

IN THE SUPREME COURT OF
THE STATE OF ARIZONA

BETH FAY,)	
	)	Case No.:
Petitioner	)	CR20-0306-PR
)	
vs.)	
	)	Court of Appeals No.
HON. DEWAIN D. FOX, Judge of	)	1 CA-SA 20-0123
the Maricopa County Superior Court)	
of the State of Arizona,)	
	)	Maricopa County Superior Court
Respondent Judge,	)	Case No.
	)	CR2015-005451-001 DT
and)	
)	
STATE OF ARIZONA,)	
)	
Real Party in Interest,	)	BRIEF OF AMICI CURIAE
	)	ARIZONA VOICE FOR
v.	)	CRIME VICTIMS, INC. AND
	)	NATIONAL CRIME VICTIM
JORDAN MICHAEL HANSON,	)	LAW INSTITUTE IN
)	SUPPORT OF PETITION FOR
Respondent-Real Party)	REVIEW¹
In Interest Defendant.)	

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¹ This brief is filed under Rule 16(b)(1)(C) of the Arizona Rules of Civil Appellate Procedure. Counsel for Amici Curiae did not receive consent from Real Party in Interest. A Motion for Leave accompanies this brief.

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INTERESTS AND ARCAP 16 DISCLOSURES OF AMICI CURIAE

Pursuant to ARCAP 16(b)(3), no person or entity other than Arizona Voice for Crime Victims, Inc. (AVCV) and the National Crime Victim Law Institute (NCVLI) provided financial resources for the preparation of this brief.

Arizona Voice for Crime Victims (AVCV) is an Arizona nonprofit organization that works to promote and protect crime victims' interests throughout the criminal justice process. AVCV seeks to foster a fair justice system that (1) provides crime victims with resources and information to help them seek immediate crisis intervention, (2) informs crime victims of their rights under the laws of the United States and Arizona, (3) ensures that crime victims fully understand their rights, and (4) promotes meaningful ways for crime victims to enforce their rights, including through direct legal representation. AVCV participates as amicus curiae to provide insight to the judiciary when it is facing the task of balancing the constitutional and statutory rights of victims with the rights and interests asserted by the accused.

NCVLI is a nonprofit educational and advocacy organization located at Lewis and Clark Law School in Portland, Oregon. NCVLI's mission is to actively promote balance and fairness in the justice system through crime victim-centered legal advocacy, education and resource sharing. NCVLI accomplishes its mission through education and training; providing legal assistance on cases nationwide;

researching and analyzing developments in crime victim law; and promoting the National Alliance of Victims' Rights Attorneys & Advocates. NCVLI also participates as amicus curiae in select cases that present victims' rights issues of broad importance. This is one of those cases.

This case involves constitutional issues that are fundamental to the rights and interests of all crime victims in Arizona: the rights to justice and due process, to be treated with fairness and respect and to prompt restitution.

INTRODUCTION

Under Arizona law, crime victims have the rights to justice and due process, to be treated with fairness and respect, and to receive prompt restitution. *See* Ariz. Const. art. II, § 2.1(A), (A)(1), (A)(8). Victims also are afforded explicit standing to invoke and seek enforcement of their rights. A.R.S. § 13-4437(A). Without doubt, a defendant's post-conviction petition for leave to file a delayed appeal to challenge a restitution order affects victims' right to prompt restitution. Indeed, the court of appeals expressly acknowledged that "a delayed appeal could impact [the victims'] ability 'to receive *prompt* restitution.'" Pet., Ex. A at 2 (emphasis in original). A proper and reasoned interpretation of Arizona law requires courts to interpret victims' rights to guarantee, at a minimum, an opportunity to be heard on such petition.

In this case, the trial court committed reversible error when it issued an order striking the victims' response to defendant's post-conviction attempt to challenge the restitution order and precluding the victims from filing any additional responsive pleadings. The court of appeals compounded the error by elevating form over substance when it narrowly construed the issues and denied relief. The Court should exercise jurisdiction to redress these errors and grant the petition for review.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The facts and procedural history have been ably recounted by the parties.

