael B Whiting  
Ronald D Wood  
Benjamin M Brewer  
Michael P Roca  
Hon Donna J Grimsley, Presiding Judge

IN THE  
**Court of Appeals**  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA ex rel. CRISS ) Court of Appeals  
E. CANDELARIA, Apache County ) Division One  
Attorney, ) No. 1 CA-SA 08-0294  
)  
Petitioner, ) Apache County  
) Superior Court  
v. ) No. JV 2008-065  
)  
THE HONORABLE MICHAEL ROCA, )  
Judge Pro Tem of the SUPERIOR )  
COURT OF THE STATE OF ARIZONA, )  
in and for the County of APACHE, )  
)  
Respondent Judge, )  
)  
C.R., a juvenile, )  
)  
Real Party in Interest. )  

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**MANDATE**

TO: The Honorable Apache County Superior Court, Arizona in  
relation to Cause No. JV 2008-065.

GREETING: The above cause was presented in your Court and was brought  
before Division One of the Court of Appeals of the State of Arizona  
in the manner prescribed by law. This Court rendered its MEMORANDUM  
DECISION and caused the same to be filed on January 20, 2009.

The time for the filing of a motion for reconsideration has  
expired and no motion was filed. The time for the filing of a  
petition for review has expired and no such petition was filed.

NOW, THEREFORE, YOU ARE COMMANDED that such proceedings be  
had in said cause as shall be required to comply with the decision of  
this court, a copy of the MEMORANDUM DECISION being attached hereto.

IT IS ORDERED that the original of the foregoing MANDATE  
and a copy of the MEMORANDUM DECISION of the Court were mailed to the  
Clerk of Apache County Superior Court, Arizona on February 24, 2009.  
A copy of the MANDATE and MEMORANDUM DECISION was mailed to the  
Honorable Michael P Roca, Judge Pro Tem, and a copy of the MANDATE  
was mailed on said day to each party appearing or the attorneys of  
record.



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 ex rel. CRISS ) No. 1 CA-SA 08-0294  
E. CANDELARIA, Apache County )  
Attorney, ) DEPARTMENT C  
)  
Petitioner, )  
)  
v. ) **MEMORANDUM DECISION**  
)  
THE HONORABLE MICHAEL ROCA, ) (Not for Publication -  
Judge Pro Tem of the SUPERIOR ) Rule 28, Arizona Rules of  
COURT OF THE STATE OF ARIZONA, ) Civil Appellate Procedure)  
in and for the County of APACHE, )  
)  
) **FILED 1-20-09**  
Respondent Judge, )  
)  
C.R., a juvenile, )  
)  
Real Party in Interest. )  
\_\_\_\_\_ )

Petition for Special Action from  
the Superior Court in Apache County

Cause No. JV 2008-065

The Honorable Michael Roca, Judge Pro Tempore

**JURISDICTION ACCEPTED; RELIEF GRANTED IN PART**

Apache County Attorney's Office  
By Criss E. Candelaria  
Bradley W. Carlyon  
Michael B. Whiting  
Attorneys for Petitioner

St. Johns

The Wood Law Office  
By Ronald D. Wood  
Benjamin Brewer  
Attorneys for Real Party in Interest

Show Low

H A L L, Judge

¶1 The issue presented by this special action is whether the juvenile court is precluded by statute or rule of procedure from considering the State's motion to dismiss one of the two counts of first-degree murder while C.R., the juvenile defendant, is undergoing a competency evaluation. We hold that the juvenile court was not precluded from determining the State's motion.

¶2 On November 7, 2008, the State filed a delinquency petition charging C.R. with two counts of first-degree murder involving two victims. During a detention hearing held the same day, the juvenile court sua sponte ordered that C.R. be evaluated to determine his competency to stand trial. See Ariz. Rev. Stat. (A.R.S.) § 8-291.01(A) (2007) ("A juvenile shall not participate in a delinquency, incorrigibility or criminal proceeding if the court determines that the juvenile is incompetent to proceed.").<sup>1</sup> The State subsequently filed a motion to dismiss Count I of the petition *without* prejudice. C.R. responded, requesting any dismissal be *with* prejudice. During a status conference held December 8, the juvenile court declined to consider the motion to dismiss until it had determined C.R.'s competency because "statutes

