



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



STATE OF ARIZONA V. KAREN MARIE HANSEN
1 CA-CR 05-0520; CR-06-0459-PR

PARTIES AND COUNSEL:

Petitioner: Karen Marie Hansen, represented by Sherman Jensen of Sherman Jensen, P.C.

Respondent: The State of Arizona, represented by Assistant Attorney General Joseph T. Maziarz

FACTS:

On April 27, 2005, the Yavapai County Superior Court sentenced petitioner to concurrent, 12-year terms of imprisonment for fraudulent schemes and artifices, and theft of \$25,000 or more, both class 2 felonies with one historical prior felony conviction. The court also ordered petitioner to pay restitution of \$65,466.03, and that the restitution be paid “from 30 percent of compensation earned while in prison until paid in full or Defendant is released; any balance within 180 days of release.” The court’s restitution payment order was consistent with A.R.S. § 31-254(D)(4) (Supp. 2005), which provides that “[i]f a court has ordered the prisoner to pay restitution pursuant to § 13-603, thirty per cent of the prisoner’s compensation shall be spent for the court ordered restitution.” Petitioner filed a timely notice of appeal and her appeal is currently pending before the court of appeals.

Since her commitment to prison, the Arizona Department of Corrections (ADOC) has withheld money from petitioner’s prison earnings for restitution payments. According to petitioner, as of June 22, 2006, the ADOC had withheld \$13.79 from her wages and forwarded these monies to the Yavapai County Superior Court. In turn, the Clerk of the Yavapai County Superior Court has distributed this money to the victims.

On September 1, 2006, petitioner filed her Motion for Stay of Restitution and Return of Restitution Improperly Withheld, based on Rule 31.6, Ariz. R. Crim. P., asking the court of appeals for an order directing ADOC to stop withholding 30 percent of her prison earnings, and for an order restoring to her “all restitution previously withheld.” The State filed its response to the motion on September 20, 2006.

In an order filed October 6, 2006, the court of appeals effectively denied petitioner’s motion, ordering as follows:

IT IS ORDERED that appellant’s obligation to make restitution payments will not be suspended or stayed pending the appeal.

IT IS FURTHER ORDERED that while the appeal is pending, the Clerk of the

Yavapai County Superior Court shall retain all restitution payments received from appellant directly or through the [ADOC], and shall not disperse any of these monies until resolution of the appeal in this matter. Upon issuance of the appellate mandate, the Clerk of Yavapai County Superior Court shall disperse any monies held in accordance with the appellate courts final resolution of the appeal.

In an opinion filed November 16, 2006, the court of appeals explained its earlier order denying petitioner's motion. Petitioner filed her petition for review in the Supreme Court on December 21, 2006.

ISSUE PRESENTED FOR REVIEW:

Is Appellant's obligation to make restitution payments stayed pursuant to Rule 31.6, Ariz. R. Crim. P., while her appeal is pending or, as the Court of Appeals held, must she continue to make restitution payments pursuant to A.R.S. § 13-804(D)?

The second paragraph of Rule 31.6 provides that: "A sentence to pay a fine or restitution shall be stayed pending appeal." The comment to the rule states that: "The second paragraph follows the current Arizona policy of not requiring payment of a fine or the giving of a bond in lieu of payment pending appeal."

A.R.S. § 13-804(D) provides that: "Restitution payments that are ordered pursuant to § 13-603 and this section shall not be stayed if the defendant files a notice of appeal, and payments may be held by the court pending the outcome of an appeal."

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.