



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE ex rel. POLK v. HON. CAMPBELL/KRAPS
CR-15-0303-PR**

PARTIES:

Petitioner: Francis Frederick Kraps

Respondent: State of Arizona

FACTS:

Believing that two police officers who were in their twenties were actually 16-year-old runaways named “Jade” and “Mackenzie,” 79-year-old Francis Frederick Kraps allegedly offered them \$200 for sex in a hotel room.

The State indicted Mr. Kraps on two Class 2 felony charges of child prostitution under A.R.S. § 13–3212(B)(2), which criminalizes the act of knowingly “[e]ngaging in prostitution with a minor who[m] the person knows is fifteen, sixteen or seventeen years of age”.

At a pretrial hearing, the trial court advised Mr. Kraps that if he were convicted, then A.R.S. § 13–3212(G) would require the court to impose a mandatory prison sentence of between 7 and 21 years, and Mr. Kraps would not be eligible for probation. Mr. Kraps filed a motion for reconsideration, arguing that subsection (G) did not apply to him because he never offered any money to anyone who was actually under 18 years of age.

The trial court held oral argument and reconsidered whether A.R.S. § 13-3212(G) applied in this case. The trial court found that if Mr. Kraps were convicted, then he would be exposed to the general range of punishment for the two Class 2 felony offenses, but not to any special sentencing requirements. If convicted, then he would be at least eligible to receive probation.

The State filed a special action in the Arizona Court of Appeals, which accepted discretionary review and reversed the trial court’s ruling that probation was available.

ISSUES:

1. Arizona appellate courts, using well-established rules of statutory construction, have held in other similar child sex cases that the word “minor” means a child under the age of eighteen and does not include “peace officers posing as a minor” for sentencing purposes. Did the Court of Appeals err in holding otherwise, exposing Mr. Kraps and others caught up in these police “stings” to years of mandatory prison if convicted?

2. Did the Legislature intend that defendants convicted of child prostitution be sentenced to lengthy, mandatory prison regardless of whether the victim was a child or an undercover police officer?

DEFINITIONS:

Discretionary review: A case in which to the appellate court has a choice whether to accept a case to decide it on its merits or to decline to consider the case altogether. Ordinary appeals are not discretionary.

Probation: A time period in which a person convicted of a crime remains out of confinement but is responsible to follow a list of rules and accountable to a probation officer. Probation aims to keep less-violent offenders integrated in their community as long as they follow the rules. If the probation officer thinks a probationer has seriously or repeatedly violated the rules, the probation officer may then formally ask the court to revoke probations, which sends the person to serve the rest of the person's term in prison.

Special action: A legal petition (request) outside the ordinary appeals process in which a court decides whether to make a faster decision, generally when a case requires prompt resolution and can be decided solely on issues of law rather than fact.

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