



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**

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**STATE OF ARIZONA v. BOBBY CHARLES PURCELL**

CR-21-0398-PR

**STATE OF ARIZONA v. SCOTT LEE DESHAW**

CR-21-0400-PR

(consolidated)

**PARTIES:**

*Petitioners:* Bobby Charles Purcell (CR-21-0398-PR)  
Scott Lee Deshaw (CR-21-0400-PR)

*Respondent:* The State of Arizona

**FACTS:**

In 1994, petitioner DeShaw was charged with first degree murder, kidnapping, and armed robbery. He was 17 years old at the time of the crimes. A jury found him guilty as charged. He was sentenced to natural life for the murder. His sentence was not statutorily mandated. The Court of Appeals affirmed his convictions and life sentences on direct appeal.

In 1998, petitioner Purcell was charged with two counts of first-degree murder, nine counts of attempted first-degree murder, and one count of aggravated assault. He was 16 years old at the time of the murders. A jury found him guilty on all counts. He was sentenced to consecutive life terms without the possibility of release for the first-degree murders. The sentence was not statutorily mandated. The Court of Appeals affirmed his convictions and life sentences on direct appeal.

In 2013, both DeShaw and Purcell sought post-conviction relief under *Miller v. Alabama*, 567 U.S. 460 (2012), which prohibited imposing mandatory sentences of life without parole for juvenile offenders convicted of homicide. In each case, the trial court and Court of Appeals denied relief, finding that *Miller* did not apply retroactively and that, even if it did, it did not apply to petitioner's case because the trial court considered petitioner's youth at sentencing.

On January 25, 2016, the U.S. Supreme Court issued its decision in *Montgomery v. Louisiana*, 570 U.S. 190 (2016), holding that *Miller* applies retroactively on collateral review. Purcell and DeShaw were among multiple defendants who filed petitions for certiorari to the U.S. Supreme Court challenging the constitutionality of their life sentences without parole.

On October 26, 2016, in *Tatum v. Arizona*, 137 S.Ct. 11 (2016), Justice Sotomayor issued a decision granting a remand to Purcell, DeShaw, and other Arizona defendants, holding that a remand of these cases in light of *Montgomery* would permit the lower courts to consider whether these petitioners' sentences complied with the substantive rule governing the imposition of a sentence of life without parole on a juvenile offender. On remand, the State stipulated to both Purcell's and DeShaw's resentencing, and both cases were remanded to the Superior Court for resentencing.

However, on April 22, 2021, in *Jones v. Mississippi*, 141 S.Ct. 1307 (2021), the U.S. Supreme Court clarified the relationship between *Miller* and *Montgomery* and set out more clearly the requirements that sentencers must meet to sentence a juvenile homicide offender to life without parole. It stated that “in making the rule retroactive, the *Montgomery* Court unsurprisingly declined to impose new requirements not already imposed by *Miller*,” *id.* at 1317, and sentencers need not make separate findings of permanent incorrigibility but need only consider the offender’s “youth and attendant characteristics.” *Id.* at 1311.

The State then moved in both *Purcell* and *DeShaw* to withdraw its stipulation and to vacate the petitioners’ resentencing, arguing that *Miller* did not apply because petitioners’ natural life sentences were not mandatory, that *Jones* overruled *Montgomery*, and that the original sentencing proceeding was constitutionally sufficient. In each of the two cases, the superior court judge issued a minute entry vacating the petitioner’s resentencing, dismissing the petition for post-conviction relief, and relieving the State of its stipulation to resentencing.

Both *Purcell* and *DeShaw* appealed from the orders vacating their resentencing. In each case, the Court of Appeals dismissed the appeal for lack of jurisdiction. The dismissal orders stated:

The record shows petitioner purports to appeal from the superior court’s final decision in petitioner’s post-conviction relief proceeding entered on November 16, 2021. The superior court’s final decision in a post-conviction relief proceeding is not an appealable order. *See* A.R.S. § 13-4033. A defendant convicted at trial who seeks appellate review of the superior court’s final decision in a post-conviction relief proceeding must file a petition for review. *Ariz. R. Crim. P. 32.16(a)(1)*.

That this court previously granted relief in the same post-conviction relief proceeding pursuant to a stipulation and remanded the matter back to the superior court for resentencing does not make the superior court’s order appealable pursuant to A.R.S. § 13-4033 and Arizona Rule of Criminal Procedure 31. If petitioner wishes to challenge the superior court’s post-remand order dismissing the post-conviction relief proceedings based on the failure to state a claim upon which post-conviction relief may be granted, petitioner must do so through a petition for review. *Ariz. R. Crim. P. 32.16(a)(1)*.

The petitioners filed separate Petitions for Review which the Arizona Supreme Court granted and consolidated.

**ISSUE:**

Did the CoA err by concluding that it did not have appellate jurisdiction over the dismissal of the resentencing proceedings?

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