Arizona Supreme Court

Criminal Petition for Review - Special Action

CR-16-0227-PR **SIMPSON/MARTINEZ v. HONS. MILLER/STEINLE/STATE**

Appellate Case Information

Case Filed: 21-Jun-2016

Case Closed:

Dept/Composition

En Banc

Hon. Scott Bales
Hon. John Pelander
Hon. Robert M. Brutinel
Hon. Ann A. Scott Timmer
Hon. Clint Bolick

Side 1. JASON DONALD SIMPSON, a.k.a. JASON DONALD SIMPSON, SR., Petitioner

(Litigant Group) JASON DONALD SIMPSON, a.k.a. JASON DONALD SIMPSON, SR.

- **Jason Donald Simpson, Sr.**

Attorneys for: Petitioner

Woody Thompson, Esq. (AZ Bar No. 21356)
Hannah H Porter, Esq. (AZ Bar No. 29842)
Katherine Elise Hollist, Esq. (AZ Bar No. 33085)
Hector J Diaz, Esq. (AZ Bar No. 20965)
Andrea S Tazioli, Esq. (AZ Bar No. 26621)

Side 2. THE HONORABLE PHEMONIA MILLER, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, Respondent Judge

(Litigant Group) THE HONORABLE PHEMONIA MILLER, COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa

- **Hon. Phemonia L Miller, Respondent Commissioner**

Side 3. STATE OF ARIZONA, Real Party in Interest

(Litigant Group) STATE OF ARIZONA

- **State of Arizona**

Attorneys for: Real Party in Interest

William G Montgomery, Esq. (AZ Bar No. 21246)
David R Cole, Esq. (AZ Bar No. 4643)
Lisa Marie Martin, Esq. (AZ Bar No. 10668)
Michael G Bailey, Esq. (AZ Bar No. 13747)

Side 4. JOE PAUL MARTINEZ, Petitioner

(Litigant Group) JOE PAUL MARTINEZ

- **Joe Paul Martinez**

Attorneys for: Petitioner

Jean-Jacques Cabou, Esq. (AZ Bar No. 22835)
Sarah R Gonski, Esq. (AZ Bar No. 32567)
Alexis E Danneman, Esq. (AZ Bar No. 30478)
Brian F Russo, Esq. (AZ Bar No. 18594)

Side 5. THE HONORABLE ROLAND J. STEINLE, JUDGE OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, Respondent Judge

(Litigant Group) THE HONORABLE ROLAND J. STEINLE, JUDGE OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa

- **Hon. Roland J Steinle, III**

Side 6. MARICOPA COUNTY SUPERIOR COURT, Amicus Curiae

(Litigant Group) MARICOPA COUNTY SUPERIOR COURT

- **Maricopa County Superior Court**

Attorneys for: Amicus Curiae

Mark Brnovich, Esq. (AZ Bar No. 14134)
Eryn M McCarthy, Esq. (AZ Bar No. 15182)

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Side 7. ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE, PIMA COUNTY PUBLIC DEFENDER'S OFFICE, PIMA COUNTY LEGAL DEFENDER'S OFFICE, MARICOPA COUNTY PUBLIC DEFENDER'S OFFICE, MARICOPA COUNTY OFFICE OF THE LEGAL ADVOCATE, AND MARICOPA COUNTY OFFICE OF THE LEGAL DEFENDER, Amicus Curiae

(Litigant Group) ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE

- **Arizona Attorneys for Criminal Justice**

Attorneys for: Amicus Curiae
Mikel Steinfeld, Esq. (AZ Bar No. 24996)
David J Euchner, Esq. (AZ Bar No. 21768)

(Litigant Group) PIMA COUNTY PUBLIC DEFENDER'S OFFICE

- **Pima County Public Defender's Office**

Attorneys for: Amicus Curiae
Steven R Sonenberg, Esq. (AZ Bar No. 16031)

(Litigant Group) PIMA COUNTY LEGAL DEFENDER'S OFFICE

- **Pima County Legal Defender's Office**

Attorneys for: Amicus Curiae
Dean J Brault, Esq. (AZ Bar No. 17152)

(Litigant Group) MARICOPA COUNTY PUBLIC DEFENDER'S OFFICE

- **Maricopa County Public Defender's Office**

Attorneys for: Amicus Curiae
Jeremy D Mussman, Esq. (AZ Bar No. 9779)

(Litigant Group) MARICOPA COUNTY OFFICE OF THE LEGAL ADVOCATE

- **Maricopa County Office of the Legal Advocate**

Attorneys for: Amicus Curiae
Bruce F Peterson, Esq. (AZ Bar No. 12308)

(Litigant Group) MARICOPA COUNTY OFFICE OF THE LEGAL DEFENDER

- **Maricopa County Legal Defender's Office**

Attorneys for: Amicus Curiae
Martin Lieberman, Esq. (AZ Bar No. 7442)

Side 8. D.L., Crime Victim

(Litigant Group) D.L.

