



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**

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**STATE OF ARIZONA v. JASPER PHILLIP RUSHING  
CR-23-0113-AP**

**PARTIES**

*Appellant:* Jasper Rushing

*Appellee:* State of Arizona

**FACTS**

This direct appeal follows Appellant Jasper Rushing’s resentencing for the premeditated first degree murder of a fellow inmate at Lewis Prison Complex.

In August 2010, Rushing and the victim, S. Palmer were moved into the same isolation cell after each expressed safety concerns with his prior assigned housing. On September 10, Rushing killed Palmer while in their cell using a razor blade and a bludgeoning weapon made from a thick book inside a sock and wrapped in a sheet.

In 2015, following a jury trial Rushing was convicted on one count of premeditated first degree murder. The same jury found three aggravating factors: (1) previous conviction for offense where life or death could be or had been imposed; (2) Rushing committed the offense in an especially heinous or depraved manner; and (3) Rushing committed the offense while in the custody. After considering mitigation evidence presented by Rushing and the State, the same jury determined that Rushing should receive the death penalty. Rushing appealed.

In November 2017, this Court affirmed Rushing’s conviction and the jury’s finding of three aggravating factors. However, Rushing’s death sentence was vacated because the trial court failed to instruct the jury that if it sentenced Rushing to life in prison, his only possibility for release after completion of the service of twenty-five calendar years would be commutation. Therefore, Rushing’s case was remanded to the superior court for new penalty phase proceedings.

A new jury was selected for the new penalty phase proceedings. After considering mitigation evidence presented by Rushing and the State, the new jury again determined that Rushing should receive the death penalty.

Rushing raises five issues on appeal related to his new penalty phase proceedings and death sentence and lists twenty-three additional issues that he acknowledges this Court has previously rejected to avoid preclusion and preserve them for federal review.

**ISSUES**

1. Whether the trial court violated Rushing’s due process rights by allowing him to be visibly shackled throughout the penalty phase proceedings.
2. Whether the trial court erred by rejecting thirteen of Rushing’s proposed jury instructions.
3. Whether the trial court erred by directing the jury to refer to previously provided instructions when the jury asked for a definition of “moral culpability.”
4. Whether two allegations of prosecutorial error cumulatively denied Rushing a fair trial.
5. Whether the court violated Rushing’s Eighth Amendment rights by accepting his waiver of the presentation of mitigation evidence.

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