



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE v. MANUEL DAVID PEREZ-GUTIERREZ
CR-23-0137-PR**

PARTIES:

Petitioner: State of Arizona

Respondent: Manuel David Perez-Gutierrez

Perez-Gutierrez appealed from the trial court's sentencing order imposing consecutive sentences for multiple counts of sexual conduct with a minor. The court of appeals found that the trial court did not comply with A.R.S. § 13-711(A), which requires “[t]he court shall state on the record the reason for its determination.” The court of appeals did not apply fundamental error review, but “remanded for the court to satisfy its statutory duty under A.R.S. § 13-711(A) for sentences it had the discretion to impose consecutively or concurrently.” *State v. Perez-Gutierrez*, 255 Ariz. 232, ¶ 16 (App. 2023).

In a similar case, another panel of the court of appeals “decline[d] to follow *Perez-Gutierrez* because a trial court's non-compliance with A.R.S. § 13-711(A) should be reviewed for fundamental or harmless error.” *State v. Zazueta Garcia*, 1 CA-CR 22-0377, 2023 WL 8430421, ¶ 2 (App. Dec. 5, 2023). The court of appeals applied fundamental error review, found that “Zazueta has failed to establish fundamental, prejudicial error” and affirmed his sentences. *Id.* at ¶¶ 26-27.

ISSUE:

“Whether the court of appeals erred when it declined to apply fundamental error review to a sentencing claim raised for the first time on appeal.”

Statute:

Except as otherwise provided by law, if multiple sentences of imprisonment are imposed on a person at the same time, the sentences imposed by the court may run consecutively or concurrently, as determined by the court. The court shall state on the record the reason for its determination.

A.R.S. § 13-711(A).

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