- **D. L.**

Attorneys for: Crime Victim
Jamie Balson, Esq. (AZ Bar No. 28587)

Side 9. D.D., Natural Father

(Litigant Group) D.D.

- **D. D.**

Attorneys for: D. D.
Colleen Clase, Esq. (AZ Bar No. 29360)
Jessica A Gattuso, Esq. (AZ Bar No. 25492)
Eric John Aiken, Esq. (AZ Bar No. 32418)

Side 10. ARIZONA ATTORNEY GENERAL, SPEAKER OF THE ARIZONA HOUSE OF REPRESENTATIVES and PRESIDENT OF THE ARIZONA SENATE, Amicus Curiae

(Litigant Group) ARIZONA ATTORNEY GENERAL

- **Mark Brnovich, Arizona Attorney General's Office**

Attorneys for: Amicus Curiae Attorney General
John R. Lopez, IV, Esq. (AZ Bar No. 19182)
Rusty D Crandell, Esq. (AZ Bar No. 26224)

(Litigant Group) PRESIDENT OF THE ARIZONA SENATE

- **Andy Biggs, Arizona State Senate**

Attorneys for: Amicus Curiae President of Arizona
Gregrey G Jernigan, Esq. (AZ Bar No. 3216)

(Litigant Group) SPEAKER OF THE ARIZONA HOUSE OF REPRESENTATIVES

- **David Gowan, Arizona House of Representatives**

Attorneys for: Amicus Curiae Speaker, Az House of
Robert L Ellman, Esq. (AZ Bar No. 14410)

Side 11. AMERICAN CIVIL LIBERTIES UNION, THE AMERICAN CIVIL LIBERTIES UNION OF ARIZONA AND THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, Amicus Curiae

(Litigant Group) AMERICAN CIVIL LIBERTIES UNION, THE AMERICAN CIVIL LIBERTIES UNION OF ARIZONA AND THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

- **American Civil Liberties Union**
- **American Civil Liberties Union of Arizona**
- **National Association of Criminal Defense Lawyers**

Attorneys for: Amici
Kathleen E Brody, Esq. (AZ Bar No. 26331)
Andrea Woods, Esq. (NY Bar No. ANDREAWOODS)
Ezekiel R Edwards, Esq. (NY Bar No. 4189304)
Anne M Chapman, Esq. (AZ Bar No. 25965)

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Arizona Supreme Court

Criminal Petition for Review - Special Action

CR-16-0227-PR SIMPSON/MARTINEZ v. HONS. MILLER/STEINLE/STATE

CASE STATUS

Nov 8, 2016.....	**Submitted**	Sep 20, 2016....	**At Issue**
Sep 20, 2016....	Oral Argument Granted	Jun 21, 2016.....	Pending

PREDECESSOR CASE(S)		Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
1 CA	1 CA-SA 15-0292					
↳ MAR	CR2015-134762-001			Phemonia L Miller, Authoring Judge of Order Comments: (none)		
1 CA	1 CA-SA 15-0295					
↳ MAR	CR2014-118356-001			Roland J Steinle, Authoring Judge of Order Comments: (none)		

