



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. JOSE ADRIAN AGUNDEZ-MARTINEZ
CR-23-0053-PR**

PARTIES:

Petitioner: State of Arizona
Respondent: Jose Adrian Agundez-Martinez
Amicus Curiae: Maricopa County Attorney's Office, Arizona Attorneys for Criminal Justice, and Maricopa County Public Defender's Office

FACTS:

Agundez-Martinez ("Defendant") engaged in various sexual acts with three children when he was between the ages of 10 and 12. After the children disclosed the incidents a decade later, Defendant was arrested and admitted to having committed several of the acts. The State charged him with two counts of sexual conduct with a minor (class two felonies), two counts of child molestation (class two felonies), and one count of attempted child molestation (a class three felony). A jury found Defendant guilty on all five counts. Pursuant to the mandatory sentencing scheme for dangerous crimes against children, the superior court sentenced Defendant to consecutive, mitigated prison terms on all counts totaling 51 years.

The Court of Appeals vacated Defendant's convictions and sentences and issued an opinion with three critical holdings. At issue in this Court is the holding that the State lacks authority to prosecute adult criminal charges in adult court against an individual for acts committed when the individual was younger than 14, unless it petitions for transfer under A.R.S. § 8-327.

The Court of Appeals first determined that pursuant to A.R.S. § 8-201(12) and § 13-501(B), whether conduct is a "delinquent act" or a "criminal offense" depends on the juvenile's age at the time of the conduct. The court then discussed the constitutional and statutory changes that occurred after the Juvenile Justice Initiative (Proposition 102) was passed in 1996. It found that by adopting the initiative, voters clearly intended to respond more stringently to juvenile crime "when appropriate." It further found that the legislature determined that it is appropriate to respond to juvenile misconduct more harshly if the conduct is more serious and the juvenile is older when the alleged offense is committed.

The Court of Appeals next focused on the juvenile charging and transfer statutes, finding that none of the transfer provisions allow for the prosecution of adult charges for the acts committed by Defendant. The State could neither file a juvenile petition alleging delinquencies under § 8-301 nor request a transfer from juvenile court to adult criminal court under § 8-327 because the State did not prosecute Defendant until he became an adult. Furthermore, Defendant does not qualify for adult court prosecution under § 13-501.

The Court of Appeals concluded that an offensive "act by a juvenile" is a "delinquent act" unless it is enumerated in § 13-501(A) or (B). Because neither subsection criminalizes the conduct of an individual younger than "fourteen years of age at the time the alleged offense is committed," any

act committed by a juvenile under the age of 14 “that if committed by an adult would be a criminal offense” is, by definition, a delinquent act and may be prosecuted only in the juvenile court or transferred to adult court under § 8-327. Here, the acts with which Defendant was charged would be criminal offenses “if committed by an adult.” However, because he committed them when he was between 10 and 12 years old, and because they do not fall under § 13-501(A) or (B), they are instead delinquent acts. The State thus cannot prosecute Defendant for these offenses now that he has reached adulthood. The Court of Appeals determined that its holding is not inconsistent with this Court’s decisions in *Burrows v. State*, 38 Ariz. 99 (1931), *overruled in part on other grounds by State v. Hernandez*, 83 Ariz. 279 (1958), and *McBeth v. Rose*, 111 Ariz. 399 (1975), because neither of those cases interpreted the current statutes.

ISSUE:

Whether the Court of Appeals erred when it held that the State is prohibited from prosecuting an adult for offenses he committed when he was younger than 14.

RELEVANT STATUTES:

Ariz. Const. art. 4, pt. 2, § 22 states as follows:

In order to preserve and protect the right of the people to justice and public safety, and to ensure fairness and accountability when juveniles engage in unlawful conduct, the legislature, or the people by initiative or referendum, shall have the authority to enact substantive and procedural laws regarding all proceedings and matters affecting such juveniles. The following rights, duties, and powers shall govern such proceedings and matters:

1. Juveniles 15 years of age or older accused of murder, forcible sexual assault, armed robbery or other violent felony offenses as defined by statute shall be prosecuted as adults. Juveniles 15 years of age or older who are chronic felony offenders as defined by statute shall be prosecuted as adults. Upon conviction all such juveniles shall be subject to the same laws as adults, except as specifically provided by statute and by article 22, § 16 of this constitution. All other juveniles accused of unlawful conduct shall be prosecuted as provided by law. Every juvenile convicted of or found responsible for unlawful conduct shall make prompt restitution to any victims of such conduct for their injury or loss.
2. County attorneys shall have the authority to defer the prosecution of juveniles who are not accused of violent offenses and who are not chronic felony offenders as defined by statute and to establish community-based alternatives for resolving matters involving such juveniles.

A.R.S. § 8-201(12) states as follows:

“Delinquent act” means an act by a juvenile that if committed by an adult would be a criminal offense or a petty offense, a violation of any law of this state, or of another state if the act occurred in that state, or a law of the United States, or a violation of any law that can only be violated by a minor and that has been designated as a delinquent offense, or any ordinance of a city, county or political subdivision of this state defining crime. Delinquent act does not include an offense under § 13-501, subsection A or B if the offense is filed in adult court. Any juvenile who is prosecuted as an adult or who is remanded for prosecution as an adult shall not be adjudicated as a delinquent juvenile for the same offense.

A.R.S. § 13-501 states, in pertinent part, as follows:

A. The county attorney shall bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is fifteen, sixteen or seventeen years of age at the time the alleged offense is committed and the juvenile is accused of any of the following offenses:

1. First degree murder in violation of § 13-1105.
2. Second degree murder in violation of § 13-1104.
3. Forcible sexual assault in violation of § 13-1406.
4. Armed robbery in violation of § 13-1904.
5. Any other violent felony offense.
6. Any felony offense committed by a chronic felony offender.
7. Any offense that is properly joined to an offense listed in this subsection.

B. Except as provided in subsection A of this section, the county attorney may bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is at least fourteen years of age at the time the alleged offense is committed and the juvenile is accused of any of the following offenses:

1. A class 1 felony.
2. A class 2 felony.
3. A class 3 felony in violation of any offense in chapters 10 through 17 or chapter 19 or 23 of this title.
4. A class 3, 4, 5 or 6 felony involving a dangerous offense.
5. Any felony offense committed by a chronic felony offender.
6. Any offense that is properly joined to an offense listed in this subsection.

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