



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. AARON BRIAN GUNCHES
CR-13-0282-AP**

PARTIES:

Appellant: Aaron Brian Gunches

Appellee: The State of Arizona

FACTS:

In October 2003, Aaron Brian Gunches was indicted on charges of first degree murder and kidnapping. The State noticed its intent to seek the death penalty. After the trial court found Gunches competent to stand trial and to waive his right to counsel, Gunches chose to represent himself. He then pleaded guilty to both counts.

In the aggravation phase, Gunches stipulated that he was previously convicted of a serious offense (attempted murder), an aggravating circumstance under A.R.S. § 13-751(F)(2). The jury also found as an aggravating circumstance under § 13-751(F)(6) that Gunches committed the murder in an especially heinous or depraved manner. Gunches presented virtually no mitigation evidence in the penalty phase, but did request leniency in allocution. The jury determined that he should be sentenced to death.

On direct appeal, this Court found that the jury's finding of the (F)(6) aggravating factor was error and therefore vacated Gunches's death sentence and remanded the case for a new penalty phase trial. On remand during the second penalty phase, Gunches again waived his right to counsel and decided to not present any mitigation evidence. He did not request leniency in allocution. The jury determined that Gunches should be sentenced to death. His direct, automatic appeal to this Court followed.

ISSUES:

1. Does a defendant have a constitutional right to self-representation in the penalty phase of a capital case?
2. Does a capital defendant have a right to waive the presentation of mitigation?
3. Did the trial court violate Gunches's constitutional rights or abuse its discretion by allowing him to represent himself and to waive mitigation in the penalty phase?

4. Did the trial court err by refusing to determine the legal sufficiency of the prior conviction supporting the (F)(2) aggravator and denying Gunches's motion to strike the State's allegation of that aggravator?
5. Did the trial court commit fundamental error when, without objection, it responded to the jurors' question during deliberations by telling them that the subject they asked about "has no legal significance"?
6. Did the prosecutor's statement in closing argument that there was no mitigating evidence constitute fundamental error?

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