

SUPREME COURT OF THE STATE OF ARIZONA

State of Arizona v. Dustin Gill

242 Ariz. 1 (2017) · No. CR-16-0286-PR · Decided April 13, 2017

SUMMARY

The Arizona Supreme Court held that statements made in connection with a deferred prosecution agreement are not protected by Arizona Rule of Evidence 410(a)(4), which concerns statements made during plea discussions. The court also held that Rule 410 protections may extend to authorized prosecutorial agents and that Gill knowingly waived any applicable protections. The court vacated the Court of Appeals' opinion and affirmed Gill's conviction and sentence.

CASE DETAILS

COURT	Supreme Court of the State of Arizona
WRITING FOR THE COURT	Chief Justice Bales; Vice Chief Justice Pelander; Justice Brutinel; Justice Timmer; Justice Bolick; Justice Gould; Justice Berch (retired)
JURISDICTION	Arizona
DECIDED	April 13, 2017
DOCKET	CR-16-0286-PR
DISPOSITION	vacated
PROCEDURAL POSTURE	Gill was convicted after a bench trial and appealed the denial of his motion to suppress statements made in connection with a deferred prosecution and drug-diversion program. The Arizona Court of Appeals rejected his Arizona Rule of Evidence 410 arguments. The Arizona Supreme Court granted review, vacated the court of appeals' opinion, and affirmed the trial court's judgment.
STANDARD OF REVIEW	Admission of evidence is reviewed for abuse of discretion; interpretation of the Arizona Rules of Evidence is reviewed de novo.
PRECEDENTIAL VALUE	precedential
PARTIES	Dustin Gill v. State of Arizona

TOPICS

evidence criminal procedure plea bargaining appellate procedure standard of review

PRACTICE AREAS

Criminal law

Evidence

Plea bargaining and pretrial diversion

Appellate procedure

QUESTIONS PRESENTED

1. Whether statements made in connection with a deferred prosecution agreement are statements made during plea discussions protected from admission by Arizona Rule of Evidence 410(a)(4).
2. Whether Rule 410 extends to statements made to a private diversion-program representative acting as an agent of the prosecutor.
3. Whether Gill knowingly waived Rule 410 protections even though his waiver agreement did not specifically reference Rule 410.

HOLDINGS

1. Arizona Rule of Evidence 410(a)(4) does not apply to discussions about deferred prosecution when the defendant and prosecutor are negotiating participation in a pretrial diversion program rather than a guilty or no-contest plea.
2. Rule 410 may protect statements made to agents authorized by a prosecutor to negotiate pleas, but the TASC representative was not the prosecutor's agent for plea-negotiation purposes in this case.
3. A knowing waiver of Rule 410 does not require the waiver agreement to specifically reference Rule 410; the defendant must understand the nature of the right being abandoned and the consequences of abandoning it.

KEY QUOTATIONS

“We hold that this evidentiary rule does not apply to discussions about deferred prosecution and that a knowing waiver of its provisions does not require specifically referencing the rule.” (242 Ariz. at 1, ¶ 1)

“A plea discussion entails the prosecutor and defendant negotiating whether the defendant will plead guilty or no contest to a criminal offense in exchange for some concession by the prosecutor on any aspect of the disposition of the case.” (242 Ariz. at 5, ¶ 12)

“A deferred prosecution discussion, on the other hand, involves a defendant and prosecutor negotiating whether the defendant will participate in “a special supervision program” in which the state “divert[s] or defer[s], before a guilty plea or a trial, the prosecution of a person who is accused of committing a crime[.]”” (242 Ariz. at 5, ¶ 13)

“A waiver agreement need not specifically reference the evidentiary rule being waived.” (242 Ariz. at 7, ¶ 21)

FACTUAL BACKGROUND

A private security guard found Dustin Gill in a restroom with several grams of marijuana, and the State charged him with possession or use of marijuana. At a settlement conference, Gill chose participation in the TASC drug-treatment program in exchange for deferred prosecution rather than proceeding to trial, and he was expressly told that he would not have to plead guilty. Gill then completed a TASC statement-of-facts form admitting that

the marijuana was found in his possession and acknowledging that the statement could be used against him if he failed the program. After Gill failed to attend seminars and tested positive for alcohol and marijuana, the State resumed prosecution and used the statement against him.

PROCEDURAL HISTORY

After Gill failed to complete the TASC diversion program, the State resumed prosecution. The superior court denied Gill's motion to suppress, found him guilty after a bench trial, suspended his sentence, and placed him on one year of unsupervised probation. The court of appeals affirmed, and the Arizona Supreme Court granted review to decide whether Rule 410(a)(4) applied to statements made during deferred prosecution discussions and whether Gill knowingly waived the rule's protections.

DISPOSITION

vacated

CASES CITED

- State v. Tucker, 215 Ariz. 298, 313 ¶ 46, 160 P.3d 177, 192 (2007)
- State v. Romero, 239 Ariz. 6, 9 ¶ 11, 365 P.3d 358, 361 (2016)
- Espinoza v. Martin, 182 Ariz. 145, 147, 894 P.2d 688, 690 (1995)
- State v. Superior Court, 125 Ariz. 575, 577, 611 P.2d 928, 930 (1980)
- United States v. Levy, 578 F.2d 896, 901 (2d Cir. 1978)
- DeNaples v. Office of Comptroller of Currency, 706 F.3d 481, 489 (D.C. Cir. 2013)
- State v. Campoy, 220 Ariz. 539, 543 ¶ 6, 548 ¶ 25, 207 P.3d 792, 796, 801 (App. 2009)
- United States v. McCauley, 715 F.3d 1119, 1126 (8th Cir. 2013)
- Clutter v. Commonwealth, 364 S.W.3d 135, 138 (Ky. 2012)
- State v. Martinez, 221 Ariz. 383, 391-92 ¶ 31, 212 P.3d 75, 83-84 (App. 2009)
- Hernandez v. State, 203 Ariz. 196, Hernandez v. State, 203 Ariz. 196, 198 ¶ 10, 52 P.3d 765, 767 (2002)
- United States v. Mezzanatto, 513 U.S. 196, 197, 210 (1995)
- In re Andre M., 207 Ariz. 482, 484 ¶ 7, 88 P.3d 552, 554 (2004)
- Moran v. Burbine, 475 U.S. 421 (1986)