



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



STATE OF ARIZONA v. JESUS HUMBERTO SOTO

CR-10-0089-PR

223 Ariz. 407, 224 P.3d 223 (App. 2010)

PARTIES:

Petitioner: The State of Arizona.

Respondent: Jesus Humberto Soto.

FACTS:

This case concerns A.R.S. §13-4033(C), which the legislature enacted in 2008 to prohibit appeals for non-pleading defendants who voluntarily abscond and thereby prevent sentencing from occurring within 90 days after their conviction. *See* 2008 Ariz. Sess. Laws, ch. 25, § 1.

Soto was convicted in 2004 in two different cases of crimes involving the possession of drugs and his prohibited possession of a deadly weapon. Although he appeared for the first two days of his first trial, he absconded and did not appear on the last day for the verdict. Soto did not appear at all for his trial in the second case. Represented by court-appointed counsel, he was convicted *in absentia*.

Soto was apprehended in October 2008. On December 1, 2008, the trial court sentenced him in both cases to concurrent prison terms, the longest of which was thirteen years. At sentencing, the court advised Soto he had the right to appeal his convictions and sentences, and that he must file a notice of appeal within twenty days. Apparently, neither the court nor counsel were aware that A.R.S. §13-4033(C) had gone into effect in September 2008.

Soto appealed in both cases. Because he had absconded pending sentencing in 2004, the State moved to dismiss the appeals, arguing the court of appeals lacked jurisdiction under §13-4033(C). After granting the State's motions to dismiss, the court of appeals subsequently recalled the mandates, consolidated the two appeals, and found that it had improvidently dismissed the appeals.

The State filed a petition for special action relief challenging the recall of the mandates, and the Arizona Supreme Court declined jurisdiction of that action. *See State v. Eckerstrom et. al., and Soto, Real Party in Interest, CV-09-0363-SA, jurisdiction declined, January 5, 2010.*

Thereafter, the court of appeals issued an opinion in the consolidated actions finding that §13-4033(C) is facially unconstitutional. The court reasoned that Soto, having had no notice of the potential consequences of his absence from trial, did not knowingly, voluntarily, or intelligently waive his constitutional appeal right. To the extent the statute leaves him or similarly situated defendants without a means of obtaining appellate review that would provide an equally comprehensive safeguard against a wrongful conviction, it violates a defendant's right to appeal,

guaranteed by article II, §24 of the Arizona Constitution.

ISSUES:

1. Did the court of appeals err in holding that A.R.S. §13-4033(C) unconstitutionally deprives absconding defendants of their right to appeal their convictions?
2. Did the court of appeals err in determining that A.R.S. §13-4033(C) applies only to defendants who are personally informed that their absence may result in the loss of their right to appeal their conviction, thereby requiring a knowing, intelligent, voluntary waiver of the right to appeal?

RELEVANT STATUTE:

A.R.S. §13-4033, relating to appeals by defendants, states in its entirety:

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.

C. A defendant may not appeal under subsection A, paragraph 1 or 2, if the defendant's absence prevents sentencing from occurring within ninety days after conviction and the defendant fails to prove by clear and convincing evidence at the time of sentencing that the absence was involuntary.

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