



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**MOHAMED ISMA SAMIUDDIN v. HON. RICHARD
NOTHWEHR/STATE OF ARIZONA
CR 16-0422-PR**

PARTIES:

Petitioner: Mohamed Isma Samiuddin (“Samiuddin”).

Respondent: Hon. Richard Nothwehr, Commissioner of the Superior Court of the State of Arizona, Maricopa County.

Real Party in Interest: The State of Arizona (“the State”).

FACTS AND PROCEDURAL BACKGROUND:

In June 2016, Samiuddin was arrested for allegedly exposing himself through an apartment window while a couple of neighbors and their children were passing by, resulting in charges for five counts of Public Sexual Indecency to a Minor (a class 5 felony) and two counts of Public Sexual Indecency (a class 1 misdemeanor). Following his arraignment, the court released him on his own recognizance. In addition to other conditions for release, the Final Release Order required him to find an alternative residence separate from his family and barred him from having any contact with minors, with no exceptions.

Samiuddin then filed a motion to modify the release conditions to allow him to have unsupervised contact with his children and to allow him to return home. In his motion and at the hearing on the motion, defense counsel argued that there was no evidence that Samiuddin posed any danger to his children and the State had not made any allegation that the children had been victimized. The trial court ruled that it would not allow Samiuddin to have unsupervised contact with his children. The court indicated, however, it would be willing to modify the order to allow for supervised contact if defense counsel was able to make arrangements through a qualified agency. The court then entered a minute entry continuing oral argument but affirming the prior release order.

In early October 2016, oral argument resumed. In his petition for review, Samiuddin alleges that his counsel not only reiterated his prior arguments, but also argued that a person has a fundamental right to care for and be with his children and family. The court again rejected the argument and entered a minute entry modifying the terms of release “to allow the Defendant contact with his children if monitored by a court approved monitor.” The court also entered a modified release order imposing the condition that Samiuddin not have contact with minors, except that “Defendant may have contact with his children so long as it is supervised by a court approved monitor.” Under the order, Samiuddin is responsible for paying for the monitor.

A week later, Samiuddin filed a special action with the Court of Appeals challenging the restriction. On October 14, without waiting for a response, the Court of Appeals declined special action jurisdiction. The Court of Appeals did not explain the basis for its decision.

ISSUES:

Samiuddin is asking the Arizona Supreme Court to address the following issues:

“Petitioner filed a motion to modify his release conditions, which prohibited him from having contact with his non-victim children. Following a hearing, the Court said it would permit supervised visits through a court-approved agency if arranged by the defense, and set another hearing for further argument. At the second hearing, Petitioner reiterated legal reasons for removing the no-contact order. The Court denied full contact, and allowed only limited contact supervised through a court-approved agency. Petitioner has to pay the cost of the supervision.”

1. “Is Respondent’s order authorized by any provision of Arizona law, where the relevant statutes do not expressly authorize such an order, and catch-all provisions only permit conditions aimed at assuring appearance at trial, a goal not served by the order?”
2. “Does Respondent’s order satisfy the strict scrutiny required of an impingement on Mr. Samiuddin’s fundamental right in the care, custody, and control of his children where (1) there were no findings supporting the order; (2) to the extent the order may be authorized, it is only because the provisions permitting it are ambiguous; and (3) there is a less restrictive alternative already available to the State, namely family court proceedings initiated by [the Department of Child Safety], to serve any interest at which the order is aimed?”

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