

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

CLAYTON ROBERT SOPELAND,
Petitioner,

v.

HON. PETER J. CAHILL, JUDGE OF THE
SUPERIOR COURT OF THE STATE OF ARIZONA,
IN AND FOR THE COUNTY OF GILA,
Respondent,

and

THE STATE OF ARIZONA,
Real Party in Interest.

No. 2 CA-SA 2015-0015
Filed April 20, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED FOR PERSUASIVE AUTHORITY.
See Ariz. R. Sup. Ct. 111(a)(3), (c); Ariz. R. Civ. App. P. 28(a)(2);
Ariz. R. P. Spec. Actions 7(g), (i).

Special Action Proceeding
Gila County Cause No. CR201400104

JURISDICTION ACCEPTED; RELIEF GRANTED

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COUNSEL

Lloyd Law Group, P.L.L.C., Payson
By Arthur E. Lloyd
Counsel for Petitioner

Bradley D. Beauchamp, Gila County Attorney
By Bryan B. Chambers, Deputy County Attorney, Globe
Counsel for Real Party in Interest

DECISION ORDER

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Miller and Judge Espinosa concurred.

ECKERSTROM, Chief Judge:

¶1 In this special action, Clayton Sopeland seeks review of the respondent judge's order denying his motion to withdraw from his plea agreement. The state initially failed to respond to the special action as ordered and, upon further order of this court, has taken no position in this special action. Because Sopeland has no "equally plain, speedy, and adequate remedy by appeal," we accept special action jurisdiction. Ariz. R. P. Spec. Actions 1(a).

¶2 In the minute entry detailing Sopeland's change-of-plea hearing, the respondent judge stated he would defer acceptance of the plea agreement until sentencing. Although we can presume acceptance of a plea agreement if a trial court finds that the plea was voluntarily and intelligently entered and that the factual basis is sufficient, *see State v. McKesson*, 27 Ariz. App. 500, 501-02, 556 P.2d 801, 802-03 (1976), we find no authority suggesting we can, for the same reasons, disregard a court's statement that it has not yet accepted the plea agreement. Thus, because Rule 17.4(b), Ariz. R. Crim. P., permits a party to unilaterally revoke a plea agreement that has not yet been accepted by the court, we are compelled to grant relief. *See* Ariz. R. P. Spec. Actions 3(a) (special action relief

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warranted if respondent “has failed to . . . perform a duty required by law as to which he has no discretion”).

¶3 We accept jurisdiction and grant relief. The respondent judge’s order denying the petitioner’s motion to withdraw from the plea is reversed.