



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. Hon. SILVIA ARELLANO, Respondent,
and MICHAEL APELT and RUDI APELT, Real Parties in Interest
CV-05-0397-SA**

PARTIES AND COUNSEL:

Petitioner: The State is represented by Kent E. Cattani and Patricia A. Nigro,
Assistant Attorneys General.

Real Parties in Interest: Michael Apelt is represented by Dana Carpenter, Esq.
Rudi Apelt is represented by Michael L. Burke, Assistant Federal Public Defender.

FACTS: Michael Apelt and Rudi Apelt were convicted of premeditated first degree murder and conspiracy to commit first degree murder. Each received the death penalty. The Arizona Supreme Court affirmed. State v. Michael Apelt, 176 Ariz. 349 (1993); State v. Rudi Apelt, 176 Ariz. 369 (1993).

The Apelts have filed petitions for post-conviction relief raising claims based on Atkins v. Virginia, 122 S.Ct. 2428 (2002), alleging that they cannot be executed because they are mentally retarded. Following the procedures set forth in A.R.S. § 13-703.02, the Apelts have been evaluated by experts on mental retardation and the parties are conducting other discovery in preparation for an evidentiary hearing in superior court. On July 21, 2005, the court ruled on several pre-hearing motions filed by Rudi Apelt and joined in by Michael Apelt, and issued "Findings of Fact, Conclusions of Law, and Order." The court "granted, in part" the "Motion to Preclude Testimony of Employees of the Arizona Department of Corrections." (Order at 7-9.) It "granted as to Rudi, and denied, as to Michael" the "Motion for Finding that Defendant's IQ is Sixty-Five or Lower, Establishing a Rebuttable Presumption of Mental Retardation." (Id. at 11-13.) On September 7, 2005, upon considering Michael Apelt's motion for reconsideration, the court changed its prior ruling and found "that Defendant Michael Apelt IS entitled to the statutory presumption of mental retardation." (Minute Entry 9/7/05.) The court denied the State's motion for reconsideration. The State filed a Petition for Special Action, and the Arizona Supreme Court accepted jurisdiction.

ISSUES:

1. "Did Respondent Judge abuse her discretion by ruling that testimony regarding defendants' adaptive behavior after the age of eighteen is not relevant to a determination of mental retardation, and is unduly prejudicial because its probative value is outweighed by the prejudice of focusing on defendants' current adaptive behavior?"
2. "Did Respondent Judge abuse her discretion by finding both defendants entitled to a rebuttable presumption of mental retardation before hearing from a single witness?"

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.