

**ARIZONA SUPREME COURT**

State of Arizona,

Petitioner,

v.

Bennett Laquan Williams,

Respondent.

Arizona Supreme Court  
No. CR-23-0068-PR

Court of Appeals  
Division One  
No. 1 CA-CR 22-0197 PRPC

Maricopa County  
Superior Court  
No. CR2016-002220-001

---

***BRIEF OF AMICUS CURIAE MARICOPA COUNTY OFFICE OF THE  
LEGAL ADVOCATE IN SUPPORT OF RESPONDENT***

---

Daniel Fenzel (#033263)  
Deputy Legal Advocate  
222 North Central Avenue, Ste. 154  
Phoenix, Arizona 85004  
(602) 506-4111  
[OLAlegaladvocateappeals@maricopa.gov](mailto:OLAlegaladvocateappeals@maricopa.gov)  
Attorney for *Amicus Curiae*

**Table of Contents**

Table of Contents .....2

Table of Authorities.....3

Identity and Interest of Amicus Curiae Maricopa County Office of the Legal Advocate. ....5

    I. Introduction.....5

    II. Contract Law as a Starting Point. ....6

    III. Contrasting Caselaw: *7200 Scottsdale Rd., Szyrka*, and Frustration of Purpose.....8

    IV. Conclusion. ....12

## Table of Authorities

### Cases

<i>7200 Scottsdale Rd. Gen. Partners v. Kuhn Farm Mach., Inc.</i> , 184 Ariz. 341 (App. 1995) .....	5, 8-9
<i>Coy v. Fields</i> , 200 Ariz. 442 (App. 2001) .....	5
<i>Next Gen Capital, L.L.C. v. Consumer Lending Associates, L.L.C.</i> , 234 Ariz. 9 (App. 2013) .....	9
<i>People v. Shinaul</i> , 88 N.E. 3d 760 (Ill. 2017) .....	11
<i>Ricketts v. Adamson</i> , 483 U.S. 1 (1987).....	6-8, 12
<i>State v. Draper</i> , 123 Ariz. 399 (App. 1979).....	12
<i>State v. Quick</i> , 167 Ariz. 318 (App. 1991).....	12
<i>State v. Robertson</i> , 249 Ariz. 256 (2020).....	7
<i>State v. Szpyrka</i> , 233 Ariz. 390 (App. 2010).....	5, 10-11
<i>State v. Williams</i> , 254 Ariz. 516 (App. 2023) .....	5, 10
<i>United States v. Bunner</i> , 134 F.3d 1000 (10th Cir. 1998) .....	10-11
<i>United States v. Johnson</i> , 420 F.Supp. 3d 462 (E.D. Va. 2019).....	11
<i>United States v. Moulder</i> , 141 F.3d 568 (5th Cir. 1998) .....	11
<i>United States v. Samuels</i> , 454 F.Supp. 3d 595 (E.D. Va. 2020).....	11
<i>United States v. Sandoval-Lopez</i> , 122 F.3d 797 (9th Cir. 1997) .....	10
<i>Vereit Real Estate, LP v. Fitness International, LLC</i> , 255 Ariz. 147 (App. 2023) ....	9

**Other Authorities**

Michael Doudna, *47 Years After Bombing, Friends, Fans and Coworkers Gather to Remember Don Bolles*, 12 News, June 2, 2003 .....6

Restatement (Second) of Contracts, § 265..... 5, 8-11

## **Identity and Interest of Amicus Curiae Maricopa County Office of the Legal Advocate.**

The Maricopa County Office of the Legal Advocate (“OLA”) is a Maricopa County indigent representation office maintaining a unit for appellate and post-conviction relief cases. OLA has an interest in providing competent and diligent representation as court-appointed counsel for indigent clients seeking meaningful review in appellate and post-conviction relief proceedings. OLA has encountered cases with issues mirroring those in this case.

### **I. Introduction.**

Arizona courts recognize that contract law is a helpful analog to construe plea agreements. *Coy v. Fields*, 200 Ariz. 442, 445 ¶ 9 (App. 2001) (citations omitted). Where the analogy holds, courts should avoid implementing contrasting standards.

