

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

SOPHIA DOMINIQUE SIMMONS, *Petitioner*,

v.

STATE OF ARIZONA, *Respondent*.

No. 1 CA-SA 26-0004

FILED 10-23-2026

Petition for Special Action from the Superior Court in Maricopa County

No. CR2024-006820-001

The Honorable Joseph Shayne Kiefer, Judge

JURISDICTION ACCEPTED; RELIEF GRANTED

COUNSEL

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OPINION

Presiding Judge David B. Gass¹ delivered the opinion of the court, in which Judge Anni Hill Foster and Chief Judge Randall M. Howe joined.

G A S S, Judge:

¶1 The State seeks the death penalty in its prosecution of Sophia Simmons for the murder of her daughter. Simmons asked the superior court to assess whether her intellectual disability bars the State from executing her. The legislature enacted a process governing discovery when the State seeks the death penalty and the defendant's intellectual ability is in question. A.R.S. § 13-753. At the end of the process, if the superior court finds Simmons has an intellectual disability and she is later convicted of a capital offense, she "shall not be sentenced to death but shall be sentenced to life or natural life." *See* A.R.S. § 13-753.A.

¶2 Simmons seeks special action review of the superior court's order determining the timing of the State's intellectual disability expert's examination of Simmons under A.R.S. § 13-753.E. Subsection E says, "**Not less than** twenty days after receipt of the records provided pursuant to subsection D, or twenty days after the expiration of the deadline for providing the records, whichever is later, each expert in intellectual disability shall examine the defendant" (Emphasis added.) The State sought to have its expert examine Simmons before the twenty days passed from the superior court's deadline to disclose records. Simmons objected, arguing subsection E's "[n]ot less than twenty days after" language required the State's expert to wait a minimum of (or at least) twenty days after the disclosure deadline. The crux of the State's argument was that "not less than" means "within," and the State's expert thus must complete the

¹ Judge David B. Gass was a sitting member of this court when the matter was assigned to this panel of the court. He retired effective June 30, 2026. In accordance with the authority granted by Article VI, Section 3, of the Arizona Constitution, and under A.R.S. § 12-145, the Chief Justice of the Arizona Supreme Court has designated Judge David B. Gass as a judge pro tempore in the Court of Appeals for the purpose of participating in the resolution of cases assigned to this panel during his term in office and for the duration of Administrative Order 2026-87.

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examination “no more than” or “within” twenty days after the later of the disclosure deadline or receipt of the records. The superior court denied Simmons’s motion.

¶3 Simmons timely filed this special action. Based on subsection 13-753.E’s plain language, the court accepts special action jurisdiction and grants relief.

FACTUAL AND PROCEDURAL HISTORY

¶4 Following the death of Simmons’s daughter, the State charged Simmons with first degree murder, along with related crimes. The State also filed a notice of intent to seek the death penalty. Section 13-753.B required the superior court to “appoint a prescreening psychological expert in order to determine [Simmons’s] intelligence quotient” unless Simmons objected. Simmons first asked the superior court to delay section 13-753’s process to allow the defense team to investigate, but later asked the superior court to proceed with section 13-753’s process.

¶5 The prescreening psychological expert determined Simmons’s intelligence quotient was 53. An intelligence quotient of 75 or below triggers further examinations. A.R.S. § 13-753.D. The superior court thus continued following the statutory process by appointing one expert the State nominated and one Simmons nominated. *See id.* Based on the date of appointments, the superior court set a deadline for the parties to disclose records relevant to Simmons’s intellectual ability. *See id.* Simmons sought to extend the deadline for this disclosure, and the superior court granted her request.

¶6 The State scheduled its expert to examine Simmons before the extended disclosure deadline passed. Simmons objected based on A.R.S. § 13-753.E. The superior court overruled Simmons’s objection. Simmons filed this special action.

SPECIAL ACTION JURISDICTION

¶7 Though the Arizona Supreme Court has exclusive jurisdiction over direct appeals in which the death penalty has been imposed, this court may accept special action jurisdiction in cases involving the death penalty. *See* A.R.S. § 12-120.21.A.4; *see also State ex rel. Adel v. Hannah*, 250 Ariz. 426, 429 ¶ 6 (App. 2020) (quoting *State v. Arellano*, 213 Ariz. 474, 476 ¶ 4 (2006)).

