

**BREWER V. REES, COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A,  
2011 Ariz. App. LEXIS 191, 11/10/11**

When Nathan Brewer was arrested on drug-related charges in March 2010 he accepted an offer to participate in a deferred prosecution program, and he was released on personal recognizance to begin that program. In December 2010, prosecutors moved the court to resume prosecution based upon Brewer's failure to comply with several conditions of the deferred prosecution program. The trial court granted that request.

About a month later, Brewer was indicted by the Grand Jury on new drug-related charges, allegedly committed in November 2010, while Brewer was still in the deferred prosecution program. Since the Arizona Constitution states that persons charged with a felony offense while "already admitted to bail on a separate felony charge," (*Article 2, Section 22(A)(2)*) are not bondable, the court in the new felony case ordered Brewer held without bail. Brewer challenged that detention order, claiming that since he was in a deferred prosecution program at the time of the alleged new offense, he had not been "admitted to bail." The trial court disagreed, and Brewer appealed.

On appeal, Brewer argued that there was no "active" case for which he could be admitted to bail, and that the suspension of his prosecution in that case was the functional equivalent of a dismissal with the right to re-file if Brewer failed to comply with the deferred prosecution program. In addressing these arguments, the appeals court cited an Arizona Supreme Court case that held that a defendant released on personal recognizance on a felony charge was "admitted to bail" for the purposes of denying bail, under *Article 2, Section 22(A)(2)*, on a new felony charge. (*Heath v. Kiger*, 217 Ariz. 492 (2008).) The court concluded: "Whether Brewer's case at the time he allegedly re-offended is characterized as 'active' or 'inactive' is not a relevant consideration to our analysis in determining his release status under the Arizona Constitution. We conclude that the holding in *Heath* – that 'the phrase *admitted to bail* includes those defendants released on their own recognizance' – necessarily also includes defendants released on their own recognizance pursuant to a deferred prosecution agreement." The court affirmed the trial court's ruling that Brewer was non-bondable in the new case.

**NEBRASKA V. ZAMARRON, NEBRASKA COURT OF APPEALS, 19 Neb. App. 349,  
11/15/11**

Jose Zamarron was released after posting with the court 10 percent of a \$10,000 bond. Under Nebraska law, Zamarron was entitled to a return of 90 percent of his \$1,000 deposit at the conclusion of the case if he made all court appearances. (*Neb. Rev. Stat. § 29-901(3)(a)*). He did make all his scheduled appearances, and when he was convicted the trial court ordered that court costs be deducted from the bail deposit amount refunded to Zamarron. Zamarron challenged this, arguing that no statute authorized the court to take this action.

On appeal to the Nebraska Court of Appeals, the State argued that the authority of the court to apply bail deposit funds to court costs comes from a provision of the statute, which reads

that “judgments for fines and costs in criminal cases shall be a lien upon all the property of the defendant within the county from the time of docketing the case...” (*Neb. Rev. Stat. §29-2407.*) The State claimed that the judgment for court costs was, in effect, a lien on Zamarron’s property, and since Zamarron owed costs to the court and the court owed Zamarron his deposit back, there was a right of setoff. The court disagreed, saying that the State’s argument violated a basic rule of statutory construction – that “it is not within the province of the courts to read a meaning into a statute that is not there,” and that “we see nothing in the statutes authorizing a setoff under these circumstances.” Moreover, the court noted that “[b]ecause the only purpose of the bond was to ensure Zamarron’s appearance and he appeared as ordered, the court erred in peremptorily applying Zamarron’s bond to costs.”