



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**E.H. v. HON. SLAYTON, STATE OF ARIZONA, JASON CONLEE,  
LENDA HESTER, AND KIMMY WILSON  
CR-19-0118-PR**

**PARTIES:**

*Petitioner:* E.H.  
*Respondents:* The State of Arizona  
Lenda Hester  
Kimmy Wilson  
*Amicus Curiae:* National Crime Victim Law Institute

**FACTS:**

E.H. and her half-brother, J.H., were raised by their aunt, Lillian Hester, because their biological parents did not want to raise them. While in Lillian Hester’s care, J.H. was subjected to extreme abuse. He lived in filth, was not potty trained, and spent most of his days confined to a high chair with restraints. When he was deemed to behave badly, he was physically punished with a belt. The severe abuse and neglect led to his death at age six, at which time he weighed only 29 pounds and had contusions throughout his body and a fracture to his right arm. His half-sister E.H. (petitioner in this case) witnessed J.H.’s abuse and neglect.

Four family members were charged in connection with J.H.’s death: Lillian Hester, Jason Conlee (Lillian’s boyfriend), Lenda Hester (maternal grandmother of E.H. and J.H.), and Kimmy Wilson (Lenda’s boyfriend). In 2018, Lillian Hester was convicted by a jury of first-degree murder and child abuse and sentenced to natural life in prison. The Superior Court ordered restitution to E.H. as part of the sentence. Because Lillian Hester’s restitution obligation was not capped (i.e., limited), she is not a party to this case.

The remaining three defendants, Jason Conlee, Lenda Hester, and Kimmy Wilson (“the defendants”), were each charged with child abuse and negligent homicide. All three sought to resolve their cases by entering into plea agreements with restitution caps. During a settlement conference, the victim’s counsel notified the prosecutor that the victim objected to any cap on restitution, based upon her right to restitution for her full economic loss under the Victims’ Bill of Rights (“VBR”), Ariz. Const. Art. 2, § 2.1, and associated statutes. The State responded that the judge would likely not approve a plea without a restitution cap, in reliance on a line of Arizona cases decided before the passage of the VBR under the federal constitution’s Due Process Clause. Prior to the change of plea, Judge Slayton e-mailed all counsel asking them to be prepared to discuss these cases, i.e., [State v. Phillips, 152 Ariz. 533, 535 \(1987\)](#), [State v. Lukens, 152 Ariz. 501 \(1986\)](#), and [State v. Adams, 159 Ariz. 168, 170 \(1988\)](#), which collectively hold that a pleading defendant has a due process right to know the maximum amount of restitution to which the plea

may subject the defendant. After hearing argument, Judge Slayton ruled that “there has to be an amount not to exceed, that it has to be capped, that you cannot agree to an open restitution to any amount,” relying upon the *Phillips/ Lukens* rule. He ordered that each of the defendants be jointly and severally liable for restitution capped at \$500,000, with the determination of the exact amount postponed until completion of the defendants' sentences.

During the change of plea proceeding, the victim’s counsel, Colleen Clase, had been allowed to sit in the “well” of the courtroom, in a row of chairs behind counsel table. However, at the beginning of the sentencing hearing, where the issue of the restitution cap was to be determined, Judge Slayton called the attorneys to the bench and advised victim’s counsel that she would have to sit in the gallery of his courtroom until he called her to the podium and would not be permitted to sit in the well. He later stated:

With regard to Ms. Clase’s objection that she wasn’t allowed to sit behind the prosecution, there is no rule that allows a victim representative attorney to sit in front of the bar. It’s always been my practice and the practice of other judges that we always recognize the defendant’s —the victim’s attorney, that we always make available argument from the victim’s attorney in this case, in cases where they have their own attorney.

Ms. Clase has been afforded every opportunity to make her arguments and to approach the court. She has been included in bench conferences as well. So enough said about that.

The victim sought relief by a special action challenging both the restitution caps and the requirement that she sit in the gallery rather than the well of the courtroom. After briefing and oral argument, the Court of Appeals issued a Memorandum (unpublished) Decision, declining jurisdiction on the grounds the validity of restitution caps was not yet “ripe” for review because the victim, or her adoptive parents, had not yet filed a restitution claim. Judge Perkins wrote a special concurrence agreeing with her colleagues that the issue was not yet ripe for review but stating that the petition presented a legal question of statewide importance. The Arizona Supreme Court granted review of both issues.

## **ISSUES:**

“Whether the State and a criminal defendant may cap the amount of restitution a victim may seek in a plea agreement, over the victim’s objection?”

“Whether crime victims have a right to have their own counsel in the well of the courtroom?”

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