57 PROCEEDING ENTRIES

1.	21-Jun-2016	FILED: Appendix to Motion for STAY of Lower Court Proceedings Pending Consideration of Petition for Review of a Special Action Decision of the Court of Appeals; Certificate of Service (Real Party State)
2.	21-Jun-2016	FILED: Motion for STAY of Lower Court Proceedings Pending Consideration of Petition for Review of a Special Action Decision of the Court of Appeals; Certificate of Service (Real Party State)
3.	22-Jun-2016	The Court has received and read the State's Motion for Stay of the Trial Court proceedings. On the Court's own motion, IT IS ORDERED Petitioners Simpson and Martinez shall file a Response to the Motion by June 30, 2016. IT IS FURTHER ORDERED that the Maricopa County Superior Court is invited to submit an amicus brief by no later than June 30, 2016, describing actions it contemplates taking in response to the Court of Appeals' opinion absent a stay. Any other amicus briefs also must be submitted by that same date. (Hon. John Pelander)
4.	27-Jun-2016	FILED: Supplement to Motion for Stay of Lower Court Proceedings Pending Consideration of Petition for Review of a Special Action Decision of the Court of Appeals; Certificate of Service; Appendix (Real Party State)
5.	30-Jun-2016	FILED: Amicus Curiae Brief of the Superior Court of Arizona in Maricopa County; Certificate of Service; Certificate of Compliance (Amicus Curiae Maricopa County Superior Court)
6.	30-Jun-2016	FILED: (Copy of) ASC Order Allowing Amicus Brief (Amicus Curiae Maricopa County Superior Court)
7.	30-Jun-2016	FILED: Response to Motion for Stay of Lower Court Proceedings Pending Consideration of Petition for Review of a Special Action Decision of the Court of Appeals; Certificate of Service (Petitioners Simpson/Martinez)
8.	30-Jun-2016	FILED: Memorandum of Amici Curiae in Opposition to Motion for Stay of Lower Court Proceedings; Certificate of Service (Amici Arizona Attorneys for Criminal Justice et al.)
9.	30-Jun-2016	FILED: Motion to Appear as Amici Curiae (Amici Arizona Attorneys for Criminal Justice et al.)
10.	1-Jul-2016	A "Motion to Appear as Amici Curiae," (Amici Arizona Attorneys for Criminal Justice, et al.) and the Brief of Amici Curiae were filed on June 30, 2016. IT IS ORDERED granting the "Motion to Appear as Amici Curiae." The brief shall be filed as of June 30, 2016. (Hon. Ann A. Scott Timmer)
11.	1-Jul-2016	Real Party in Interest State has filed a "Motion for Stay of Lower Court Proceedings Pending Consideration of Petition for Review of a Special Action Decision of the Court of Appeals." Pursuant to an expedited briefing schedule, Amicus Curiae Maricopa County Superior Court filed an Amicus Brief on June 30, 2016, indicating it takes no stance regarding a stay. Petitioners Simpson and Martinez, and Amici Curiae Arizona Attorneys for Criminal Justice, et al., filed responses and briefs in opposition to the motion on the same date. After consideration, IT IS ORDERED denying the motion for stay without prejudice to Real Party State filing the motion in the Court of Appeals, asking that court to stay the effective date of its opinion until this court has ruled on the upcoming petition for review, or in the event no petition is filed, the day after the expiration of the time for filing such petition. (Hon. Ann A. Scott Timmer)
12.	12-Jul-2016	FILED: State's Motion to Extend Due Date for Petition for Review; Certificate of Service (Real Party State)

