



**ARIZONA SUPREME COURT**  
**ORAL ARGUMENT CASE SUMMARY**



**CASE SUMMARY**

**STATE OF ARIZONA v. DANIEL JOHN SMYERS, CR-03-0284-PR**

**Parties and Counsel:** Petitioner, the State of Arizona, is represented by Jon G. Anderson, Assistant Attorney General. Respondent Daniel John Smyers is represented by Stephen R. Collins, Deputy Public Defender.

**Facts:**

In 2000, an 11-year-old girl and her grandmother visited the trailer home of a family friend, 43-year-old Daniel Smyers. During the visit, Smyers and the child were alone together in a computer room. Smyers called the girl over to the computer and showed her an image of a pornographic image, which made her feel uncomfortable. Smyers then asked the girl to go with him to a shed attached to his trailer where he again showed her the image on another computer. Police later seized the two computers and found several hundred pornographic images, including ones consistent with the girl's description of the one she had seen.

Smyers was charged with two counts of furnishing obscene or harmful items to a minor, in violation of A.R.S. § 13-3506. The State also alleged that, in 1996, Smyers had been convicted of attempted child abuse in the death of his six month old son from starvation.

The State filed a pre-trial motion seeking to impeach Smyers with his prior conviction, in the event he testified at trial. Smyers objected that the prior conviction was not probative of the charged offenses. If the conviction were admitted, however, he contended that it either should be "sanitized" to indicate only the fact of the prior conviction, or the full nature of the offense should be disclosed to the jury.

The court ruled that, if Smyers testified, he could be impeached with his prior felony conviction, including the name of the offense, the court, the date, and whether he was assisted by counsel. The jury, however, would not be permitted to hear the class of the felony or the facts of the offense. Smyers chose not to testify and was convicted as charged.

On appeal, the court found that the trial judge committed reversible error in his conditional admission of Smyers's prior conviction. The court also found that Smyers did not waive his claim of improper impeachment by failing to testify at trial because the trial judge's erroneous ruling deprived Smyers of the ability to make a reasoned and informed decision about whether to testify. Finally, the appeals court found that the error was not harmless because there was no fair assurance that the trial judge's ruling did not affect Smyers' decision not to testify, or that his decision not to testify did not unduly affect the verdict.

This court granted the State's petition for review.

**Issue:**

Did the court of appeals ignore controlling Arizona Supreme

Court authority by holding that Smyers did not waive his challenge to the trial court's ruling regarding use of his prior conviction to impeach him, even though he did not testify at trial?

*This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.*



**ARIZONA SUPREME COURT  
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**CASE SUMMARY  
GILBERT NAVARRO GALAZ v. TERRY L. STEWART**

**CV-03-0180-PR**

**Parties & Counsel:**

The Director of the Arizona Department of Corrections (formerly Terry L. Stewart, now Dora B. Schiro) is represented by Assistant Attorney General Susanna Pineda. Gilbert Navarro Galaz is represented by Thomas J. Dennis, Deputy Legal Advocate.

**Issue:**

“Did the court of appeals err in deciding that the Board of Executive Clemency had the power to grant Galaz parole eligibility while commuting his sentence when the sentencing statute precluded this?”

**Facts:**

Mr. Galaz was convicted of two counts of aggravated assault, committed while on release from confinement. On March 18, 1987, he was sentenced to two concurrent life terms for dangerous and repetitive offenses. Pursuant to the version of A.R.S. ' 13-604.02 in effect at that time, he was not eligible for parole or other release until he had served a minimum of 25 years.

In 1994, the legislature enacted the Disproportionality Review Act, 1994 Ariz. Sess. Laws ch. 365, ' 1, to remedy the disparity between sentences imposed before the 1994 amendments to the sentencing statutes and those imposed after. Pursuant to the act, in 1995, the Board of Executive Clemency commuted Mr. Galaz' life sentences to 19.75 years each.<sup>1</sup>

The Department of Corrections takes the position that, pursuant to former A.R.S. ' 13-604.02, Mr. Galaz will have to serve every day of the 19.75 years (“flat time”) and is not eligible for parole or early release credits. Mr. Galaz filed a petition for writ of habeas corpus arguing that he is eligible for parole and early release credits (“soft time”). The superior court denied the petition. On appeal, the Court of Appeals “vacate[d] the trial court’s ruling that Galaz’s commuted sentence was subject to flat-time provisions and instruct[ed] Galaz to file a petition” with the Board of Executive Clemency asking “the Board to make a recommendation to the Governor as to whether his commuted sentence should be subject to soft, hard, or flat time.” The Department of Corrections filed a Petition for Review by the Arizona Supreme Court.

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<sup>1</sup> The Governor purportedly rejected the Board’s recommendation of commutation, but pursuant to McDonald v. Thomas, 202 Ariz. 35 (2002), that rejection was not effective. On April 18, 2002, the Board issued a declaration that Mr. Galaz’ sentences are commuted.

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