



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. ROBERT EUGENE ALLEN, Jr.
CR-08-0368-PR**

PARTIES AND COUNSEL:

Petitioner:

The State of Arizona is represented by Sarah E. Heckathorne, Assistant Attorney General.

Respondent:

Robert Allen, Jr. is represented by Christopher Johns, Maricopa County Deputy Public Defender.

FACTS:

Robert Allen, Jr. was convicted of aggravated assault, misconduct involving weapons, and possession of marijuana. On the second day of trial, the parties agreed to have the trial court read the following stipulations to the jury:

The defendant and the State stipulate that the defendant is a prohibited possessor.

The defendant and the State stipulate that the defendant was in possession of a usable amount of marijuana on December 8th, 2006.

On appeal, Mr. Allen argued that the stipulations were the functional equivalent of guilty pleas and therefore the trial court was required to advise him of the consequences and obtain his waiver, pursuant to Boykin v. Alabama, 395 U.S. 238 (1969), and Rule 17, Ariz. R. Crim. P., before reading the stipulations to the jury. The Court of Appeals affirmed the convictions and sentences for aggravated assault and misconduct involving weapons, finding no error as to the prohibited possessor stipulation. Regarding the second stipulation, the Court of Appeals found that "the stipulation combined with the State's uncontested evidence of defendant's guilt was tantamount to a plea of guilty" and that the trial court's failure to engage Mr. Allen in a Rule 17-type colloquy was fundamental error. The Court of Appeals remanded for an evidentiary hearing on the issue of prejudice, stating that "[i]f defendant can show that he was unaware of the rights he waived and that he would not have agreed to the stipulation had he been aware, then the trial court is instructed to vacate his conviction and sentence on the marijuana offense and grant a new trial on that charge." The State of Arizona filed a Petition for Review by the Arizona Supreme Court.

ISSUES PRESENTED:

1. "Did the court of appeals err in concluding that the trial court committed fundamental error by not sua sponte engaging Appellant in a Rule 17-type colloquy before accepting a trial stipulation, where the court's ruling in effect was a determination that counsel rendered ineffective assistance by agreeing to the stipulation?"
2. "Assuming fundamental error occurred when the trial court did not engage

Appellant in a Rule 17-type colloquy before accepting the stipulation, did the court of appeals err in ordering the case be remanded so Appellant could attempt to show that he was prejudiced by the stipulation, or was Appellant required to establish prejudice based on the existing trial court record?"

This Summary was prepared by the Arizona Supreme Court Staff Attorneys' 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.