

ARIZONA SUPREME COURT

LISA GILPIN,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE
OF ARIZONA, in and for the County
of PINAL, THE HONORABLE
DANIELLE HARRIS, a judge thereof,

Respondent Judge,

MARCOS JERELL MARTINEZ,

Real Party in Interest.

Supreme Court

No. _____

Court of Appeals

No. 2 CA-SA 2023-0067

Pinal County Superior Court

No. CR201800324

**PETITION FOR REVIEW OF A
SPECIAL ACTION DECISION OF
THE COURT OF APPEALS**

Colleen Clase (AZ Bar # 029360)
Vanessa Kubota (AZ Bar #036850)
Attorneys for Petitioner Lisa Gilpin
Arizona Voice for Crime Victims
111 East Taylor Street
Phoenix, AZ 85004
480-600-2661 (office)
480-789-9951 (cell)
cclase@voiceforvictims.org
colleen.avcv@gmail.com

TABLE OF CONTENTS

INTRODUCTION	1
JURISDICTIONAL STATEMENT	3
ISSUES PRESENTED FOR REVIEW	3
I. Whether the Court of Appeals erred by declining special action jurisdiction when Petitioner Gilpin does not have a remedy by appeal, important issues of law have been incorrectly decided, and the issue is one of statewide importance that is likely to recur?.....	3
II. Whether <i>Heartfield</i> unconstitutionally infringes on the victim’s constitutional right to full restitution by tethering “conviction” to moral blame, ignoring the “guilty” prong of A.R.S. § 13-502, and mischaracterizing restitution as a punitive measure in derogation of constitutional and statutory law?.....	3
MATERIAL FACTS AND PROCEDURAL HISTORY.....	3
REASONS FOR GRANTING REVIEW	5
I. The <i>Heartfield</i> court rewrote A.R.S. § 13-502(E) by adding an ad hoc amendment to the statute in a manner inconsistent with its plain language.....	5
II. <i>Heartfield</i> narrowed the scope of a victim’s right to restitution under the VBR by adding a restriction not expressed in the statute.	6
A. <i>Heartfield</i> rendered the “guilty” term superfluous.....	7
B. <i>Heartfield</i> ignored the “expressio unius” canon.....	9
C. Restitution is not retributive.	9
III. A “guilty except insane” verdict does not negate criminal liability. ..	11
A. The State cannot waive restitution in a plea agreement and the superior court erred by imposing an automatic waiver.....	12
B. <i>Heartfield</i> mistook the absence of authorization for prohibition.....	12
C. <i>Heartfield</i> ignored its own precedent.....	13
CONCLUSION	13

TABLE OF AUTHORITIES

CASES

<i>Allen v. Sanders</i> , 237 Ariz. 93 (App. 2015)	5
<i>Blake v. Schwartz</i> , 202 Ariz. 120 (Ariz. App. 2002)	6
<i>Clark v. Arizona</i> , 548 U.S. 735 (2006)	8
<i>Coconino Cnty. Pub. Def. v. Adams</i> , 184 Ariz. 273 (App. 1995)	8
<i>Cont'l Lighting & Contracting, Inc. v. Premier Grading & Utils., LLC</i> , 227 Ariz. 382 (App. 2011)	5
<i>E.H. v. Slayton in & for Cnty. of Coconino</i> , 249 Ariz. 248 (2020)	12
<i>E.H. v. Slayton in & for Cnty. of Coconino</i> , 251 Ariz. 289 (App. 2021)	4, 10
<i>Knapp v. Martone</i> , 170 Ariz. 237 (1992)	6, 7
<i>In re Stephanie B.</i> , 204 Ariz. 466 (App. 2003)	1, 9
<i>Matter of ABB Tr.</i> , 251 Ariz. 313 (App. 2021)	7
<i>Nataros v. Superior Ct. of Maricopa Cnty.</i> , 113 Ariz. 498 (1976)	5
<i>Nicaise v. Sundaram</i> , 245 Ariz. 566 (2019)	8
<i>Pouncey v. State</i> , 297 Md. 264 (Md. 1993)	13
<i>Rodriguez v. Arellano</i> , 194 Ariz. 211 (App. 1999)	6
<i>State ex rel. Romley v. Fields</i> , 35 P.3d 82 (Ariz. App. 2001)	5
<i>State v. Agueda</i> , 253 Ariz. 388 (2022)	5
<i>State v. Buhman</i> , 181 Ariz. 52 (App. 1994)	6
<i>State v. Fancher</i> , 169 Ariz. 266 (App.1991)	1
<i>State v. Heartfield</i> , 196 Ariz. 407 (App. 2000)	1, 2, 12, 13
<i>State v. Iniguez</i> , 169 Ariz. 533 (App. 1991)	10
<i>State v. McDonagh</i> , 232 Ariz. 247 (App. 2013)	11
<i>State v. Ovind</i> , 186 Ariz. 475 Ariz. App. 1996)	11, 12, 13
<i>State v. Patel</i> , 251 Ariz. 131 (2021)	1, 2, 4
<i>State v. Pena</i> , 235 Ariz. 277 (2014)	7
<i>State v. Reese</i> , 156 Or. App. 406 (1998)	10
<i>State v. Saenz</i> , 197 Ariz. 487 (App. 2000)	10
<i>State v. Warner</i> , 168 Ariz. 261 (App. 1990)	12
<i>State v. Wilkinson</i> , 202 Ariz. 27 (2002)	9

