



ARIZONA SUPREME COURT ORAL ARGUMENT CASE SUMMARY



State of Arizona vs. Edward James Rose

CR-23-0315-PC

PARTIES

Petitioner/Cross-Respondent: State of Arizona

Respondent/Cross-Petitioner: Edward James Rose

FACTS

In *Simmons v. South Carolina* (1994), the U.S. Supreme Court held that when a jury is considering whether to sentence a defendant to death, and future dangerousness is presented as a consideration, the defendant has a right to inform jurors that a “life” sentence means that the defendant will not be eligible for parole. In 2015, the Arizona Supreme Court held that *Simmons* was not a significant change in the law that would support post-conviction relief in a case where the death penalty was imposed, and, in 2016, the U.S. Supreme Court reversed in *Lynch II*. A “*Simmons/Lynch*” claim is one where a defendant who is sentenced to death argues that the jury should have been informed that the defendant cannot be released on parole.

In 2021, the Arizona Supreme Court found in *Cruz II* that *Lynch* did not “announce a new constitutional principle. Rather, it was a routine application of *Simmons v. South Carolina* to the facts of *Lynch*’s case.” In 2023, in *Cruz III*, the U.S. Supreme Court reversed *Cruz II*, holding that Arizona’s decision to not recognize *Lynch* as a significant change in the law was not an adequate state-law ground to deny federal review and remanded, arguably requiring Arizona courts to treat *Lynch* as a significant change in law.

In July 2007, Rose shot and killed a Phoenix police officer who was responding to a report that Rose was attempting to cash stolen checks at a check cashing store. On the day Rose’s trial was supposed to start, he agreed to plead guilty to first degree murder of a law enforcement officer, first degree felony murder, and eight other felony counts. A jury found four aggravating factors: (1) Rose was previously convicted of a serious offense; (2) he killed the officer in expectation of receiving something of value; (3) he was on probation for a felony when he killed the officer; and (4) the officer was an on-duty police officer. After Rose presented mitigation evidence, the jury sentenced him to death.

After Rose’s convictions and sentences were affirmed on appeal, in April 2017, he filed a petition for post-conviction relief. In August 2020, the superior court denied or dismissed as moot Rose’s claims related to his guilty plea and the jury’s verdicts on the aggravating factors, and most of his claims challenging the death sentence. The superior court, however, granted relief and a new sentencing hearing on Rose’s claim that the court erred by not informing the jury that he could not be released on parole if the jury imposed a life sentence.

The State and Rose both requested review of the superior court’s ruling. This Court remanded Rose’s case to the superior court with instructions to reconsider its ruling in light of *Cruz II*. In November 2023, after the Supreme Court’s decision in *Cruz III*, the superior court again granted relief on Rose’s claim, denied relief on many of his remaining claims, and dismissed as moot his claims alleging that he is intellectually disabled and cannot be sentenced to death.

The State and Rose again both requested review of the superior court’s ruling. The State’s request was granted. Rose’s request was granted in part.

ISSUES

The Court granted review on the State’s Petition for Review as to the following rephrased issues:

1. Whether the superior court abused its discretion by ruling that *Lynch v. Arizona* (“*Lynch II*”), 578 U.S. 613 (2016), is a significant change in the law as defined in Ariz. R. Crim. P. 32.1(g) despite this Court’s ruling in *State v. Cruz* (“*Cruz II*”), 251 Ariz. 203 (2021).

In addressing this rephrased issue, the parties should address whether *Cruz v. Arizona* (“*Cruz III*”), 598 U.S. 17 (2023), does any more than find that this Court’s holding in *Cruz II* was not constitutionally adequate to support foreclosure of federal review of Cruz’s *Simmons/Lynch* claim.

2. Regardless of the conclusion as to Issue 1, presuming that *Lynch II* is a significant change in the law, and therefore Rose’s *Simmons* claim is not precluded, whether Rose can establish that a *Simmons* instruction would probably overturn his death sentence.
3. Regardless of the conclusion as to the prior issues, presuming that *Simmons* error is cognizable under Rule 32.1(a)—apart from a claim of ineffective assistance of trial or appellate counsel—whether any *Simmons* error in Rose’s penalty phase was harmless beyond a reasonable doubt.

The Court also granted review on Rose’s Cross-Petition for Review as to the following rephrased issues:

1. Whether the superior court abused its discretion by finding Rose’s intellectual disability claims moot.
2. Whether the superior court abused its discretion by failing to address, in the alternative, whether Rose’s intellectual disability claims are precluded under Rule 32.2(a)(2), (3).

In addressing this rephrased issue, the parties should address whether Rose’s intellectual disability claims are cognizable under Rules 32.1(a), (c), (g), and (h).

3. In the alternative, presuming that Rose’s claim his trial counsel was ineffective related to his intellectual disability is not precluded, whether trial counsel was prejudicially ineffective.
4. In the alternative, presuming that Rose’s intellectual disability claim is cognizable under Rule 32.1(a), though precluded based on Rose’s waiver under A.R.S. § 13-753(B), whether the court should address the merits of the claim in light of this Court’s decision in *State v. Gates (Altamirano)*, 243 Ariz. 451 (2018).

CASELAW & DEFINITIONS

Simmons v. South Carolina, 512 U.S. 154 (1994) (concluding that where the State puts a defendant’s future dangerousness in issue, and the only available alternative sentence to death is life imprisonment without possibility of parole, the jury should be told that the defendant cannot be released on parole).

Lynch v. Arizona, 578 Ariz. 613 (2016) (reversing the Arizona Supreme Court’s decision, in *State v. Lynch*, 238 Ariz. 84 (2015), that because Arizona law permitted the possibility of release, refusing a *Simmons* instruction was not error and, although an instruction that parole is not currently available would be correct, the failure to give the *Simmons* instruction was not error).

State v. Cruz (“*Cruz II*”), 251 Ariz. 203 (2021) (holding that the Supreme Court’s holding in *Lynch v. Arizona*, 578 Ariz. 613 (2016) was not a significant change in the law for purposes of permitting collateral review of a matter defendant could have raised during direct appeal).

Cruz v. Arizona (“*Cruz III*”), 598 U.S. 17 (2023) (holding that the Court’s ruling in *Cruz II* that *Lynch v. Arizona* was not a significant change in the law was not based on adequate state law ground that would preclude the Supreme Court’s review of a question of federal law).

State v. Gates (Altamirano), 243 Ariz. 451 (2018) (holding that, although defendant was not permitted to void waiver of his right to pre-trial intellectual disability testing by withdrawing his objection, the waiver provision of the statute, see A.R.S. § 13-753(B), does not prohibit the trial court from ordering an intellectual disability evaluation despite defendant's earlier waiver).

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