



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. FABIO GOMEZ  
CR-10-0358-AP**

**PARTIES:**

*Appellant:* Fabio Gomez

*Appellee:* The State of Arizona

**FACTS:**

In December 1999, Fabio Gomez kidnapped, sexually assaulted, and beat to death Joan Morane, who lived in the same Chandler apartment complex as Gomez. A jury convicted Gomez of these crimes. Before he was sentenced, the United States Supreme Court held in *Ring v. Arizona*, 536 U.S. 584 (2002), that Arizona's death penalty statutes were unconstitutional because they allowed a judge, rather than a jury, to find aggravating factors that could result in a death sentence. The trial court reset the matter for a jury sentencing hearing, and the jury found the murder was committed in an "especially cruel" manner, *see* A.R.S. § 13-751(F)(6) ("the F(6) aggravator"), and determined Gomez should be sentenced to death. In 2005, this Court affirmed Gomez's convictions but vacated his death sentence because he had been shackled in the jury's presence, in violation of *Deck v. Missouri*, 544 U.S. 622 (2005). At resentencing, the trial court initially allowed Gomez to represent himself but later revoked his pro per status, and Gomez was then represented by appointed counsel. The jury again found the F(6) aggravator and determined that Gomez should be sentenced to death.

**ISSUES:**

1. Did the trial court err by revoking Gomez's pro per status and appointing counsel to represent him at his capital resentencing?
2. Did the trial court err by failing to hold a hearing before denying requests for new counsel?
3. Did the State present sufficient evidence of cruelty to support the F(6) aggravator?
4. Should this Court strike down Gomez's death sentence on independent review?
5. On the State's cross-appeal, did the trial court abuse its discretion by precluding cross-examination of Gomez on statements he made during

allocution?

6. On the State's cross-appeal, did the trial court abuse its discretion by precluding the State from presenting rebuttal evidence after Gomez's allocution?

**DEFINITIONS:**

*The F(6) aggravator:* A.R.S. section 13-751(F) sets forth various aggravating circumstances that a trier of fact must consider in determining whether to impose a sentence of death or life imprisonment. The aggravating circumstance the jury found in this case is set forth in subsection (F)(6): "The defendant committed the offense in an especially heinous, cruel or depraved manner."

*Allocution:* The procedure during sentencing when a judge gives a convicted defendant the opportunity to make a personal statement on his own behalf to mitigate the punishment that will be imposed.

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