



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



STATE V. JOE CLARENCE SMITH
CR-04-0208-AP

PARTIES AND COUNSEL:

Appellant: Joe Clarence Smith is represented by Susan Sherwin, Maricopa County Legal Advocate and Kerry L. Chamberlain, Deputy Legal Advocate, Maricopa County Office of the Legal Advocate

Appellee: The State of Arizona is represented by Terry Goddard, Attorney General, Kent E. Cattani, Chief Counsel, and Jon G. Anderson, Assistant Attorney General, Capital Litigation Section

FACTS:

In January and February of 1976 the bodies of Sandy Spencer and Neva Lee were found in two different desert locations on the outskirts of Phoenix. Each victim died of asphyxiation caused by having her nose and mouth stuffed with dirt and taped shut. Both had ligature marks on their wrists and ankles; multiple stab/puncture wounds; and injuries to the pubic region.

On November 4, 1976, a grand jury indicted Smith for two counts of first degree murder. A jury convicted Smith on June 17, 1977 for the murder of Neva Lee, and he pled guilty to the murder of Sandy Spencer on July 7, 1977. The superior court subsequently sentenced Smith to death on both counts. This Court affirmed Smith's convictions, but reversed his death sentences and remanded for resentencing because his presentation of mitigation evidence had been unconstitutionally limited. *State v. Smith*, 123 Ariz. 231, 243, 599 P.2d 187, 199 (1979) (*Smith I*).

At resentencing, Smith's counsel presented no new mitigation and Smith was again sentenced to death. On appeal, this Court affirmed the sentence of death on both counts. *State v. Smith*, 131 Ariz. 29, 35, 638 P.2d 696, 702 (1982) (*Smith II*). Smith then filed a series of unsuccessful petitions for post conviction relief.

Smith subsequently filed a federal habeas corpus petition, which the Ninth Circuit granted in part, on the grounds that his counsel was ineffective at his resentencing. *Smith v. Stewart*, 189 F.3d 1004, 1014 (9th Cir. 1999) (*Smith III*). The majority of the Ninth Circuit panel concluded that the failure of Smith's counsel to present more mitigation evidence on remand, now that the evidence was not limited to statutory mitigation, was similar to presenting no evidence in mitigation. *Id.* at 1009-11. Believing that additional evidence may have changed the mind of the sentencing judge, the majority ordered that the death sentences be vacated for new sentencing hearings. *Id.* at 1013-14.

The jury sentencing proceedings began in March (Spencer) and May (Lee) of 2004. Both juries unanimously found that the State had proven three aggravators beyond a reasonable doubt: (1) prior conviction for an offense that was punishable under Arizona law by a sentence of life in prison or death, Arizona Revised Statutes (“A.R.S.”) § 13-454(E)(1) (Supp. 1957-1978); (2) prior felony conviction that involved the use or threat of violence on another person, *Id.* § 13-454(E)(2); and (3) that the offense was committed in an especially heinous, cruel, or depraved manner, *Id.* § 13-454(E)(6). Neither jury found that the mitigation was sufficiently substantial to call for leniency, and therefore determined that Smith should be sentenced to death. Accordingly, the superior court sentenced Smith to death by lethal injection on both counts. This automatic appeal followed.

ISSUES:

Smith raises six challenges to his resentencing. In addition to those six issues, A.R.S. § 13-703.04 requires the Supreme Court to independently review the aggravating and mitigating circumstances to determine if the death penalty is appropriate. Smith raises the following issues on appeal:

1. Did the trial court err by denying Smith’s motions for judgment of acquittal based upon insufficient evidence of the A.R.S. § 13-454(E)(2) aggravator?
2. Did the trial court err by allowing Detective Dominguez to testify as to the contents of a police report concerning matters about which he had no personal independent recollection and/or knowledge, and by allowing Dr. Keen to testify as to matters about which he had no personal knowledge and upon which he had not formed his own independent opinion? Did the testimony constitute hearsay not within any exception, and was it admitted in violation of Smith’s Confrontation rights?
3. Did the trial court err by specifying that Smith shall be put to death by lethal injection?
4. Did the trial court violate Smith’s right to a fair and impartial jury, his right to due process, and his right to heightened reliability, by improperly limiting the scope of voir dire and by inappropriately rehabilitating prospective jurors?
5. Did the trial court err by allowing the State to introduce irrelevant and unduly prejudicial “rebuttal” evidence?
6. Does the twenty-seven year delay between Smith’s conviction and his re-sentencing violate his constitutional speedy trial rights? Further, would it constitute cruel and unusual punishment to execute Smith after such a lengthy incarceration on death row?

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.