



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**VICTOR TED HERNANDEZ v. HON. WELTY/STATE
CV-15-0105-PR**

PARTIES:

Petitioner: Victor Ted Hernandez

Respondent: State of Arizona, Real Party in Interest

FACTS:

The State indicted Victor Ted Hernandez in a noncapital case that involved his alleged threats against a victim. Attorney Blaine Gadow represented Hernandez in this noncapital case for about a month.

In the meantime, Hernandez began to suspect that law-enforcement officers were investigating him for the murder of a different person, but Gadow did not work on aspects of what would later become this capital case. Gadow ultimately withdrew from representing Hernandez.

Eventually, the Maricopa County Attorney's Office hired Gadow as a supervisor, or "Bureau Chief." The Maricopa County Attorney's Office attempted to screen Gadow from working on any of Gadow's prior cases that involved defendants whom he had represented, but the Hernandez matter was not flagged for screening.

The Hernandez defense team in the capital case eventually proposed a plea agreement to the Maricopa County Attorney's Office to resolve both the noncapital case and the capital case by having the State withdraw its effort to seek the death penalty.

In response to the defense's proposed plea agreement, the Maricopa County Attorney's Office's Capital Review Committee met to consider it. As a supervisorial Bureau Chief, Gadow participated in that meeting. The Capital Review Committee voted 9-0 against recommending that the State accept the proposed plea agreement that would have reversed the State's decision to seek the death penalty.

When the defense learned that Gadow participated in the Capital Review Committee's vote, the defense filed a motion to disqualify the Maricopa County Attorney's Office from prosecuting the capital murder case. The trial court declined to vicariously disqualify the Maricopa County Attorney's Office, reasoning that the individual attorney—Gadow himself—was not disqualified.

The court of appeals disagreed with that ruling and remanded the matter back to the trial court to determine whether Hernandez suffered any actual prejudice from Gadow's participation in the Capital Review Committee's vote against accepting the defense's proposed plea agreement.

Hernandez filed a petition for review in the Arizona Supreme Court, arguing that the test for determining whether a prosecution office should be vicariously disqualified from capitally prosecuting a case in which the defendant's former attorney has worked on the former client's case should be whether what the former attorney did created an appearance of impropriety, regardless of whether the former attorney actually prejudiced the former client.

ISSUE:

Did the court of appeals correctly remand to the trial court to determine whether the defendant was actually prejudiced, or should the court of appeals have determined (or ordered the trial court to first determine) whether the continued capital prosecution of the defendant by the Maricopa County Attorney's Office created an appearance of impropriety?

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