



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. CHRISTOPHER MICHAEL REGENOLD
CR-10-0154-PR**

PARTIES AND COUNSEL:

Petitioner: Christopher Michael Regenold

Respondent: State of Arizona

FACTS:

In 2006, Regenold pled guilty to one count of luring a minor for sexual exploitation, a class three felony. The indictment alleged that he offered or solicited sexual conduct in online conversations with an undercover detective who posed as a 14 year old girl. The plea stipulated that Regenold would be placed on lifetime probation and would be required to register as a sex offender. The sentencing range in the plea was listed as a minimum of 5 years, a presumptive of 10 years, and a maximum of 15 years with probation available. At sentencing, Regenold was placed on lifetime probation and ordered to serve 365 days in jail with credit for 265 days.

In 2007, Regenold's probation officer filed a petition to revoke his probation. Regenold admitted to violating one condition of his probation. In preparation for the sentencing hearing, Regenold filed a motion to dismiss the allegation of dangerous crime against children, citing Boynton v. Anderson, 205 Ariz. 45, 66 P.3d 88 (App. 2003)(luring a minor for sexual exploitation not dangerous crime against children). He also argued that he could not be sentenced under A.R.S. § 13-604.01 because the victim was not a minor but an adult posing as a child. The State argued that the court had no authority to consider the motions and should sentence Regenold pursuant to the plea agreement. The trial court reinstated Regenold on probation and added a term of intensive probation.

A few months later, Regenold's probation officer filed a second petition to revoke. The trial court reviewed the transcript of the earlier proceedings and remarked that it was "caught between a rock and a hard place" on the sentence. It appeared that Regenold had entered into a plea agreement with an illegal sentence, but the State was entitled to the benefit of its bargain. The prosecutor argued that the court had no discretion but to follow the plea, even if it meant imposing an illegal sentence. The trial court decided to follow the range of sentence in the plea but acknowledged there may be problems. After holding a witness violation hearing, the trial court found that Regenold violated a number of terms of his probation. The trial court sentenced him to a mitigated term of 6.5 years.

Regenold appealed from the disposition sentence. The State argued that the court of appeals lacked appellate jurisdiction because Regenold challenged a sentence imposed pursuant to a plea agreement. Regenold argued that he had a right to appeal pursuant to A.R.S. §13-4033(A)(3) and (4) because his sentence of imprisonment in DOC was a post-judgment

order affecting his substantial rights and the sentence was illegal. The court of appeals agreed with the State and dismissed the appeal. “In noncapital cases a defendant may not appeal from a judgment or sentence that is entered pursuant to a plea agreement.” A.R.S. §13-4033(B) (Supp. 2009); see also State v. Celaya, 213 Ariz. 282, 282-83 ¶ 3, 141 P.3d 762, 762-63 (App. 2006); Rule 17.1(e), Arizona Rules of Criminal Procedure. In this case, Regenold signed a plea agreement in which the range of sentence was listed and in which he agreed that he waived his right to appeal. Through this appeal, the court of appeals found that Regenold was attempting to challenge the legality of the sentence imposed pursuant to the plea agreement. The court of appeals concluded that it did not have jurisdiction to consider such an appeal.

ISSUE:

Under Arizona law, does a defendant placed on probation pursuant to a plea agreement have the right to appeal a later sentence imposed at a disposition hearing following a witness violation hearing when that sentence is a post-judgment order affecting a substantial right and illegal or excessive?

RELEVANT STATUTORY PROVISIONS:

A.R.S. §13-4033(A) and (B) provide:

- A. An appeal may be taken by the defendant only from:
 - 1. A final judgment of conviction or verdict of guilty except insane.
 - 2. An order denying a motion for a new trial.
 - 3. An order made after judgment affecting the substantial rights of the party.
 - 4. A sentence on the grounds that it is illegal or excessive.

- B. In noncapital cases a defendant may not appeal from a judgment or sentence that is entered pursuant to a plea agreement or an admission to a probation violation.

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