



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



CR-00-0595-AP

**STATE OF ARIZONA, Appellee
v.
SHAD DANIEL ARMSTRONG, Appellant**

Parties/Counsel:

The State is represented by Kent Cattani, Chief Counsel, Capital Litigation Section, and Donna J. Lam, Assistant Attorney General, Capital Litigation Section, both of the Arizona Attorney General's Office

Shad Daniel Armstrong is represented by Harriette P. Levitt

FACTS:

In late August 1996, Shad Daniel Armstrong ("Armstrong"), his sister Farrah, and a friend burglarized a home in Texas. Over the next couple of years, Farrah's relationship with Armstrong deteriorated. In January 1998, Armstrong knew that Farrah was considering turning herself in for the 1996 burglary. At that time, Armstrong and another friend, Doogan, began to discuss how they would murder Farrah and her fiancé.

In early February, Armstrong and Doogan dug a grave on Doogan's property. Armstrong then lured Farrah to Doogan's residence, where he planned to shoot her with a shotgun, but he was unable to carry out the plan. On February 18, 1998, Armstrong and Doogan made a plan to lure both Farrah and Frank to Doogan's residence the next day to carry out the murders.

In preparing for the murders on February 19, 1998, Armstrong and Doogan hung sheets on the walls to capture any blood splatter and gathered plastic bags to cover the victims' upper bodies after the shooting.

Farrah and Frank arrived at Doogan's around dusk that day. The group congregated in the living room where Farrah, Frank, and Doogan sat down. Armstrong went down the hall to retrieve the shotgun. He returned with the gun in hand, pointed it at Frank and shot him in the midsection. Farrah screamed and started to get up, but Armstrong turned and shot her first in the midsection, and then in the head. Armstrong then turned back to Frank and shot him in the head. Armstrong and Doogan gathered

the bodies, dumped them in the pre-dug grave, and covered them, after having stripped Farrah of her money and jewelry.

Armstrong was on the run until he was finally arrested in January 1999. He was charged with two counts of first degree murder and one count of conspiracy to commit murder. His trial started January 24, 2000, and lasted 33 days, at which point he was convicted by a jury on all charges. At the aggravation/mitigation hearing in August 2000, the trial court found pecuniary gain and the double homicides were aggravating factors in the murders. After considering the mitigating evidence, the trial court imposed the sentence of death for each homicide and 25 years to life for the conspiracy conviction.

ISSUES:

Armstrong presents two issues on appeal:

1. Whether prosecutorial misconduct and erroneous rulings from the court combined to deprive Armstrong of his Constitutional right to a fair trial.
2. Whether the imposition of the death penalty was improper.

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**ARIZONA SUPREME COURT
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CV-02-0412-PR

**FACILITEC, INC. v. J. ELLIOTT HIBBS, in his capacity as Director of the Arizona
Department of Administration**

Parties and Counsel:

Petitioner: Facilitec, Inc., represented by Timothy Berg and Keith L. Hendricks, Fennemore Craig.

Respondent: J. Elliott Hibbs, former director of the Arizona Department of Administration, represented by Assistant Attorney General Charles A. Grube.

FACTS:

The state issued a Request for Proposals (RFP) seeking competitive bids to provide the state with modular furniture. Facilitec, an unsuccessful bidder, protested the award. The state procurement office dismissed the protest, and Facilitec appealed to Department of Administration (“DOA” or “ADOA”) Director Hibbs. Mr. Hibbs’s deputy director, William Bell, referred the procurement case to the Office of Administrative Hearings (OAH), where an administrative law judge heard the evidence and arguments of both parties. The ALJ found that the state procurement office had not fairly and equitably evaluated Facilitec’s proposal, and advised that Facilitec be granted a second, non-exclusive contract. The ALJ sent his recommendation to Mr. Hibbs for final agency determination.

Deputy Director Bell issued the agency decision, rejecting the ALJ’s recommendation. Facilitec filed a Motion for Review with Director Hibbs, which Mr. Bell denied by order. It also asked the OAH to certify the recommended decision as final, based on Mr. Hibbs’s failure to take action within thirty days under Arizona Revised Statutes (“A.R.S.”) § 41-1092.08(D). OAH declined, and Facilitec filed a judicial review action in superior court. The trial court granted Facilitec’s motion for partial summary judgment, finding Mr. Hibbs could not delegate his quasi-judicial functions under § 41-1092.08(D) to his deputy.

