



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. SCOTT NORDSTROM
CR-09-0266-AP**

PARTIES:

Appellant: Scott Nordstrom
Appellee: The State of Arizona

FACTS:

In 1998, Scott Nordstrom was convicted of the first degree, premeditated murders of Thomas Hardman and Carol Lynn Noel. The murders occurred in the course of two robberies committed at the Moon Smoke Shop and the Fire Fighters' Union Hall in Tucson, Arizona in 1996. Nordstrom received the death sentence for these murders and for the felony murders of four others; he was also convicted and sentenced on charges of attempted murder, armed robbery, and first-degree burglary. Although this Court initially affirmed his convictions and sentences on direct appeal, the Court later vacated Nordstrom's death sentence and remanded his case for resentencing in light of *Ring v. Arizona*, 536 U.S. 584 (2002), which held Arizona's death penalty statutes unconstitutional.

After numerous special actions to the court of appeals, the State subsequently decided to pursue the death penalty only with respect to the Hardman and Noel murders, alleging that each murder conviction was an A.R.S. § 13-703(F)(1) aggravator (prior conviction of another offense subject to sentence of life imprisonment or death) for the other. In 2009, the jury found the aggravator proven beyond a reasonable doubt for each murder. Nordstrom waived mitigation and allocution, arguing that he had been impermissibly prevented from bringing claims regarding his actual innocence for the underlying convictions and prosecutorial misconduct at his original trial. The jury determined that death was the appropriate sentence.

ISSUES:

1. Did the trial court abuse its discretion and violate Nordstrom's rights by permitting the State to offer evidence in the penalty phase and preventing the defense from challenging it, even though the defense chose not to present any mitigation?
2. Were Nordstrom's rights under the double jeopardy clauses of the Fifth Amendment to the United States Constitution and Article 2, Section 10 of the Arizona Constitution contravened when the trial court refused to grant a pretrial evidentiary hearing on his motion to dismiss on the grounds of prosecutorial misconduct?

3. Did the trial court abuse its discretion when it failed to rule on Nordstrom's Rule 24 motion filed within moments of the sentencing?
4. Were Nordstrom's due process rights under the Fourteenth Amendment to the United States Constitution and its Arizona counterpart violated when he was not permitted to challenge the constitutional sufficiency of the convictions used as aggravators under A.R.S. § 13-703(F)(1)?
5. Did the Arizona legislature intend that contemporaneous convictions be used as aggravators under A.R.S. § 13-703(F)(1)?
6. Did the trial court err when it denied Nordstrom's Rule 20 motion, because the State did not carry its burden of proof as to the element in (F)(1) that the defendant had been convicted of an offense for which, under Arizona law, a sentence of life imprisonment or death was imposable?
7. Were Mr. Nordstrom's rights under the Eighth and Fourteenth Amendments to an individualized sentencing abridged when the sentencing jury was not allowed to hear any of the guilt phase testimony?
8. Did the trial court abuse its discretion when it permitted the State to introduce photographs of the victims in the penalty phase, particularly because the defense did not offer any mitigation and was not allowed to present rebuttal to the State's penalty phase evidence, and, therefore, the photographs were not relevant to any contested issue?
9. Should this Court strike down Nordstrom's death sentence on independent review?

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