

Arizona Supreme Court
Criminal Petition for Review-Post Conviction (ASC)

CR-18-0489-PR

STATE OF ARIZONA v WADE NOLAN CLAY

Appellate Case Information

Case Filed: 21-Sep-2018
 Case Closed:

Dept/Composition

En Banc
 Hon. Robert Brutinel
 Hon. Ann A. Scott Timmer
 Hon. Clint Bolick
 Hon. Andrew W. Gould
 Hon. John R. Lopez
 Hon. James P. Beene
 Hon. William G. Montgomery

Consolidated with: CR-18-0595-PR CR-19-0379-PR

Side 1. STATE OF ARIZONA, Respondent

(Litigant Group) STATE OF ARIZONA

- State of Arizona

Attorneys for: Respondent

Reed Weisberg, Esq. (AZ Bar No. 033604)
 Matthew J Smith, Esq. (AZ Bar No. 10467)

Side 2. WADE NOLAN CLAY, Petitioner

(Litigant Group) WADE NOLAN CLAY

- Wade Nolan Clay

Attorneys for: Petitioner

C Kenneth Ray, II, Esq. (AZ Bar No. 9810)
 Randal Boyd McDonald, Esq. (AZ Bar No. 32008)
 Katherine Puzauskas, Esq. (AZ Bar No. 26345)
 Robert Joseph Dormady, Esq. (AZ Bar No. 31755)

CASE STATUS

Oct 9, 2020.....Decision Rendered

Mar 31, 2020....Oral Argument Granted

Sep 21, 2018....Pending

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
1 CA	1 CA-CR 18-0463 PRPC				
↪ MOH	S8015CR13572		Richard D Lambert, Judge on PC Comments: (none)		

CASE DECISION

09-Oct-2020 OPINION

* We hold that Graham, Miller, and Montgomery do not prohibit consecutive sentences imposed for separate crimes when the aggregate sentences exceed a juvenile's life expectancy. Consequently, Graham and its progeny do not represent a significant change i

Filed: **09-Oct-2020** Mandate:

Decision Disposition
Affirmed

John Lopez.....Author
 Robert Brutinel.....Concur
 Ann Timmer.....Concur
 Clint Bolick.....Concur
 Andrew Gould.....Concur
 James Beene.....Concur
 John Pelander.....Concur

DECISION APPLIES TO THE FOLLOWING OTHER CASE(S)

CR-18-0595-PR STATE OF ARIZONA v MARTIN RAUL SOTO-FONG
CR-19-0379-PR STATE OF ARIZONA v MARK NORIKI KASIC JR

60 PROCEEDING ENTRIES

- 21-Sep-2018 FILED: Petition for Review of a Decision of the Court of Appeals; Certificate of Service; Certificate of Compliance (Petitioner Clay)
- 21-Sep-2018 FILED: Appendices to Petition for Review; Certificate of Service (Petitioner Clay)

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3. 11-Oct-2018 FILED: Record from CofA: Electronic Record
4. 7-Nov-2018 FILED: Notice of Supplemental Legal Authority; Certificate of Service (Petitioner Clay)
5. 4-Dec-2018 The Clerk of the Supreme Court having been authorized by the Supreme Court to order any party to file a response to a petition for review at the direction of a Supreme Court staff attorney,

IT IS ORDERED that Respondent State shall file a response to the petition for review on or before December 26, 2018.

IT IS FURTHER ORDERED no extensions of time shall be granted absent extraordinary circumstances. (Janet Johnson, Clerk)
6. 21-Dec-2018 FILED: Response to Petition for Review of a Decision of the Court of Appeals; State Cert of Service (Respondent State)
7. 21-Dec-2018 FILED: Reply to State's Response to Petition for Review of Decision of the Court of Appeals; Certificate of Service; Certificate of Compliance (Petitioner Clay)
8. 11-Jan-2019 ORDERED: Petition for Review of a Decision of the Court of Appeals = CONTINUED.
9. 5-Feb-2019 ORDERED: Petition for Review of a Decision of the Court of Appeals = CONTINUED.
10. 5-Mar-2019 ORDERED: Petition for Review of a Decision of the Court of Appeals = CONTINUED.
11. 3-Apr-2019 ORDERED: Petition for Review of a Decision of the Court of Appeals = CONTINUED.
12. 14-Apr-2019 FILED: Notice Of Absence; Certificate Of Service (Petitioner Clay)
13. 30-Apr-2019 ORDERED: Petition for Review of a Decision of the Court of Appeals = CONTINUED.
14. 28-May-2019 ORDERED: Petition for Review of a Decision of the Court of Appeals = CONTINUED.
15. 27-Aug-2019 ORDERED: Petition for Review of a Decision of the Court of Appeals = CONTINUED.
16. 24-Sep-2019 ORDERED: Petition for Review of a Decision of the Court of Appeals = CONTINUED.
17. 29-Oct-2019 ORDERED: Petition for Review of a Decision of the Court of Appeals = CONTINUED.
18. 19-Nov-2019 ORDERED: Petition for Review of a Decision of the Court of Appeals = CONTINUED.
19. 10-Dec-2019 ORDERED: Petition for Review of a Decision of the Court of Appeals = CONTINUED.
20. 7-Jan-2020 ORDERED: Petition for Review of a Decision of the Court of Appeals = CONTINUED.
21. 11-Feb-2020 ORDERED: Petition for Review of a Decision of the Court of Appeals = CONTINUED.
22. 3-Mar-2020 ORDERED: Petition for Review of a Decision of the Court of Appeals = CONTINUED.
23. 31-Mar-2020 ORDERED: Petition for Review of a Decision of the Court of Appeals = GRANTED as to this issue as restated:

