



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**FRANK HOFFMAN v. STATE OF ARIZONA
CV-12-0149-PR**

PARTIES:

Petitioner: Frank Hoffman (“petitioner”)

Respondent: The State of Arizona

FACTS:

Petitioner Hoffman’s vehicle collided with Toni Orozco’s vehicle, damaging it and injuring Carmen Orozco. As a result of the collision, petitioner was indicted for DUI. Following the collision, American Family Insurance (“AFI”) compensated Toni Orozco in the amount of \$2433.45 (her property damage economic loss, less her \$500 deductible) and Carmen Orozco in the amount of \$50,000 (her bodily injury economic loss, comprised of \$26,539.89 in medical bills plus pain and suffering).

Petitioner pled guilty to DUI. In the plea agreement, he agreed to pay restitution to the victim in an amount “to be determined” but which was capped at \$53,655.45. A restitution hearing date was set and petitioner began serving his sentence.

At the restitution hearing in Tucson City Court, an AFI vehicle damage appraiser testified for the State based upon a \$2933.48 estimate prepared by a body shop and a civil attorney’s demand for payment of a settlement to AFI’s insured, Carmen Orozco, for the policy limit of \$50,000. Although petitioner disputed the validity of the claim, the City Court judge ordered restitution in the amount of \$40,933.45. When petitioner appealed the restitution to the Superior Court, the State moved to dismiss the appeal, arguing that, under Criminal Rule 17.1(e), a guilty plea “waives the right to have the appellate courts review the proceedings by way of direct appeal, and [defendant] may seek review only by filing a petition for post-conviction relief....”

Additionally, the State argued, A.R.S. § 28-4033(A) provides the list of matters a defendant may appeal, and post-conviction restitution orders are not on that list. Moreover, A.R.S. § 28-4033(B) states that in noncapital cases “a defendant may not appeal from a judgment or sentence that is entered pursuant to a plea agreement or an admission to a probation violation.” The proper vehicle for obtaining review was a Rule 32 petition for post-conviction relief, the State argued.

Petitioner opposed the motion to dismiss, arguing that, under Arizona law, the method of imposing restitution is appealable whether conviction is obtained by trial or by a change of plea. *See, e.g., State v. Unkefer*, 225 Ariz. 430 (Div. 1, 2010). Petitioner argued that the appeal was proper

under A.R.S. § 13-4033(A)(3) as an “order made after judgment affecting the substantial rights of the party.”

The Superior Court dismissed the appeal, agreeing with the State that, when a defendant pleads guilty and waives the right to appeal a conviction and sentence, he or she also waives the right to appeal a restitution order. Petitioner sought relief from the dismissal of his appeal through a Special Action filed in the Arizona Court of Appeals, which declined jurisdiction. This Petition for Review followed. The Arizona Supreme Court granted review to address the issue below.

ISSUE:

Whether the Respondent Judge was without legal authority in ruling that a criminal defendant loses his constitutional right to appeal the lawfulness of a contested restitution award by entering a plea agreement as to the judgment of guilt.

This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.