MEMORANDUM

Date: April 10, 2020

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

Re: **Decision of the Arizona Court of Appeals Regarding Pima County Consolidated Justice Court**

Attached is a Ruling of the Arizona Court of Appeals, Division Two, in a case where a Justice of the Peace concluded that he did not have jurisdiction to hear a particular case in the Consolidated Justice Court. If allowed to stand, this would have effectively eliminated the functioning Consolidated Justice Court. For this reason, a special action was taken to the Arizona Court of Appeals, Division Two.

The attached Ruling clearly indicates the Consolidated Justice Court has been properly formed and continues to function as a consolidated court based on the Arizona Constitution, Statutes and Supreme Court Administrative authority provide for that continuation.

CHH/anc

Attachment

c: The Honorable Kyle Bryson, Presiding Judge, Pima County Superior Court

IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Petitioner,

v.

HON. HOWARD FELL, JUDGE PRO TEMPORE OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, IN AND FOR THE COUNTY OF PIMA,
Respondent,

and

LISABETH JANE WEBER,
Real Party in Interest.

No. 2 CA-SA 2020-0005
Filed April 7, 2020

Special Action Proceeding
Pima County Cause No. CR20195375001

JURISDICTION ACCEPTED; RELIEF GRANTED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines and Amy S. Ruskin, Deputy County Attorneys, Tucson
Counsel for Petitioner

Law Office of Mark F. Willimann LLC, Tucson
By Mark F. Willimann
Counsel for Real Party in Interest

OPINION

Judge Espinosa authored the opinion of the Court, in which Presiding Judge Eppich and Judge Eckerstrom concurred.

E S P I N O S A, Judge:

¶1 In this petition for special action, the state challenges the respondent judge's ruling affirming on appeal a justice court judge's dismissal of charges against real party in interest Lisabeth Weber on the ground the justice court lacked jurisdiction. Because the question is an important one that is likely to recur, we accept special action jurisdiction. And because we conclude the justice court had jurisdiction, we grant relief.

Special Action Jurisdiction

¶2 Our discretionary special action jurisdiction is appropriate when a petitioner has no "equally plain, speedy, and adequate remedy by appeal." Ariz. R. P. Spec. Act. 1(a). In this case, appeal to this court is barred by A.R.S. § 22-375 (no further appeal from superior court misdemeanor appeal unless "the action involves the validity of a tax, impost, assessment, toll, municipal fine or statute"). Exercise of our special action jurisdiction is also appropriate when, as here, the issue presented is a purely legal and significant one, and is likely to recur. *See Lear v. Fields*, 226 Ariz. 226, ¶ 6 (App. 2011); *Nordstrom v. Cruikshank*, 213 Ariz. 434, ¶¶ 8-9 (App. 2006). Accordingly, we accept special action jurisdiction.

Background

¶3 Lisabeth Weber was arrested for driving under the influence in the geographical area of Pima County Justice of the Peace Precinct 1. Her citation ordered her to appear in the Pima County Consolidated Justice Court (PCCJC). A subsequent form providing the conditions of her release assigned her case to Judge Vince Roberts, the justice of the peace in Precinct 10, though located in the same facility as Precinct 1 under the county consolidation plan. Before trial, Weber made an oral objection to Judge Roberts's jurisdiction over the matter. Citing various statutes and a decision of this court, *Lay v. Nelson*, 246 Ariz. 173 (App. 2019), Judge Roberts agreed that he lacked jurisdiction and dismissed the case. The state appealed that ruling to the superior court, arguing the justice court had

jurisdiction and Judge Roberts's dismissal was in error. Respondent Judge Howard Fell affirmed, likewise relying on *Lay*.

Justice Court Jurisdiction

¶4 To determine whether the justice court had jurisdiction, we must ascertain whether the statutes creating and guiding the justice courts of this state conflict with administrative orders of our supreme court directing operation of the various Pima County justice of the peace precincts, and whether either the statutes or orders conflict with the Arizona Constitution. Our consideration of this question thus requires a review of the relevant statutes and administrative orders relating to the PCCJC.

¶5 Pursuant to A.R.S. § 22-101(A), the county board of supervisors divides each county "into justice precincts" and is empowered to "change or abolish any justice precinct." The justice of the peace of each precinct has original jurisdiction in criminal actions as provided by A.R.S. § 22-301. It provides, "The justice courts shall have jurisdiction of the [enumerated] offenses committed within their respective precincts." § 22-301(A). The legislature has further provided for venue when a justice is "unable to act" in A.R.S. § 22-302:

> If the justice of the peace of the precinct in which the crime is alleged to have been committed is absent therefrom, or for any reason is unable to act, the prosecution may be commenced in any precinct within the county designated by the justice of the peace or in the absence of the justice of the peace in any precinct designated by the presiding judge of the superior court.

Likewise, A.R.S. § 22-114(a) authorizes "each justice of the peace within a county" to "preside in any other precinct within the county" "[i]n the absence, illness or inability to act or on the request of the justice of the other precinct."

