

IN THE ARIZONA SUPREME COURT

STATE OF ARIZONA,

Appellee,

v.

JOSE ADRIAN
AGUNDEZ-MARTINEZ,

Appellant.

S.Ct. Case No. CR-23-0053-PR

Court of Appeals Division One
No. 1 CA-CR 21-0369

Yuma County Superior Court
Cause No. S1400 CR2019-00622

APPELLANT'S SUPPLEMENTAL BRIEF

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ISSUE FOR REVIEW

Did the Court of Appeals correctly hold that existing Arizona law and statutes do not authorize the State to prosecute criminal charges against an adult for conduct he committed as a juvenile under the age of 14?

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INTRODUCTION

The facts are undisputed that Mr. Agundez was between 10-12 years of age, a preadolescent juvenile, when the offenses in this case were committed and that the State charged him as an adult and pushed for adult mandatory minimums under the Dangerous Crimes Against Children (DCAC) adult statutes at A.R.S. § 13-705. Mr. Agundez is now serving a 51-year prison sentence and has been incarcerated for over four years, since June 2, 2019. At the time of his arrest in this case, Mr. Agundez was 23 years old. He had graduated early from high school and attended college while working and living with his family. He had no intervening arrests or charges during his adolescence or adulthood prior to his sole arrest in June 2019 for the present case.

The State's position is that it has absolute discretion to charge any juvenile offender below the age of 14 as an adult once they turn 18 without any procedural requirements or any consideration given to their young age at the time of the offense. In essence the State argues that it should be able to "pretend" that the preadolescent juvenile offender committed a crime as an adult and this position leads to unjust prosecutions. Taken to its most logical conclusion, the State's argument is that it can charge any juvenile who commits an offense at any age, no matter how young, perhaps even an infant, with an adult crime with the possibility of an extensive prison sentence decades later.

This is clearly not the result that the Arizona legislature and courts have intended. The State should not have unfettered discretion and charging authority in its prosecutions under Arizona law, without any consideration of the defendant's age on the date of offense or consideration of any constitutional protections, particularly as it relates to juveniles of a tender age, *i.e.* under the age of 14.

ARGUMENT

I. The Court of Appeal's Holding is Narrow

The Court of Appeals specifically limited its holding in this case to juveniles under the age of 14:

We, therefore, hold that any act committed by a juvenile under the age of 14 that if committed by an adult would be a criminal offense is, by definition, a delinquent act and thus not a criminal offense and may be prosecuted only in the juvenile court or transferred to adult court under A.R.S. § 8–327.

State v. Agundez-Martinez, 524 P.3d 832, 838 (Ariz. App. 2023) at ¶ 25.

This case presents unusual facts and circumstances. Most juvenile offenders under the age of 14 are charged while they are still juveniles or commit additional crimes when they are older and are charged for those crimes instead. Only one other case in Arizona, *State v. Kleinman*, 250 Ariz. 362 (App. 2020), is factually similar. The Court of Appeals' opinion in this case also indicates that nationwide these types of cases (where a juvenile offender aged 13 or younger is later charged as an adult) are exceedingly rare. *See id.* at pgs. 840-842.

The State has noticed one case involving a 17-year-old defendant and has argued that this Court should consider the issues in this case as related to defendants aged 14 and older as well. While the State points to other hypothetical situations regarding older adolescent defendants, the Court of Appeals' holding narrowly and explicitly applies only to those juveniles under the age of 14 at the time of the offense.

This Court should consider the Court of Appeals decision and this case on the narrow grounds before it, rather than the hypothetical fact patterns presented by the State. *See Carpenter v. United States*, 138 S. Ct. 2206, 2220 (2018) (“[o]ur decision today is a narrow one. We do not express a view on matters not before us...”). *See also Mountain States Tel. & Tel. Co. v. Arizona Corp. Comm'n*, 160 Ariz. 350, 354 (1989) (“[f]aced with numerous constitutional issues, jurisprudential considerations require us to decide the case on the narrowest grounds possible”).

By considering this case as if Mr. Agundez were a 17-year-old, as suggested by the State, the Court runs the risk of deciding based on hypothetical issues and facts that are not particular to this defendant, and possibly prejudicing him. The legislative intent and statutory framework may have nuanced differences for older juvenile offenders with different fact patterns who could potentially be charged under A.R.S. § 13-501.

Here, as noted by the Court of Appeals, A.R.S. § 13-501 clearly demonstrates by its plain language that the legislature considered juveniles' ages "at the time of commission of the offense" and that explicitly did not include any juveniles under the age of 14. Indeed, the State's Petition for Review presents the issue as specifically relating to the State's prosecution of an adult for offenses he committed when he was younger than 14. Thus, the question of whether the State's position can be applied to juveniles aged 13 and younger is specific to this case and the specific facts before this Court and should be decided narrowly on that issue.

II. The State's Position Contradicts Legislative Intent and Leads to Unjust Results

The Arizona legislature clearly contemplated enhanced rights for juveniles who may be charged as adults and established the statutory framework at A.R.S. § 13-501 as well as the transfer hearing requirements at A.R.S. § 8-327. The statutes set out specific requirements to protect these juveniles' constitutional and due process rights, including determinations by judges and transfer hearings rather than granting the State blanket authority to make all charging decisions unilaterally.

