

COURT OF APPEALS, DIVISION ONE

BRIEFS

SECTION 2

1 CA-CR 6693

STATE OF ARIZONA

v.

JAMES HAROLD BURRELL,

MARICOPA COUNTY  
SUPERIOR COURT  
NO. CR-123775

TRANSMITTAL DATE

# ORIGINAL

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA,	)	
	)	
Appellee,	)	No. 1 CA-CR 6693
	)	
v.	)	
	)	Maricopa County Superior
JAMES HAROLD BURRELL,	)	Court No. CR-123775
	)	
Appellant.	)	
<hr/>		

## APPELLANT'S OPENING BRIEF

ROSS P. LEE  
Maricopa County Public Defender

MICHAEL G. SULLIVAN  
Deputy Public Defender  
Attorney for Appellant  
132 South Central, 2nd Floor  
Phoenix, Arizona 85004

DIVISION 1  
COURT OF APPEALS  
STATE OF ARIZONA  
FILED MAR 2 1983

GLEN D. CLARK, CLERK  
By *[Signature]*

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3-28-83

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### STATEMENT OF THE CASE

The Appellant, James Harold Burrell, was charged by an indictment returned on December 21, 1981 with three (3) counts of Sale of a Dangerous Drug, all class two (2) felonies. Appellant was arraigned on January 8, 1982 and his trial was scheduled for March 4, 1982 before the Honorable Cecil B. Patterson, Jr., Judge of the Superior Court. The pretrial conference was set for February 18, 1982.

At the time set for the pretrial conference, Appellant and his counsel entered into a plea agreement with the Maricopa County Public Defender's Office. The Appellant agreed to plead guilty to Count II. The State agreed to dismiss Counts I and III. The parties stipulated that Appellant would receive probation, but there was no agreement as to incarceration as a term of that probation. The parties further stipulated that Appellant would pay One Thousand Five Hundred Fifty Five Dollars (\$1,555.00) in restitution to D.E.A. for funds expended. Judge Patterson deferred the acceptance of the plea until sentencing.

The sentencing was originally set for March 22, 1982, but was continued a few times until April 27, 1982. At that time, Appellant requested that he be allowed to withdraw from the plea agreement. Judge Patterson denied this request. The court then placed Appellant on probation for a period of five (5) years. As a term of that probation, Judge Patterson ordered Appellant to serve six (6) months in the Maricopa County Jail.

The Maricopa County Adult Probation Department filed a petition to revoke Appellant's probation on October 7, 1982. The petition alleged that Appellant had violated four (4) of the terms and conditions of his probation. The petition alleged Appellant had violated: term #1 by committing the crime of disorderly conduct on September 27, and October 2, 1982 and the crimes of endangerment and controlling a deadly weapon on October 2, 1982; term #2 by failing to report on

September 30, 1982; term #8 by drinking to excess on October 2, 1982; and term #11 by controlling a .22 caliber rifle on October 2, 1982.

Appellant denied the allegations at his revocation arraignment on October 27, 1982. Judge Patterson set the violation hearing on the petition to revoke for November 19, 1982. At that time, Appellant admitted the violation of term #2 and the State moved to dismiss the allegations of violation involving terms 1, 8 and 11. Judge Patterson accepted Appellant's admission and granted the State's motion to dismiss. Appellant then waived the time for a disposition hearing and his probation officer gave an oral recommendation to Judge Patterson. Judge Patterson reinstated Appellant to probation for five (5) years from April 27, 1982.

A timely notice of appeal was filed on November 30, 1982. Appellant was represented throughout the proceedings below by the Maricopa County Public Defender's Office. This appeal is taken from the finding of violation entered and the terms of probation imposed on November 19, 1982.

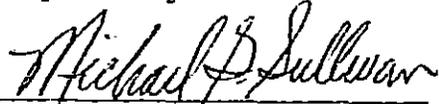
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COMPLIANCE WITH ANDERS V. CALIFORNIA

Counsel for Appellant has searched the record on appeal pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). No arguable question of law has been found. It is respectfully requested that this Court search the record for fundamental error pursuant to A.R.S. §13-4035. State v. Powell, 5 Ariz.App. 51, 423 P.2d 127 (1967).

Respectfully submitted,

ROSS P. LEE  
Maricopa County Public Defender

By   
MICHAEL G. SULLIVAN  
Deputy Public Defender  
Attorney for Appellant

TWO COPIES of Appellant's Opening Brief mailed this 2<sup>nd</sup> day  
of March, 1983, to ROBERT K. CORBIN, Attorney General of Arizona, 1275 W.  
Washington, Criminal Division - 2nd Floor, Phoenix, Arizona 85007.

ONE COPY of Appellant's Opening Brief mailed this 2<sup>nd</sup> day  
of March, 1983, to JAMES HAROLD BURRELL, 815 North 3rd Avenue, #206,  
Phoenix, Arizona 85003.