<i>State v. Zaputil</i> , 220 Ariz. 425 (App. 2008)	1–2, 9
<i>Sw. Iron & Steel Indus., Inc. v. State</i> , 123 Ariz. 78 (1979)	8–9

STATUTES

A.R.S. § 12-120.24.....	3
A.R.S. § 13-201.....	11
A.R.S. § 13-502.....	1, 2, 3, 6, 7, 8, 10, 12, 13
A.R.S. § 13-502 (A).....	1, 8, 10–11
A.R.S. § 13-502(B)	11
A.R.S. § 13-502 (E).....	1, 2, 6, 8, 11, 13
A.R.S. § 13-603(C)	2, 10
A.R.S. § 13-703	6
A.R.S. § 13-704.....	6
A.R.S. § 13-3994.....	12
A.R.S. § 13-4401(19)	5
A.R.S. § 13-4403(A)(1)	8
A.R.S. § 13-4403(C)	5
A.R.S. § 13-4418	7
A.R.S. § 13–4437(A)	2, 3
A.R.S. § 13-4437(E)	2
A.R.S. § 33-4033(A)(1)	2

RULES

Ariz. R. Crim P. 1.9(v)(2)	3
Ariz. R.P. Spec. Act. 1(a)	5
Ariz. R.P. Spec. Act. 2(a)(2)	3
Ariz. R.P. Spec. Act. 8(c)	3

CONSTITUTIONAL PROVISIONS

Ariz. Const. art. 2, § 2.1(A)	1
Ariz. Const. art. 2, § 2.1(A)(8)	1, 12
Ariz. Const. art. 6, § 5(3)	3

Md. Const. art. 47, §§ (a)-(c)13

SECONDARY SOURCES

Black’s Law Dictionary (11th Ed. 2019)7
Pocket Oxford American Dictionary & Thesaurus (3d Ed. 2010)7
RenEe MelanCon, *Arizona's Insane Response to Insanity*, 40 ARIZ. L. REV. 287
(1998)10

INTRODUCTION

For over thirty years the Victims' Bill of Rights ("VBR") has "preserve[d] and protect[ed] victims' rights to justice and due process," Ariz. Const. art 2, § 2.1(A), including the "right to receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury," *id.* at § 2.1(A)(8). But even though the VBR is "the supreme law of Arizona," and "second only to the constitution of the United States," *State v. Patel*, 251 Ariz. 131, 137 ¶¶ 26 (2021), some courts still do not acknowledge its existence.

The Court of Appeals violated the victim's constitutional right to restitution twenty-three years ago in *State v. Heartfield*, 196 Ariz. 407 (App. 2000), when it legislated an ad hoc exception to the VBR that narrowed the definition of "conviction" to exclude verdicts of "guilty except insane" under A.R.S. § 13-502.

That decision was error because "insanity" as defined in A.R.S. § 13-502(A) does not negate criminal liability; it only inoculates the defendant from moral blame. A verdict of "guilty except insane" is "not a conviction for sentencing enhancement purposes" because sentencing enhancements are punitive. *See* A.R.S. § 13-502(E). Restitution is not punitive; its purpose is to make the victim whole. *In re Stephanie B.*, 204 Ariz. 466, 470 ¶ 15 (App. 2003). Because restitution is not a punishment or disability, *State v. Zaputil*, 220 Ariz. 425, 428 ¶ 11 (App. 2008),

courts do not have discretion to decline to order it once a defendant is convicted of a crime, *see* A.R.S. § 13-603(C).