Amici curiae does not repeat them here.

STANDARD OF REVIEW

Special Action relief is appropriate when, among other things, a court has abused its discretion. Ariz. R. Spec. Act. 3. An error of law is an abuse of discretion. *See, e.g., Twin City Fire Ins. Co. v. Burke*, 204 Ariz. 251, 254 ¶ 10 (2003), quoting *Grant v. Ariz. Pub. Serv. Co.*, 113 Ariz. 434, 456 (1982) (“[W]hen a judge commits an ‘error of law . . . in the process of reaching [a] discretionary conclusion,’ he may be regarded as having abused his discretion.”). This Court reviews *de novo* interpretations of rules, statutes, and constitutional provisions. *State v. Hansen*, 215 Ariz. 287, 289 (2007). *De novo* review is also appropriate “when a mixed question of law and fact implicates constitutional rights.” *State v. Buccini*, 167 Ariz. 550, 556 (1991).

ARGUMENT

I. THE VICTIMS' CONSTITUTIONAL RIGHTS TO DUE PROCESS AND FAIR TREATMENT ENCOMPASS THE RIGHT TO BE HEARD IN A PROCEEDING THAT MAY AFFECT THEIR RIGHT TO PROMPT RESTITUTION.

Arizona's Victims' Bill of Rights (VBR) expressly affords crime victims the rights to due process and to be treated with fairness, respect and dignity throughout the criminal justice process. *See* Ariz. Const. art. II, § 2.1(A)(1) (providing—“[t]o preserve and protect victims' rights to justice and due process”—victims are afforded rights, including the right “[t]o be treated with fairness, respect, and dignity . . . throughout the criminal justice process”). It has been long-established by the United States Supreme Court—and observed by this Court—that due process mandates an opportunity to be heard.

In fact, “[a] fundamental requirement of due process is ‘the opportunity to be heard.’ It is an opportunity which must be granted at a meaningful time and in a meaningful manner.” *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (citation omitted); *see Wohlstrom v. Buchanan*, 180 Ariz. 389, 391 (1994) (observing that “due process at a minimum requires notice and an opportunity to be heard”; and citing *Armstrong*, 380 U.S. at 550, 85 S. Ct. at 1190); *In re Hamm*, 211 Ariz. 458, 468, ¶, 42 (2005) (recognizing that a rudimentary requirement of due process is a meaningful opportunity to be heard; and quoting *Armstrong*, 380 U.S. at 552).

The victims’ right to due process—which encompasses a meaningful opportunity to be heard—extends to the constitutional right to prompt restitution. *See* Ariz. Const. art. II, § 2.1(A)(8) (affording victims—“[t]o preserve and protect victims’ rights to justice and due process”—the right “[t]o receive prompt restitution”); *id.* art. II, § 2.1(E) (providing that “[t]he enumeration in the constitution of certain rights for victims shall not be construed to deny or disparage others granted by the legislature or retained by victims”); *see also* A.R.S. § 13-4437(A) (explaining that victims’ rights “belong to the victim” and that victims have “standing to seek . . . enforce[ment] [of] any right or to challenge an order denying any right guaranteed to victims”).

Because the victims’ rights to due process and fair treatment were violated by the lower court’s rulings, the Court must grant review to remedy this violation.

II. THE VICTIMS’ STANDING TO SEEK ENFORCEMENT OF THEIR CONSTITUTIONAL RIGHT TO “PROMPT” RESTITUTION REQUIRES THAT THEY BE AFFORDED AN OPPORTUNITY TO BE HEARD WHEN DEFENDANT’S PETITION FOR LEAVE TO FILE A DELAYED APPEAL IMPLICATES THEIR RIGHT.

“The VBR and its implementing legislation were adopted ‘to provide crime victims with basic rights of respect, protection, participation’ and to aid the ‘healing of their ordeals.’” *J.D. v. Hegyi*, 236 Ariz. 39, 42 ¶ 16(2014) (quoting *Champlin v. Sargeant*, 192 Ariz. 371, 375 ¶ 20(1998)) (internal quotation marks omitted in original)). In furtherance of these aims, Arizona law affords the victims

explicit standing to seek enforcement of their rights in any proceeding that may impact their rights. A.R.S. § 13-4437(A) (emphasis added) (“The victim has standing to seek an order, to bring a special action or to file a notice of appearance in a trial court or an appellate proceeding, *seeking to enforce any right* or to challenge an order denying any right guaranteed to victims.”).

