



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE v. Hon. MICHAEL KEMP, Respondent,
and APOLINAR ALTAMIRANO, Real Party in Interest
CR-19-0274-PR**

PARTIES:

Petitioner: State of Arizona

Respondent: Hon. Michael Kemp

Real Party in Interest: Apolinar Altamirano

FACTS:

Apolinar Altamirano is charged with first degree murder. After a pretrial hearing held pursuant to A.R.S. § 13-753, the superior court found "by clear and convincing evidence Defendant is intellectually disabled," and dismissed the State's Notice of Intent to Seek the Death Penalty pursuant to A.R.S. § 13-753(H).

The State filed a Petition for Special Action in the Court of Appeals. The Court of Appeals issued an Order accepting jurisdiction and denying relief with a discussion of the merits. The State then filed a Petition for Review in the Arizona Supreme Court.

ISSUES:

1. Did the trial court correctly apply the definition of adaptability in A.R.S. § 13-753(K)(1) in light of the decisions in *Moore v. Texas*, 137 S.Ct. 1039 (2017) and *Moore v. Texas*, 139 S.Ct. 666 (2019)?
2. Did Altamirano meet his burden of proving intellectual disability?

Definitions:

A.R.S. § 13-753(K) provides:

"1. 'Adaptive behavior' means the effectiveness or degree to which the defendant meets the standards of personal independence and social responsibility expected of the defendant's age and cultural group."

"3. 'Intellectual disability' means a condition based on a mental deficit that involves significantly subaverage general intellectual functioning, existing concurrently with significant impairment in

adaptive behavior, where the onset of the foregoing conditions occurred before the defendant reached the age of eighteen."

"5. 'Significantly subaverage general intellectual functioning' means a full scale intelligence quotient of seventy or lower. The court in determining the intelligence quotient shall take into account the margin of error for the test administered."

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