



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**In re: JAMES M. SMITH, Debtor. SIDNEY LACHTER AND
SANDRA LACHTER v. JAMES M. SMITH
CV-04-0153-CQ**

PARTIES/COUNSEL:

Plaintiffs: Sidney and Sandra Lachter, represented by Lawrence D. Hirsch of Hirsch Law Offices, P.C.

Defendant: James M. Smith (“Debtor”), represented by Ronald J. Ellett of Ellett Law Offices, P.C.

FACTS:

James M. Smith (the “Debtor”) filed a chapter 13 bankruptcy petition on July 13, 1995. Among the objectors to the Debtor’s chapter 13 plan were Sidney and Sandra Lachter (“Lachters”). The Lachters owned a state court money judgment against the Debtor. The Lachters timely renewed that judgment in 1992 in accordance with Arizona law. On July 16, 1996, the Debtor voluntarily converted his chapter 13 case to chapter 7. On November 12, 1995, the debtor received his discharge.

On September 27, 1996, the Lachters filed an adversary proceeding against the Debtor seeking a determination that their judgment was not dischargeable in bankruptcy due to fraud. Following a trial, the bankruptcy court determined that the Lachters’ claim/judgment was not dischargeable in bankruptcy. That judgment was entered on November 4, 1998. That determination was appealed and the Ninth Circuit Bankruptcy Appellate Panel affirmed the decision that the claim was not dischargeable. *In re Smith*, 242 B.R. 694 (9th Cir. B.A.P. 1999).

On August 29, 2000, the Lachters filed a second adversary proceeding against the debtor seeking a declaratory judgment that they had timely renewed their judgment in accordance with Arizona law. The bankruptcy court granted the Lachters summary judgment on that claim. On appeal, the Ninth Circuit Bankruptcy Appellate Panel reversed that decision and remanded the matter back to the bankruptcy court to “consider whether the Lachters timely renewed the judgment in accordance with 11 U.S.C.A. § 108(c)(1). *In re Smith*, 293 B.R. 220 (9th Cir. 2003). The Bankruptcy Appellate Panel also raised questions about the applicability in these circumstances of A.R.S. § 12-1612(B), which provides that a renewal of judgment be filed within the ninety days preceding expiration of the five year renewal period.

While the bankruptcy litigation was pending, the Lachters’ filed three renewal affidavits with the Maricopa County Superior Court. The first was filed on November 7, 1997. A supplemental affidavit was filed on December 6, 1998. A third affidavit was filed on October 28, 2002.

The bankruptcy court has certified two questions to the Arizona Supreme Court.

CERTIFIED QUESTIONS:

A. When a pending bankruptcy case is unresolved and the time period under Arizona law to file the required affidavit of renewal of judgment has passed, under what circumstances, if any, is the time period under A.R.S. § 12-1551 extended or otherwise changed to allow the judgment creditor to file a timely affidavit of renewal of judgment?

B. Were either of the affidavits of renewal of judgments filed by the Lachters timely filed?

RELEVANT STATUTES:

A.R.S. § 12-1551(B) provides:

B. An execution or other process shall not be issued upon a judgment after the expiration of five years from the date of its entry unless the judgment is renewed by affidavit or process pursuant to section 12 -1612 or an action is brought on it within five years from the date of the entry of the judgment or of its renewal.

A.R.S. § 12-1612(B) provides for filing of a renewal affidavit by the judgment creditor “within ninety days preceding the expiration of five years from the date of entry of such judgment . . .”

11 U.S.C.A. § 108(c) provides, in relevant part:

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law . . . fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor . . . , and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of –

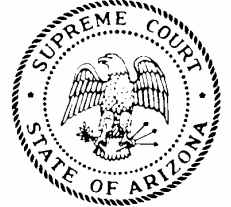
(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 722, 1201, or 1301 of this title, as the case may be, with respect to such claim.

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**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**CR-03-0160-AP: STATE OF ARIZONA, Appellee v.
ALBERT MARTINEZ CARREON, Appellant**

PARTIES/COUNSEL: The State is represented by the Arizona Attorney General's Office by Kent E. Cattani, Chief Counsel, Capital Litigation Section, and Dawn M. Northup, Assistant Attorney General, Capital Litigation Section. Albert Martinez Carreon is represented by Brent E. Graham, and Karen Noble, Deputy Public Defenders of the Maricopa County Public Defender's Office.

FACTS:

Albert Martinez Carreon was convicted by a jury of first-degree murder, attempted first-degree murder, burglary in the first degree, two counts of endangerment, and misconduct involving weapons. In the penalty phase of Carreon's trial, the jury found that the aggravating factors outweighed the mitigating evidence and sentenced Carreon to death. The case is before the Arizona Supreme Court on mandatory direct review.

The facts heard at trial include the following. Richard Trujillo suspected Armando Hernandez of informing on Trujillo's brother. On January 23, 2001, Hernandez was at the home of Cristina Aragon, his girlfriend. Carreon, an associate of Trujillo, and a friend of Hernandez, arrived at the door. Hernandez let him in.

Carreon used the bathroom while Aragon and Hernandez sat in the living room. When Carreon emerged, he had a pistol. He shot Hernandez in the leg. When Hernandez bent over, Carreon shot him in the back of the head. Aragon arose from her seat and Carreon shot her in the abdomen. Aragon ran toward the bedroom where her two small children slept. Carreon pursued her, shooting her in the neck and the face. Aragon collapsed and cried for help. Carreon fled, only to return a short time later, apparently drawn by Aragon's continued cries. He hit her in the head with a hard object. Aragon then played dead until Carreon left for good. When he had, Aragon's oldest son retrieved a phone and Aragon called 911.

The next day, Carreon was arrested outside Richard Trujillo's home. He had over a thousand dollars in his pockets. The murder weapon was never found.

Carreon raises the following issues on appeal.

ISSUES:

1. Whether retroactive application of Arizona's new death penalty statute violates the *ex post facto* clauses of the state and federal constitutions, as well as A.R.S. § 1-244.

2. Did the trial court abuse its discretion by refusing to dismiss the State's notice of aggravating factors?
3. Did the trial court abuse its discretion by excluding for cause persons who had a general objection to the death penalty?
4. Did the trial court abuse its discretion by precluding evidence of Cristina Aragon's connection to a Mexican crime family?
5. Was there sufficient evidence to sustain Carreon's convictions for endangerment?
6. Did the trial court err by commenting on a factual stipulation?
7. Was there sufficient evidence to find the serious offense aggravator under A.R.S. § 13-703.F.2?
8. Was Carreon denied a unanimous verdict on that aggravator?
9. Did the trial court allow improper evidence of that aggravator?
10. Was there sufficient evidence to find that Carreon committed the offense while on release from the Department of Corrections?
11. Was there sufficient evidence to find that Carreon knowingly created a grave risk to another?
12. Was there sufficient evidence to find that Carreon committed the offense for pecuniary gain?
13. Did the trial court abuse its discretion by refusing to permit Carreon's expert to present mitigation evidence?
14. Were the jurors improperly instructed on "impairment" as a mitigating circumstance?
15. Did the trial court improperly instruct jurors on sympathy in the aggravation and penalty phases?
16. Did the trial court misstate the law in its definition of "aggravating factor?"
17. Was the admission of victim impact statements unduly prejudicial?
18. Does A.R.S. § 13-703.05(A) violate the separation of powers doctrine?
19. Did the trial court err in ordering some of Carreon's sentences to be served consecutively?

20. Is Arizona's death penalty statute unconstitutional?

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