A contrast exists in *State v. Szpyrka*, 233 Ariz. 390, 392-94 ¶¶ 5, 9 (App. 2010), discussed below, where the Court of Appeals referenced “frustra[tion] of purpose” in its analysis, but made no reference to existing Arizona civil contract law to do so. Arizona civil contract law uses the frustration of purpose test from the Restatement (Second) of Contracts, § 265 (“Restatement”), but the *Szpyrka* court’s analysis departed from the Restatement. *Id.*; *7200 Scottsdale Rd. Gen. Partners v. Kuhn Farm Mach., Inc.*, 184 Ariz. 341, 345 (App. 1995). *State v. Williams* compounds the departure by relying on *Szpyrka*’s faulty analysis, mechanically vacating the plea agreement. 254 Ariz. 516 ¶¶ 15-17 (App. 2023) (citing *Szpyrka*, 223 Ariz. at 393 ¶

9). This Court should harmonize the application of the Restatement analysis.

## II. Contract Law as a Starting Point.

*Ricketts v. Adamson*, 483 U.S. 1 (1987) is an appropriate starting point. There, the dissent characterizes plea agreements as unique constitutional contracts, calls for cognizable rules of construction, and advances a principle of “common civility” to resolve interpretation disputes. *Id.* at 12-24 (Brennan, J., dissenting).

In 1976, *Arizona Republic* investigative reporter Don Bolles arrived at the Clarendon Hotel in Phoenix to meet John Adamson about a story, but was mortally wounded when a hidden dynamite bomb planted in his car exploded.<sup>1</sup> Tragically, Bolles would succumb to his injuries eleven days later.<sup>2</sup>

Adamson was charged with murder and entered into a testimonial agreement with the State in exchange for a charge reduction. *Ricketts*, 483 U.S. at 3-5. But when he refused to testify again in a retrial, the State considered him in breach of the agreement and re-filed a first degree murder charge. *Id.* Adamson was convicted and sentenced to death. *Id.* at 6. The Court reversed the Ninth Circuit’s habeas grant, finding that Adamson breached his agreement with the State. *Id.* at 11-12.

The dissent lamented that the “Court [had] yet to address in any

---

<sup>1</sup> Michael Doudna, *47 Years After Bombing, Friends, Fans and Coworkers Gather to Remember Don Bolles*, 12 News, June 2, 2003, <https://www.12news.com/article/news/local/valley/47-years-after-bombing-don-bolles/75-ac66c126-38cf-46c2-a193-fbd318fcfdde>.

<sup>2</sup> *Id.*

comprehensive way the rules of construction appropriate for disputes involving plea agreements.” *Id.* at 16. It “seem[ed] clear that the law of commercial contract may in some cases prove useful as an analogy or point of departure in construing a plea agreement, or in framing the terms of the debate.” *Id.* (citation omitted).

Accordingly, contract law is an analytical starting point because the defendant is “an individual whose ‘contractual’ relation with the State is governed by the Constitution.” *Id.* at 20. Fundamental principles of fairness under the Due Process Clause of the Fourteenth Amendment demand that neither party have the “unilateral and exclusive right to define the meaning of a plea agreement.” *Id.* at 21. In other words, it would be “flatly inconsistent with the [] requirements [of] the Due Process Clause to uphold as intelligently made a plea agreement which provided that, in the future, the agreement would mean whatever the State interpreted it to mean.” *Id.* A defendant should be permitted to “advance against the State a reasonable interpretation of [a] plea agreement.” *Id.* This reasoning accords with this Court’s recognition that “given the unequal bargaining power between the state and a defendant, the latter is usually in no position to dictate specific terms be included in plea agreements,” and any errors in the drafting are likely attributable to the State. *State v. Robertson*, 249 Ariz. 256, 261 ¶ 21 (2020).