The legislature very carefully fashioned the statutory language of A.R.S. § 13-501 specifying the situations in which the State could charge juveniles directly in adult court and specifically stating that the sections applied to ages 14-17 "at the time the alleged offense is committed." A.R.S. §§ 13-501(A), (B). A.R.S. § 13-

501(F) also deals with sentencing and states that “a person who is charged pursuant to this section shall be sentenced in the criminal court in the same manner as an adult for any offense for which the person is convicted.”

A.R.S. § 13-501 is clear evidence that the legislature considered the issue of when and how the State could charge juveniles in adult court automatically and decided to allow the State to charge ages 14 and up “at the time of the commission of the offense” in adult court. The statute establishes a bright line age at which the State can direct file in adult court and sets out specific requirements for the State to bring those charges.

The State’s position directly contradicts this plain statutory language and clear legislative intent by asserting that essentially there is no age under which conduct by a child cannot be charged as an adult crime, as long as the child offender is an adult at the time of charging. Under the State’s reasoning then, if a 5-year-old commits a sex offense, that child can be charged decades later at the age of 50 with an adult crime. In fact, the individual who committed an offense at age 5 could be subject to the same prison sentence as a 50-year-old man who sexually abused a child.

This would be an absurd and unjust result as the intent and *mens rea* of a 5-year-old child and a 50-year-old man, particularly as related to the commission of sexual abuse against a minor, are drastically different. This would also result in an inconsistency in charging across the state as different prosecutors will take different

approaches as to where the line is as to how young of a child can later be prosecuted as an adult for his crimes.

Our entire criminal justice system benefits from bright line rules that are uniformly applied. Here, the bright line has been drawn by the legislature when it established specific procedures for charging juveniles aged 14 and up in adult court under A.R.S. § 13-501. The bright line age under which juveniles cannot be tried as an adult without a transfer hearing is 14. A.R.S. § 8-327.

The position proposed by the State encourages bad faith prosecutions by creating an incentive for prosecutors to “sit on” juvenile charges until the defendant is an adult to avoid transfer hearings.

III. The State’s Position Contravenes Constitutional and Public Policy Considerations

The State ignores the far-reaching implications of its position as it relates to public policy, fundamental notions of fairness and justice, and constitutional rights. The crux of the State’s argument is that a 10-12 year old offender like Mr. Agundez has less rights than a 14-17 year old offender under Arizona law, simply because he wasn’t charged until he was an adult. As the Court of Appeals noted in its holding: “[N]othing in our statutes shows that the legislature intended for the mere passage of time to transform delinquent acts into criminal offenses with adult consequences.” *State v. Agundez-Martinez*, 524 P.3d at 839, ¶ 28.

Arizona statutes set out specific due process requirements for charging juvenile offenders in adult court. The State's position advocates for no due process whatsoever for juvenile offenders in Mr. Agundez' position. Mr. Agundez has been treated under the law very differently than a similarly aged defendant who was arrested at the time of the offense would have been.

Due to nothing more than the passage of time, Mr. Agundez was charged as an adult and received a 51-year prison sentence whereas a 12-year-old charged in juvenile court would likely receive a rehabilitative sentence like intensive probation and counseling. In fact, juvenile offenses cannot be charged as "Dangerous Crimes Against Children" in juvenile delinquency proceedings. *See In re Casey G.*, 224 P.3d 1016 (Ariz. App. 2010).

There are constitutional implications to the State's position including (i) due process considerations with pretending that a juvenile offender committed the offense as an adult without any consideration of his age at the time of the offense, (ii) failing to provide adequate notice to defendants of the penalties that can be imposed at the time an offense is committed and inflicting a greater punishment than the law annexed to the crime when committed in violation of U.S. Const. art. I, § 9, Ariz. Const. art I, § 10, and A.R.S. § 1-246, and (iii) equal protection concerns over the disparate treatment of two similarly situated defendants who are only distinguishable by the date on which they are charged.

From a public policy perspective, the goal of the juvenile system is rehabilitation (A.R.S. §§ 13-101, -101.1) as opposed to the goal of the adult system which is punishment (A.R.S. § 13-101(6)) and deterrence (A.R.S. § 13-101(5)). The U.S. Supreme Court has held that “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, **for a greater possibility exists that a minor's character deficiencies will be reformed.**” *Roper v. Simmons*, 543 U.S. 551 (2005) (emphasis added). The *mens rea* and conduct of a child is not the same as that of an adult.

By all standards Mr. Agundez was rehabilitated – he graduated high school and attended college, he had no criminal history, and he was working at the time of his arrest at age 23. The goal of the adult system is punishment, and, per the State’s reasoning, that punishment should be exacted even if the conduct occurred decades prior when the defendant was a child and he has since demonstrated rehabilitation.

Unlike other juvenile offenders, Mr. Agundez never had the chance for the rehabilitative benefits of juvenile court and is now serving a lengthy prison sentence imposed on him as an adult. While the goal at the time he committed the offenses would have been rehabilitation, he lost that opportunity due to the passage of time. The State’s position in this case disregards these constitutional and public policy considerations regarding juvenile offenders under the age of 14.

CONCLUSION

The Court of Appeals' holding in this case is narrowly applied and is correct based on Arizona law and statutes. Accordingly, Mr. Agundez respectfully requests that this Court affirm the holding of the Court of Appeals vacating his convictions on all counts.

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