

**Arizona Supreme Court**  
**Miscellaneous Special Action**

**M-24-0023**

**STATE OF ARIZONA v CARY SMITH**

**Appellate Case Information**

Case Filed: **7-Jun-2024** Archive on: 3-Jul-2034 (planned)  
Case Closed: **3-Jul-2024**

**Dept/Composition**

**Side 1. STATE OF ARIZONA, Respondent**

(Litigant Group) STATE OF ARIZONA

- State of Arizona

**Side 2. CARY SMITH, Petitioner**

(Litigant Group) CARY SMITH

- Cary Smith

PRO SE

**CASE STATUS**

Jul 3, 2024.....**Case Closed**

Jul 3, 2024.....**Decision Rendered**

**PREDECESSOR CASE(S)**

	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MAR	CR2023-101335-001				

**CASE DECISION**

**03-Jul-2024 ORDER**

\* On January 18, 2023, Petitioner Smith was indicted on a charge of second degree murder. On June 4, 2024, Petitioner entered a plea of guilty pursuant to a plea agreement with the Respondent State to the amended charge of manslaughter (A.R.S. § 13-1103(A)

Filed: **03-Jul-2024**

Mandate: \_\_\_\_\_

Decision Disposition

***Dismissed Without Prejudice***

**Kathryn King**

**2 PROCEEDING ENTRIES**

1. 7-Jun-2024 FILED: Petition for Review (Petitioner Smith, Pro Se)

**Arizona Supreme Court**  
**Miscellaneous Special Action**

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**STATE OF ARIZONA v CARY SMITH**

**2 PROCEEDING ENTRIES**

2. 3-Jul-2024 On January 18, 2023, Petitioner Smith was indicted on a charge of second degree murder. On June 4, 2024, Petitioner entered a plea of guilty pursuant to a plea agreement with the Respondent State to the amended charge of manslaughter (A.R.S. § 13-1103(A)(1)), a class 2 dangerous felony (see A.R.S. § 13-704).

On June 7, 2024, Petitioner filed in this Court a "Petition for Review" that makes various allegations of prosecutorial misconduct.

On June 7, 2024, Petitioner also filed a pro per notice of appeal in the superior court. The court of appeals (in case 1 CA-CR 24-0315) dismissed the notice of appeal stating, "[t]he record shows that appellant purports to appeal the superior court's orders entered on April 29, 2024. Those orders ruled on numerous pretrial motions and are not appealable under A.R.S. § 13-4033."

On June 24, 2024, the superior court issued an order (docketed on June 25, 2024) observing that the court had received and reviewed Petitioner's pro per pleading entitled "Special Action" that was filed in superior court case LC2024-000216-001. On its own motion, the court ordered that the motion be filed in the criminal case (CR2023-101335-001) and referred it to a different division to be handled as a motion for change of counsel.

On June 27, 2024, the superior court issued an order (docketed July 1, 2024) setting a status conference on Petitioner's motion for change of counsel for July 9, 2024.

Petitioner's claims must be presented initially to the superior court, and when a final decision is entered, a party may file a timely petition for review in the court of appeals. See Ariz. R. Crim. P. 33.16. After a decision by the court of appeals, Ariz. R. Crim. P. 33.16(I) allows for the filing of a timely petition for review in this Court.

Petitioner's "Petition for Review" filed in this Court fails to state a sufficient reason for seeking relief initially from this Court instead of the superior court. See Ariz. R. Sup. Ct. 1(b)(1); A.R.S. § 12-2101(A)(11). Therefore,

IT IS ORDERED that Petitioner's "Petition for Review" is dismissed without prejudice to Petitioner seeking appropriate relief in the superior court in the first instance.

IT IS FURTHER ORDERED closing case number M-24-0023.

IT IS FURTHER ORDERED that no further filings will be accepted in this matter. (Hon. Kathryn H. King)

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