



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**JOHN FITZGERALD v. Hon. MYERS/STATE OF ARIZONA
CR-16-0285-PR**

PARTIES:

Petitioner: John Fitzgerald

Respondent: State of Arizona

FACTS:

After the Arizona Supreme Court affirmed John Fitzgerald's first-degree murder conviction and death sentence, counsel was appointed to represent Mr. Fitzgerald in post-conviction proceedings under Rule 32, Arizona Rules of Criminal Procedure ("Ariz. R. Crim. P."). During those proceedings in the superior court, Mr. Fitzgerald filed a "Motion for Hearing to Determine Competency to Proceed in State Post-Conviction Proceedings and to Stay All Other Proceedings Until Such Time as Competency May Be Regained." Mr. Fitzgerald argued that (1) A.R.S. § 13-4041(B) and Rule 32.5, Ariz. R. Crim. P., establish a defendant's right to competency during post-conviction proceedings, and (2) he is not competent. The superior court denied the motion, and the court of appeals declined jurisdiction of Mr. Fitzgerald's special action petition. The Arizona Supreme Court granted Mr. Fitzgerald's petition for review.

ISSUES:

"Whether the Respondent Judge's ruling denying Petitioner's Motion [for Hearing] to Determine Competency to Proceed in State Post-Conviction Proceedings [and to Stay All Other Proceedings] Until Such Time as Competency May Be Regained violated Petitioner's rights: 1. Under ARS Section 13-4041(B) to effectively and competently communicate with his appointed counsel in Rule 32 Petition For Post Conviction cases[;] 2. Under Arizona Rules of Criminal Procedure 32.5 to effectively and competently determine if the information in the Petition For Post Conviction Relief is true and accurate."

Definitions:

A.R.S. § 13-4041(B) states: "After the supreme court has affirmed a defendant's conviction and sentence in a capital case, the supreme court or, if authorized by the supreme court, the presiding judge of the county from which the case originated shall appoint counsel to represent the capital defendant in the state postconviction relief proceeding."

Rule 32.5, Ariz. R. Crim. P., states in part: "The petition shall be accompanied by a declaration by the defendant stating under penalty of perjury that the information contained [therein] is true to the best of the defendant's knowledge and belief. . . ."

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