



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**LISA GILPIN v. HON. DANIELLE HARRIS/
MARCOS JERELL MARTINEZ
CR-23-0252-PR**

PARTIES:

Petitioner: Lisa Gilpin

Real Party in Interest: Marcos Jerell Martinez

Respondent Judge: Judge Danielle Harris, Pinal County Superior Court

FACTS:

Marcos Martinez (“Martinez”) was indicted of one count of first degree murder for the death of his grandmother, Vicky Ten Hoven. At the time of the murder, Vicky was married to Glen Ten Hoven; Petitioner Lisa Gilpin (“Gilpin”) is Glen Ten Hoven’s daughter.

Martinez entered into a plea agreement in which he agreed to plead guilty except insane to the charge. At a plea status conference, Gilpin appeared as the victim representative and objected to the agreement’s provision that restitution was not applicable. Gilpin acknowledged that *State v. Heartfield*, 196 Ariz. 407 (App. 2000), held that guilty except insane verdicts are not considered criminal convictions and that victim restitution therefore is not available for such verdicts. Gilpin argued, however, that this Court has since held that the Arizona Constitution requires restitution for a victim’s full economic loss. The superior court held that restitution was not available, accepted the plea, scheduled Martinez for sentencing, and granted a stay on the restitution issue.

At the sentencing hearing, the superior court entered judgment “that the Defendant is Guilty Except Insane.” The court also determined that Martinez was insane at the time of the offense, that he was “not eligible for discharge until the completion of his natural life,” and that his actions caused the death of another person. Regarding restitution, the court held that restitution was not available and took notice of the victim loss statement, in which the total amount requested was \$18,277.90.

Gilpin filed a petition for special action with the court of appeals, which declined to accept jurisdiction.

ISSUE (as rephrased by the Court):

Is a victim entitled to restitution when a defendant is adjudged guilty except insane?

CONSTITUTIONAL PROVISION:

In relevant part, Ariz. Const. Art. 2 § 2.1(A)(8) provides:

To preserve and protect victims' right to justice and due process, a victim of crime has a right . . . [t]o receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.

STATUTES:

In relevant part, A.R.S. § 13-603(C) provides:

If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime or to the immediate family of the victim if the victim has died, in the full amount of the economic loss as determined by the court and in the manner as determined by the court or the court's designee

In relevant part, A.R.S. § 13-502 provides:

A. A person may be found guilty except insane if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong. A mental disease or defect constituting legal insanity is an affirmative defense. Mental disease or defect does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or impulse control disorders. Conditions that do not constitute legal insanity include momentary, temporary conditions arising from the pressure of the circumstances, moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental disease or defect or an abnormality that is manifested only by criminal conduct.

B. In a case involving the death or serious physical injury of or the threat of death or serious physical injury to another person, if a plea of insanity is made and the court determines that a reasonable basis exists to support the plea, the court may commit the defendant to a secure state mental health facility under the department of health services, a secure county mental health evaluation and treatment facility or another secure licensed mental health facility for up to thirty days for mental health evaluation and treatment. . . .

C. The defendant shall prove the defendant's legal insanity by clear and convincing evidence.

D. If the finder of fact finds the defendant guilty except insane, the court shall determine the sentence the defendant could have received pursuant to § 13-707 or § 13-751, subsection A or the presumptive sentence the defendant could have

received pursuant to § 13-702, § 13-703, § 13-704, § 13-705, § 13-706, subsection A, § 13-710 or § 13-1406 if the defendant had not been found insane, and the judge shall suspend the sentence and shall order the defendant to be placed and remain under the jurisdiction of the superior court and committed to a secure state mental health facility under the department of health services pursuant to § 13-3992 for the length of that sentence. In making this determination the court shall not consider the sentence enhancements for prior convictions under § 13-703 or 13-704. The court shall expressly identify each act that the defendant committed and separately find whether each act involved the death or physical injury of or a substantial threat of death or physical injury to another person.

E. A guilty except insane verdict is not a criminal conviction for sentencing enhancement purposes under § 13-703 or 13-704.

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