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IN THE SUPREME COURT OF ARIZONA

In the Matter of)
PETITION TO MODIFY RULE 17.1) Petition to Modify Arizona Rule of
OF THE ARIZONA RULES OF) Criminal Procedure 17.1
CRIMINAL PROCEDURE) and
_____) Request for Expedited Consideration

Pursuant to Rule 28(B), Rules of the Supreme Court, Paul Julien, *Pro Tempore* and Thomas Robinson who are Judges in Courts of Limited Jurisdiction in the State of Arizona submit this petition to amend Rule 17.1 of the Arizona Rules of Criminal Procedure as set forth in this petition.

Background

A number of courts of limited jurisdiction in the state of Arizona handle a high volume of criminal traffic violations such as criminal speeding. Many of these courts have Interstate highways in their jurisdictions and have people from other states and countries cited into their courts for criminal traffic and criminal boating violations. Pursuant to former Rule 8(b) of the Rules of Procedure in Traffic Cases and Boating Cases, defendants could enter a guilty plea by signing a

sheet on a court's bond card which constituted a waiver of their right to trial, entry of a guilty plea and their consent to the judgment imposing the fine listed for the offense on the court's bond schedule. Defendants could pay the fine by mail, telephonically, or on the court's website.

The Arizona Rules of Procedure in Traffic Cases and Boating Cases were abrogated in 2015; therefore, the procedure under Rule 8(b) has been abolished. As a result, the long standing method for the disposition of criminal traffic and criminal boating cases was abolished as well. This seems to be an unintended consequence of the abrogation of the Arizona Rules of Procedure in Traffic Cases and Boating Cases.

A similar procedure for pleas by mail under Rule 17.1 of the Arizona Rules of Criminal Procedure is much more cumbersome than the Rule 8(b) procedure. The Rule 17.1 process requires defendants to submit a form that is acknowledged by a notary public. The form also must contain a recitation of defendants' constitutional rights, and a statement for the court to consider when determining the appropriate sanction. Many defendants who receive citations on Interstate highways do not reside in Arizona and cannot easily appear at the court into which they were cited.

In fiscal year 2014, 20% of the defendants who were cited for criminal traffic violations resided outside of Arizona. For defendants who simply want to pay a sanction, it will be much more difficult to comply with the requirements under Criminal Rule 17.1 than it was for them to comply with the requirements under Rule 8(b) of the Arizona Rules of Procedure in Traffic Cases and Boating Cases. It can be impossible for defendants who reside in other countries to comply with the notary requirement.

Furthermore, the requirements in Rule 17.1 create additional work for court staff who deal with a large volume of these cases because the court staff must process defendants' requests to enter a plea by mail, have a judicial officer impose a sanction, and finally send correspondence to defendants advising them of the sanction and their deadline for payment. This process also delays the processing of those cases where defendants simply wish to pay a sanction to dispose of their cases.

The petitioners have discussed this issue with impacted limited jurisdiction court judges throughout the state of Arizona. In addition, the petitioners have presented the following proposal to limited jurisdiction court judges in Coconino County in April, 2016 and at the Arizona Magistrates Association Annual Conference in May, 2016. The following proposal will also be presented at two different sessions of the Annual Judicial Conference in June, 2016.

Proposal

This proposed rule does not change the language of the current version of Rule 17.1 of the Arizona Rules of Criminal Procedure. It simply adds the language of Rule 8(b) of the Arizona Rules of Traffic and Boating Cases that existed at the time the Arizona Rules of Traffic and Boating Cases were abrogated. The petitioners request that Rule 17.1 of the Arizona Rules of Criminal Procedure be modified as follows (additions shown by underscoring):

“(4). Pleas by Mail in Courts of Limited Jurisdiction.

(a) Notwithstanding the requirements in Rules 1.6, 14.2, 17.1(a)(2), 17.2, 17.3, and 26.9 that the defendant personally appear before a judicial officer, courts of limited jurisdiction may accept a written plea of guilty or no contest to a misdemeanor or petty offense if the court is satisfied that a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial distance to travel, or incarceration. Except as noted above, a plea submitted by mail must comply with the requirements of Rule 17 and must be signed by the defendant and acknowledged by a notary public.

The defendant shall use the guilty/no contest plea by mail form appearing in the Appendix to these rules for entry of a plea by mail. The form shall recite that the defendant waives his or her constitutional rights, enters a plea of guilty or no contest to the offenses described in the complaint, and consents to the entry of judgment. The plea by mail form must include a statement for the court to consider when determining the appropriate sentence.

The court shall send the defendant by mail a copy of a judgment entered pursuant to this rule. The judgment of guilt may be used as a prior conviction in the event of a subsequent conviction.

A plea by mail shall not be available for the following:

- (i) Cases involving a victim;
- (ii) Cases in which the court may impose a jail term, unless the defendant is sentenced to time served, or the defendant is currently incarcerated and the proposed term of incarceration would not extend the period of incarceration and would be served concurrently;
- (iii) Cases in which the court may sentence the defendant to a term of probation;
- (iv) Offenses for which A.R.S. § 13-607 requires the taking of a fingerprint upon sentencing; and
- (v) When this method of entering a plea would not be in the interests of justice.

The local court shall establish a policy for participation by the prosecutor in pleas by mail.

(b) Notwithstanding the requirements of subsection (a), when a judicial officer permits a guilty plea to a traffic or boating misdemeanor or petty offense to be made other than in open court, the plea shall be signed by the defendant, and shall recite that the defendant waives his or her right to trial, enters a plea of guilty to the offense described in the Complaint, and consents to judgment imposing the fine that is prescribed on the court's bond schedule. Such plea shall be deemed accepted, and the judgment and sentence imposing the prescribed fine shall be deemed pronounced on the plea, when the fine is paid."

Conclusion

By implementing this rule change, the Supreme Court will simply reinstate a method by which criminal traffic cases were adjudicated for many years. The reinstatement of this process will permit defendants who live in other states and

countries to resolve their cases, and it will assist courts of limited jurisdiction in meeting case processing standards.

Pursuant to the foregoing explanation of the unforeseen consequences resulting from the abrogation of the Rules of Procedure in Traffic Cases and Boating Cases, Petitioners respectfully request that the Arizona Supreme Court expedite consideration of this Petition at the August, 2016 Rules Agenda for adoption in January, 2017.

Respectfully submitted on this 13th day of May, 2016,

/s/ _____

Paul Julien

/s/ _____

Thomas Robinson