



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. DONALD WILLIAM GULLEY
CR-16-0456-PR**

PARTIES:

Petitioner: Donald William Gulley

Respondent: The State of Arizona

FACTS:

Gulley lived with E.W. and her adult son S.W. Gulley came home drunk one evening, broke the household phone, and hit E.W. He chased her into the kitchen and continued to flog her with a curtain rod. E.W. felt trapped in the kitchen until S.W. came and subdued Gulley, who passed out. E.W. and S.W. retreated to S.W.'s bedroom and locked the door. When Gulley came to, he pounded on the door, threatening to kill them.

When things quieted down, S.W. jumped out his bedroom window and walked to his brother M.W.'s house nearby. When M.W. heard of the incident, he called the police.

The State charged Gulley with two counts of disorderly conduct domestic violence, class 1 misdemeanors under Arizona Revised Statutes ("A.R.S.") section ("§") 13-2904(A)(1), (B). It alleged the offenses as class 6 felonies under A.R.S. § 13-707(B) because Gulley had been convicted of misdemeanor disorderly conduct within the preceding two years. The State also charged him with one count of aggravated assault per domestic violence, a class 6 felony (count 3), and one count of threatening or intimidating per domestic violence, a class 1 misdemeanor (count 4). For sentence enhancement purposes, the state alleged Gulley had five prior felony convictions.

After trial the jury convicted Gulley of two counts of disorderly conduct, class 6 felonies, and one misdemeanor count each of assault and threatening or intimidating.

The court imposed concurrent presumptive terms of 3.75 years' imprisonment, less time served, for the two disorderly conduct counts as class 6 felonies. For the misdemeanor convictions, the sentence amounted to time served. Gulley appealed.

The court of appeals affirmed in a split decision. The majority reasoned that enhanced sentencing applies to an adult previously "convicted of one or more of the same misdemeanors . . . within two years next preceding the date of the present offense" who therefore "shall be sentenced for the next higher class of offense" than that for the current offense. A.R.S. § 13-707(B).

The majority concluded that the "legislature intended that one who stands convicted of

a class 1 misdemeanor under § 13-707(B) is not only subject to class 6 felony sentencing, but his offense is [also] a class 6 felony.” The majority relied on *State v. Draper*, in which the court of appeals referred to that defendant’s later shoplifting charge as a class 6 felony under the statute, even though the defendant could not be sentenced under that statute because over two years had passed since the first charge. *State v. Draper*, 123 Ariz. 399, 401, 599 P.2d 852, 854 (App. 1979).

Judge Swann dissented only concerning the application of A.R.S. § 13-707(B). Following *State v. Ceasar*, 241 Ariz. 66, 383 P.3d 1140 (App. 2016), he would conclude that the convictions on counts 1 and 2 are properly classified as class 1 misdemeanors, not felonies.

ISSUE:

Does the legislative phrase “stands convicted of any misdemeanor” mean a person is actually convicted of a misdemeanor and not a felony?

Arizona Revised Statutes:

A.R.S. § 13-105:

18. “Felony” means an offense for which a sentence to a term of imprisonment in the custody of the state department of corrections is authorized by any law of this state.

* * *

25. “Misdemeanor” means an offense for which a sentence to a term of imprisonment other than to the custody of the state department of corrections is authorized by any law of this state.

A.R.S. § 13-707 (B), in relevant part:

B. A person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of any misdemeanor . . . and who has been convicted of one or more of the same misdemeanors . . . within two years next preceding the date of the present offense shall be sentenced for the next higher class of offense than that for which the person currently is convicted.

A.R.S. § 13-2904:

A. A person commits disorderly conduct if, with intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person:

1. Engages in fighting, violent or seriously disruptive behavior.

* * *

B. Disorderly conduct under subsection A, paragraph 6 is a class 6 felony. Disorderly conduct under subsection A, paragraph 1, 2, 3, 4 or 5 is a class 1 misdemeanor.

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