



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**JESSE MESA v. HON. GRANVILLE / STATE OF ARIZONA
CR-16-0053-PR**

PARTIES:

Petitioner: Jesse Mesa

Respondent/Real Party in Interest: State of Arizona

Amici Curiae: Maricopa County Public Defender's Office
Arizona Attorneys for Criminal Justice

FACTS:

In April 2014, a Phoenix shop clerk was shot and killed. Petitioner Mesa and his co-defendant, Alex, were indicted and charged with first-degree murder, armed robbery, theft of means of transportation, and arson ("2014 case"). Thereafter, an associate was also indicted for first-degree murder, armed robbery, and first-degree burglary. Mesa was arraigned on May 21, 2014. The State did not file a Notice of Intent to Seek the Death Penalty ("NOI"). *See* Arizona Rule of Criminal Procedure 15.1(i)(1) (requiring State to file NOI within 60 days of arraignment).

In October 2014, the State began talking to the associate. He said Mesa shot the clerk in the face and later laughed about the clerk mentioning his children before Mesa shot him; he also said that there was a woman who stood outside as the lookout. In March 2015, the associate entered a plea and agreed to provide testimony.

Police re-contacted the lookout who told police that Alex and Mesa said Alex shot the clerk and then Mesa shot the clerk in the head with the clerk's gun. The lookout said Mesa bragged about the shooting and laughed when recounting how the clerk mentioned his kids and begged Mesa to not shoot.

In April 2015, the State filed a new indictment against Mesa ("2015 case"). The 2015 indictment contained the same charges from the 2014 case and added two new charges—conspiracy to commit first-degree murder, and first-degree burglary. Mesa was arraigned on May 4, 2015. Thereafter and upon the State's motion, the superior court dismissed the 2014 case without prejudice. *See* Arizona Rule of Criminal Procedure 16.6 ("[O]n motion of the prosecutor showing good cause therefor, [the court] may order that a prosecution be dismissed . . . upon a finding that the purpose of the dismissal is not to avoid the provisions of [Arizona Rule of Criminal Procedure] 8.").

Pursuant to Arizona Rule of Criminal Procedure 15.1(i)(1), Mesa stipulated to extend the

time for the State to file an NOI until September 2015. The NOI and Notice of Aggravating Factors was timely filed under the stipulation. The State alleged four aggravating factors: conspiracy to commit first-degree murder under A.R.S. § 13-751(F)(1); conspiracy to commit first-degree murder, first-degree burglary, armed robbery, and arson under A.R.S. § 13-751(F)(2); pecuniary gain under A.R.S. § 13-751(F)(5); and heinous, cruel, or depraved under A.R.S. § 13-751(F)(6).

Mesa moved to strike and dismiss the NOI. The superior court denied the motion. The court characterized Mesa's argument that the State was forever barred from seeking the death penalty as "based on the premise that [the 2014 and 2015 cases] are the same case." The superior court held that Mesa's argument was foreclosed by *Godoy v. Hantman*, 205 Ariz. 104 (2003), because a re-charged indictment re-starts all of the time limits in the criminal rules. The superior court alternatively determined that "[e]ven if a NOI does not re-set the clock, [Mesa] has not shown unfair prejudice by the State's filing of the [NOI] on September 1, 2015 for a trial now set for August 2017." The court relied on *State v. Hampton*, 213 Ariz. 167, 175 ¶¶ 27-28 (2006), *State v. Ellison*, 213 Ariz. 116, 135-36 ¶¶ 77-80 (2006), *State v. Cropper*, 205 Ariz. 181, 184 ¶ 15 (2003), *State v. Lee*, 185 Ariz. 549, 556 (1996), and *State v. Jackson*, 186 Ariz. 20, 24 (1996).

Mesa filed a special action in the Arizona Court of Appeals. After holding oral argument, the court of appeals declined to accept discretionary review.

ISSUE:

Petitioner Mesa frames the issue as:

"Where the state indicts a person for first-degree murder and fails to give notice of its intent to seek the death penalty within the 60-day time limit provided by Rule 15.1(i)(1); and where the state further chooses to re-indict the same person on the same first-degree murder count under a new cause number, does the Rule 15.1(i)(1) time limit restart, thus allowing the State to file a notice to seek the death penalty in the second case over a defendant's objection?"

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