



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. DAVID BERNARD CLARK  
CR-11-0149-PR**

**PARTIES:**

*Petitioner:* David Bernard Clark

*Respondent:* The State of Arizona

**FACTS:**

In 1982, when Clark was 18 years old, he pled guilty to sexual misconduct arising out of an episode of allegedly consensual sex with a minor under 15 years old. The court imposed a four-year term of probation, which Clark successfully completed. After Clark's conviction and during his probationary term, the Arizona Legislature enacted A.R.S. § 13-3821, the sex offender registration statute, which became effective in 1983. Under the new law, Clark was required to register as a sex offender.

In December 2009, Clark was arrested for failing to register as a sex offender as required by A.R.S. § 13-3821. He pled guilty pursuant to a plea agreement and received a 3.5-year prison term. In a petition for post-conviction relief under Rule 32, Arizona Rules of Criminal Procedure, Clark argued that Arizona's sex offender registration statute, first enacted after he was convicted, (1) violates the state and federal prohibition against ex post facto laws if applied retroactively to his offense; (2) violates his constitutional right to protection against double jeopardy; and (3) violates A.R.S. § 1-246 (requiring a defendant be punished under the law in effect at the time his or her offense was committed). The trial court summarily denied relief, concluding that the issues had been "considered and rejected" in the court of appeals' recent decision in *State v. Henry*. Clark appealed.

The court of appeals declined Clark's invitation to overrule *Henry*. The court was not convinced that *Henry* was either "clearly erroneous" or that "conditions [had] changed so as to render [that case] inapplicable."

**ISSUES:**

Whether *State v. Noble*[, on which the *Henry* court relied] should be overruled because:

1. the punitive effects of Arizona's current sex offender registration statute outweigh the regulatory purpose of the law; and
2. *Smith v. Doe*, 538 U.S. 84 (2003), does not restrict this court's determination of the punitive effects of Arizona's own sex offender registration

requirement.

**RELEVANT STATUTE:**

*A.R.S. § 13-3821:*

The sex offender registration statute has been significantly amended since its enactment in 1983. In 1983, the statute required a person convicted of a sex offense to register with the county sheriff when moving into any Arizona county. The sheriff then provided the person's fingerprints and photograph to the criminal identification section of the Arizona Department of Public Safety and to the chief of police, if any, where the person lived.

The current statute contains additional, more serious consequences for those convicted of sex offenses. For example, the current statute requires that a convicted person obtain a new identification card or driver's license annually. Further, depending on the risk posed by a particular sex offender, it may require community notification when the offender moves into an area, including posting of "flyers" in the neighborhood, notifying area schools, and prospective employers. The flyer and a press release may also be posted online. A.R.S. § 13-3826(E)(1)(a).

**RELEVANT CASES:**

*Smith v. Doe*, 538 U.S. 84 (2003):

The United States Supreme Court held the Alaska Sex Offender Registration Act did not violate the federal ex post facto clause.

*State v. Noble*, 171 Ariz. 174, 329 P.2d 1221 (1992):

The Arizona Supreme Court held the statute requiring sex offenders to register did not violate the ex post fact clauses of either the state or the federal constitutions.

*State v. Henry*, 224 Ariz. 164, 228 P.3d 900 (App. 2010):

The Arizona Court of Appeals held the sex offender registration statutes did not violate the constitutional prohibition against ex post facto laws.

**DEFINITIONS:**

*Double jeopardy:*

As relevant to this case, the term refers to imposing multiple punishments for the same offense. Protection against double jeopardy is provided by the 5<sup>th</sup> Amendment to the United States Constitution ("[n]o person shall be . . . subject for the same offence to be twice put in jeopardy of life or limb") and by the Arizona Constitution, art. 2 § 10 ("[n]o person shall be compelled in any criminal case to . . . be twice put in jeopardy for the same offense").

*Ex post facto law:*

As relevant here, an ex post facto law is defined, in part, as a law that changes the punishment for a crime and inflicts a greater punishment than was provided for when a person committed the crime. Such laws are prohibited pursuant to the United States Constitution art. I, § 10 (“[n]o State shall . . . pass any . . . ex post facto Law”) and Arizona Constitution art. 2, § 25 (“[n]o . . . ex-post-facto law . . . shall ever be enacted”). The prohibition against ex post facto laws does not apply to statutes that are nonpunitive in nature (meaning statutes that do not impose punishment).

*Petition for post-conviction relief:*

A petition for post-conviction relief, authorized by Rule 32, Arizona Rules of Criminal Procedure, permits a defendant to request that a criminal conviction be corrected or vacated under limited circumstances and for certain reasons. When a defendant enters into a plea agreement resulting in a conviction, as in this case, a petition for post-conviction relief, or a “Rule 32 petition,” takes the place of an appeal.

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