



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



CASE SUMMARY

**STATE OF ARIZONA v. VICTOR TORRES
CR-03-0326-PR**

Parties and counsel:

Petitioner: State of Arizona, represented by Attorney General Terry Goddard and Assistant Attorney General Karla Hotis Delord.

Respondent: Victor Torres, represented by Susan Sherwin, Office of the Legal Advocate, and Tennie B. Martin, Deputy Legal Advocate.

Facts:

Victor Torres appeals from a conviction for aggravated assault, unlawful flight from a marked law enforcement vehicle, misconduct with a weapon, and two counts of disorderly conduct. The Court of Appeals reversed the conviction, and the State of Arizona brought this petition for review.

Two months before the original trial date below, Torres filed a written motion in propria persona alleging that he could no longer speak with his appointed counsel about his case, that he did not trust his attorney, that he felt “threatened and intimidated” by his attorney, that he no longer felt there was “confidentiality” between him and his attorney, and that the attorney was no longer behaving in a professional manner. A pre-trial hearing was held on June 12, 2001. At that hearing, Torres verbally requested new counsel, and there was limited discussion on the record, but the trial court denied the request. A jury trial was held, and Torres was convicted. A different judge presided at a later sentencing hearing. At the sentencing hearing, Torres again expressed dissatisfaction with his appointed counsel. This time, the sentencing judge appointed new counsel.

Torres appealed, arguing (among other things) that he was denied his constitutional right to adequate representation. The Court of Appeals ruled that the trial court had a duty to decide the motion for new counsel “after conducting an adequate inquiry.” Opinion, ¶ 7. The appellate court explained that if the allegations made in the motion for new counsel were true, they might demonstrate a sufficient conflict between Torres and his appointed counsel to require appointment of different counsel. The appellate court found that the trial court’s failure to conduct a hearing on the allegations meant that there was not enough information in the record for the appellate court to be able to tell whether an “irreconcilable conflict” existed between Torres and his attorney. The court of appeals reversed the conviction, finding that the denial of Torres’ motion without an adequate inquiry into the allegations violated Torres’ Sixth Amendment right to assistance of counsel because it may have subjected him to representation by a lawyer with whom he had an irreconcilable conflict.

The State of Arizona filed a Petition for Review, asking the Arizona Supreme Court to review the decision of the Court of Appeals. The State argues that there was no error by the trial court, but that, if it was error not to inquire further into the allegations in the motion for new counsel, then the error was harmless. The State argues further that, if the failure to hold a hearing on the allegations in the motion was error, and if there is not enough information in the record to decide whether the error was harmless, then, rather than reverse the conviction, the Court should remand the case to the trial court for a hearing on the allegations in the motion.

Issue:

Did the Court of Appeals err in creating a broad procedural rule of structural error that will affect many criminal cases in Arizona with drastic results by holding that a trial court's summary denial of an indigent defendant's motion for new counsel, without an inquiry into the basis for the motion, violated his Sixth Amendment right to counsel and mandated reversal?

Definitions:

in propria persona From Latin for "in one's own proper person." A litigant who appears or files papers in a legal proceeding on his own behalf, without an attorney, does so "in propria persona."

The Sixth Amendment provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

structural error An error of such magnitude that reversal is required, because of the likelihood that the error may have affected the verdict.

harmless error If an appellate court can determine, beyond a reasonable doubt, that an error did not contribute to or affect the verdict, the error may be found to be "harmless error," which does not require reversal.

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