Allowing the parties to bilaterally resolve plea interpretation disputes serves the interests of all stakeholders. Rather than unilateral findings of breach and

recission, “[i]f the defendant offers an interpretation of a plea agreement at odds with that of the State, [...] either party may seek to have the agreement construed by the court in which the plea was entered.” *Ricketts*, 483 U.S. at 21. This protects the integrity of convictions, allows for dispute resolution, preserves a defendant’s ability to perform, and furthers the goals of the Victims’ Bill of Rights.<sup>3</sup>

### **III. Contrasting Caselaw: 7200 Scottsdale Rd., Szpyrka, and Frustration of Purpose.**

Importantly, the State’s dissatisfaction with a defendant’s diminished or modified performance neither justifies mechanistic recission nor amounts to a “get out of jail free card” where performance is still possible and occurring. The Restatement’s frustration of purpose doctrine exists to rigorously test these assumptions. But a comparison between Arizona civil and criminal cases shows that it has not been as rigorously applied in the criminal setting.

Frustration of purpose addresses “the problem that arises when a change in circumstances makes one party’s performance virtually worthless to the other.” *7200 Scottsdale Rd.*, 184 Ariz. at 345 (citing Restatement cmt. a-c, additional citation omitted). In civil contract law, Arizona courts have followed the Restatement (Second) of Contracts § 265 approach when applying the frustration of purpose test.

---

<sup>3</sup> If it had sought trial court resolution of the dispute, the State in *Ricketts* “would have placed far fewer demands on the judicial process than were in fact imposed here, and would have fulfilled its constitutional obligation to treat all persons with respect.” 483 U.S. at 21.

*See Vereit Real Estate, LP v. Fitness International, LLC*, 255 Ariz. 147 ¶¶ 20-25 (App. 2023); *Next Gen Capital, L.L.C. v. Consumer Lending Associates, L.L.C.*, 234 Ariz. 9, 11 ¶¶ 6-8 (App. 2013). The approach used in *7200 Scottsdale Rd.*, *Vereit Real Estate*, and *Next Gen Capital* employs a four-pronged analysis before a party may be excused from performance:<sup>4</sup>

1. The purpose that is frustrated must have been a principal purpose of that party, and must have been so to the understanding of both parties;<sup>5</sup>
2. The frustration must be substantial -- it must be so severe that it is not to be regarded as within the risks assumed under the contract. In *7200 Scottsdale Rd.*, the court noted that it is not enough that the transaction has simply become less profitable -- the value of counter-performance must be “totally or nearly totally destroyed[.]” 184 Ariz. at 349 (citation omitted).;
3. The non-occurrence of the frustrating event must have been a basic assumption of the contract; and
4. Relief will not be granted if the risk of the frustrating occurrence, or the loss caused thereby, should be properly placed on the party seeking relief.

In each case, the superior court employed Restatement principles to rigorously test whether a party could escape its contractual obligations using frustration of purpose doctrine. 184 Ariz. at 347-49; 255 Ariz. 147 ¶¶ 20-25; 234 Ariz. at 11 ¶¶ 6-8. Arizona criminal cases, however, have not been so faithful to the Restatement test.

---

<sup>4</sup> 184 Ariz. at 347-49; 255 Ariz. 147 ¶¶ 20-25; 234 Ariz. at 11 ¶¶ 6-8.

<sup>5</sup> It is not enough that the promisor had in mind some specific object without which he would not have the contract. The object must be so completely the basis of the contract that, as both parties understand, without it the transaction would make little sense. *7200 Scottsdale Rd.*, 184 Ariz. at 348 (citing Restatement cmt. a).

*State v. Szpyrka*, cited in the opinion below, involved a defendant who pled guilty to a repetitive felony offense pursuant to A.R.S. § 13-703(B). 223 Ariz. at 391 ¶ 1; *Williams*, 254 Ariz. at ¶¶ 13-15. The historical prior felony conviction that enhanced his plea sentence was vacated on appeal, and a petition for post-conviction relief followed. *Szpyrka*, 223 Ariz. at 391 ¶ 2. The defendant requested resentencing as a non-repetitive offender, as he urged that the rest of the plea agreement remained valid. *Id.* On special action review, the Court of Appeals found the material alteration amounted to frustration of purpose, allowing for rescission. *Id.* at ¶¶ 5, 9.

