



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA V. LYNN LAVERN BURBEY  
CR-16-0390-PR**

**PARTIES:**

*Petitioner:* Lynn Lavern Burbey  
*Respondent:* State of Arizona  
*Amicus Curiae:* Pima County Public Defender's Office

**FACTS:**

Burbey was released from prison and registered as a sex offender with the Pima County Sheriff's Office as required by Arizona Revised Statutes section ("A.R.S. §") 13-3821. While completing his term of community supervision, he resided at a halfway house in Tucson and listed the address of the halfway house. Five months later he was discharged from the halfway house and became homeless. Burbey failed to notify the sheriff's department after leaving the halfway house and did not update his residential status as transient within 72 hours. Within a month of his leaving the halfway house the police arrested Burbey for failing to notify the sheriff of his homeless status within 72 hours of leaving the halfway house. He was charged with failing to give notice of a change of address, a class four felony in violation of A.R.S. § 13-3822(A).

At trial, the court instructed the jury that registered sex offenders must report a change of residence within 72 hours. Burbey did not object to the instruction. The jury convicted him as charged and the trial court sentenced Burbey as a repetitive offender to a mitigated seven-year prison term.

On appeal, Burbey argued that the trial court erred in instructing the jury on the requirements of § 13-3822(A). He argued that because he became homeless when he left the halfway house and had no residence or new mailing address to register with the sheriff, he was only obligated to register as a transient every 90 days. As a result, he argued the trial court misstated the law in instructing the jury that registered sex offenders must report a change of residence within 72 hours of moving,

Because Burbey acquiesced to the trial court's instruction, the court of appeals reviewed only for fundamental error. Upon review, the court of appeals rejected Burbey's argument and concluded as follows:

Accordingly, we conclude that § 13-3822(A), while imposing on homeless registrants a reporting obligation not less than every ninety days so long as the person remains homeless, *also* plainly requires that all registrants, including those who become homeless, notify the sheriff, in person and in writing, within seventy-two hours of moving from a previously registered address. Because the trial court's

jury instruction accurately stated the law's reporting requirement, there was no error.

The court of appeals affirmed the conviction and sentence.

**ISSUE:**

Did the court of appeals err in its interpretation of A.R.S. § 13-3822 to conclude that persons who become homeless after living at a residence must register their homeless status with the sheriff within 72 hours of becoming homeless?

**RELEVANT STATUTE:**

A.R.S. § 13-3822(A) provides:

A. Within seventy-two hours, excluding weekends and legal holidays, after moving from the person's residence within a county or after changing the person's name, a person who is required to register under this article shall inform the sheriff in person and in writing of the person's new residence, address or new name. If the person moves to a location that is not a residence and the person receives mail anywhere, including a post office box, the person shall notify the sheriff of the person's address. If the person has more than one residence or does not have an address or a permanent place of residence, the person shall register as a transient not less than every ninety days with the sheriff in whose jurisdiction the transient is physically present. Within three days after receipt of such information, the sheriff shall forward it to the department of public safety and the chief of police, if any, of the place from which the person moves, and shall forward a copy of the statement, fingerprints and photograph of the person to the chief of police, if any, of the place to which the person has moved.

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