



## **ARIZONA SUPREME COURT ORAL ARGUMENT CASE SUMMARY**

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***State v. Dunbar*  
Case no. CR-23-0029-PR**

### **PARTIES:**

*Petitioner:* State of Arizona

*Respondent:* Kevin Dunbar

### **FACTS:**

Dunbar was convicted by a jury of attempted first-degree murder, kidnapping, possession of a deadly weapon by a prohibited possessor, and aggravated assault. The trial court imposed concurrent and consecutive prison terms totaling 37 years. Dunbar appealed, raising a number of issues. On appeal, the court of appeals affirmed his convictions, but agreed that the trial court had improperly sentenced him. The court of appeals vacated Dunbar's sentences on all counts and remanded for resentencing.

On remand, Dunbar moved to represent himself, which the trial court denied. The court sentenced him to concurrent sentences for attempted first-degree murder, possession of a deadly weapon by a prohibited possessor, and aggravated assault, the longest term of which is 10 years, with a consecutive 10-year prison term for kidnapping. Dunbar again appealed.

He argued that the trial court committed structural error at his resentencing by denying his request for self-representation. The court of appeals majority observed that there was “no question that Dunbar had a Sixth Amendment right to counsel at resentencing.” It found that the denial of the right to self-representation at sentencing constituted structural error not subject to a harmless error analysis. It observed that, “[i]f the request is untimely, the trial court has discretion to grant or deny it and in so doing should consider factors including ‘the reasons for the defendant’s request, the quality of counsel, the defendant’s proclivity to substitute counsel, and the disruption and delay expected in the proceedings if the request were to be granted,’” citing *State v. De Nistor*, 143 Ariz. 407, 413 (1985). The majority concluded that, “on the record before us, three of the other *De Nistor* factors appear to weigh in favor of granting Dunbar’s request, despite its untimeliness.” It remanded with instructions to the trial court to consider the *De Nistor* factors to determine whether Dunbar’s request should have been granted, and if so, to vacate his sentences and schedule a resentencing.

The dissent objected to extending structural error analysis to a motion for self-representation at sentencing, indicating that harmless error analysis should apply, and determined that no prejudice occurred here.

**ISSUES:**

Is the denial of the right to self-representation at sentencing amenable to harmless error, rather than structural error, review?

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