¶8 “Special action jurisdiction is highly discretionary but may be appropriate when no equally plain, speedy, and adequate remedy by

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appeal exists. Jurisdiction is also appropriate in matters of statewide importance, issues of first impression, cases involving purely legal questions, or issues that are likely to arise again.” *Prosise v. Kottke*, 249 Ariz. 75, 77 ¶ 10 (App. 2020) (quotations and citations omitted).

¶9 The court generally declines special action jurisdiction over discovery disputes. *See Yuma Reg’l Med. Ctr. v. Superior Ct.*, 175 Ariz. 72, 74 (App. 1993). But the court has accepted special action jurisdiction when the case presents a question of statewide importance concerning discovery in a capital case related to a defendant’s intellectual disability. *See State ex rel. Adel*, 250 Ariz. at 429 ¶ 8 (accepting special action jurisdiction “concerning the appropriate scope of the State’s discovery when a defendant’s mental health will be at issue in a potential penalty phase in a capital case”). Simmons raises a purely legal question of first impression related to her intellectual disability in a capital case. That issue is one of statewide importance and is likely to arise again. *See Prosise*, 249 Ariz. at 77 ¶ 10. The court thus exercises its discretion and accepts special action jurisdiction.

MOOTNESS

¶10 Because the statutory timeframe for the evaluation expired before the court could issue a decision on the issue, the court must address the question of mootness. But the issue here almost always, if not always, will become moot. That reality highlights the need for the court to accept special action jurisdiction.

¶11 Under the mootness doctrine, Arizona courts generally will not address issues “no longer in existence because of changes in the factual circumstances.” *See Flores v. Cooper Tire and Rubber Co.*, 218 Ariz. 52, 57 ¶ 24 (2008) (quoting *Chambers v. United Farm Workers Org. Comm.*, 25 Ariz. App. 104, 106 (1975)). For that reason, the court generally will not address an issue if “its action as a reviewing court will have no effect on the parties.” *In re G.L.*, 259 Ariz. 463, 465 ¶ 7 (2025). But the mootness doctrine is “solely a discretionary policy of judicial restraint” and several exceptions to it are relevant here. *Phoenix Newspapers, Inc. v. Molera*, 200 Ariz. 457, 460 ¶ 12 (2001).

¶12 First, the court may make an exception to the mootness doctrine if the issue is of “public importance.” *Prutch v. Town of Quartzsite*, 231 Ariz. 431, 435 ¶ 10 (App. 2013). In determining whether matters of “public importance” should overcome the mootness doctrine, the court considers “the impact of the alleged violation; whether the issue is likely to recur; and whether the issue is one that will evade review in the future.”

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Fisher v. Maricopa Cnty. Stadium Dist., 185 Ariz. 116, 119–20 (App. 1995). The exception “typically applies when an issue will have broad public impact beyond resolution of the specific case.” *Kondaur Cap. Corp. v. Pinal Cnty.*, 235 Ariz. 189, 193 ¶ 10 (App. 2014) (cleaned up). The issue here involves a matter of public importance: the intellectual disability of a defendant facing the death penalty.

¶13 Second, the court may make exceptions to the mootness doctrine if the issue is “capable of repetition yet evading review.” *Prutch*, 231 Ariz. at 435 ¶ 10. This exception “typically applies where time constraints prevent an appellate court from deciding an issue that may recur.” *Ariz. All. for Retired Ams., Inc. v. Crosby*, 256 Ariz. 328, 331 ¶ 5 (App. 2023) (quotations omitted); see also *Kondaur Cap. Corp.*, 235 Ariz. at 194 ¶ 12 (“Issues are typically characterized as ‘evading review’ where time constraints prevent an appeal from being heard.”). This special action involves the court determining how a statutory twenty-day timeframe applies. Any post-hoc review of (and available relief for) a violation of this issue of great public importance will be limited.

¶14 Third, the court may make exceptions to the mootness doctrine if the issue could result in “collateral consequences” that could “continue to affect a party.” *Cardoso v. Soldo*, 230 Ariz. 614, 617 ¶ 9 (App. 2012). *Cardoso* applied this exception to an order of protection expiring during the appellate process. *Id.* If the court declines to address the questions presented here on mootness grounds, both parties will face the collateral consequence of proceeding through the arduous process of a capital murder trial and potential appeal rather than have this straightforward statutory issue resolved now.

