

SUPREME COURT OF ARIZONA

Morehart v. Barton, 226 Ariz. 510

250 P.3d 1139 (2011) · No. CV-10-0327-PR · Decided April 29, 2011

SUMMARY

The Supreme Court of Arizona held that crime victims do not have a constitutional or statutory right to attend an ex parte hearing concerning the return of summonses issued for a capital defendant's pretrial mitigation investigation when the defendant himself has no right to attend. The court concluded that such a hearing is purely procedural, while recognizing that victims may have independent participation rights if other statutory protections are implicated. The court vacated the court of appeals' opinion and remanded the case to the superior court.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                      |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Arizona                                                                                                                                                                                                                                                                                                             |
| WRITING FOR THE COURT | Bales, Justice; Rebecca White Berch, Chief Justice; Andrew D. Hurwitz, Vice Chief Justice; A. John Pelander, Justice; Robert M. Brutinel, Justice                                                                                                                                                                                    |
| JURISDICTION          | Arizona                                                                                                                                                                                                                                                                                                                              |
| DECIDED               | April 29, 2011                                                                                                                                                                                                                                                                                                                       |
| DOCKET                | CV-10-0327-PR                                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | vacated                                                                                                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | The victims petitioned for special action relief from an order of the Maricopa County Superior Court permitting an ex parte hearing concerning a capital defendant's pretrial mitigation investigation. The court of appeals accepted jurisdiction and vacated the superior court's order. The Arizona Supreme Court granted review. |
| STANDARD OF REVIEW    | The Supreme Court reviewed the legal question concerning the victims' statutory and constitutional right to attend the proposed ex parte proceeding.                                                                                                                                                                                 |
| PRECEDENTIAL VALUE    | Published, precedential opinion of the Supreme Court of Arizona, decided en banc.                                                                                                                                                                                                                                                    |
| PARTIES               | Patricia Morehart, Colleen Duffy v. The Honorable Janet E. Barton, The State of Arizona, William Craig Miller                                                                                                                                                                                                                        |

## TOPICS

criminal procedure

appellate procedure

right to counsel

due process

sixth amendment

## PRACTICE AREAS

criminal procedure

constitutional law

victims' rights

capital litigation

appellate procedure

## QUESTIONS PRESENTED

1. Whether crime victims have a constitutional or statutory right to attend an ex parte hearing concerning the return of out-of-state summonses issued as part of a capital defendant's pretrial mitigation investigation when the defendant has no right to be present.
2. Whether Arizona Rule of Criminal Procedure 15.9(b) permits such an ex parte proceeding when the defense makes a proper showing of a need for confidentiality.
3. Whether the victims' right to attend is triggered by the presence or participation of defense counsel even when the defendant himself has no right to attend.

## HOLDINGS

1. Crime victims are not entitled under Arizona Constitution article 2, section 2.1(A)(3), or A.R.S. section 13-4420, to attend an ex parte hearing concerning the return of out-of-state summonses for pretrial mitigation discovery when the hearing is purely procedural and the defendant has no right to be present.
2. Arizona Rule of Criminal Procedure 15.9(b) permits an ex parte proceeding related to the appointment of investigators or experts and the procurement of mitigation evidence for an indigent capital defendant when the defense makes a proper showing of a need for confidentiality.
3. Trial courts must separately consider independent statutory victim-participation rights in an ex parte proceeding, but must enforce those rights only insofar as doing so would not deprive the defendant of a fair trial.

## KEY QUOTATIONS

*“Because the defendant has no right to attend such a purely procedural hearing, victims also have no right to attend.”* (250 P.3d at 1139)

*“Victims are not entitled to attend such hearings under Arizona Constitution, article 2, section 2.1(A)(3) or A.R.S. § 13-4420, if, as is the case here, the defendant does not have a right to be present.”* (250 P.3d at 1145)

## FACTUAL BACKGROUND

William Craig Miller was charged with five counts of first-degree murder, and the State sought the death penalty. After being found indigent, Miller obtained approval for a mitigation specialist and neurologist, and later sought an ex parte hearing concerning defense efforts to obtain mitigation evidence through out-of-state summonses. The victims' surviving family members objected, asserting that the Arizona Victims' Bill of Rights entitled them to attend any ex parte hearing.

## PROCEDURAL HISTORY

The superior court granted William Craig Miller's request for an ex parte hearing concerning the return of out-of-state summonses issued in connection with his mitigation investigation. Surviving family members of two murder victims objected under Arizona's Victims' Bill of Rights. The court of appeals vacated the order, and the Supreme Court of Arizona vacated the court of appeals' opinion and remanded to the superior court.

## DISPOSITION

vacated

## REMAND INSTRUCTIONS

The court vacated the opinion of the court of appeals and remanded the case to the superior court for further proceedings.

## CASES CITED

- Morehart v. Barton, 225 Ariz. 269, 236 P.3d 1216 (App. 2010)
- State v. Apelt, 176 Ariz. 349, 365, 861 P.2d 634, 650 (1993)
- Dawson v. Delaware, 503 U.S. 159, 167 (1992)
- Ake v. Oklahoma, 470 U.S. 68, 77 (1985)
- State v. Bocharski, 200 Ariz. 50, 62 ¶ 61, 22 P.3d 43, 55 (2001)
- Wiggins v. Smith, 539 U.S. 510, 522-23 (2003)
- Kentucky v. Stincer, 482 U.S. 730, 732-33, 745 (1987)
- Snyder v. Massachusetts, 291 U.S. 97, 105-06 (1934)
- United States v. Gagnon, 470 U.S. 522, 523-27 (1985) (per curiam)
- State v. Dann, 205 Ariz. 557, 571-75 ¶¶ 52-72, 74 P.3d 231, 245-49 (2003)
- Ex parte Moody, 684 So. 2d 114, 120 (Ala. 1996)
- Stevens v. Indiana, 770 N.E.2d 739, 759 (Ind. 2002)
- State v. Riggs, 189 Ariz. 327, 330, 942 P.2d 1159, 1162 (1997)
- State v. Bible, 175 Ariz. 549, 602-03, 858 P.2d 1152, 1205-06 (1993)
- Malloy v. Hogan, 378 U.S. 1 (1964)