¶6 Weber, fundamentally, argues that these statutes control and contends "[t]he State confuses 'statutory' authority with 'constitutional' authority to give credence to the notion that Arizona's constitution permissibly trumps Arizona statutes." But, of course, statutes must conform with the mandates of our state constitution. *See, e.g., Kenyon v.*

Hammer, 142 Ariz. 69, 87 (1984) (declaring former A.R.S. § 12-564 unconstitutional because it violated Ariz. Const. art. II, § 13).

¶7 In contrast, the state contends certain administrative orders issued by our supreme court, forming the PCCJC, are procedural in nature and therefore override the statutory provisions, citing Ariz. Const. art. VI, § 3. *See State v. Hansen*, 215 Ariz. 287, ¶ 9 (2007) (if matter regulated is procedural, it is in province of court). Indeed, as the state points out, the Arizona Constitution provides the chief justice of the court certain administrative powers, including that he or she "may assign judges of intermediate appellate courts, superior courts, or courts inferior to the superior court to serve in other courts or counties." Ariz. Const. art. VI, § 3.

¶8 Pursuant to that power, in 1974, our supreme court assigned administrative supervision of the Justice Courts in Pima County to the presiding judge of the Pima County Superior Court. In 1976, the presiding judge noted that it had "become necessary, through the imbalance of the caseload," to "more evenly distribute the judicial activity." The presiding judge therefore ordered that "each Justice of the Peace in Tucson be assigned, indefinitely, to serve in each of the other Tucson Precincts." In 2000, the presiding judge issued the same order, excepting Precincts 3 and 7 (Green Valley and Ajo) from the order.

¶9 Our supreme court in 2013 affirmed that the 1974 order would "remain in effect." Ariz. Sup. Ct. Admin. Order No. 2013-70 (July 25, 2013). It then set forth various administrative guidelines for the courts to follow, including defining roles for presiding judges and justices and various administrative positions. The remaining justices of the peace were assigned certain administrative duties as well, including "[s]chedul[ing] hearings and trials related to cases and other matters filed in the justice precinct over which the justice of the peace has jurisdiction." Ariz. Sup. Ct. Admin. Order No. 2013-70 (July 25, 2013).

¶10 These orders are consistent with the authority provided to the chief justice in our constitution and, contrary to the view of the real party in interest, we do not read them as inconsistent with the statutes. When "there is an apparent conflict between a rule and a statute, the rule and statute are harmonized if possible." *Kenneth T. v. Ariz. Dep't of Econ. Sec.*, 212 Ariz. 150, ¶ 8 (App. 2006) (quoting *Johnson v. Elson*, 192 Ariz. 486, n.4 (App. 1998)). "Moreover, the rule and statute should be 'read in conjunction with each other.'" *Id.* (quoting *State v. Superior Court*, 173 Ariz. 385, 386 (App. 1992)).

¶11 Through the 1976 order indicating the disparate caseloads between the precincts, the justices of the peace for those precincts made known their "inability to act" and "request" for other justices to serve in their stead, consistent with the statutory provision. § 22-114. And, by allowing such provisions, the legislature abided by the constitutional requirement that the chief justice of the supreme court maintain the ability to assign judges to the various courts of this state. Thus, we need not invalidate either the statutes or the administrative order; rather they can be read in concert. *See Kenneth T.*, 212 Ariz. 150, ¶ 8.

¶12 In Weber's case, her citation directed her to the PCCJC, which encompasses Precinct 1, in which she committed her offense. Although Weber argues the administrative orders "[a]bolish the precinct system in Pima County," the orders in fact merely allow the justices of the various precincts to sit for one another as needed. Weber has cited nothing in the statutes requiring that the precinct court be physically located in the precinct or disallowing the consolidation of precincts, so long as each continues to exist. *See* A.R.S. § 22-101 (providing board of supervisors may change or abolish precincts). The administrative order properly allowed a justice of the peace who was able to hear the case to do so, regardless of the precinct to which he or she was elected. Once assigned to the case, Judge Roberts effectively served as a justice of Precinct 1.

¶13 Both Judge Roberts and the respondent judge relied on *Lay* to conclude the justice court lacked jurisdiction. The question here, however, is distinguishable from that presented in *Lay*. In that case, this court addressed whether the "justice court lacked subject-matter jurisdiction absent evidence that the offenses were committed 'within the precinct' under § 22-301(C)." 246 Ariz. 173, ¶ 7. But the issue at hand is not whether there was sufficient evidence as to the location of the offenses;[1] it is instead whether Judge Roberts, elected to another precinct but assigned to the case, could hear it. As discussed above, the Arizona constitution, statutes, and supreme court administrative authority, viewed in concert, provide that he could.

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[1] We note as well that the Yuma County Justice Courts are not consolidated and sit in three different locations, governed by administrative orders other than those applicable here.

Disposition

¶14 For these reasons, we accept special action jurisdiction, reverse the respondent judge's affirmance and the justice court's dismissal, and remand the case for further proceedings in the justice court.