Under the VBR, Arizona crime victims have enumerated rights, including the rights “to receive prompt restitution” from the convicted criminal and to a “prompt and final conclusion of the case after the conviction and sentence.” Ariz. Const., art. II § 2.1(A)(8), (10). The constitutional right to “prompt restitution” must not be interpreted in isolation—both the VBR and canons of construction mandate a construction that also gives full effect to all of the rights. *See* Ariz. Const. art. II, § 2.1(E) (providing that “[t]he enumeration in the constitution of certain rights for victims shall not be construed to deny or disparage others granted by the legislature or retained by victims”).

Neither the VBR nor its enabling statutes define “prompt restitution.” As such, courts should interpret statute in accordance with the ordinary meaning of its plain language. *Stout v. Taylor*, 233 Ariz. 275, 278 ¶¶ 11–12 (App. 2013). Moreover, courts must construe constitutional provisions and statutes “in view of the entire text, considering the context and related statutes on the same subject” such that “no word or provision is rendered superfluous.” *Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11 (2019).

The Court of Appeals has previously defined prompt, in the context of government compliance with public records requests, as “without delay,” citing the word’s ordinary meaning. *West Valley View, Inc. v. Maricopa County Sherriff’s Office*, 216 Ariz. 225, 230 ¶ 21 (App. 2007); *see also McKee v. Peoria Unified School Dist.*, 236 Ariz. 254, 258 ¶ 15 (App. 2014) (citing definition approvingly). In light of the term’s plain meaning and *West Valley View*, prompt restitution requires restitution “without delay.” Thus, exceptional delays, such as an attempt to unwind procedural deadlines, necessarily conflict with the victim’s right to receive prompt restitution.

In this case, the victims sought to be heard on a proceeding that not only impacts their right to “prompt” restitution but also their right to full restitution—as the appeal challenges the restitution order itself. *See* A.R.S. §13-603(C) (recognizing victims’ right to full restitution). Here, giving effect to the mandate of *prompt* restitution requires, at a minimum, that the Court conclude a post-conviction petition for leave to file a delayed appeal to challenge a restitution order impacts the victims’ constitutional right.

Despite this, the court of appeals, following the trial court’s error, adopted a narrow construction of the issue—determining that defendant’s petition only concerns “whether the delay in filing this appeal ‘was not [defendant’s] fault.’” Pet., Ex. A at 2. This determination elevates form over substance and frustrates both the substantive right to prompt restitution and the constitutional guarantee that

“all rules governing criminal procedure . . . in all criminal proceedings protect victims’ rights.” Ariz. Const. art. II, § 2.1(A)(11). Because the trial court and court of appeals erroneously concluded defendant’s post-conviction petition does not affect the victims’ constitutional right to prompt restitution, the Court must grant review to correct this error.

III. THE ABSENCE OF THE WORDS “TO BE HEARD” IN THE RIGHT TO “PROMPT RESTITUTION” CLAUSE CANNOT BE CONSTRUED TO MEAN VICTIMS HAVE NO RIGHT TO BE HEARD IN A PROCEEDING THAT IMPACTS THIS RIGHT.

The trial court concluded that the victims do not have a constitutional right to be heard on their right “to receive prompt restitution” because neither the constitutional restitution provision nor the statutory provisions explicitly include the phrase “to be heard.” Pet., Ex. C at 4.² Accepting this narrow construction of the VBR would lead to the absurd conclusion that crime victims have no standing to be heard in any proceeding that involves ten of the twelve enumerated rights that are not preceded by the explicit “to be heard” clause. *See* Ariz. Const. art. II, § 2.1(A)(1)-(3), (5)-(8), (10)-(12); *see also* Green v. Osborne, 157 Ariz. 363, 367

² The trial court’s analysis rests on a canon of construction—the expression of one thing implies the exclusion of others; courts have recognized this canon needs to “be applied with caution,” *Lou Grubb Chevrolet v. Indus. Comm’n of Arizona*, 171 Ariz. 183, 190 (App. 1991), and “applied only to carry out the intent of the Constitution, not to defeat it,” *Morris v. Arizona Corp. Comm’n*, 24 Ariz. App. 454, 455 (1975).