Do sentences that exceed the petitioner's expected lifespan and are the equivalent of life without parole violate Eighth Amendment protections as articulated by *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016)?

FURTHER ORDERED: Consolidating this case with CR-18-0595-PR and CR-19-0379-PR.

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 the Court's Minute Letter. Any amicus briefs are due on or before May 4, 2020, and any responses to amicus briefs are due on or before May 18, 2020. Any amicus briefs or responses may not exceed 20 pages in length.
24. 3-Apr-2020 FILED: Notice of Appearance; Certificate of Service (Petitioner Clay)
25. 6-Apr-2020 NOTICE OF ORAL ARGUMENT: Set for Thursday, June 4, 2020 at 9:30 A.M. [twenty minutes (20) per side]

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26. 6-Apr-2020 Pursuant to this Court's order filed on March 31, 2020,

IT IS ORDERED amending the caption to reflect the consolidation of cases CR-18-0595-PR, CR-18-0489-PR and CR-19-0379-PR.

IT IS FURTHER ORDERED that the primary case number is designated as CR-18-0595-PR, State of Arizona v. Martin Raul Soto-Fong. (Hon. Robert Brutinel)
27. 7-Apr-2020 NOTICE OF ORAL ARGUMENT: Set for Thursday, June 4, 2020 at 9:30 A.M. [twenty minutes (20) per side]
28. 13-Apr-2020 [VACATED] The Court has received Petitioner's "Motion to Disqualify Justice William Montgomery," "Notice of Supplemental Exhibit," and "Declaration of Mark Harrison." Upon consideration,

IT IS ORDERED that the State of Arizona may file a response to the motion on or before April 20, 2020 (Hon. Robert Brutinel)

(SEE DKT NO. 34)
29. 13-Apr-2020 The Court has received Petitioner's "Motion to Stay Briefing Schedule." Upon consideration,

IT IS ORDERED denying the motion. (Hon. Robert Brutinel)
30. 13-Apr-2020 FILED: Motion to Stay Briefing Schedule; Certificate of Service (Petitioners Soto-Fong/Clay/Kasic)
31. 11-Apr-2020 FILED: Notice of Supplemental Exhibit; Certificate of Service; Declaration of Mark Harrison (Petitioners Soto-Fong/Clay/Kasic)
32. 10-Apr-2020 FILED: Motion to Disqualify Justice William Montgomery; Certificate of Service (Petitioners Soto-Fong/Clay/Kasic)
33. 9-Apr-2020 FILED: Notice of Filing Acknowledgment of Oral Argument (Reed Weisberg will argue) (Respondent State)
34. 8-Apr-2020 FILED: Notice of Filing Acknowledgment of Oral Argument (Sam Kooistra will argue) (Petitioners Soto-Fong & Kasic)
35. 10-Apr-2020 FILED: Minute Letter Returned. Sent Back out to Updated Address.
36. 13-Apr-2020 FILED: Order Consolidating Returned. Mailed Back out to Updated Address.
37. 20-Apr-2020 Justice Montgomery is recused and will not participate in the above captioned matter. Therefore, pursuant to Article 6, Section 3 of the Arizona Constitution,

IT IS ORDERED that the Honorable John Pelander, Justice (Ret.), of the Arizona Supreme Court is designated to sit on the case until it is finally determined. (Hon. Robert Brutinel)
38. 20-Apr-2020 FILED: Response to Motion to Disqualify Justice Montgomery; Certificate of Service (Respondent State)
39. 20-Apr-2020 FILED: Respondent's Supplemental Briefing as to the Issue as Restated by This Court; Certificate of Service; Certificate of Compliance (Respondent State/Clay)
40. 20-Apr-2020 Justice William Montgomery is recused and will not participate in the above captioned matter. Therefore, pursuant to Article 6, Section 3 of the Arizona Constitution,