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57 PROCEEDING ENTRIES

13.	12-Jul-2016	A "State's Motion to Extend Due Date for Petition for Review" (Real Party State) having been filed on July 12, 2016, IT IS ORDERED granting a first extension of time to file the Petition for Review on or before July 19, 2016. No further extensions of time shall be granted absent extraordinary circumstances. This matter is subject to dismissal if the Petition for Review is not filed by July 19, 2016. (Janet Johnson, Clerk)
14.	14-Jul-2016	FILED: Notice of Appearance of Counsel for Victim, D.L. (Attorney Jamie Balson for Victim D.L.); Certificate of Service (Victim D.L.)
15.	18-Jul-2016	FILED: State's Petition for Review of a Special Action Decision of the Court of Appeals; Certificate of Service; Certificate of Compliance (Real Party State)
16.	19-Jul-2016	FILED: State's Motion to File Appendix to Petition for Review of a Special Action Decision of the Court of Appeals; Certificate of Service; Appendix to State's Petition for Review of a Special Action Decision of the Court of Appeals (Real Party State)
17.	19-Jul-2016	FILED: D.D.'s Notice of Appearance Pursuant to A.R.S. § 13-4437(A); Certificate of Service (Father D.D.)
18.	19-Jul-2016	FILED: Record from CofA: Electronic Record
19.	21-Jul-2016	On July 19, 2016, Real Party State filed a "Motion to File Appendix to Petition for Review of a Special Action Decision of the Court of Appeals," and the proposed appendix. After consideration, IT IS ORDERED granting the motion. The appendix shall be deemed filed as of July 19, 2016. (Hon. Ann A. Scott Timmer)
20.	22-Jul-2016	FILED: Appendix to Motion to Stay Effective Date of Court of Appeals Opinion filed June 14, 2016; Certificate of Service (Real Party State)
21.	22-Jul-2016	FILED: Motion to STAY Effective Date of Court of Appeals Opinion Filed June 14, 2016; Certificate of Service (Real Party State)
22.	26-Jul-2016	Real Party in Interest State has filed a "Motion to Stay Effective Date of Court of Appeals Opinion filed June 14, 2016," IT IS ORDERED that any party, victim or victim's representative, or amicus curiae desiring to respond to the "Motion for Stay of Effective Date of Court of Appeals Opinion filed June 14, 2016" shall file a responsive pleading on or before Wednesday August 3, 2016. IT IS FURTHER ORDERED that the Petition for Review filed by Real Party in Interest State will be considered by the Court on September 20, 2016. (Hon. Robert M. Brutinel)
23.	28-Jul-2016	FILED: Minor Victim D.L.'s Response to the State's Motion to Stay Effective Date of Opinion Filed June 14, 2016; Certificate of Service (Victim D.L.)
24.	3-Aug-2016	FILED: D. D.'s Response to State's Motion to Stay Effective Date of Court of Appeals Opinion Filed June 14, 2016; Certificate of Service (Father D.D.)
25.	4-Aug-2016	Real party in interest State of Arizona having filed a "Motion to Stay Effective Date of Court of Appeals Opinion Filed June 14, 2016," and responses thereto having been received, after consideration and good cause having been shown, IT IS ORDERED staying the Opinion of the Court of Appeals in this matter, Simpson v. Miller, ___ P.3d ___, 2016 WL 3264151 (App. June 14, 2016). The order staying this matter shall remain in effect pending this Court's consideration on September 20, 2016 and the proceedings before this Court have concluded. (Hon. Clint Bolick)
26.	4-Aug-2016	Amended Order Real party in interest State of Arizona having filed a "Motion to Stay Effective Date of Court of Appeals Opinion Filed June 14, 2016," and responses thereto having been received, after consideration and good cause having been shown, IT IS ORDERED staying the Opinion of the Court of Appeals in this matter, Simpson v. Miller, ___ P.3d ___, 2016 WL 3264151 (App. June 14, 2016). The order staying this matter shall remain in effect pending this Court's consideration on September 20, 2016 and until the proceedings before this Court have concluded. (Hon. Clint Bolick)
27.	17-Aug-2016	FILED: Petitioner Jason Simpson's Response to the State's Petition for Review of a Special Action Decision of the Arizona Court of Appeals; Certificate of Service; Certificate of Compliance (Petitioner Simpson)
28.	17-Aug-2016	FILED: D.D.'s & D.L.'s Brief in Support of the State's Petition for Review Pursuant to A.R.S. § 13-4437(A); Certificate of Service; Certificate of Compliance (Victim D.L. and Father D.D.)
29.	22-Aug-2016	FILED: Response to State's Petition for Review of a Special Action Decision of the Court of Appeals; Certificate of Service; Certificate of Compliance (Petitioner Martinez)