Although the Court of Appeals acknowledged that “[p]lea agreements are contractual in nature and subject to contract interpretation,” it delivered an incomplete, perfunctory frustration of purpose analysis. *Id.* at ¶ 5 (citation omitted). The court did not account for the parties’ concept of the plea agreement’s principal purpose, and incorrectly analyzed the remaining value of the defendant’s prospective counter-performance. Instead, citing *United States v. Bunner*, 134 F.3d 1000 (10th Cir. 1998), it merely concluded that “where a plea agreement is materially altered by nullification of one of its provisions, frustrating the agreement’s purpose, rescission of that agreement may be warranted.” *Id.* (additional citation omitted).

But this was a misreading of *Bunner*. There, the Tenth Circuit Court of Appeals critiqued the Ninth Circuit’s opinion in *United States v. Sandoval-Lopez*, 122 F.3d 797 (9th Cir. 1997) for similarly “stopp[ing] too soon” in failing to use

Restatement frustration of purpose principles to analyze a plea agreement affected by a defendant’s successful collateral attack.<sup>6</sup> 134 F.3d at 1004-05. *Bunner*, unlike *Szpyrka*, substantively analyzed the effect of a collateral attack on the plea agreement using the Restatement framework. *Id.* The Tenth Circuit discussed the parties’ basic assumptions at the time of the plea agreement, analyzed their bases for entering it, and acknowledged the magnitude of the change in law that was at issue. *Id.* In accordance with the Restatement test, it carefully tested the question of whether “the supervening event ... render[ed] performance impossible, [or] one party’s performance [] virtually worthless to the other.” *Id.* at 1004. Importantly, the Tenth Circuit found frustration of purpose only *after* the district court had already vacated the plea agreement, and there was no feasible manner of enforcing it. *Id.* at 1002.

*Bunner* demonstrates the difference between the deliberate analysis of whether a plea agreement becomes “impossible” or “virtually worthless” through the Restatement test, and *Szpyrka*’s “mere frustration” analysis. Further, *Bunner*’s conclusion contemplates a plea agreement already vacated, unlike this case where the defendant does not seek to vacate the plea agreement. Here, the intervening event

---

<sup>6</sup> Other courts also channel Restatement principles when using frustration of purpose to construe criminal plea agreements, with various degrees of rigor. *See, e.g., United States v. Moulder*, 141 F.3d 568, 571-72 (5th Cir. 1998); *United States v. Samuels*, 454 F.Supp. 3d 595, 600 (E.D. Va. 2020) (citing *United States v. Johnson*, 420 F.Supp. 3d 462, 469-70 (E.D. Va. 2019)); *People v. Shinaul*, 88 N.E. 3d 760, 770-71 ¶¶ 35-38 (Ill. 2017) (Theis, J., dissenting).

still allows for performance, as both the conviction and sentence would remain.

This Court should clarify that the analyses utilized in *Szpyrka*, *State v. Draper*, 123 Ariz. 399 (App. 1979), and *State v. Quick*, 167 Ariz. 318 (App. 1991) either stop too soon or entirely ignore the frustration of purpose analysis. Faithful adherence to the Restatement would harmonize civil and criminal cases, in turn advancing policies of fairness, due process, finality, and judicial economy.

#### **IV. Conclusion.**

This Court should avoid interpreting plea agreements in a manner that “flouts the law of contract, [and] due process[.]” *Ricketts*, 483 U.S. at 26. Allowing a defendant to advance a reasonable interpretation of his plea agreement against the State requires no “exotic apparatus for enforcement. Indeed, it requires nothing more than common civility.” *Id.* at 21. Accordingly, this Court should resolve the contrast between Arizona civil and criminal jurisprudence to promote cognizable principles of plea interpretation, serving both the interests of the parties and the judiciary.

RESPECTFULLY SUBMITTED this 4th day of October, 2023,

STEVE KOESTNER  
OFFICE OF THE LEGAL ADVOCATE

By: /s/ Daniel Fenzel  
Daniel Fenzel  
Deputy Legal Advocate  
Attorney for *Amicus Curiae*