The question for this Court is whether a person who is found “guilty” of the criminal conduct except morally blameless due to insanity is “convicted” of the crime for restitution (non-punitive) purposes under the VBR and A.R.S. § 13-502. This petition says yes. If A.R.S. § 13-502 prohibited “guilty except insane” verdicts from being treated as convictions for restitution purposes, that statute would be “an unconstitutional limitation of a crime victim’s right to receive prompt restitution and . . . [would] thus [be] void. *Patel*, 251 Ariz. at 138 ¶ 26.

But the statute never limited the victim’s right to restitution. The Arizona Court of Appeals did when it rewrote A.R.S. § 13-502(E) to exclude a guilty except insane verdict from the definition of “conviction for purposes of restitution,” *Heartfield*, 196 Ariz. at 408 ¶ 6, a restriction neither stated nor implied in the statute. This error of statutory construction wrongly treats restitution as a punishment, rather than as a constitutional right belonging to the victim. *See* A.R.S. § 13-4437(A), (E).

This Court should grant review to consider whether *Heartfield* (a) unconstitutionally restricts the scope and definition of “conviction” in A.R.S. § 13-502, in violation of the VBR and this Court’s directives, and (b) derogates the statute’s plain language by rendering the “guilty” prong of the statute meaningless.

JURISDICTIONAL STATEMENT

This Court has jurisdiction “in all actions and proceedings” under Ariz. Const. art. 6, § 5(3). *See also* A.R.S. § 12-120.24 and Ariz. R.P. Spec. Act. 8(c).¹

ISSUES PRESENTED FOR REVIEW

- I. Whether the Court of Appeals erred by declining special action jurisdiction when Petitioner Gilpin does not have a remedy by appeal, important issues of law have been incorrectly decided, and the issue is one of statewide importance that is likely to recur?

- II. Whether *Heartfield* unconstitutionally infringes on the victim’s constitutional right to full restitution by tethering “conviction” to moral blame, ignoring the “guilty” prong of A.R.S. § 13-502, and mischaracterizing restitution as a punitive measure in derogation of constitutional and statutory law?

MATERIAL FACTS AND PROCEDURAL HISTORY

Real Party Marcos Jerrell Martinez murdered his grandmother Vicky Ten Hoven and was later indicted on one count of first-degree murder. (Appx. at APP-14, 20.) Five years later, he pled “guilty except insane.” (APP-16, 20.) Petitioner Lisa Gilpin is the deceased victim’s stepdaughter; her father, Glen Ten Hoven, was married to Vicky at the time of her murder. (APP-6, 126.) Petitioner is acting as her father’s victim representative. (APP-6, 23, 24, 28, 126, 137.)

¹ Jurisdiction for the underlying Petition for Special Action exists under A.R.S. § 13-4437(A); Ariz. R.P. Spec. Act. 2(a)(2); and Ariz. R. Crim P. 1.9(v)(2).

The plea agreement provided that “[r]estitution is not applicable.” (Appx. at APP-17.) Petitioner’s counsel objected to that provision at the change of plea hearing, acknowledging *Heartfield* but noting this Court’s recent holdings which emphasized the victim’s non-waivable right to full restitution under the VBR. *See Patel*, 251 Ariz. at 138 ¶ 26; *E.H. v. Slayton in & for Cnty. of Coconino*, 251 Ariz. 289, 291 ¶ 10 (App. 2021) (*Slayton II*). (APP-25 (RT 7/10/2023 at 4–5).) She also asked Respondent Judge to stay acceptance of the plea pending the outcome on Special Action. (APP-26, 34, 40, 47.)

Respondent Judge preserved Petitioner’s request for a stay on the record but set a date for sentencing. (APP-27, 47.) Petitioner and the parties agreed that the rest of the plea provisions could move forward to sentencing, while the issue of restitution would be stayed until after sentencing. (APP-27, 147.) Real Party was sentenced on August 14, 2023. (APP-51, 57.)

Petitioner sought special action review in Division 2 of the Arizona Court of Appeals, asking the court to reexamine its holding in *Heartfield* in light of the VBR and this Court’s recent opinions in *Patel* and *Slayton II* that have defined, implemented and affirmed the victim’s constitutional right to restitution. (APP-4.) For the first time in his response, Real Party challenged Petitioner’s standing to assert victims’ rights. (APP-81–85.) The Court of Appeals summarily declined jurisdiction. (APP-147.) This Petition for Review follows.