¶15 Because three exceptions to the mootness doctrine apply and because the issue remains a purely legal question of first impression that is of statewide importance and is likely to arise again, the court will exercise special action jurisdiction and not apply the mootness doctrine. See *Prosise*, 249 Ariz. at 77 ¶ 10.²

I. A statute’s plain language guides the court’s interpretation.

¶16 If a statute’s plain language is clear, the court generally assumes “the legislature has said what it means.” *Hughes v. Jorgenson*, 203

² Though a trial date had been set, the parties agreed it was not a firm trial date and doubted this case would go to trial on that date. It has not. The court takes judicial notice that the trial currently is set for April 26, 2027.

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Ariz. 71, 73 ¶ 11 (2002); *see also* *Ariz. Advoc. Network Found. v. State*, 250 Ariz. 109, 114 ¶ 19 (App. 2020) (“If the statute’s language is clear and unambiguous, courts ‘must give effect to that language without employing other rules of statutory construction.’”) (quoting *Parsons v. Ariz. Dep’t of Health Servs.*, 242 Ariz. 320, 323 ¶ 11 (App. 2017)). The court will not “enlarge, stretch, expand, or extend a statute to matters not falling within its express provisions.” *Fitzgerald v. Myers*, 243 Ariz. 84, 89 ¶ 13 (2017) (quoting *State ex rel. Morrison v. Anway*, 87 Ariz. 206, 209 (1960)).

¶17 When interpreting a statute, the court gives statutory “terms their ordinary and commonly accepted meaning, unless the legislature has provided a specific definition.” *JH2K I LLC v. Ariz. Dep’t of Health Servs.*, 246 Ariz. 307, 310 ¶ 9 (App. 2019). The court determines “the plain meaning of the words the legislature chose” by viewing those words “in their broader statutory context.” *In re Drummond*, 257 Ariz. 15, 18 ¶ 5 (2024) (citation omitted). If the statute’s plain language is unambiguous, the court “must give effect to that language without employing other rules of statutory construction.” *Parsons*, 242 Ariz. at 323 ¶ 11. “Unless there is ambiguity in a provision’s meaning, or a provision’s plain meaning would produce absurd results, [the court’s] inquiry ‘begins and ends with the plain meaning of the legislature’s chosen words, read within the overall statutory context.’” *Pima Cnty. v. State*, 258 Ariz. 11, 15–16 ¶ 23 (2024) (cleaned up).

II. If the State files a notice of intent to seek the death penalty, the superior court must follow a legislatively established twelve-step process under section 13–753 to determine whether the defendant has an intellectual disability.

¶18 To understand the arguments in context, the court examines each step the legislature identified in section 13–753 and the terms it used to describe the timeframe, if any, for that step. The twelve steps are:

1. **Without any designated timeframe**, the superior court must appoint a prescreening psychological expert to determine the defendant’s intelligence quotient, unless the defendant objects to the appointment. A.R.S. § 13–753.B
2. **Without any designated timeframe**, the prescreening expert must engage in testing the defendant. *Id.*
3. **Within ten days of testing** the defendant, the prescreening expert must submit a written report. *Id.*

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4. **Within ten days of receiving** the prescreening expert's report showing "the defendant's intelligence quotient is seventy-five or less," the superior court must order the State and the defendant to nominate intellectual disability experts. *Id.* at .D.
5. **Without any designated timeframe**, the State and the defendant must nominate experts. *Id.*
6. **Without any designated timeframe**, the superior court must appoint experts. *Id.*
7. **"Within forty-five days after** the [superior] court orders the State and the defendant to nominate experts . . . or on the appointment of such experts, whichever is later," the parties must disclose "any available records that may be relevant to the defendant's status." *Id.* On good cause, the superior court may extend the deadline. *Id.*
8. **"Not less than twenty days after** receipt of the records . . . or twenty days after the expiration of the deadline for providing the records, whichever is later, each expert in intellectual disability shall examine the defendant" *Id.* at .E.
9. **"Within fifteen days of examining** the defendant, each expert in intellectual disabilities shall submit a written report to the [superior] court that includes the expert's opinion as to whether the defendant has an intellectual disability." *Id.*
10. **"No less than thirty days after** the experts in intellectual disabilities submit reports to the court and before trial, the [superior] court shall hold a hearing to determine if the defendant has an intellectual disability." *Id.* at .G.
11. **Without any designated timeframe**, the superior court must make a finding on the defendant's intellectual disability. *Id.* at .H.
12. **"Within ten days after** the [superior] court makes a finding on intellectual disability, the [S]tate or the defendant may file a petition for special action with the Arizona court of appeals." *Id.* at .I.