(1988) (stating that “courts should adopt a construction of the constitution which avoids an absurdity”).³

The trial court’s interpretation is also contrary to the requirements of due process and Arizona precedent. Arizona courts, including this Court, have routinely afforded victims a right to be heard at any proceeding that impacted their constitutional rights, whether or not those rights provisions included an explicit right “to be heard” phrase. *See, e.g., Knapp v. Martone*, 170 Ariz. 237 (1992) (indicating no issue regarding the victim’s right to be heard in case where the victim had presented legal arguments on the merits in the trial and appellate courts, through her own counsel, seeking enforcement of her right to refuse a defense-initiated deposition); *Hegy*, 236 Ariz. 39 (indicating no issue regarding the victims’ right to be heard in case where the victims had presented legal arguments on the merits in the trial and appellate courts, through their own counsel, seeking enforcement of their right to refuse a defense interview). The Court must accept review to correct this erroneous interpretation of law.

First, as stated above, the trial court’s determination is contrary to the explicit standing provided by statute: the legislature has made clear that crime

³ Those provisions also include, *inter alia*, the rights “[t]o be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process” and “[t]o refuse an interview, deposition, or other [defense] discovery request.” Ariz. Const. art. II, § 2.1(A)(1), (5).

victims have standing to seek enforcement of all of their rights. A.R.S. § 13-4437(A) (stating that victims' rights "belong to the victim" and that victims have "standing to seek . . . enforce[ment] [of] any right or to challenge an order denying any right guaranteed to victims").

Second, "[i]n interpreting a constitutional provision, [the Court's] 'primary purpose is to effectuate the intent of those who framed the provision.'" *Cain v. Horne*, 220 Ariz. 77, 80 ¶ 10 (2009) (quoting *Jett v. City of Tucson*, 180 Ariz. 115, 119 (1994)). Constitutional provisions may not "be interpreted as if they were simple contracts" because they are "meant to endure, [and they] must be interpreted with an eye to syntax, history, initial principle, and extension of fundamental purpose." *United States v. Sup. Ct. In & For Maricopa Cnty.*, 144 Ariz. 265, 275–76 (1985) (cautioning that "[f]ine semantic or grammatical distinctions, legalistic doctrine, and parsing of sentences may lead us to results quite different from the objectives which the framers intended to accomplish"); accord *Ruth v. Indus. Comm'n*, 107 Ariz. 572, 575 (1971) ("It is axiomatic that constitutional provisions are interpreted in view of the history behind the enactment, the purpose sought to be accomplished by its enactment and the evil sought to be remedied.").

Here, all rights provisions must be interpreted to serve the purpose of "provid[ing] crime victims with basic rights of respect, protection, [and]

participation.” *Hegy*, 236 Ariz. at 42 ¶16 (emphasis added); *accord id.* at 41-43 ¶¶ 9, 19 (finding that “[t]his case cannot be resolved based on the ‘plain language’” of the statute; and concluding that “[t]he goals of respecting victims, protecting their rights, and aiding in their healing . . . are better served by construing § 13–4433(G)” broadly). The trial court’s interpretation of the VBR is inconsistent with the goals of respect, protection and participation. The only construction of the VBR that effectuates the intent of the drafters and the voters in this case is to interpret the right to “prompt restitution” to include the due process right to be heard when the victims are confronted with a proceeding that impacts that right. The Court must grant review to reverse the trial court’s error.

CONCLUSION

For the foregoing reasons, in addition to the reasons urged by the petitioner, AVCV and NCVLI hereby respectfully requests that this Court accept review and grant the relief requested therein.

Respectfully submitted this 30th day of October 2020,

by _____/s/_____
Colleen Clase
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