



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. BRADY WHITMAN, JR.  
CR-13-0201-PR**

**PARTIES:**

*Petitioner:* State of Arizona

*Respondent:* Brady Whitman, Jr.

**FACTS:**

A jury convicted Whitman of four counts of aggravated DUI. On December 7, 2011, the trial court sentenced him to concurrent four-month prison terms, followed by five years' probation. The minute entry documenting this event was not filed until December 9. Whitman filed his notice of appeal on December 28, twenty-one days after sentencing and nineteen days after the court clerk filed the minute entry order memorializing the sentencing hearing.

The State argued in the court of appeals that the appeal was untimely because the twenty-day time period for filing a notice of appeal is measured from the date of oral pronouncement of the sentence in court rather than from the date the minute entry was filed. In a split decision, the majority concluded the appeal was timely. It found Rule 31.3, Arizona Rules of Criminal Procedure (“[t]he notice of appeal shall be filed with the clerk of the trial court within 20 days after the entry of judgment and sentence”), to be ambiguous because the rules do not expressly state when the “entry of judgment and sentence” occurs.

*Majority opinion:* To resolve the ambiguity, the majority discussed at length the history of the relevant criminal rules. It traced the perceived ambiguity to the Supreme Court's adoption of various rule amendments in 1973, including (1) Rule 26.16(a), which, as adopted, provides that the judgment and sentence “are complete and valid as of the time of their oral pronouncement in open court;” (2) Rule 26.16(b), which requires “the clerk of the court” to “enter the exact terms of the judgment and sentence in the court's minutes;” (3) Rule 31.3, providing the “entry” of judgment and sentence as the benchmark for filing a notice of appeal; and (4) what is now Form 23, advising defendants that “[t]he entry of judgment and sentence occurs at the time of sentencing.”

Thus, Rule 26.16(b) came to share the term “enter” with Rule 31.3, but that change obscured the meaning and discrete functions of Rule 26.16, which pertain not to appeals, but to entry of judgment and sentence and proof of authority to execute the defendant's sentence. Nevertheless, the language of Rule 26.16(b) now suggests that the “entry” of a judgment and sentence on the court's “minutes” might be the critical event in determining the time for appeal. The effect of the 1973 rule changes was to create uncertainty as to whether the “entry” of a criminal judgment and sentence means the oral “pronouncement” of sentence in open court or the date the judgment is filed.

The majority stated that construing the 1973 criminal rules and forms as adopting a unique meaning of “entry” that departs from the ordinary and historic meaning of the term (pronouncement in open court) would bar many prompt appeals, such as in this case; leave in place a legal trap; and needlessly disrupt the court system with requests for delayed appeals under Rule 32.1(f). The court found no evidence that the Supreme Court intended such disruption or delay, nor did it believe the court intended to penalize defendants or even diligent attorneys for their failure to discern the meaning of confusing and seemingly contradictory rules and forms. The optimal solution would be for the Supreme Court to amend the rules to remove all ambiguity concerning the time for taking a criminal appeal. In the meantime, the majority held, the time for appeal under Rule 31.3 is measured from the date the sentencing minute entry is filed.

*Dissent:* The dissent found no ambiguity in the pertinent rules. Rule 26.16(a) plainly states that judgment and sentence “are complete and valid as of the time of their oral pronouncement in open court,” making the clause the majority focuses on in Rule 31.3 unambiguous. Entry of judgment and sentence occurs at the time of sentencing and it starts the clock for filing a notice of appeal. *See* Ariz. R. Crim. P. 26.16(a), 31.3, 41, Form 23.

Viewing the Rules of Criminal Procedure as a whole, the definition of entry of judgment and sentence is not limited to Rule 31. Although the clause “entry of judgment and sentence” appears in eight different rules (Ariz. R. Crim. P. 24.2, 24.3, 26.16, 30.2, 31.2(b), 31.3, 31.8(b)(2)(iii), and 32.4(a)), it generally is used in the same manner as Rule 31.3, to mark the start of a time period. Only Rule 26.16 presents the clause in its heading to designate its introduction and definition. More importantly, the text of Rule 26.16(a) specifies when judgment and sentence are complete, which is “as of the time of their oral pronouncement in open court.” Form 23 contains an equally clear statement of entry of judgment and sentence: “[entry] occurs at the time of sentencing.” According to the dissent, this clear, unambiguous language makes the majority’s historical analysis irrelevant.

## **ISSUE:**

Arizona Rule of Criminal Procedure 31.3 and Form 23 require a defendant to file a notice of appeal within 20 days of the entry of judgment and sentence. Appellant failed to meet that deadline. Did the court of appeals have jurisdiction over Appellant’s appeal?

## **RELEVANT RULES (ARIZONA RULES OF CRIMINAL PROCEDURE):**

### **Rule 26.16. Entry of judgment and sentence; warrant of authority to execute sentence**

**a. Entry of Judgment and Sentence.** The judgment of conviction and the sentence thereon are complete and valid as of the time of their oral pronouncement in open court.

**b. Warrant of Authority.** The court or person authorized by the court shall forthwith enter the exact terms of the judgment and sentence in the court’s minutes.

A certified copy, signed by the sentencing judge, shall be furnished to the appropriate officer and no other authority shall be necessary to carry into execution any sentence entered therein.

If the sentence is for death or imprisonment, the appropriate officer shall receive the defendant for execution of the sentence upon delivery to him or her of a signed, certified copy of the entry in the court's docket.

### **Rule 31.3. Time for taking appeal**

The notice of appeal shall be filed with the clerk of the trial court within 20 days after the entry of judgment and sentence, except that:

- a. A notice of cross-appeal may be filed within 20 days after service of the appellant's notice of appeal; and
- b. A notice of delayed appeal shall be filed within 20 days after service of an order granting a delayed appeal under Rule 32.1(f).

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