In a published opinion, the Court of Appeals reversed the trial court. It noted that under A.R.S. § 41-702(A), the DOA deputy director “serves at the pleasure of the director and shall assist the director in administering the department by performing the duties and responsibilities that the director prescribes.” It criticized the trial court’s view that DOA administration excludes legislative and judicial functions as reading the statute too narrowly. When used in reference to the Department of Administration, the plain meaning of “administering” does not reasonably suggest the “ministerial” limitation Facilitec argued and

the trial court found. Instead, it was reasonably intended to include decision-making responsibilities. According to the Court of Appeals, many administrative acts require the exercise of judgment and discretion, so the trial court's application of the general rule of limited delegation is not appropriate here.

Judge Garbarino dissented, agreeing with the trial court that the DOA director has no statutory authority to delegate quasi-judicial functions to the deputy director. Adjudication of a dispute is not a managerial or enforcement function within the scope of the DOA deputy director's administrative duties. Quasi-judicial functions can only be delegated when explicitly permitted by statute.

ISSUE:

“May the Director of the Arizona Department of Administration (‘ADOA’) delegate to the Deputy Director the authority to make the final quasi-judicial decision on the appeal of a procurement protest when the legislature expressly granted this quasi-judicial role to the Director?”

Definitions:

- A.R.S. §* Arizona Revised Statutes section, the designation that precedes the title and section number of Arizona legislation.
- procurement* procedures by which public agencies purchase goods and services from private businesses, based on competitive written offers or bids.
- quasi-judicial* having the qualities of judicial function, such as weighing the relative importance and credibility of documents and witness testimony, but not performed by a judge in a courtroom setting. Administrative law decision-making is considered quasi-judicial.
- § 41-1092.08(D) “... if the head of the agency ... does not accept, reject or modify the administrative law judge’s decision within thirty days after the date the office sends a copy of the administrative law judge’s decision to the head of the agency... the office shall certify the administrative law judge’s decision as the final administrative decision....”

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**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



CV-02-0375-PR

JAMES R. GLAZE, JR., v. ERIC A. LARSEN

Parties and counsel:

Petitioner: Eric Larsen, represented by D. Burr Udall and Peter Akmajian of Chandler, Tullar, Udall & Redhair, LLP.

Respondent: James R. Glaze, Jr., represented by James K. Kerley.

Amicus Curiae: Arizona Association of Defense Counsel, represented by William H. Anger.

FACTS:

This is a legal malpractice suit. Glaze claims that Attorney Larsen provided substandard representation when Larsen was Glaze's defense attorney in a criminal proceeding in which Glaze was convicted of a crime. Larsen represented Glaze both at trial and in an unsuccessful appeal of the conviction. After losing the appeal, Glaze obtained new counsel and sought post-conviction relief. That litigation took two years, but ultimately the conviction was overturned based on a ruling that Glaze received ineffective assistance of counsel at his trial. Glaze then filed this suit against Larsen.

A statute of limitations bars malpractice claims that are not brought within two years after the claim accrues. The issue here is when Glaze's claim against Larsen accrued, and whether the claim is barred by the statute of limitations.

ISSUE:

The fundamental issue decided by the Court of Appeals was when a cause of action for legal malpractice accrues arising out of an underlying criminal action in which a Rule 32 Petition for post-conviction relief had been brought. The Court of Appeals considered several points in time during the criminal proceedings when the cause of action might have accrued: 1) when the claimant was convicted and sentenced; 2) when the conviction and sentence were affirmed on appeal; 3) when the claimant brought his Rule 32 petition alleging ineffective assistance of counsel; 4) when the Court of Appeals issued its mandate in the Rule 32 proceedings, finding a colorable claim of ineffective assistance of counsel; or 5) when the trial court dismissed the underlying action, with prejudice, following the mandate by the Court of Appeals.

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