



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. DUSTIN GILL
CR-16-0286-PR**

PARTIES:

Petitioner/Appellant/Defendant: Dustin Gill

Respondent/Appellee/Plaintiff: The State of Arizona

FACTS:

In 2013, a security guard found Gill in a restroom holding several grams of marijuana. The State charged Gill with one count of possession or use of marijuana, a Class 6 felony. After the State reduced the charge to a misdemeanor, and Gill rejected plea offers, the parties agreed that the prosecution would be deferred while Gill participated in a Treatment Assessment Screening Center (“TASC”) deferred prosecution program.

Upon Gill’s entry into the TASC program, a TASC representative interviewed Gill and Gill filled out a “statement of facts” form with his attorney present. On that form, which Gill and his attorney signed, Gill indicated he understood his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), and avowed that “I fully understand that what I have written here may be used against me in a court of law should I fail to satisfactorily complete the TASC program.” When asked about “the facts of the offense,” Gill wrote on the form: “The marijuana was found in the bathroom on the ground in my possession.” According to Gill’s petition for review, the TASC representative testified that “unless an applicant admits possession of a drug, they cannot be admitted into the TASC program—without exception. And the TASC representative obtains the statement in furtherance of a policy set by the Maricopa County Attorney’s Office.”

Although Gill participated in the TASC program for a period of time, he failed to complete the requirements by testing positive for alcohol and marijuana during the course of treatment, and the State resumed prosecution. After Gill then rejected another plea offer, he moved to suppress the “statement of facts” form and any testimony from TASC representatives regarding his admissions, claiming they were inadmissible because they were made in the course of plea discussions. After full briefing, the superior court denied Gill’s motion.

After a bench trial, the court found Gill guilty, suspended his sentence and placed him on one year of unsupervised probation. Gill timely appealed his conviction, arguing information he provided to TASC was not admissible at trial because under Arizona Rule of Evidence 410(a)(4), they constitute “a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.”

In an opinion filed June 23, 2016, the court of appeals affirmed, finding no error. The court held Gill's admission recorded on the TASC "statement of facts" form before he entered a deferred prosecution program did not constitute inadmissible plea negotiations under Rule 410(a)(4). The TASC program is part of a deferred prosecution governed by Arizona Rule of Criminal Procedure ("Criminal Rule") 38, which does not reference Rule 410. Moreover, the statement was made after Gill rejected a plea offer and was not made to a prosecuting attorney. In any event, according to the court, Gill waived any Rule 410 protections. More specifically, the court reasoned that (1) the information Gill gave TASC was not "during plea discussions;" (2) TASC is not part of a deferred prosecution under Criminal Rule 38, which does not refer to Rule 410; and (3) therefore participating in a deferred prosecution program such as TASC is not a plea negotiation or agreement subject to Criminal Rule 17.4 or Rule 410. In fact, here Gill agreed to participate in the TASC program and provided the statements challenged after he rejected a plea offer. Given that Gill rejected the plea offer before agreeing to participate in the TASC program, there were no plea discussions ongoing when he later provided TASC the statements he challenges here.

Second, nothing suggests Gill's statements were made "during plea discussions with an attorney for the prosecuting authority." Ariz. R. Evid. 410(a)(4).

Third, even if Gill's statements met the requirements of Rule 410(a)(4), he waived those protections when he indicated he understood Miranda warnings listed on the TASC form and wrote "yes" and initialed next to this declaration: "I have made this statement without coercion and of my own free will. I fully understand that what I have written here may be used against me in a court of law should I fail to satisfactorily complete the TASC program." Only after he initialed the declaration did Gill give the statements he challenges on appeal.

ISSUE FOR WHICH REVIEW WAS GRANTED:

Pursuant to an agreement reached during plea negotiations at a settlement conference, the State agreed to defer prosecution to allow Mr. Gill to complete a program by the Treatment Assessment Screening Center ("TASC"). Did the court of appeals incorrectly decide an important legal issue when it held that Arizona Rule of Evidence 410 did not apply to statements made in furtherance of a deferred prosecution agreement?

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