



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**SARAH M. HEATH v. HON. WILLIAM KIGER, RESPONDENT
JUDGE,
STATE OF ARIZONA, REAL PARTY IN INTEREST
1 CA-SA 06-0197; CV-07-0222**

PARTIES AND COUNSEL:

Petitioner (Real Party in Interest Below) State of Arizona (“State”): Yavapai County Attorney Sheila Sullivan Polk and Deputy Yavapai County Attorney Dennis M. McGrane.

Respondent (Petitioner Below) Sarah M. Heath (“Defendant”): Damon A. Rossi, and Abigail Jensen of Abigail Jensen, P.C.

FACTS:

On March 29, 2005, in CR 82005-0216 (2005 case), Defendant was arrested and charged with three drug offenses. On May 2, 2005, as part of a TASC diversion plea agreement, Defendant pled guilty to Possession or Use of Dangerous Drugs, a class four felony; Possession Use of Marijuana, a class six felony; and Possession of Drug Paraphernalia, a class six undesignated offense. The agreement included a paragraph entitled “Release Conditions,” which provided that:

Any bond in this cause shall be exonerated, and if Defendant is in custody, he/she shall be released on his own recognizance [“OR”] after the change of plea. Defendant agrees to the following release conditions:

- 1) Obey all laws;
- 2) Maintain contact with his attorney;
- 3) Comply with all TASC requirements;
- 4) Not leave the State of Arizona without the Court’s permission;
- 5) Appear and answer to all orders of the Court.

After Defendant completed the TASC program, the State filed a motion to set the matter for sentencing. The trial court initially set Defendant’s sentencing for May 15, 2006, but Defendant failed to appear. The court reset sentencing for June 5, 2006.

On June 4, 2006, Defendant was arrested for Possession or Use of Dangerous Drugs, a class four felony; Possession or Use of Marijuana, a class six felony; and Possession or Use of Drug Paraphernalia, a class six felony. The next day, Defendant posted bond in CR 82006-0397 (2006 case) and was released from jail. Defendant was sentenced in the 2005 case for Possession of Drug Paraphernalia, a class one misdemeanor.

On June 22, 2006, the State filed a Motion to Hold Defendant Non-Bondable pursuant to Ariz. Const. Art. 2, § 22(A)(2), in the 2006 case, and requested an evidentiary hearing. On July 10, 2006, the trial court denied the motion without prejudice because Defendant had been sentenced for a misdemeanor in the 2005 case. Later the same day, the State renewed its motion and again requested an evidentiary hearing. Defendant filed a response and argued that Art. 2, § 22(A)(2) did not apply because she was released OR, and not “admitted to bail,” in the 2005 case at the time she allegedly committed the offenses in the 2006 case.

The trial court held an evidentiary hearing on August 25, 2006, and found that Defendant was on felony release at the time of the new offenses, and that “there [was] proof evident or presumption great as to the possession of drug paraphernalia charge.” The court ordered Defendant “held without bond until further order of the court” pursuant to Art. 2, § 22(A)(2).

Defendant filed this special action in the court of appeals asking the court to review the trial court’s decision to hold her without bond.

In an opinion filed May 24, 2007, a majority of the court of appeals’ panel accepted jurisdiction in this special action and granted relief to the Defendant, finding that a person released on her own recognizance is not “admitted to bail” for purposes of the Constitutional prohibition against release of a person charged with a felony offense “committed when the person charged is already *admitted to bail* on a separate felony charge. . .” Art. 2, § 22(A)(2) (Emphasis supplied.). Thus, the majority concluded that “[b]ecause [Defendant] was released OR at the time of her second arrest, she was not admitted to bail and was not required to be detained pursuant to Art. 2, § 22.A.2, of the Arizona Constitution.” Slip Op., p. 11 ¶24.

Judge Hall, dissenting, stated that he “believe[d] the proper interpretation of the phrase ‘admitted to bail,’ when used in laws prohibiting release, is that it refers to any type of eligibility for court-sanctioned release from custody for pending felony charges. Thus, I conclude, as did the trial judge, that [Defendant] was admitted to bail when released on her ‘own recognizance.’” *Id.* at 14 ¶26.

On June 27, 2007, the State filed its petition for review in this Court. Defendant filed her response on August 29, 2007.

ISSUE PRESENTED FOR REVIEW:

Whether the Court of Appeals erred when it determined that a defendant released on her own recognizance is not “admitted to bail” as set forth in Article 2, Section 22(A)2 of the Arizona Constitution and is not barred from being released in a subsequent prosecution?

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.