¶19 For five of the twelve steps (steps 1, 2, 5, 6, and 11) the legislature provided no statutory timeframe. A.R.S. § 13-753.B–I. For another five of the twelve steps (steps 3, 4, 7, 9, 12), the legislature used the

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terms “within” or “within . . . or . . . whichever is later” to define the statutory timeframe. A.R.S. § 13-753.B-I. And for the remaining two of the twelve steps (steps 8 and 10), the legislature used “not less than . . . or . . . whichever is later” and “no less than . . . or . . . whichever is later.” A.R.S. § 13-753.B-I.

III. Based on section 13-753’s plain language, intellectual disability experts must wait to examine a defendant until twenty days have passed from the later of (1) the last disclosure of relevant evidence or (2) the superior court’s deadline for the disclosure.

¶20 The State argues the legislature chose the term “not less than” in subsection E to mean “within” to set the latest date an examination may occur. The crux of the State’s argument is to conflate the terms “not less than,” “within” and “not more than.” The State expressly argued that point during the Stay hearing. Simmons argues the legislature chose the term “not less than” to set the earliest date for an examination.

¶21 The legislature knows how to use the term “within” when it wants to communicate a maximum timeframe. And it did so in section 13-753—not just once, but five times. For example, the legislature used the term “within” to show it wanted the prescreening expert to issue a report no later than a set number of days. A.R.S. § 13-753.B (requiring prescreening expert to provide a report “within ten days”). The parties do not dispute the meaning of the legislature’s use of the term “within.” If the legislature had used “within” in subsection D, there would be no need to exercise special action jurisdiction. Its meaning would be plain.

¶22 But the legislature did not use that same plain term in subsection D. Instead, the legislature chose a different (but no less plain) term, “not less than.” Consistent with Simmons’s argument, the legislature uses the term “not less than” to set minimums in criminal statutes. *See* A.R.S. §§ 13-2605.B (“Commercial bribery is a class 6 felony if the value of the benefit is . . . not less than one hundred dollars.”); -2910.09.C.1 (requiring a person convicted of a second offense of equine tripping “[s]hall be sentenced to serve not less than thirty consecutive days in jail”); -3405.D (requiring a “fine of not less than \$750 or three times the value . . . and not more than the maximum authorized by chapter 8 of this title”).

¶23 And the legislature consistently uses the term “not more than” to set maximums in Title 13. *See* A.R.S. § 13-1817 (“[T]he court may impose a fine of not more than three times the value represented on the retail sales receipt or the retail price represented by the original universal

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product code label.”); -820 (saying the court “shall award the petitioner reasonable attorney fees, costs and an additional penalty of not more than five hundred dollars”); -3118.B.2 (allowing political subdivisions to enact rules or ordinances “requiring a business that obtains a secondhand firearm by purchase, trade or consignment to retain the firearm for a period of not more than ten days”).

¶24 Indeed, the legislature often juxtaposes the term “not less than” to establish a minimum against the term “not more than” to establish a maximum. *See, e.g.*, A.R.S. §§ 13-3405.D (requiring a “fine of not less than \$750 or three times the value . . . and not more than the maximum authorized by chapter 8 of this title”). And courts have long treated “not less than” and “not more than” as separate, unambiguous phrases that together define a sentencing range. *See, e.g., State v. Harden*, 108 Ariz. 22 (1971); *State v. Anders*, 2 Ariz. App. 42 (1965). Under this framework, the term “not less than” sets the minimum and the term “not more than” sets a maximum. The phrases are not synonymous or interchangeable.

¶25 The court cannot substitute either the term “not more than” or “within” for the term “not less than” in 13-753.E, but must determine “the plain meaning of the words the legislature chose.” *In re Drummond*, 257 Ariz. at 18 ¶ 5. The legislature chose “not less than.” A.R.S. § 13-753.E. The court cannot conclude the legislature chose to use the term “not less than” in subsection E in a different way than how it consistently has used that term throughout Title 13. The plain language directs a different conclusion.