REASONS FOR GRANTING REVIEW

I. The *Heartfield* court rewrote A.R.S. § 13-502(E) by adding an ad hoc amendment to the statute in a manner inconsistent with its plain language.

The Court of Appeals abused its discretion by failing to accept jurisdiction and reconsider its prior holding. *See State v. Agueda*, 253 Ariz. 388, 391–92 ¶ 20 (2022) (“[T]he degree of adherence demanded by a prior judicial decision depends upon its merits, and it may be abandoned if . . . it was clearly erroneous or manifestly wrong.”) (citation omitted).

Petitioner has standing to bring this action² and lacks a plain, speedy, or adequate remedy by appeal. Ariz. R.P. Spec. Act. 1(a). Justice also cannot be obtained by other means. *See Nataros v. Superior Ct. of Maricopa Cnty.*, 113 Ariz. 498, 499 (1976). The issue is one of constitutional magnitude,

² Respondent challenged Petitioner’s victim status for the first time in his response to her petition for special action, arguing, among other things, that Petitioner never “proved” her status as a victim representative under A.R.S. § 13-4403(C), (Appx. at APP-81-85) which authorizes a victim’s child to exercise victims’ rights on the parent’s behalf if the parent is “a vulnerable adult.” *See* A.R.S. § 13-4403(C). *Cf. Cont’l Lighting & Contracting, Inc. v. Premier Grading & Utils., LLC*, 227 Ariz. 382, 386 ¶ 12 (App. 2011) (arguments not raised before the trial court are waived on appeal). In any case, A.R.S. § 13-4403(C) does not require a court finding before an adult child can serve as victim representative. And Petitioner can independently assert victims’ rights because she is related to Ms. Ten Hoven by “affinity to the second degree,” A.R.S. § 13-4401(19), which includes the “connection existing in consequence of a marriage, between each of the married persons and the kindred of the other,” *Allen v. Sanders*, 237 Ariz. 93, 95 ¶ 8 (App. 2015).

see Rodriguez v. Arellano, 194 Ariz. 211, 213 ¶ 4 (App. 1999), and turns on a purely legal question of statewide importance that is likely to recur, *see Blake v. Schwartz*, 202 Ariz. 120, 122 ¶ 7 (Ariz. App. 2002).

Heartfield infringed on the victim’s constitutional right to restitution and narrowed the consequences of a guilty except insane verdict in A.R.S. § 13-502. Despite the statute’s express language, which only provides that “[a] guilty except insane verdict is not a criminal conviction for sentencing enhancement purposes under § 13-703 or 13-704,” A.R.S. § 13-502(E), the court interpreted the exception to swallow the rule. It determined that a “guilty except insane” verdict is not a conviction for the non-punitive purpose of restitution. *Heartfield*, 196 Ariz. at 408 ¶ 6. That ruling flouts the Arizona Constitution by making an “ad hoc exception” to the VBR. *See Knapp v. Martone*, 170 Ariz. 237, 239 (1992). Petitioner submits that the VBR and the plain language of A.R.S. § 13-502 must govern and *Heartfield* should be overruled.

II. *Heartfield* narrowed the scope of a victim’s right to restitution under the VBR by adding a restriction not expressed in the statute.

The Court of Appeals should have interpreted A.R.S. § 13-502 in a way that harmonized it with the Constitution. *See State v. Buhman*, 181 Ariz. 52, 55 (App. 1994) (“We are obliged, if possible, to give the statute a constitutional

construction.”). But the court in *Heartfield* did the opposite: it expanded A.R.S. § 13-502 beyond its plain language and made it unconstitutional.

The legislature has directed that criminal statutes “shall be liberally construed to preserve and protect the rights to which victims are entitled.” A.R.S. § 13–4418. But the court in *Heartfield* did the opposite: it construed § 13-502 narrowly to preclude a victim’s constitutional right to restitution. *See Knapp*, 170 Ariz. at 239 (“If trial courts are permitted to make ad hoc exceptions to the constitutional rule based upon the perceived exigencies of each case, the harm the Victims' Bill of Rights was designed to ameliorate will, instead, be increased.”).

A. *Heartfield* rendered the “guilty” term superfluous.

A statute's plain language is the best indicator of legislative intent. *Matter of ABB Tr.*, 251 Ariz. 313, 317 ¶ 22 (App. 2021). The plain language of the statute here supports a reading of “guilty except insane” as a conviction.

