



ARIZONA SUPREME COURT ORAL ARGUMENT CASE SUMMARY



**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
1501 West Washington - Phoenix Arizona 85007- 3231
Public Information Office: (602) 542-9310**

CASE SUMMARY

State of Arizona v. James Earl Christian,
No. CR-02-0023-PR (Opinion)

Parties and Counsel:

Petitioner: James Earl Christian, represented by Deputy Maricopa County Public Defender M. Daniel Evans.

Respondent: State of Arizona, represented by Deputy Maricopa County Attorney Diane Gunnels Rowley.

Facts:

James Earl Christian was convicted of theft of a means of transportation.

The trial court imposed sentence without counting a prior conviction for narcotics possession as a “historical prior felony” for sentence enhancement purposes. It agreed with Christian’s argument that A.R.S. § 13-604(V)(1) excludes from the definition of “historical prior felony” a Proposition 200 conviction involving drugs below the threshold amount. The court sentenced Christian to prison for 6 ½ years. If the court had counted the prior drug possession conviction, the sentence would have been 11 ½ years.

The State appealed, and the court of appeals vacated the sentence. Two judges on the panel said a prior Proposition 200 conviction *could* be used as a “historical prior felony conviction” to enhance a defendant’s sentence. A.R.S. § 13-901.01, the statute codifying Proposition 200, requires a court to impose probation for a first or second time drug possession/use conviction, but nothing in that statute precludes enhancement of a subsequent conviction for a different offense with a prior Proposition 200 sentence. They found no language in the statute to suggest a conviction under A.R.S. § 13-901.01 should be treated any differently than a prior conviction for any other offense for enhancement purposes under A.R.S. § 13-604(V)(1). One judge dissented, and would interpret A.R.S. § 13-604(V)(1) to exclude by its terms Proposition 200 prior convictions for sentence enhancement purposes. He would interpret the word “listed” in A.R.S. § 13-604(V)(1)(c) to include the reference to Title 34 drug possession offenses in subsection (1)(a). Under this interpretation, because Proposition 200 prior convictions are “listed” under subsection (a), they cannot be used for enhancement under subsection (c). He agreed with the majority’s Proposition 200 analysis.

Issue(s):

"A.R.S. § 13-604(V)(1) defines 'historical prior felony convictions.' Subdivision (a) lists those offenses that shall and shall not be historical priors. Listed as offenses that shall not be historical priors are Chapter 34 [drug possession] offenses below the threshold amount. Subdivision © provides in part that 'any class 4, 5, or 6 felony, except the offenses listed in subdivision (a) of this paragraph, that was committed within five years immediately preceding the date of the present offense.' In 1999, James Christian was convicted of possession of narcotic drugs, a Chapter 34 offense below the threshold amount. Did the court of appeals (majority) commit an error of law by finding Christian's drug conviction was not listed in subdivision (a)?"

Authority:

Pertinent parts of A.R.S. § 13-604(V) defines "historical prior felony conviction" for sentence enhancement purposes as:

(a) any prior felony conviction for which the offense of conviction:

(l) mandated a term of imprisonment except for a violation of chapter 34 of this title involving a drug below the threshold amount; or

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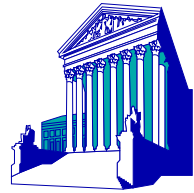
c) any class 4, 5, or 6 felony, except the offenses listed in subdivision (a) of this paragraph, that was committed within the five years immediately preceding the date of the present offense. Any time spent incarcerated is excluded in calculating if the offense was committed within the preceding five years.

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office and the Administrative Office of the Courts solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.

February 13, 2003



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CASE SUMMARY

CV-02-0269-PR
Patrick Galloway et al v Hon J Vanderpool et al

INFORMATION NOT AVAILABLE

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February 13, 2003