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<sup>1</sup> A.R.S. § 8-291(2) (2007) defines "incompetent" as meaning "a juvenile who does not have sufficient present ability to consult with the juvenile's lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the juvenile." It also provides: "Age alone does not render a person incompetent."

controlling the issue or addressing the issue of competency presuppose that nothing will happen while an individual is incompetent" and the State's motion dealt with a "substantive" issue. The court also cited what it referred to as "the parallel . . . adult practice or the criminal court practice under [Arizona Rule of Criminal Procedure] 11" of staying proceedings while a competency determination is pending and stated, "The equivalent is, and I feel should be, true in juvenile matters." The State then filed this special action asking us to vacate the juvenile court's ruling and direct the court to rule on the State's motion before it had determined C.R.'s competency.

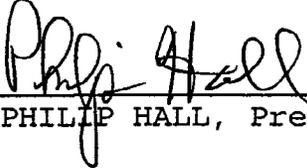
¶3 In the exercise of our discretion, we accept jurisdiction of the State's special action because it lacks an adequate remedy by appeal. See Ariz. R.P. Spec. Act. 1(a). Pursuant to A.R.S. § 8-291.08(D) (2007), the juvenile court would be required to dismiss both counts of the petition with prejudice should it find that C.R. "is incompetent and there is not a substantial probability that [he] will be restored to competency within two hundred forty days . . . ." Although the State has the right to appeal a dismissal order, see A.R.S. § 8-235(A) (2007); Ariz. R.P. Juv. Ct. 103(A), there is a likelihood that such an appeal would be limited to whether reasonable evidence supported the juvenile court's finding of incompetency. See, e.g., *State v. Krantz*, 174 Ariz. 211, 212, 848 P.2d 296, 297 (App. 1992) (stating that

appellate review of the denial of a motion for redetermination of probable cause must be brought by special action and is not available on appeal). In addition, the issue here does not depend on contested facts and is one of pure law. See *Finck v. Superior Court*, 177 Ariz. 417, 418, 868 P.2d 1000, 1001 (App. 1993) (accepting jurisdiction because petitioner had no equally plain, speedy, and adequate remedy by appeal and because question raised was one of pure law).

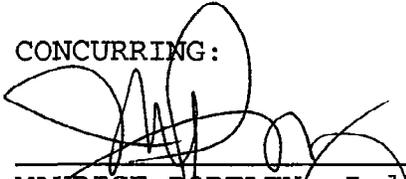
¶14 The juvenile court apparently believed that it was precluded by A.R.S. § 8-291.01(A) from considering the State's motion. We disagree. That statute only comes into play after the court has actually found that a juvenile is incompetent to proceed and not when, as here, the court has determined only that there are reasonable grounds to order a competency evaluation. Although it may be the better course of action in many circumstances to delay the consideration of substantive matters until the issue of competency is resolved, no statute or rule requires the court to do so. Arizona Rule of Criminal Procedure 11, which the juvenile court relied on by analogy, similarly contains no provision that prevents a court from timely addressing a motion to dismiss filed after reasonable grounds for a mental evaluation have been found to

exist but before the court has held a hearing to determine a defendant's competency.<sup>2</sup>

¶15 In conclusion, the juvenile court was not, as it believed, precluded by statute and/or court rule from addressing the State's motion to dismiss Count I without prejudice. We therefore grant relief in part by vacating the court's contrary ruling and returning this matter to the juvenile court for further proceedings consistent herewith.

  
\_\_\_\_\_  
PHILIP HALL, Presiding Judge

CONCURRING:

  
\_\_\_\_\_  
MAURICE PORTLEY, Judge

  
\_\_\_\_\_  
PATRICIA K. NORRIS, Judge

<sup>2</sup> Although criminal proceedings are not automatically suspended when the court orders a competency evaluation, Rule 8.4(a) provides that any delay caused by an examination and hearing to determine a defendant's competency is excluded from the computation of speedy trial limits under Rules 8.2 and 8.3. See also Ariz. R.P. Juv. Ct. 17(B)(1) (same).