



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**BETH FAY v. HON. DEWAINE D. FOX/ STATE OF
ARIZONA/JORDAN MICHAEL HANSON
CR-20-0306-PR**

PARTIES:

Petitioners: The State of Arizona
Beth Fay

Respondent: Jordan Michael Hanson (“Defendant”)

FACTS:

On February 16, 2017, a jury convicted Defendant of the second-degree murder of Carson Dumbrell (“Decedent.”). Defendant was sentenced to twelve years in prison, and appealed. However, the trial court retained jurisdiction over the issue of the amount of restitution owed by Defendant to Decedent’s survivors.

While the direct appeal was pending, the restitution issue proceeded in the Superior Court. Beth Fay (“Victim”) is Decedent’s mother and as such is entitled to the status of victim under Arizona victims’ rights law. Her right to restitution was exclusively negotiated and litigated by her attorney, Randall Udelman, and Defendant’s restitution attorney, Michael Kimerer. Defendant had separate counsel for the trial and appeal. The State did not participate in the restitution negotiations.

On March 24, 2018, Victim filed “Beth Fay’s Motion for Criminal Restitution Order” requesting a Criminal Restitution Order (“CRO”) pursuant to [A.R.S. § 13-805\(B\)](#). The motion alleged that Victim might never be able to work again as a result of post-traumatic stress from her son’s murder. Victim therefore claimed a lifetime of lost income. Victim also claimed the lost benefit of Decedent’s income for his lifetime. Lastly, the motion claimed travel expenses incurred by Decedent’s sister for attending her brother’s funeral. The total amount of restitution requested was \$570,159.45. On May 8, 2018, Defendant filed a Response in Opposition to the Motion for Criminal Restitution Order.

On May 20, 2019, after various additional restitution filings and proceedings in Superior Court, the trial judge entered a CRO requiring Defendant to make payments to Decedent’s survivors totaling \$562,980.45. Defendant did not appeal from that order. In the meantime, the Court of Appeals and Arizona Supreme Court had affirmed Defendant’s conviction.

On January 7, 2020, eight months after the CRO was entered, Defendant filed a “Limited Petition for Post-Conviction Relief (Delayed Appeal Request) and Request to Hold Further PCR Proceedings in Abeyance.” Defendant requested leave to file a delayed appeal of the restitution order. After Victim filed a response in opposition to Defendant’s post-conviction relief petition,

Defendant filed a Motion to Strike Victim’s response and also asked the trial court to prohibit any future responsive filings by Victim in the post-conviction proceedings.

Victim then filed an opposition to the Motion to Strike. By Minute Entry dated January 28, 2020, the trial court originally denied the Motion to Strike. However, on January 30, 2020, Defendant filed an objection, complaining that the trial court had denied his Motion to Strike before he had a chance to reply to Victim’s response, and further requesting reconsideration of the trial court’s ruling. By Minute Entry dated April 14, 2020, the trial court reversed itself, ruling that a victim has no constitutional, statutory, or rule-based right in Arizona to be heard in a post-conviction relief proceeding seeking a delayed appeal of a restitution order. The trial court wrote that, “[a]s much as the Court respects victim’s rights, the Court is tasked with enforcing the law as written.” The trial court therefore struck the Victim’s Response to Defendant’s post-conviction relief petition and precluded Victim from filing any future response. Although Victim sought special action relief in the Court of Appeals, that court denied relief.

Both Victim and the State of Arizona filed Petitions for Review to the Arizona Supreme Court, which granted Victim’s petition to address the single issue set forth below.

ISSUE PRESENTED

“Is a victim entitled to be heard on a Rule 32.1(f) Request for Delayed Appeal concerning restitution?”

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