IT IS ORDERED that the "Motion to Disqualify Justice William Montgomery" previously filed on behalf of Martin Raul Soto-Fong, Wade Nolan Clay, and Mark Noriki Kasic is denied as moot, and this Court's order entered on April 13, 2020 allowing the State to file a Response to the motion by April 20, 2020 is hereby vacated. (Hon. Robert Brutinel)
41. 16-Apr-2020 FILED: Remaining Record from CofA - Electronic (Clay)
42. 20-Apr-2020 FILED: Respondent's Supplemental Brief; Certificate of Service; Certificate of Compliance (Respondent State/Soto-Fong/Kasic)
43. 20-Apr-2020 FILED: Notice of Filing Acknowledgment of Oral Argument (Jacob R Lines will argue) (Respondent State)
44. 20-Apr-2020 FILED: Supplemental Brief of Petitioner Wade Nolan Clay; Certificate of Service; Certificate of Compliance (Petitioner Clay)
45. 20-Apr-2020 FILED: Supplemental Brief of Petitioner Martin Fong Soto; Certificate of Service; Certificate of Compliance (Petitioner Soto-Fong)
46. 20-Apr-2020 FILED: Supplemental Brief of Petitioner Mark Kasic; Certificate of Service; Certificate of Compliance (Petitioner Kasic)
47. 21-Apr-2020 FILED: Notice of Filing Acknowledgment of Oral Argument (Randy McDonald will argue) (Petitioner Clay)

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48. 22-Apr-2020 FILED: Petitioners' Unopposed Joint Motion for Additional Oral Argument Time; Certificate of Service (Petitioners Clay/Soto-Fong/Kasic)
49. 27-Apr-2020 Petitioners Martin Soto-Fong, Mark Kasic, and Wade Clay filed an "Unopposed Joint Motion for Additional Oral Argument Time" on April 22, 2020. After consideration,

IT IS ORDERED granting the motion in part and extending the oral argument from twenty minutes to twenty-five minutes per side. (Hon. Robert Brutinel)
50. 4-May-2020 A "Motion for Leave to File Brief of Amicus Curiae" (Amicus Curiae Arizona Attorneys for Criminal Justice) and the brief of amicus curiae were filed on May 4, 2020.

IT IS ORDERED granting the motion. The brief shall be filed as of May 4, 2020. (Hon. Robert Brutinel)
51. 4-May-2020 FILED: Motion for Leave to File Brief of Amicus Curiae (Amicus Curiae Arizona Attorneys for Criminal Justice)
52. 4-May-2020 FILED: Brief of Amicus Curiae Arizona Attorneys for Criminal Justice in Support of Petitioners; Certificate of Service; Certificate of Compliance (Amicus Curiae Arizona Attorneys for Criminal Justice)
53. 4-May-2020 FILED: Brief of Amicus Curiae Arizona Attorney General in Support of Respondent; Certificate of Service; Certificate of Compliance (Amicus Arizona Attorney General)
54. 4-May-2020 FILED: Brief of Amicus Curiae Phillips Black, Inc.; Certificate of Service; Certificate of Compliance (Amicus Curiae Phillips Black, Inc.)
55. 4-May-2020 FILED: Motion for Permission to File as Amici Curiae (Amicus Curiae Phillips Black, Inc.)
56. 5-May-2020 A "Motion for Permission to File as Amici Curiae" (Amicus Curiae Phillips Black, Inc.) and the brief of amicus curiae were filed on May 4, 2020.

IT IS ORDERED granting the motion. The brief shall be filed as of May 4, 2020. (Hon. Robert Brutinel)
57. 11-May-2020 SENT: Letter to Counsel RE June Oral Argument
58. 18-May-2020 FILED: Joint Response of Petitioners Fong, Kasic, and Clay to Brief of Amicus Curiae Arizona Attorney General in Support of Respondent; Certificate of Service; Certificate of Compliance (Petitioners Soto-Fong/Clay/Kasic)
59. 4-Jun-2020 ORAL ARGUMENT - Submitted for decision en banc (Attorneys who argued: Reed Weisberg, Jacob Lines, Sam Kooistra, Randal Boyd McDonald [via webex])
60. 9-Oct-2020 OPINION - We hold that Graham, Miller, and Montgomery do not prohibit consecutive sentences imposed for separate crimes when the aggregate sentences exceed a juvenile's life expectancy. Consequently, Graham and its progeny do not represent a significant change in the law under Rule 32.1(g). Therefore, we affirm the court of appeals' decisions and the trial courts' judgments and sentences in Petitioners' cases, and we deny Petitioners' requested relief for resentencing. (Hon. John R. Lopez IV - Author; Hon. Robert Brutinel - Concur; Hon. Ann A. Scott Timmer - Concur; Hon. Clint Bolick - Concur; Hon. Andrew W. Gould - Concur; Hon. James P. Beene - Concur; Hon. John Pelander - Concur)