



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. MICHAEL DIMETRIUS SCHMIDT**  
CR-08-0308-PR

**PARTIES AND COUNSEL:**

*Petitioner:* Michael Demetrius Schmidt, represented by Michael P. Denea, Michael P. Denea P.L.C.

*Respondent:* The State of Arizona, represented by Deputy Maricopa County Attorney Elizabeth Ortiz.

**FACTS:**

Mr. Schmidt agreed to plead guilty to count 4, sexual abuse, a class 3 felony and dangerous crime against children that occurred April 12, 1992 and to amended count 5, attempted sexual abuse of another child, a class 3 felony and dangerous crime against children that occurred April 13, 1992. The court sentenced him to ten years on count 4 and imposed lifetime probation on count 5.

When the state petitioned to revoke probation in November 2002 and again in August 2003, Schmidt admitted the violation, and the court reinstated him on intensive probation. He had had contact with a woman who has a felony record and an infant. He hoped to get into traditional housing, rather than the homeless shelter where he had been placed before. When released from jail, he was returned to Central Arizona Shelter Services (CASS), where the woman also lived. On a third petition to revoke, the trial court again held a hearing but then revoked, sentencing him on count 5 to an aggravated term. It stated committing the same crime one day before “outweighs any factors in mitigation and justifies an aggravated term of imprisonment” under Arizona Revised Statutes section (“A.R.S. §”) 13-702(20), the “catchall” provision, as a prior conviction.

When he petitioned for post-conviction relief, Schmidt claimed the trial court erred by improperly considering as aggravating sentencing factors his probation performance and the count 4 conviction. He also argued double jeopardy, collateral estoppel and law of the case barred an aggravated sentence on count 5. After considering the petition, response and reply, the superior court denied relief for there being no colorable claim. The superior court noted Schmidt was not sentenced the same day for both felonies; because imposition of probation is a suspension of sentence, Defendant was not sentenced on count 5 until the term of imprisonment was imposed, which occurred in 2004. The court of appeals summarily denied review.

**ISSUES:**

A. Issues presented for review

“1. Whether count 4 could be used to aggravate the sentence imposed in count 5 by means of the ‘catch-all’ aggravator in A.R.S. § 13-702(D)(13) (1992).

“2. Whether count 4 could be used to aggravate the sentence imposed in count 5 pursuant to A.R.S. § 13-702(D)(11) (1992), when the date of conviction is the same for both.

“3. Whether the trial court properly aggravated Schmidt’s sentence with his performance on probation and whether this violated Schmidt’s due process rights in light of this Court’s opinion in State v. Price.”

B. Issues preserved for review

“4. Whether the trial court was barred by principles of double jeopardy, collateral estoppel and law of the case from imposing an aggravated sentence on count 5 when a prior judge imposed a presumptive sentence on count 4 when Schmidt was first sentenced.”

**Definitions:**

*Aggravated sentence:* term of imprisonment that has been lengthened or aggravated based on factors listed in a sentencing statute, here, A.R.S. § 13-702(D).

*“Catch-all” aggravator:* factor that may be used to aggravate a sentence, but which is not specified in the list that appears before it.

*Collateral estoppel:* a way to avoid re-visiting an issue that has already been decided.

*Double jeopardy:* constitutional protection against being tried twice for the same offense.

*Due process rights:* constitutional protection against taking away a person’s liberty without notice and a fair opportunity to have the accusations heard, with representation by counsel and confrontation of the witnesses against the defendant.

*Law of the case:* matters already decided in a particular case.

*Presumptive sentence:* the sentence listed in the applicable statute, neither aggravated (increased) or mitigated (lessened).

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