ROSS P. LEE  
Maricopa County Public Defender

By Michael G. Sullivan

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ORIGINAL

IN THE COURT OF APPEALS  
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JAMES HAROLD BURRELL,	)	No. CR-123775
	)	
Appellant.	)	
	)	

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APPELLANT'S SUPPLEMENTAL BRIEF

ROSS P. LEE  
Maricopa County Public Defender

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DIVISION 1  
COURT OF APPEALS  
STATE OF ARIZONA

FILED APR 15 1983

GLEN D. CLARK, CLERK  
By W.S. Clark

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## NOTICE OF APPEAL

1

JAMES HAROLD BURRELL  
CR 123775

ON THE 19<sup>th</sup> DAY OF NOVEMBER 1982 DEFENDANT JAMES HAROLD BURRELL WAS REINSTATED ON PROBATION. DURING THIS TIME THE COURT ORDERED GRANTING THE MOTIONS TO DISMISS TERMS 1, 8 AND 11 ALLEGATIONS OF VIOLATION. WHEN I WAS ARRESTED ON OCTOBER 2 1982 POLICE OFFICERS OF THE WHITE RIVER POLICE DEPT. HAD NO GROUNDS FOR AN ARREST. I WAS NOT CHARGED FOR ANY CRIMINAL OFFENSE UNTIL OCTOBER ~~7~~ 1982. I WAS ALLEGEDLY BEING HELD FOR QUESTIONING, BEING HELD FOR 2 DAY BEFORE BEING CHARGED WITH 13-1201A, 13-2904 AG, AND 13-3107A. MY TRIAL DATE WAS ON OCT. 14, 1982 AT 10 AM AT PINETOP JUSTICE COURT. THE STATE MADE A MOTION TO DISMISS ALL CHARGES ON THE GROUNDS THAT THERE WAS ABSOLUTELY NO EVIDENCE AND IT WAS ALSO NOT UNDER COUNTY OR STATE JURISDICTION, WHERE THE ALLEGED OFFENSES OCCURED ON THE 2<sup>nd</sup> DAY OF OCT. 1982. COURT ORDERED MOTION FOR DISMISSAL OF ALL CHARGES ON OCT. 15, 1982. THERE IS A DISCREPENCY FROM THE TIME OF DEFENDANTS' RELEASE FROM NAVAJO Co. JAIL 00034 TO THE TIME MARICOPA COUNTY BROUGHT THE

DEFENDANT JAMES BURRELL INTO THEIR CUSTODY, BEING THAT CHARGES WERE DISMISSED IN ANOTHER COUNTY FOR REASONS STATED ALSO SHOWS ANOTHER DISCREPENCY. THE ADMISSION TO THE TECHNICAL VIOLATION TO WHICH THE DEFENDANT FAILED TO APPEAR AND SEE PROBATION OFFICER MARTIN KRIZAY ON SEPT 28 1982 CAN BE PROVEN BY THE DEFENDANT TO BE AN ERROR OF MR. KRIZAY. DEFENDANT HAS PAST APPOINTMENT SLIPS FROM MARTIN KRIZAY WHICH PROVE THERE WAS NO APPOINTMENT MADE FOR SEPT. 28 1982, BUT ON SEPT. 2<sup>ND</sup> OF 1982 WHICH WAS THE DEFENDANTS LAST APPEARANCE WITH MARTIN KRIZAY MR. BURRELL RECEIVED AN APPOINTMENT CARD FOR HIS NEXT APPOINTMENT TO BE ON OCT 7 1982. THE DEFENDANT FEELS HE HAS BEEN TREATED UNLAWFULLY AND WAS HELD IN CUSTODY IN MARICOPA CO. JAIL FOR A PERIOD OF 31 DAYS WITHOUT PROPER LAWFUL REASON. DEFENDANT ALSO BELIEVES MANY CONSTITUTIONAL RIGHTS OF HIS HAVE BEEN VIOLATED, AND HIS DUE PROCESS WAS TOTALLY IRRATIONAL IN THIS MATTER.

4-14-83

SINCERELY

DEFENDANT

James Burrell

WITNESS

Judith Helms

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**YOUR NEXT APPOINTMENT IS ON:**

DAY: Thursday DATE: Oct 7, 1982

TIME: \_\_\_\_\_

\_\_\_\_\_ MARTY \_\_\_\_\_

If you are unable to keep this appointment call

262-3430

TWO COPIES of Appellant's Opening Brief delivered this 15<sup>th</sup> day  
of April, 1983, to ROBERT K. CORBIN, Attorney General of Arizona, 1275 West  
Washington, Criminal Division, Second Floor, Phoenix, Arizona, 85007.

ONE COPY of the Appellant's Opening Brief mailed this 15<sup>th</sup> day  
of April, 1983, to JAMES HAROLD BURRELL, 815 N. 3rd Ave., #206, Phoenix,  
Arizona 85003

ROSS P. LEE  
Maricopa County Public Defender

By Michael G. Sullivan  
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Deputy Public Defender  
Attorney for Appellant  
132 South Central, 2nd Floor  
Phoenix, Arizona 85004

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