



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**DALE ALLEN WRIGHT v. HON. GATES/STATE  
CR-16-0435-PR**

**PARTIES:**

*Petitioner:* Dale Allen Wright  
*Real Party in Interest:* State of Arizona  
*Amicus Curiae:* Pima County Public Defender's Office

**FACTS:**

In 1992, Wright spoke to a woman about allowing him to engage in sexual conduct with her two young children. The woman was actually a postal inspector and the young children were fictitious. Wright pled guilty to two counts of solicitation to commit molestation of a child, both class three felonies and dangerous crimes against children (DCAC). He was sentenced to lifetime probation on each count. In 2002, Wright's probation was revoked as to one of the counts and he was sentenced to ten years' imprisonment. When he was released from prison in 2008, Wright's lifetime probation on the second count was reinstated.

In 2015, the State moved to revoke his probation on the second count. Wright moved to strike the DCAC designation and to modify his sentence accordingly. Wright argued that because the DCAC statute did not specifically include solicitation among the list of crimes defined as DCAC offenses, the legislature did not intend solicitation to be included as a DCAC offense. He also argued that the legislature intended DCAC penalties to apply only to crimes involving actual minors. The trial court refused to hear Wright's motion on the merits because "a probation violation [proceeding] is [not] the appropriate vehicle" for the requested relief. Wright then filed a petition for special action in the court of appeals requesting a remand for "consideration of the substantive issues." The court of appeals accepted jurisdiction and granted relief, directing the trial court to address the merits "by treating it as a motion for modification of probation under Rule 27.3 of the Arizona Rules of Criminal Procedure."

On remand, the trial court heard the motion and denied relief. The trial court found that the crimes were properly designated as DCAC.

Wright brought a petition for special action in the court of appeals. The court accepted jurisdiction but denied relief. First, the court determined that solicitation, as a preparatory offense in furtherance of the enumerated crimes listed in A.R.S. § 13-604.01(K), constituted a DCAC offense. In 1992, § 13-604.01(K) included a list of crimes

defined as DCAC offenses when “committed against a minor under fifteen years of age.”<sup>1</sup> Molestation of a child was listed as a DCAC offense. § 13-604.01(K)(1)(d). Under the statute, a DCAC offense could be either completed or preparatory. Solicitation is a preparatory offense. A.R.S. § 13-1002. The court of appeals rejected Wright’s argument that solicitation was not a DCAC because it was not specifically listed in the DCAC statute. This interpretation would render meaningless the sections of the statute that reference preparatory offenses. Thus, the court found any preparatory conduct in furtherance of the crimes identified as DCAC would constitute a DCAC offense.

Second, a majority of the court of appeals found that the crime of solicitation to commit child molestation does not require an actual victim. The crime of solicitation was complete when Wright requested the postal inspector to allow him to engage in sexual conduct with two fictitious children.

The dissent disagreed with the majority that the crime of solicitation to commit child molestation does not require an actual child victim. The charges Wright pled guilty to required proof that he solicited another “to engage in specific conduct which would constitute the felony” of child molestation, meaning sexual conduct with a child under the age of fifteen. A.R.S. § 13-1002(A), -1410. The conduct which Wright solicited from the postal inspector, however, would not have constituted child molestation because child molestation requires sexual conduct with an actual child. The legislature’s decision in 1977 not to include the Model Penal Code’s additional language that solicitation includes “an attempt to commit such crime,” meant that the Arizona legislature intended that “the object of the solicitation must be conduct for which one actually could be convicted.” Based on the facts in the record, the dissent believed Wright’s guilty pleas to the two counts of solicitation to commit child molestation lacked sufficient factual bases and his remaining term of lifetime probation must be vacated.

#### **ISSUES:**

1. Did the legislature intend to classify solicitation as a DCAC [dangerous crime against children] offense in the second degree?
2. Consistent with *Mejak v. Granville*, can DCAC penalties be imposed for a completed offense (solicitation) where there is no actual child victim of the solicited offense (child molestation)?
3. Is the distinction between the language in A.R.S. § 13-1002(A) and Model Penal Code § 5.02(1) defining the offense of solicitation relevant to resolution of the issues of statutory interpretation raised by Wright’s petition?

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1 The DCAC statutes were renumbered in 2008 as A.R.S. § 13-705. While renumbered, the substantive portions of the DCAC statutes at issue on review are the same.

**RELEVANT STATUTE AND CODE:**

A.R.S. § 13-1002(A) defines the offense of solicitation:

- A. A person, other than a peace officer acting in his official capacity within the scope of his authority and in the line of duty, commits solicitation if, with the intent to promote or facilitate the commission of a felony or misdemeanor, such person commands, encourages, requests or solicits another person to engage in specific conduct which would constitute the felony or misdemeanor or which would establish the other's complicity in its commission.

The Model Penal Code § 5.02 (Am. Law Inst. 1962) defines the offense of solicitation:

A person is guilty of solicitation to commit a crime if with the purpose of promoting or facilitating its commission he commands, encourages or requests another person to engage in specific conduct which would constitute such crime *or an attempt to commit such crime* or which would establish his complicity in its commission *or attempted commission*.

(Emphasis added.)

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