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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

STATE OF ARIZONA,

Plaintiff,

vs.

ARLENA M WILLES,

Defendant,

J.Z.,

Crime Victims' Representative.

Maricopa County Superior Court No.
CR2019-005397-001

**CRIME VICTIM REPRESENTATIVE'S
MOTION IN SUPPORT OF STATE'S
MOTION FOR RECONSIDERATION**

**(Assigned to the Honorable Geoffrey
Fish)**

Crime Victims' Representative, respectfully files this motion in support of the State's Motion for Reconsideration of the Defendant's Self-Representation.

I. FACTS

At the Initial Pre-Trial Conference Hearing before Commissioner Garfinkel on August 30, 2019, Defendant requested to represent herself during this criminal case. Commissioner Garfinkel granted Defendant's motion after finding a knowing, voluntary, and intelligent waiver of her right to court appointed counsel. Defendant was also admonished to not disclose the personally identifiable information of the victim and that she was to abide by the rules of the Court. Lastly, the Court addressed Defendant's motion arguing that the Court lacked jurisdiction in her case and

that the case should be dismissed with prejudice. The Court found proper jurisdiction and denied Defendant's motion, and admonished Defendant from relitigating motion which had already been ruled upon.

On September 12, 2019, Defendant filed another Motion to Dismiss with Extreme Prejudice for Cause. Similar to Defendant's prior motions, the motion included personally identifiable information of the minor victim and raised the same issues addressed and ruled upon by Commissioner Garfinkel at the August 30, 2019, Initial Pre-Trial Conference.

II. ARGUMENT

This Court should reconsider the prior order permitting Defendant to represent herself because Defendant is not following the rules of procedure and courtroom protocol and Defendant is attempting to relitigate previously denied motions.

In Arizona, "a Defendant has a constitutional right to proceed without counsel when the defendant knowingly, intelligently, and voluntarily elects to do so." *State v. Whalen*, 192 Ariz. 103, 106, 961 P.2d 1051, 1054 (1997) (citing *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525 (1975); *State v. De Nistor*, 143 Ariz. 407, 694 P.2d 237 (1985)). However, the right to proceed without counsel is limited "only so long as the defendant is able and willing to abide by the rules of procedure and courtroom protocol." *State v. Whalen*, 192 Ariz. 103, 106, 961 P.2d 1051, 1054 (1997) (citing *McKaskle v. Wiggins*, 465 U.S. 168, 173 (1984)). In *Whalen*, the court of appeals upheld the trial court's decision to revoke the defendant's self-representation, the court noted it was:

"fundamental to the court's ability to control the courtroom, is the power to instruct those participating in and observing [court proceedings] as to the manner in which they comport themselves. To further this end, trial judges have the authority and the obligation to ensure that counsel, litigants, jurors, court personnel and spectators behave civilly."

Id.

In the present case, Defendant is not following the prior admonishments set forth by this Court. Specifically, on August 30, 2019, the Court clearly and unambiguously admonished the Defendant that she must not continue to argue an issue after the Court has ruled. Similarly, the Court admonished the Defendant that she must not disclose personally identifiable information of the minor victim. Such action is a violation of the victim's right "[t]o be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process." Ariz. Const. art. II, § 2.1(A)(1).

III. CONCLUSION

Defendant has shown that despite a clear and unambiguous directive from the court both in person and in the August 30, 2019, minute entry, she is unwilling or unable to follow the rules and procedures set forth by this Court. For the reasons set forth above, we request the Court reconsider the prior ruling permitting Defendant to represent herself.

Respectfully submitted this 26th day of September, 2019.

By: _____
Robert Swinford
Attorney for Victim J.Z.

ORIGINAL e-filed this September 26th, 2019
to the Clerk of the Court

Copies of the foregoing emailed/delivered to
this September 26th, 2019

The Honorable Geoffrey Fish
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