



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



STATE v. ROBERT ALLEN HENDERSON, CR-04-0442-PR

PARTIES AND COUNSEL:

Petitioner: The State of Arizona is represented by Assistant Attorney General Randall M. Howe.

Respondent: Mr. Henderson is represented by Deputy Public Defender Edward F. McGee.

FACTS:

A jury convicted Henderson of unlawful imprisonment (the lesser-included offense to kidnapping), assault, and threatening or intimidating. For the unlawful imprisonment conviction, the trial court imposed a super-aggravated prison term of 2 years. For the other two convictions, which were misdemeanors, the court sentenced Henderson to concurrent terms of 6 months in prison.

The presumptive term for the unlawful imprisonment conviction is 1 year. Upon the finding of an aggravating factor, the maximum sentence is 1.5 years. Pursuant to A.R.S. § 13-702.01(A), the trial court can impose a super-aggravated sentence up to 2 years if it finds at least two substantial aggravating factors. In Henderson's case, the trial court found the following aggravating factors:

[I]n aggravation I find that the violent nature of the facts of this case are aggravating. The trauma that you've caused Ms. Pyle and the injuries that you've caused her are aggravating.

I find, in aggravation, Ms. Pyle's age. I further find in aggravation that you have no remorse whatsoever for any of these offenses. I find in aggravation your statements that you made to me today.

The court did not find any mitigating factors.

At trial, Henderson did not object to the trial court, instead of the jury, finding the aggravating factors. He did not raise that issue on appeal. After the initial briefs were filed, Blakely v. Washington, 124 S.Ct. 2531 (2004), was decided and the Court of Appeals ordered supplemental briefing on Blakely-related issues. On November 18, 2004, the Court of Appeals issued an opinion holding that Blakely error is not structural error requiring automatic reversal of a sentence, that Blakely error occurred in Henderson's case, and that on the facts of this case, the error was fundamental and not harmless. State v. Henderson, 100 P.3d 911 (Ariz. App. 2004).

ISSUE: “Did the court of appeals erroneously apply a harmless-error standard to Appellant’s alleged *Blakely* claim, when he did not timely object at trial or otherwise preserve the claim for appeal?”

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