



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. HON. BRIAN R. HAUSER (rip, MARK D. DANCY, aka SHAWN WOODS), 1 CA-SA 04-0199-PR (Order)
CV-04-0321-SA**

Petitioner: State of Arizona, represented by Deputy Maricopa County Attorney Gerald R. Grant.

Respondent: Real party in interest Mark D. Dancy, aka Shawn Woods, represented by Deputy Maricopa County Public Defender Edith M. Lucero.

FACTS:

The State charged Dancy with theft of means of transportation. It filed allegations of prior historical felony convictions for sentence enhancement, pursuant to A.R.S. § 13-702.02. The allegations involved (1) a theft committed on February 24, 1991, for which Dancy was convicted on July 22, 1991, and (2) a marijuana possession offense committed on April 28, 1994, for which he was convicted on January 21, 1997.

Dancy asked Judge Hauser to follow the ruling of another judge in a different case and to strike the allegations of priors. He claimed that, since they were more than five years old, they cannot be used as sentence enhancement. The State responded that the plain and unambiguous language of §13-702.02 allowed the use of historical prior convictions that cannot be used under § 13-604.

After hearing argument, the judge granted Dancy's motion to strike the allegations and stayed the trial pending resolution of the State's petition for special action. After the appellate court declined special action jurisdiction, Judge Hauser granted the State's motion to continue the stay. Dancy then filed this petition for special action.

ISSUE(S):

"Real Party in Interest Dancy's prior felony convictions fall outside of the time limits for a 'historical prior felony conviction' as defined in A.R.S. § 13-604(V) (2) (c). The State used those convictions to support a sentence enhancement allegation under A.R.S. § 13-702.02. Did the Respondent Judge abuse his discretion by finding that such convictions cannot support an allegation under § 13-702.02?"

AUTHORITY:

A.R.S. § 13-702.02(A), dealing with multiple offenses not committed on the same occasion, provides:

A person who is convicted of two or more felony offenses that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions as defined in 13-604 shall be sentenced, for the second or subsequent offense, pursuant to this section.

A.R.S. § 13-604(V)(2) (c) defines historical prior felony conviction as:

Any class 4, 5 or 6 felony, except the offenses listed in subdivision (a) of this paragraph, that was committed within the ten years immediately preceding the date of the present offense.

Offenses listed in A.R.S. § 13-604(V)(2) (a) generally involve violent crimes, or those for which a prison term is mandatory. There is no time limit on the use of those historical prior felony convictions for sentence enhancement.

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office 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.