Neither the VBR nor A.R.S. § 13-502 defines “conviction,” so courts may turn to common meanings and dictionary definitions. *State v. Pena*, 235 Ariz. 277, 279 ¶ 6 (2014). Black’s Law Dictionary defines “conviction” as “finding someone guilty of a crime.” Black’s Law Dictionary (11th Ed. 2019); *see also* Pocket Oxford American Dictionary & Thesaurus (3d Ed. 2010) (to “convict” is to “officially declare that someone is guilty of a criminal offense”). A finding of guilt *is* a conviction.

A defendant who is found “guilty except insane” under A.R.S. § 13-502 has been “convicted” of the crime except deemed morally exculpable. This interpretation comports with the Court of Appeals’ prior treatment of these cases. *See Coconino Cnty. Pub. Def. v. Adams*, 184 Ariz. 273, 276 (App. 1995) (describing the adjudication of “guilty except insane” as a “conviction,” and holding that indigent defendants who are “convicted pursuant to . . . A.R.S. § 31–502(A)” are entitled to counsel). *But see* A.R.S. § 33-4033(A)(1) (defendant may appeal from a “final judgment of conviction or verdict of guilty except insane”).

It also comports with the “cardinal principle of statutory interpretation,” which strives “to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous.” *Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11 (2019). And A.R.S. § 13–502 specifically uses the word “guilty,” so interpreting the statute to function as an acquittal by reason of insanity subverts the legislative purpose and renders the “guilty” prong meaningless. *See Clark v. Arizona*, 548 U.S. 735, 748 n.6 (2006) (recognizing “a change of the insanity verdict from ‘not responsible for criminal conduct’ by reason of insanity to ‘guilty except insane’”). The phrase “except insane” only tempers the finding of guilt; it does not negate it.

B. *Heartfield* ignored the “expressio unius” canon.

The court inverted the exception in A.R.S. § 13-502(E). Subpart (E) states that a guilty except insane verdict is not a criminal conviction “for sentencing enhancement purposes under § 13-703 or 13-704,” A.R.S. § 13-502(E), implying that *it is a criminal conviction for all other purposes*, including restitution, *see Sw. Iron & Steel Indus., Inc. v. State*, 123 Ariz. 78, 79 (1979) (“[T]he expression of one or more items of a class and the exclusion of other items of the same class implies the legislative intent to exclude those items not so included.”).

C. Restitution is not retributive.

Petitioner concedes that a person who is insane lacks the requisite consciousness of wrongdoing to justly face “punishment” for his or her criminal act. But “restitution is not an element of the offense nor punishment exacted by the state. *It is the act of restoring or making the victim whole and does not require proof beyond a reasonable doubt.*” *Stephanie B.*, 204 Ariz. at 470 ¶ 15 (citing *State v. Fancher*, 169 Ariz. 266, 268 (App.1991)). *See also Zaputil*, 220 Ariz at 428 ¶ 11 (“[E]ven though it is part of the sentencing process, restitution is not a penalty or a disability.”).

This is why, when considering a victim’s eligibility for restitution, courts never engage in a moral culpability analysis. For a crime victim to be entitled to restitution, just three elements must be proven: (1) The loss must be economic; (2)

“the loss must be one that the victim would not have incurred but for the defendant’s criminal offense”; and (3) “the criminal conduct must directly cause the economic loss.” *State v. Wilkinson*, 202 Ariz. 27, 29 ¶ 7 (2002). These three elements go to the causality of the act and its nexus to damage or injury to the victim, not to the motive or blameworthiness of the defendant.

Conviction in the restitution context differs from the realm of post-conviction relief, where the defendant challenges both the conviction itself and its punitive effects. *See State v. Saenz*, 197 Ariz. 487, 489 ¶ 5 (App. 2000) (“[F]or purposes of determining when a petition for post-conviction relief may be filed, a guilty verdict is not a conviction.”). That is because restitution does not entail the deprivation of a defendant’s collateral rights. *See RenEe MelanCon, Arizona's Insane Response to Insanity*, 40 ARIZ. L. REV. 287, 312 (1998) (theorizing that A.R.S. § 13-502 was not intended to result in deprivation of a defendant’s collateral rights).

Beyond that, courts have treated restitution as a remedial measure. *See State v. Iniguez*, 169 Ariz. 533, 536 (App. 1991). *See also* A.R.S. § 13-603(C) (“If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime or to the immediate family of the victim if the victim has died.”); *E.H. Slayton II*, 251 Ariz. at 291 ¶ 10.

