



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**State of Arizona v. Jeffrey Gastelum
1 CA-CR 04-0661-PR; CR 06-0149-PR**

PARTIES AND COUNSEL:

Petitioner: Randall Howe and Eric Olsson, Arizona Attorneys General, represent the State of Arizona.

Respondent: James Haas and Susan Corey, Maricopa County Public Defenders, represent Gastelum.

FACTS:

A jury found Gastelum guilty of unlawful flight from a law enforcement vehicle, possession of precursor chemicals used to manufacture methamphetamine, and possession of dangerous drugs for sale. The jury acquitted Gastelum of misconduct involving weapons.

Gastelum and the State orally stipulated that Gastelum had two prior felony convictions: (1) a 2001 conviction for attempt to commit theft by means of transportation, and (2) a 1991 conviction for trafficking in stolen property. Rule 17 of the Arizona Rules of Criminal Procedure establishes requirements for a defendant's admitting a prior conviction. "Whenever a prior conviction is charged, an admission thereto by the defendant shall be accepted only under the procedures of [Rule 17], unless admitted by the defendant while testifying on the stand." Rule 17.6 of the Arizona Rules of Criminal Procedure.

An admission of a prior conviction requires that the court advise the defendant of the nature of the allegation, the effect of admitting the allegation on the defendant's sentence and the defendant's right to proceed to trial and to require the State to prove the allegation. Here, the court did not personally advise Gastelum of: (1) the potential effect of him admitting two prior convictions; (2) the right to deny or admit the two prior convictions; or (3) the right to a jury trial on prior convictions. In that hearing, the judge and prosecutor discussed two more prior felonies that were alleageable priors.

After a presentence report was prepared, the court reconvened for sentencing and again did not follow Rule 17.6 procedures by having a direct colloquy with Gastelum about his jury trial rights concerning prior convictions. The court mentioned the stipulation and mentioned the 2001 conviction as an enhancer. However, instead of using the 1991 conviction as an enhancer pursuant to the stipulation, the court erred and referred to a 2003 conviction for possession of marijuana. In Gastelum's presence, his defense counsel concurred with the court's mistaken account of the stipulation. Pursuant to the stipulation

the court sentenced Gastelum to concurrent, presumptive terms with two historical felony convictions for his three convictions.

Gastelum appealed. The court of appeals ruled that the trial court's failure to comply with Rule 17 rendered the stipulation invalid. Because neither of the two prior convictions used by the trial court for sentence enhancement was properly established, the stipulation was invalid. The trial court's use of the invalid stipulation constituted prejudicial, fundamental error. Therefore, the court of appeals affirmed Gastelum's convictions, but vacated his sentences and remanded for re-sentencing.

ISSUE: Post trial, the parties stipulated that Appellant had two prior felony convictions for sentencing enhancement purposes, and Appellant who was present, did not object. In light of Appellant's failure to timely object and his burden, under *State v. Henderson*, 210 Ariz. 561, 567 ¶20, 115 P.3d 601 (2005), to affirmatively demonstrate fundamental error and actual prejudice, did the court of appeals violate *Henderson* by vacating Appellant's sentence on sheer speculation that it was "conceivable that Defendant was unaware of his rights or did not intend to forego them"?

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