



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. DANIEL DIAZ
CR-09-0257-PR**

PARTIES AND COUNSEL:

Petitioner: The State of Arizona, represented by David R. Pardee and Jose A. Ceja, Deputy Cochise County Attorneys.

Respondent: Daniel Diaz (“appellant”), represented by Kelly A. Smith.

FACTS:

In December 2006, Sierra Vista police received a tip that appellant would be purchasing methamphetamine in Tucson and returning to Sierra Vista in either a blue Cadillac or a red Buick. Following a traffic infraction, officers pulled over a blue Cadillac with appellant in the passenger seat. When police talked to appellant, he appeared extremely nervous and was continuously opening and closing the glove box, dropping and picking up papers, and checking the car’s side and rear view mirrors. A few minutes later, a drug-detection dog was brought to the scene and alerted the officers to the presence of drugs. Appellant and the driver were asked to step out of the vehicle, and the drug-detection dog alerted the officers to the presence of drugs on the front passenger seat and in the center console. The driver then admitted that she was carrying methamphetamine in her vagina. Both she and appellant were arrested.

After a jury trial, appellant was convicted of one count of possession of a dangerous drug for sale (methamphetamine weighing more than nine grams) in violation of A.R.S. Sec. 13-3407(A)(2), a Class 2 felony. Appellant had been previously convicted of two felonies unrelated to methamphetamine.

Over a defense objection, defendant was sentenced pursuant to A.R.S. § 13-604 (D), the general statute governing sentences for repetitive offenders, rather than under A.R.S. § 13-712, the sentencing statute specifically for methamphetamine offenses. The general statute, § 13-604(D), provided a sentencing range of **fourteen to twenty-eight years** for a Class 2 felony committed by an offender with two or more historical prior convictions. In contrast, A.R.S. § 13-712 provided a presumptive sentence of **ten years** for a first conviction and **fifteen years** for a repeat offense, but contained no provisions related to historical priors. Appellant was sentenced under A.R.S. § 13-604(D) to an aggravated term of **twenty-five years** imprisonment. He appealed his conviction and sentence.

Reversing the decision of the trial court, the Court of Appeals determined that the applicable sentencing statute was A.R.S. § 13-712, since the language of A.R.S. §13-3407 expressly instructs

the trial court to impose a sentence pursuant to §13-712. The Court acknowledged that the latter statute appeared “not to anticipate the possibility of a repetitive offender, particularly one who has committed crimes other than methamphetamine offenses.” Slip Opinion at ¶ 13. The Court further acknowledged that, “if all methamphetamine sentences are subject to §13-712, courts must disregard any historical prior felony convictions that are not methamphetamine-related and treat those convicted under §13-3407 as first-time offenders, regardless of their felonious pasts.” *Id.*

The Court conceded that such a result would be “clearly at odds with [Arizona’s] overall sentencing scheme, which typically punishes recidivism...” Slip Opinion at ¶14. However, it held, the fact that such a result contravenes the Legislature’s intent “cannot override the express language of A.R.S. § §13-3407 and 13-712.” *Id.*

Declining to “sit as a second legislature to rewrite laws that may strike us as improvident” [*In re Pima County Juv. Appeal No. 74802-2*, 164 Ariz. 25, 34 (1990)], *Id.*, the Appeals Court affirmed appellant’s conviction but remanded the case for re-sentencing under A.R.S. §13-712. The State of Arizona petitioned for review.

STATUTORY NOTE:

A.R.S. § 13-604(D) was re-codified in 2008 as A.R.S. §13-703(C) and (J). A.R.S. §13-712 was replaced in 2008 with A.R.S. §13-709.03. A.R.S. § 13-3407 was amended in 2008 to reflect the replacement of the applicable sentencing provision, §13-712, with §13-709.03.

ISSUE:

Where the defendant is convicted at trial of possession of methamphetamine for sale with two historical prior felony convictions, can he be sentenced as a repetitive offender?

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