III. A “guilty except insane” verdict does not negate criminal liability.

A “guilty except insane” verdict under A.R.S. § 13-502 “is not an acquittal. It is a *guilty verdict*.” *State v. Reese*, 156 Or. App. 406, 410 (1998) (“The only difference between a ‘guilty’ verdict and a ‘guilty except for insanity’ verdict is the dispositional alternatives.”). And “[a] person may be found guilty except insane if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong.” A.R.S. § 13-502(A). That definition does not negate the intentionality of a voluntary criminal act, which is all that is required to establish criminal liability in Arizona. *See* A.R.S. § 13-201 (“The minimum requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform a duty imposed by law which the person is physically capable of performing.”); *see also State v. Ovind*, 186 Ariz. 475, 481 (Ariz. App. 1996).

The moral blamelessness inherent in a guilty except insane verdict under A.R.S. § 13-502 only removes certain punitive consequences from the guilty verdict. *See* A.R.S. § 13-502(E) (sentencing enhancements). It does not excuse the defendant from other, non-punitive financial obligations. *See* A.R.S. § 13-502(B) (requiring defendants found guilty except insane to pay for their mental health treatment and expert evaluation unless proven indigent).

Like those costs, restitution is not a “sentence” of punishment. *See State v. McDonagh*, 232 Ariz. 247, 249 ¶ 10 (App. 2013) (“[A]n assessment may qualify as a ‘sentence’ if (1) it is ‘a pecuniary punishment imposed by a lawful tribunal upon a person convicted of a crime;’ (2) the money recovered goes to the people of Arizona and (3) the money is *not a civil penalty or restitution to a crime victim.*”) (citation omitted and emphasis added).

A. The State cannot waive restitution in a plea agreement and the superior court erred by imposing an automatic waiver.

The guilty except insane finding here was stipulated in a plea agreement. Because of *Heartfield*, the plea agreement automatically precluded restitution. But a prosecutor may not waive a victim’s constitutional right to restitution in a plea agreement without the victim’s consent. *E.H. v. Slayton in & for Cnty. of Coconino*, 249 Ariz. 248, 252–53 ¶ 8 (2020); *State v. Warner*, 168 Ariz. 261, 264 (App. 1990) (“[W]hile the state has standing to assert a victim’s rights, . . . it has no authority to waive those rights.”). *Heartfield* forces trial courts to foreclose restitution in guilty except insane pleas, depriving victims of their constitutional rights to restitution.

B. *Heartfield* mistook the absence of authorization for prohibition.

The court in *Heartfield* focused on the lack of explicit restitution language in A.R.S. § 13-502 and A.R.S. § 13-3994 to imply that restitution was forbidden when a defendant is found “guilty except insane.” *Heartfield*, 196 Ariz. at 408 ¶ 6. But

neither statute must authorize courts to order restitution because Arizona's Constitution already requires it. *See* Ariz. Const. art. 2, § 2.1(A)(8).

C. *Heartfield* ignored its own precedent.

The court barely acknowledged a Division 1 opinion issued a few years earlier that referred to a guilty except insane verdict as a “conviction.” *Heartfield*, 196 Ariz. at 408 ¶ 6 (distinguishing *Ovind*, 186 Ariz at 481). That case held that a “finding that the defendant was insane does not cancel out the elements of ‘knowingly’ and ‘premeditation,’ but merely places the crime in a different category with a rational and more humane treatment of the insane offender.” *Ovind*, 186 Ariz. at 481.

Instead, the court emphasized a Maryland case that denied restitution when a defendant was found to be insane at the time of the offense. *Heartfield*, 196 Ariz. at 409 ¶ 8 n.3 (citing *Pouncey v. State*, 297 Md. 264, 265 (Md. 1993)). But Maryland does not afford victims a constitutional right to restitution, so that comparison fails. *See* Md. Const. art. 47, §§ (a)-(c).

CONCLUSION

The State cannot waive, and courts cannot disregard crime victims' constitutional rights. *Heartfield* forces trial courts to violate the VBR. It is discordant with existing law and well-established principles of constitutional and statutory construction, and it wrongly treats restitution as punishment. This Court

should grant review, overrule *Heartfield*, and hold that a “guilty except insane” verdict under § 13-502 still qualifies as a “conviction” for restitution purposes.

RESPECTFULLY SUBMITTED this 27th day of September, 2023.

By: _____/s/_____
Colleen Clase
Attorney for Petitioner