



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**DAVID C. SHINN v. ARIZONA BOARD OF
EXECUTIVE CLEMENCY
CV-21-0275-PR**

PARTIES:

Plaintiff/Appellant:

David C. Shinn, in his official capacity as Director of the Arizona Department of Corrections, Rehabilitation, and Reentry

Defendant/Appellee:

Arizona Board of Executive Clemency

Real Party in Interest:

Nevada Freeman

**Amici Curiae:
(in Support of Plaintiff/Appellant)**

Arizona Voice for Crime Victims

**Amici Curiae:
(in Support of Defendant/Appellee)**

Everette Berry, Rudolph Turner, Marica Freeman, and Carrie Davis

FACTS:

On June 16, 1994, Freeman committed first degree murder. He was convicted and sentenced that same year. At sentencing, the judge ordered that Freeman receive the sentence of 25 calendar years without possibility of release until those years have been served. The minute entry indicated the sentence was life, without the possibility of release before 25 calendar years have been served.

In 2018 and 2019, the Arizona Department of Corrections Rehabilitation & Reentry (“ADCRR”) certified Freeman as parole eligible. In July 2019, the Arizona Board of Executive Clemency (the Board) voted unanimously to grant Freeman parole with home arrest conditions. Shortly before Freeman was due to be released, ADCRR sent the Board a letter asking it to rescind its grant of parole. ADCRR claimed that it had erroneously certified Freeman as parole-eligible. The Board held a rescission hearing in October 2019. At ADCRR’s request, the Board voted to take the matter under advisement pending the ruling in *Chaparro v. Shinn*, 248 Ariz. 138 (2020).

After the *Chaparro* opinion was issued, the Board scheduled another rescission hearing. At the hearing in May 2020, ADCRR took the position that it had erroneously certified Freeman as parole eligible and asked the Board to rescind its grant of parole. Freeman presented letters from his original sentencing judge and the Pima County Attorney’s Office, indicating that the parties and the court all intended that Freeman would be eligible for parole after 25 years. At the conclusion of the

hearing, the Board denied ADCRR's request to rescind its grant of parole to Freeman. Thereafter, ADCRR did not release Freeman on parole despite requests from Freeman's counsel.

On June 18, 2020, Director Shinn filed a Verified Complaint for Declaratory and Special Action Relief seeking a declaration that the Board lacked the power to grant Freeman parole because his sentence and the law did not authorize it. In response, Freeman asserted various counterclaims and sought a declaration that his grant of parole was lawful. Freeman also moved for a preliminary injunction, seeking his immediate release on parole as ordered by the Board.

In August 2020, the superior court denied Freeman's request for preliminary injunction, finding that the sentencing order could not be interpreted to make him eligible for parole because the order sentenced him to life "without the possibility of release before 25 calendar years have been served" rather than life "without the possibility of parole for 25 years".

In September 2020, the State and Freeman filed the stipulation in Pima County Superior Court. The parties stipulated that, at the time of sentencing, all parties involved believed and intended that after twenty-five years in prison, Freeman would be eligible for parole, and, if granted parole by the Board, he would be released on parole. The parties further jointly requested that Freeman's sentencing order be corrected to include the word "parole" as a form of release as intended by the sentencing court. In addition, the State stipulated that it would not appeal.

On September 3, 2020, a nunc pro tunc order was entered in superior court incorporating the stipulation into the record. The court further ordered nunc pro tunc, effective the date of the original sentencing, that Freeman's sentencing order be amended to include "Life without the Possibility of Parole and any other type of Release, before twenty-five calendar years have been served." No appeal was taken from the September 2020 order.

In October 2020, Freeman filed a renewed motion for preliminary injunction, on the basis that his sentence, as clarified by the nunc pro tunc order, conferred parole eligibility. After argument, the superior court granted the motion and ordered ADCRR to immediately release Freeman. On December 8, 2020, ADCRR released Freeman.

Director Shinn timely appealed the preliminary injunction. The Court of Appeals affirmed the superior court's decision to grant the preliminary injunction in favor of Freeman. Director Shinn filed a petition for review before the Arizona Supreme Court, which was granted.

ISSUES:

As rephrased by the Supreme Court:

1. Was the nunc pro tunc order here void?
2. If so, did the trial court in the preliminary injunction proceedings err by giving it effect?

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