¶26 The court thus concludes the earliest both Simmons’s and the State’s experts on intellectual disability could examine Simmons under subsection 13-753.E was twenty days after the later of the parties’ receipt of Simmons’s mental health records or the extended deadline for providing those records.

IV. The court need not consider the legislature’s intent when it enacted A.R.S. § 13-753.

¶27 The State argues the court should consider the legislature’s intent in adopting section 13-753 to determine that section’s meaning. The State argues “[t]he spirit of promptness and elimination of unnecessary delay” guided the legislature when it enacted section 13-753. Simmons responds by arguing the legislature’s intent was “providing process safeguards to ensure reliable determinations of intellectual disability, and to prevent intellectually disabled individuals from being sentenced to

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death.” And she argues her interpretation “is consistent with ensuring that capital proceedings in this context are accurate and reliable.”

¶28 Contrary to the parties’ arguments, the spirit underlying or intent behind legislation is “never an object [of statutory interpretation] itself” but is simply “a means to discern statutory meaning.” *State ex rel. Ariz. Dep’t of Revenue v. Tunkey*, 254 Ariz. 432, 438 ¶ 27 (2023) (Bolick, J., concurring). Even “[i]f the legislature agrees on findings, purposes, or definitions,” they are but “prisms” through which the court determines statutory meaning. *Id.* “[T]he words of a statute” are not the best evidence of legislative intent. *Id.* at 437 ¶¶ 25–26. They “are not ‘evidence’ of anything. They are the law.” *Id.* at 437 ¶ 26.

¶29 In applying the directives from *Tunkey*, the court begins with what the legislature said in the statute itself: “In any case in which the state files a notice of intent to seek the death penalty, a person who is found to have an intellectual disability pursuant to this section shall not be sentenced to death but shall be sentenced to life or natural life.” A.R.S. § 13–753.A. The legislature then identified the prism through which the court should look to interpret section 13–753: “It is the intent of the legislature that in any case in which this state files a notice of intent to seek the death penalty after the effective date of this act, a defendant with mental retardation shall not be executed in this state.” 2001 Ariz. Legis. Serv. Ch. 260 sec. 3 (S.B. 1551). And consistent with that the express statement of legislative intent, the Arizona Supreme Court has recognized the legislature enacted A.R.S. § 13–753 “to enforce the constitutional prohibition on executing the intellectually disabled.” *State ex rel. Montgomery v. Kemp*, 249 Ariz. 320, 323 ¶ 9 (2020).

¶30 In context, section 13–753 does not suggest a legislative focus on having the parties move through the intellectual disability process quickly. The legislature set deadlines for seven of the twelve steps, but it set no deadlines for five. The legislature could have used “within” as it did in four subsections.³ And the express intent of ensuring “a person who is found to have an intellectual disability pursuant to this section shall not be

³ The State attached Arizona House Bill Summary for S.B. 1551, now A.R.S. § 13–753, to its response. Though not helpful to the court’s analysis, the court notes bill summaries are not the law, so the court will not analyze such legislative history when it can determine “the correct legal interpretation . . . from the plain statutory text and the context of related statutes.” *Aroca v. Tang Inv. Co.*, 259 Ariz. 302, 309 ¶ 29 (quotations omitted).

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sentenced to death” suggests a greater focus on ensuring a thorough process over a prompt process. A.R.S. § 13-753.A.

¶31 At bottom, because the court can determine section 13-753.E’s meaning “from the plain statutory text and the context of related statutes,” the court need not further consider the legislature’s purposes for enacting section 13-753. *See Tunkey*, 254 Ariz. at 438 ¶ 27. But the court notes its adopted interpretation tracks with “enforc[ing] the constitutional prohibition on executing the intellectually disabled.” *Kemp*, 249 Ariz. at 323 ¶ 9.

CONCLUSION

¶32 The court accepts jurisdiction and grants relief. No party may conduct an intellectual disability examination under subsection 13-753.E until at least 20 days have passed from the later of either (1) the last disclosure of relevant evidence or (2) the superior court’s deadline for the disclosure.



MATTHEW J. MARTIN • Clerk of the Court
FILED: JR