



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE of ARIZONA v. HON. WEIN and MARLIN HENDERSON
and GUY JAMES GOODMAN
CR-17-0221-PR
242 Ariz. 352**

PARTIES:

Petitioner: Guy James Goodman

Respondent: State of Arizona

Amici Curiae: Arizona Attorney General, American Civil Liberties Union Foundation,
and the American Civil Liberties Union of Arizona

FACTS:

In 2002, Arizona voters passed Proposition 103, amending the Arizona Constitution, article 2, section 22 and A.R.S. § 13-3961 by adding an additional category of criminal charges for which there would be no release on bail: sexual assault, sexual conduct with a minor under fifteen, and molestation of a child under fifteen where “the proof is evident or the presumption great” that the defendant committed the offense. *See* 2002 Ariz. Sess. Laws, Ch. 219 § 21, Ch. 223 § 1. *See also* A.R.S. § 13-3961(A).

In *Simpson v. Miller (Simpson II)*, 241 Ariz. 341 (2017), the Arizona Supreme Court examined whether bail was potentially available to a defendant charged with sexual conduct with a minor under the age of fifteen. The Court found that because teenage consensual sex might be charged under the terms of the offense, and this would suggest little or nothing about the defendant’s danger to anyone, a blanket prohibition on bail for the crime of sexual conduct with a minor violated due process rights. *Id.* at 349 ¶ 31. Accordingly, the Court found unconstitutional the no-bail provisions in article 2, section 22(A)(1) of the Arizona Constitution and A.R.S. § 13-3961(A)(3) relating to the crime of sexual conduct with a minor under fifteen. *Simpson II*, 241 Ariz. at 349-50 ¶ 31.

Petitioner Goodman was charged with one count of sexual assault under A.R.S. § 13-1406. In response to *Simpson II*, Maricopa County Superior Court issued a “Protocol for Setting *Simpson v. Miller* Review Hearings.” The protocol afforded defendants like Goodman individualized bail hearings under A.R.S. § 13-3961(D). In accordance with the new protocol, the trial court conducted an evidentiary hearing to determine whether Goodman could be held without bail under A.R.S. § 13-3961(D). The trial court found proof evident and presumption great that Goodman had committed the sexual assault but that the State did not prove by clear and convincing evidence that Goodman posed an ongoing danger to the community or to the victim. Goodman was held bailable and allowed a \$70,000 secured appearance bond.

The State filed a petition for special action, arguing that *Simpson II* only dealt with offenses involving sexual conduct with a minor, and the trial court therefore erred in holding a bail hearing for a person charged with sexual assault because no hearing was required for a determination of future dangerousness. Goodman argued that *Simpson II* requires a finding of individualized dangerousness for a defendant before denying bail.

The court of appeals accepted special action jurisdiction and granted relief, finding that sexual assault remains a non-bailable offense following *Simpson II*. *State v. Wein*, 242 Ariz. 352, 353 ¶ 1 (App. 2017). The court looked to *Simpson II*'s citation signal "Cf." to the crime of sexual assault. It found the Court was comparing the crime of sexual conduct with a minor with the crime of sexual assault, and used this citation to highlight the difference between the two offenses. *Id.* at 354-55 ¶¶ 7-8. Unlike sexual conduct with a minor, which could potentially include consensual situations, a lack of consent is an element of the crime of sexual assault under A.R.S. § 13-1406(A). The court of appeals found that the nonconsensual nature of the crime of sexual assault fulfilled the requirement for finding inherent dangerousness. Accordingly, the court of appeals held that sexual assault remains a non-bailable offense. *State v. Wein*, 242 Ariz. at 355 ¶ 9.

ISSUE:

The state cannot deny bail without showing that either (a) the defendant presents unmanageable flight risk or future dangerousness, or (b) individuals charged with this type of crime categorically present an unmanageable risk of future dangerousness. Yet the Court of Appeals held that the state may categorically deny bail to individuals charged with sexual assault without either of these showings. Was this error?

RELEVANT STATUTE:

A.R.S. § 13-3961(D) allows the trial court to deny bail on the state's motion if the court finds by clear and convincing evidence following a hearing that

- (1) "the person charged poses a substantial danger to another person or the community,"
- (2) "no condition or combination of conditions of release may be imposed that will reasonably assure the safety of the other person or the community," and
- (3) "the proof is evident or the presumption great that the person committed the offense."

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