



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**NEKO ANTHONY WILSON v. HON. HIGGINS/ STATE OF
ARIZONA EX REL. BRAD CARLYON, REAL PARTY IN INTEREST**
469 P. 3d 481 (App. 2020)
CR-20-0254-PR

PARTIES:

Petitioner: The State of Arizona *ex rel.* Brad Carlyon, Navajo County Attorney

Respondent: Neko Anthony Wilson

FACTS:

In 2006, Wilson was placed on four years of probation after he was convicted in Navajo County of transportation of marijuana for sale, a Class 3 felony. Three years later, Wilson absconded from probation supervision. Around that same time, he was arrested and charged with felony murder and robbery in California. Shortly after Wilson was arrested in California, the Navajo County Attorney filed a petition to revoke his probation, and the Superior Court issued a warrant for his arrest. In 2018, a California court dismissed the felony murder charges against Wilson. He pleaded guilty to two counts of armed robbery, was sentenced to time served, granted parole, and released.

Later in 2018, Wilson appeared before the Navajo County Superior Court and denied the allegations in the petition to revoke his probation. The State asked the court to order Wilson held without bail pending disposition of the petition pursuant to Rule 7.2(c)(1)(A). The court agreed, ordering that Wilson “shall be held without bail pursuant to Rule 7.2(c).” He was taken into custody and has remained in jail in Navajo County since then.

After filing various unsuccessful motions for release, Wilson filed an emergency motion for temporary release pending special action review and/or disposition of probation revocation proceedings, alleging the worldwide COVID-19 pandemic and his own health conditions required he be released. The Superior Court affirmed its prior orders holding him without bail pursuant to Rule 7.2(c).

Wilson filed a petition for special action from the Superior Court’s order to hold him in custody without bail, contending Rule 7.2(c) was inapplicable under the then-current version of Rule 27.7(c), which had been amended by the Arizona Supreme Court effective January 1, 2018 to delete the reference to a release determination under Rule 7.2(c). The Court of Appeals agreed with Wilson and issued an opinion reversing the ruling of the Superior Court based upon the following reasoning:

“Until January 1, 2018, Rule 27.7 stated the following:

At the initial appearance, the court must advise the probationer of the probationer’s right to counsel under Rule 6, inform the probationer that any statement the probationer makes before the hearing may be used against the probationer, set the date of the revocation arraignment, and *make a release determination under Rule 7.2(c)*.

Ariz. R. Crim. P. 27.7 (2007) (emphasis added). When the Arizona Supreme Court amended the rule effective January 1, 2018, however, it deleted the phrase “under Rule 7.2(c)” from the provision requiring the court to make a release determination. As a result, Rule 27.7 now reads as follows:

At the initial appearance, the court must advise the probationer of the probationer’s right to counsel under Rule 6, inform the probationer that any statement the probationer makes before the hearing may be used against the probationer, set the date of the revocation arraignment, and *make a release determination*.

Ariz. R. Crim. P. 27.7(c) (emphasis added). When language from a rule is deleted, we infer that it was done purposefully, to make clear that the omitted phrase no longer has any effect. *See, e.g., Gravel Res. of Ariz. v. Hills*, 217 Ariz. 33, 37, ¶ 11 (App. 2007).”

Neko Anthony Wilson v. Hon. Higgins/State of Arizona ex rel. Brad Carlyon, 469 P. 3d 481, 485 ¶ 14 (App. 2020). The State of Arizona filed a Petition for Review, which the Arizona Supreme Court granted.

ISSUE PRESENTED BY THE STATE OF ARIZONA:

“Did the Court of Appeals err when it ignored [Rules of Criminal Procedure] Rule 7.2(c)’s plain language and concluded that it does not apply to a convicted felon in a probation revocation proceeding?”

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