



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. GARY DOUGLAS PEEK
CR-07-0412-PR**

PARTIES AND COUNSEL:

Petitioner: Gary Douglas Peek, represented by James J. Belanger of Cheifetz Iannitelli Marcolini, P.C. and Scott M. Bennett of Lewis & Roca LLP

Respondent: The State of Arizona, represented by Deputy Maricopa County Attorney Diane Gunnels Rowley.

FACTS:

On January 27, 2003, Peek pled guilty to two counts of attempted child molestation committed between September 25, 1994 and September 25, 1996, both class 3 felonies and dangerous crimes against children in the second degree. On February 27, 2003, he was sentenced to the presumptive term of 10 years on count I, to be followed by lifetime probation on count II. He is currently serving the 10-year prison term.

Until 1994, A.R.S. § 13-604.01(I) authorized lifetime probation for attempted child molestation. In 1993, the Legislature removed the lifetime probation language from § 13-604.01, and added a new subsection E to A.R.S. § 13-902, which authorized lifetime probation for “conviction of a felony offense that is included in chapter 14 [referring to sexual offenses].” These changes were effective January 1, 1994.

Then, effective July 21, 1997, the Legislature amended § 13-902(E) to authorize lifetime probation for “conviction of a felony offense *or an attempt to commit any offense* that is included in chapter 14 . . . [Added language italicized.]” The period between January 1, 1994 and July 21, 1997, is known as the “gap period.” Peek committed his offenses during the gap period and he argues that lifetime probation was not an authorized sentence for attempted child molestation committed during the gap period.

ISSUE PRESENTED BY PETITIONER PEEK:

“Whether [] lifetime probation was improperly given whe[n] at the time [] the offenses were alleged[ly] committed, no provision of the Arizona sentencing scheme provide[d] for the imposition of lifetime probation for attempted molestation of a child.”

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