

SUPREME COURT OF ARIZONA

State v. Peek

219 Ariz. 182 (2008) (Ariz. 2008) · No. CR-07-0412-PR · Decided November 3, 2008

SUMMARY

The Supreme Court of Arizona held that lifetime probation was not authorized for attempted child molestation committed between 1994 and 1996. Interpreting the version of A.R.S. § 13-902(E) then in effect, the court concluded that the statute authorized lifetime probation only for felony offenses included in Title 13, chapter 14, and did not encompass attempted offenses classified under chapter 10. The court vacated the lifetime probation term and remanded for resentencing.

CASE DETAILS

COURT	Supreme Court of Arizona
WRITING FOR THE COURT	Vice Chief Justice Berch; Chief Justice Ruth V. McGregor; Justice Michael D. Ryan; Justice Andrew D. Hurwitz; Justice W. Scott Bales
JURISDICTION	Arizona
DECIDED	November 3, 2008
DOCKET	CR-07-0412-PR
DISPOSITION	vacated
PROCEDURAL POSTURE	Petition for review of the denial of a petition for post-conviction relief challenging the legality of a lifetime-probation term.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo.
PRECEDENTIAL VALUE	Published, precedential Arizona Supreme Court opinion; decided en banc.
PARTIES	Gary Douglas Peek v. State of Arizona

TOPICS

- statutory interpretation
- legislative intent
- sentencing
- post-conviction relief
- appellate procedure

PRACTICE AREAS

- Criminal law
- Post-conviction relief
- Sentencing
- Statutory interpretation
- Appellate procedure

QUESTIONS PRESENTED

1. Whether Arizona statutes in effect between 1994 and 1996 authorized lifetime probation for attempted child molestation.
2. Whether the court should reach the merits of an untimely post-conviction petition when the State waived preclusion and the issue was recurring and of statewide importance.

HOLDINGS

1. The statutes in effect between 1994 and 1996 did not authorize lifetime probation for attempted child molestation because former A.R.S. § 13-902(E) applied to felony offenses included in chapter 14, while attempt offenses were defined in chapter 10 and the statute did not expressly include attempts.
2. The court could address the merits because the State waived preclusion and the case presented a recurring legal issue of statewide importance on which trial courts had issued conflicting opinions.

KEY QUOTATIONS

“We cannot replace what the legislature has taken out.” (195 P.3d at 643)

“When the legislature intends to include attempts, it knows how to do so.” (195 P.3d at 644)

FACTUAL BACKGROUND

Peek committed attempted child molestation between 1994 and 1996 and pleaded guilty to two counts pursuant to a plea agreement. In 2003, the court sentenced him to ten years' imprisonment on one count and lifetime probation on the second count. The legality of the lifetime-probation term depended on whether the statutes in effect when the offenses occurred authorized lifetime probation for an attempted child-molestation offense.

PROCEDURAL HISTORY

Peek pleaded guilty in 2003 to two counts of attempted child molestation committed between 1994 and 1996. The superior court imposed ten years' imprisonment on one count and lifetime probation on the other. In 2006, Peek sought post-conviction relief from the lifetime-probation term; the superior court summarily denied relief, and the court of appeals declined review. The Arizona Supreme Court granted review, waived the untimeliness issue because the State joined in addressing the merits, vacated the illegal probation term, and remanded for resentencing.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The superior court must resentence Peek on count two in a manner consistent with the opinion. The court of appeals' order declining jurisdiction and the superior court's order dismissing the post-conviction petition were also vacated.

CASES CITED

- Collins v. Youngblood, 497 U.S. 37 (1990)
- State v. Gonzalez, 216 Ariz. 11, 162 P.3d 650 (App. 2007)
- State v. Armstrong, 218 Ariz. 451, 189 P.3d 378 (2008)
- State v. Getz, 189 Ariz. 561, 944 P.2d 503 (1997)
- In re Pima County Juvenile Appeal No. 74802-2, 164 Ariz. 25, 790 P.2d 723 (1990)
- State v. Christian, 205 Ariz. 64, 66 P.3d 1241 (2003)
- State v. Sweet, 143 Ariz. 266, 693 P.2d 921 (1985)
- State v. Herrera, 131 Ariz. 35, 638 P.2d 702 (1981)
- State v. Tellez, 165 Ariz. 381, 799 P.2d 1 (App. 1990)
- State v. Wise, 164 Ariz. 574, 795 P.2d 217 (App. 1990)
- State v. Lammie, 164 Ariz. 377, 793 P.2d 134 (App. 1990)
- State v. Cory, 156 Ariz. 27, 749 P.2d 936 (App. 1987)
- State v. Cornish, 192 Ariz. 533, 968 P.2d 606 (App. 1998)

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