



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE v. ANDERSON
CR-23-0008-PR**

PARTIES:

Petitioner: The State of Arizona

Respondent: Larry Dean Anderson

Amici Curiae: Arizona Justice Project

Federal Public Defender for the District of Arizona

Maricopa County Attorney's Office

FACTS:

Anderson was convicted of conspiracy to commit first degree murder following a jury trial and, in 2000, sentenced to life in prison without the possibility of "release" for twenty-five years. In a consolidated appeal, the court of appeals affirmed his conviction, sentence, and the trial court's dismissal of his first post-conviction relief ("PCR") proceeding, where Anderson raised an ineffective assistance of counsel ("IAC") claim based on his attorney's alleged conflict of interest. Following the decision, Anderson filed a second PCR petition raising an ineffective assistance of appellate counsel claim, but the court of appeals affirmed the trial court's dismissal on the ground that the petition was untimely.

On February 11, 2022, Anderson filed a successive notice of PCR, which indicated he would be raising another IAC claim. He explained that the untimely filing of the notice was not his fault, and should thus be excused, because he was erroneously advised that he could receive parole, an issue that has "only come to light recently in Arizona law." Anderson also noted that he had been attempting to work with the county attorney on a mutual resolution of the issue.

On March 7, 2022, Anderson filed a petition claiming that his plea counsel was ineffective for erroneously advising him, in considering whether to take a plea agreement stipulating to 18 to 22 years in prison, that parole would be possible after 25 years if he lost at trial. In support of his claim, he attached the affidavit of his trial counsel, who was appointed after his plea counsel.

Trial counsel declared that he could "not remember a specific plea, as the case was set for a trial when [he] was appointed," but that the State "may have offered" one, and he had no reason to dispute it was for 18 to 22 years. He also declared that he had "advised Mr. Anderson if he lost at trial, he would receive a 25-year life sentence, but he would be eligible for parole after serving 25 years." Trial counsel added, "I did not advise [Anderson] the legislature had eliminated parole, nor did the Court. Indeed, the Arizona Legislature did not remove references to 'parole' in the Title 13 first-degree murder sentencing statutes. Thus, to my knowledge, no criminal defense attorney or judge at that time had foreseen the problem caused by the legislature's actions in cases

such as Mr. Anderson's."

After several continuances by the State, Anderson filed a motion for an evidentiary hearing indicating that the State had found no record of a plea in his case, that his plea counsel had no recollection of the case, that the original prosecutor was now deceased, and that "the parties [jointly] request an evidentiary hearing to resolve the issue of whether the State made a plea offer." Anderson also attached a supplementary affidavit to the motion declaring that his "attorney told me the prosecutor offered me a plea of 18 to 22 years . . . to attempted murder and solicitation to kidnap with the charges to run concurrently," which he rejected "because my lawyer told me, if I lost at trial, I would be eligible for parole after 25 years [and] I realized that the results if I lost the trial were comparable to my plea offer." He added that he would have accepted the plea if he had known there was no parole.

Approximately a month later, a new attorney assigned to represent the State filed a notice that the State was "withdrawing its request for an evidentiary hearing in this matter" and that it would instead be filing a response to Anderson's petition. In the State's July 15, 2022 response, it argued that Anderson failed to adequately explain his untimely filing, that his claim was precluded because he failed to raise it in prior petitions, and that his IAC claim was otherwise not colorable because "there was no plea agreement."

In his reply, Anderson's PCR counsel attached several new documents in support of his petition, explaining that, since filing his petition, "the DOC finally complied with his request for his original case files from long-term storage." The documents included a purported October 20, 1999 letter to plea counsel in which Anderson asked, "Has [the prosecutor] considered offering a better plea than the 22 years?" It also included a November 8, 1999 letter to then-newly appointed trial counsel stating, "[T]he state offered me a plea of 18 to 22 years, which I rejected," and asking, "[I]s there any way you can contact [the prosecutor] so we can negotiate a plea with a better deal than a 3 year benefit compared to the parole after 25?" Anderson then argued that the untimeliness of his claim was not his fault because "[n]obody, especially Mr. Anderson and his sentencing judge, knew 20 years ago Mr. Anderson was ineligible for parole."

The trial court denied relief without holding an evidentiary hearing. Although it agreed that Anderson's untimely filing was not his fault, and that his claim was also not precluded, due to the "ambiguity about whether inmates, such as defendant, who were sentenced to life with a minimum number of years to serve were eligible for parole," it reasoned that his IAC claim was nevertheless not colorable because if no criminal defense attorneys were correctly advising defendants about the availability of parole, as Anderson alleged, then the erroneous advice he received about its availability was not objectively unreasonable. The court also reasoned that Anderson failed to show prejudice because nothing in the record showed the existence of a plea, and the 18-to-22-year sentencing range under the alleged plea did not fit any reasonable reduction of charges.

Anderson timely petitioned the court of appeals for review, but it denied relief. It found that Anderson's claim was procedurally barred under Rule of Criminal Procedure 32.4(b)(3)(D), contrary to the trial court's ruling, because "that provision does not excuse a defendant's failure to timely seek relief based on the mere failure to recognize a valid claim might exist." It further held that "even if Rule 32.4(b)(3)(D) applied, Anderson's claim would still be precluded by Rule

32.2(a)(3) because he failed to raise it in a previous proceeding.”

Anderson petitioned this Court for review, which was granted as to the following re-phrased issues:

ISSUES:

1. Is Anderson’s ineffective assistance of counsel claim based on erroneous advice regarding the availability of parole precluded and untimely considering the extent of confusion in Arizona about the availability of parole after it was abolished?
2. If not, is erroneous advice about the availability of parole objectively unreasonable in light of the extent of confusion in Arizona surrounding the availability of parole?

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.