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IN THE SUPREME COURT, STATE OF ARIZONA

In the Matter of PETITION TO
AMEND THE ARIZONA RULES
OF CRIMINAL PROCEDURE

) Supreme Court No. R- _____

)
) Petition to Amend Rule 4.1(b), Rules of
) Criminal Procedure

I. SUMMARY OF PROPOSED CHANGES

Gary Pearlmutter, Coconino County Legal Defender, petitions this Court pursuant to Rule 28, Rules of the Supreme Court, to amend Rule 4.1(b) of the Rules of Criminal Procedure relating to time limits and the computation of time for the filing of a complaint. The proposal seeks to clarify the time needed to file a complaint by mandating that the State file it within an actual timeframe of 48 hours. The existing application of Rule 4.1(b) of the Arizona Rules of Criminal Procedure often results in a variety of time periods in which to file a complaint. The net result is a lack of uniformity and inequitable pretrial confinement of indigent defendants within the county jails, when the State does not file a complaint.

Currently, Rule 4.1(b) requires the State to file the complaint within 48 hours of the initial appearance. Rule 1.3(a) of the Arizona Rules of Criminal Procedure explicitly excludes the date of the initial appearance and Saturday, Sunday and legal holidays from the computation of the 48 hours. It also leaves open the period of time to file the complaint to the end of the day after the 48 hours

has run, since Rule 1.3(a) treats the 48 hours as two days. If the State does not file a complaint within 48 hours, Rule 4.1(b) mandates our courts to order the release of a defendant and vacate the preliminary hearing date.

The net result of these rules is that defendants do wait different periods of time for a complaint to be filed. Some may wait three days in custody, while others may wait six days. For example, if a defendant is arrested on Sunday and has an initial appearance on Monday morning, Rule 1.3(a) requires the 48 hours to start running on Tuesday and it provides the State until the end of the day Wednesday to file the complaint – a total of three days. However, if a defendant is arrested on Thursday and has an initial appearance on Friday morning, Rule 1.3(a) requires the 48 hours to start running on Monday and the State has until the end of the day Tuesday to file the complaint – a total of five days. If the Monday following Saturday and Sunday is a legal holiday, then the State has until the end of the day Thursday to file the complaint – a total of six days. Consequently, if no complaint is filed, similarly situated defendants are held for different periods of time, before our courts order their release.

This situation raises questions about equal protection. Our case law tells us that indigent defendants should not be punished for their economic status. Williams v. Illinois, 399 U.S. 235, 90 S.Ct. 2018 (1970). This principal applies to presentence custody. State v. Warde, 116 Ariz. 598, 600-01, 570 P.2d 766, 768-69 (1977)(indigent defendants must receive credit for presentence custody at sentencing). Consequently, the rules should not result in indigent defendants being treated unequally.

Administrative expediency also cannot justify the current result of the rule. The time needed to draft and file the complaint is not excessive – an hour or two at the very most. The arresting and prosecuting agencies may have to work on weekends and legal holidays to ensure that a complaint is filed within an actual time frame of 48 hours as proposed in this amendment. This additional burden

may be administratively inconvenient, but it is outweighed by the liberty interests of the indigent defendants, who are entitled to release if the State does not file a complaint. See, Riverside v. McLaughlin, 500 U.S. 44, 111 S.Ct. 1661 (1991).

The foregoing discussion underscores the need to bring uniformity to the application of our Rules of Criminal Procedure and specifically the timeframe for filing of a complaint. The proposed amendment set forth in Exhibit 1, hereto, does bring uniformity to the application of Rule 4.1(b). It resolves the issues presented in this petition and it results in equal treatment of all defendants held in custody pretrial, who are presumed innocent.

II. TEXT OF PROPOSED RULE CHANGE

Rule 4.1 Procedure Upon Arrest

(b) On arrest without a warrant. A person arrested without a warrant shall be taken before the nearest or most accessible magistrate in the county of arrest, whereupon a complaint, if one has not already been filed, shall promptly be prepared and filed. If a complaint is not filed within 48 hours from the time of the initial appearance before the magistrate, the defendant shall be released from jail, and the preliminary hearing date, if any, shall be vacated. Notwithstanding Rule 1.3, the 48 hours shall run from the actual time of the initial appearance and include Saturday, Sunday and legal holidays.

Submitted this 8th day of January, 2009.

By _____
Gary Pearlmutter
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