



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**RYAN LEE JACOBSEN v. STATE OF ARIZONA
CV-10-0309-PR**

PARTIES:

Petitioner: State of Arizona

Respondent: Ryan Jacobsen

FACTS:

Pursuant to a plea agreement, Ryan Jacobsen pled guilty to three counts of Luring a Minor for Sexual Exploitation. The plea agreement provided that:

In the event the Defendant is placed on probation, the Court shall impose the following terms of probation in addition to all standard terms and any other terms deemed appropriate by the Court:

....

B. TREATMENT

1) Defendant shall actively participate in sex offender treatment and remain in such treatment at the direction of the Probation Officer.

2) Defendant shall submit to any program of psychological or physiological assessment at the direction of the Probation Officer, including but not limited to Abel testing and/or the polygraph and/or the penile plethysmograph, to assist in treatment, planning, and case monitor[ing].

The trial court placed Jacobsen on probation for five years, including the sex offender conditions noted above. As directed by his probation officer, he enrolled in a sex offender treatment program, which required him to undergo periodic polygraph examinations and complete a questionnaire prior to examination. Jacobsen filed a Motion to Preclude Polygraph Examination and Pre-Polygraph Questionnaire, asserting his rights under the Fifth Amendment. The trial court ruled, in part:

The Court believes that the Defendant is protected in terms of the subsequent use of the information pertaining to this case or preceding cases, by the protections provided by A.R.S. § 13-4066. The Court believes that the Defendant may, without violating the conditions of his probation, invoke the Fifth Amendment with regard to questions that concern what may have occurred after the point in time where he started

undergoing treatment and after the time when he was put on probation.

Jacobsen filed a Petition for Special Action. The Court of Appeals accepted jurisdiction and granted relief in an opinion filed August 24, 2010. Jacobsen v. Lindberg, 225 Ariz. 318 (App. 2010). Relying on State v. Eccles, 179 Ariz. 226 (1994), the Court of Appeals held that "[t]he State cannot require Jacobsen to waive his Fifth Amendment rights as a condition of probation and cannot require him to answer questions that could incriminate him in future proceedings." In addition, the Court of Appeals held that § 13-4066 "is not adequate to protect his rights against self-incrimination because it does not provide adequate immunity and, in any event, it allows incriminatory statements to be used against him." The Arizona Supreme Court granted the State's Petition for Review.

ISSUES:

A. Whether the Court of Appeals erred when it determined that Arizona Revised Statutes ("A.R.S.") section 13-4066 does not adequately protect a probationer's rights against self-incrimination while undergoing sex offender treatment.

B. Whether the Court of Appeals erred when it concluded that Jacobsen did not waive his rights against self-incrimination as part of the plea agreement.

Relevant statute:

A.R.S § 13-4066 provides:

A. Any statement that is made by a person who undergoes sex offender treatment that is ordered by the court or that is provided by the state department of corrections or the department of juvenile corrections to a person who is convicted of an offense listed in chapter 14 or 35.1 of this title [sexual offenses and sexual exploitation of children] and any evidence that results from that treatment is not admissible against the person in any criminal or juvenile delinquency proceeding unless the person consents, except that the statement or evidence may be used pursuant to rule 404(b) and (c), Arizona rules of evidence.

B. This section does not apply if there is a reasonable belief that the person has committed a new violation of chapter 14 or 35.1 of this title during the course of the person's treatment. A treatment provider who complies with this subsection does not violate any privilege established by law.

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