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30.	7-Sep-2016	FILED: Brief of Amicus Curiae the Arizona Attorney General, The Speaker of the Arizona House of Representatives, and the President of the Arizona Senate in Support of Petition for Review; Certificate of Service; Certificate of Compliance (Amici Arizona Attorney General, Speaker of the Arizona House of Representatives and President of the Arizona Senate)
31.	7-Sep-2016	FILED: Rule 16 (Amici Arizona Attorney General, Speaker of the Arizona House of Representatives and President of the Arizona Senate)
32.	8-Sep-2016	FILED: Motion for Leave to File Amicus Brief; Certificate of Service (Amici Arizona Attorney General, Speaker of the Arizona House of Representatives and President of the Arizona Senate)
33.	8-Sep-2016	FILED: Brief of Amici Curiae Arizona Attorneys for Criminal Justice and Public Defense Agencies in Support of Petitioners; Certificate of Service; Certificate of Compliance (Amici Arizona Attorneys for Criminal Justice et al.)
34.	9-Sep-2016	A "Motion for Leave to File Amicus Brief" (Amici Arizona Attorney General, Speaker of the Arizona House of Representatives and President of the Arizona Senate) and the "Brief of Amicus Curiae the Arizona Attorney General, The Speaker of the Arizona House of Representatives and the President of the Arizona Senate in Support of Petition for Review" were filed on September 8, 2016. After consideration, IT IS ORDERED granting the motion. The brief shall be filed as of September 8, 2016. (Hon. Robert M. Brutinel)
35.	20-Sep-2016	ORDERED: State's Petition for Review of a Special Action Decision of the Court of Appeals = GRANTED. FURTHER ORDERED: The case shall be set for oral argument. FURTHER ORDERED: The parties may file simultaneous supplemental briefs, not to exceed 20 pages in length, no later than 20 days from the date of this Court's Minute Letter.
36.	21-Sep-2016	NOTICE OF ORAL ARGUMENT: Set for Tuesday, November 8, 2016 at 10:25 A.M. [twenty minutes (20) per side]
37.	21-Sep-2016	FILED: Notice of Filing Acknowledgment of Oral Argument (Jean-Jacques Cabou will argue) (Petitioner Martinez)
38.	22-Sep-2016	FILED: Notice of Filing Acknowledgment of Oral Argument (Woodrow C. Thompson will argue) (Petitioner Simpson)
39.	27-Sep-2016	FILED: Notice of Filing Acknowledgment of Oral Argument (David R. Cole and John R. Lopez will argue) (Real Party State/Arizona Attorney General)
40.	29-Sep-2016	FILED: Remaining Record from CofA: Instruments - 2 (1 empty backer)
41.	3-Oct-2016	Record Returned to CofA: 1 empty backer
42.	10-Oct-2016	FILED: State's Supplemental Brief; Certificate of Service - State's Supplemental Brief; Certificate of Compliance - State's Supplemental Brief (Real Party State)
43.	10-Oct-2016	FILED: Supplemental Brief of Joe Paul Martinez; Certificate of Service; Certificate of Compliance (Petitioner Martinez)
44.	10-Oct-2016	FILED: Petitioner Jason Simpson's Supplemental Brief; Certificate of Service; Certificate of Compliance (Petitioner Simpson)
45.	17-Oct-2016	FILED: Motion for Leave to Participate in Oral Argument; Certificate of Service (Amicus Arizona Attorney General)
46.	18-Oct-2016	On October 17, 2016, Amicus Arizona Attorney General filed a "Motion for Leave to Participate in Oral Argument." After consideration, IT IS ORDERED granting the motion. Counsel for Real Party in Interest State of Arizona may cede part of the twenty (20) minutes allotted for real party's oral argument to counsel for Arizona Attorney General to argue as amicus curiae. (Hon. Scott Bales)
47.	20-Oct-2016	FILED: Amicus Curiae Brief of the American Civil Liberties Union, the American Civil Liberties Union of Arizona and the National Association of Criminal Defense Lawyers; Certificate of Service; Certificate of Compliance (Amicus Curiae American Civil Liberties Union et al)
48.	20-Oct-2016	FILED: Motion to Appear as Amicus Curiae; Certificate of Service re Motion for Permission to File as Amici Curiae (Amicus Curiae American Civil Liberties Union et al)

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49.	24-Oct-2016	A "Motion for Permission to Appear as Amicus Curiae" (American Civil Liberties Union, American Civil Liberties Union of Arizona and the National Association of Criminal Defense Lawyers) and the Brief of Amicus Curiae were filed on October 21, 2016. After consideration, IT IS ORDERED granting the motion. The brief shall be filed as of October 21, 2016. (Hon. Ann A. Scott Timmer)
50.	27-Oct-2016	FILED: Notice of Filing Acknowledgment of Oral Argument (Michael Bailey will argue) (Real Party State)
51.	31-Oct-2016	FILED: Notice of Additional Authority; Certificate of Service (Real Party State)
52.	4-Nov-2016	FILED: Petitioner Jason Simpson's Notice to the Court re Potential Mootness; Certificate of Service (Petitioner Simpson)
53.	8-Nov-2016	ORAL ARGUMENT - Submitted for decision en banc (Attorneys who argued: Jean-Jacques Cabou; David R. Cole; Michael G. Bailey)
54.	14-Nov-2016	FILED: (Copy of) MCSC ME: Plea Agreement/Chane of Plea
55.	28-Nov-2016	FILED: Letter to Kathleen Brody (Verification of Pro Hac Vice Status for Ms. Woods and Mr. Edwards)
56.	21-Dec-2016	FILED: Motion to Associate Counsel Pro Hac Vice; Certificate of Service; Exhibit 1 (and 2 to Motion to Associate Counsel Pro Hac Vice) (Amicus Curiae American Civil Liberties Union et al)
57.	23-Dec-2016	Kathleen E. Brody, having filed a "Motion to Associate Counsel Pro Hac Vice" asking that Ezekiel Edwards and Andrea Woods be allowed to appear and participate in the above-referenced matter and the appropriate application and related materials having been submitted and found to be in compliance with Rule 39, Rules of the Supreme Court, IT IS ORDERED granting the Motion and authorizing Ezekiel Edwards and Andrea Woods to appear Pro Hac Vice before this Court in this matter for a period not to exceed one year from the date of this Order. (Hon. Clint Bolick)

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