



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA V. DEMITRES ROBERTSON
CR-19-0175-PR
246 Ariz. 438 (App. 2019)**

PARTIES:

Petitioner: Demitres Robertson
Respondent: State of Arizona
Amicus Curiae: Arizona Attorneys for Criminal Justice

FACTS:

In August 2002, the State charged Robertson with one count of first-degree murder, a class 1 felony, and two counts of intentional child abuse, class 2 felonies and dangerous crimes against children. The superior court dismissed the first count of child abuse for lack of probable cause. Robertson ultimately pleaded guilty to one count of manslaughter, a class 2 dangerous felony, and one count of reckless child abuse, a class 3 felony. The plea agreement provided that Robertson would receive a prison term between 8-15 years for the manslaughter charge, followed by a consecutive term of probation for the child abuse charge. The trial court sentenced Robertson to prison for 10 years for the manslaughter conviction and to a consecutive term of lifetime probation on the child abuse conviction.

Robertson completed her prison sentence in August 2010, and began her term of probation. Robertson violated her probation in 2014 and 2016. Both times the trial court reinstated her probation and imposed additional conditions.

In May 2017, the State filed another petition claiming Robertson violated intensive probation and sought to revoke probation. Robertson denied the petition's allegations. At the probation violation hearing, Robertson argued for the first time that the crimes of manslaughter and child abuse constituted a single act involving a single victim, and therefore, consecutive sentencing on the convictions violated the statutory prohibition against double punishment in A.R.S. §13-116. The court denied Robertson's oral motion to dismiss the petition to revoke. The court revoked Robertson's probation and ordered that she be imprisoned for a presumptive term of 3.5 years, with 260 days of presentence incarceration credit.

Robertson timely appealed. Robertson argued that the prison sentence imposed after her probation was revoked was illegal under A.R.S. § 13-116. She argued that she had already served a prison sentence for the same act involving the same victim, and, therefore, could not be imprisoned a second time for the same act. The State argued that under Ariz. R. Crim. P. 17.2(e) and A.R.S. § 13-4033, Robertson waived her right to appeal by pleading guilty.

The court of appeals decided the case on an issue that was not argued by either party. The court of appeals affirmed the trial court's order revoking Robertson's probation and sentencing her to prison on the ground that she invited any error by entering into a plea agreement with the State. Op. ¶¶ 13, 18. The court acknowledged that, typically, a defendant's guilty plea does not waive all challenges to a subsequent sentence imposed after a probation violation, citing *State v. Regenold*, 226 Ariz. 378, 379-80 ¶¶ 8, 12 (2011). However, the court found Robertson's case to be distinguishable. According to the court of appeals, this case is different from *Regenold* because Robertson entered into a plea agreement under which she avoided the possibility of a sentence of life in prison plus a consecutive sentence, in exchange for a prison sentence on a reduced count with a consecutive term of probation. For this reason, the court found, Robertson invited any error and cannot raise her claim under A.R.S. § 13-116. Op. ¶ 13.

Next, the court noted that there are Arizona Court of Appeals cases holding that invited error does not apply when the defendant stipulates to error unless it can be shown that he or she proposed the stipulation, rather than merely acquiesced in it. See *State v. Lucero*, 223 Ariz. 129 (App. 2009); *State v. Thues*, 203 Ariz. 339 (App. 2002). The court of appeals found that those cases reflected a misreading of *State v. Logan*, 200 Ariz. 564 (2001). Op. ¶ 15. According to the court of appeals, neither *Logan* nor any other Arizona Supreme Court case holds that only the initial party to propose a stipulation is subject to invited error analysis. Furthermore, in *State v. Parker*, 231 Ariz. 391 (2013), the Court applied invited error to a stipulation without discussing whether the State or the defendant was the source of the stipulation. Thus, the court of appeals concluded that in the case of a plea agreement evidencing the final product of compromises arrived at after off-the-record negotiations among the parties there is no need to inquire as to who first proposed the stipulations contained therein. Op. ¶ 16. By entering into the plea agreement in this case, Robertson invited an error and cannot argue that her consecutive prison term was prohibited by A.R.S. § 13-116. Op. ¶ 17.

ISSUES:

- 1.) Whether the opinion of the Court of Appeals is inconsistent with the decision of this Court in *State v. Regenold*, 226 Ariz. 378 (2011)?
- 2.) If the instant opinion does not violate this Court's decision in *Regenold*, Invited Error should not be applied to illegal sentences imposed following a contested probation violation hearing.

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