

LAW OFFICES
MICHAEL J. DEW
6501 N. Central Avenue
Phoenix, Arizona 85012-1139
Tel. (602) 234-0087
State Bar No. 004543
dewme@cox.net

Attorney for Defendant/Petitioner Vivek A. Patel

IN THE
SUPREME COURT
FOR THE STATE OF ARIZONA

STATE OF ARIZONA,)	NO. CR-19-0366-PR
)	
Plaintiff/Respondent)	COURT OF APPEALS
)	No. 1 CA-CR 18-0774
VS.)	
)	MARICOPA COUNTY SUPERIOR COURT
VIVEK A. PATEL)	No. LC 2018-000192-001
)	
Defendant/Petitioner)	DEFENDANT/PETITIONER'S
)	SUPPLEMENTAL BRIEFING
)	

Pursuant to this Court's Order of March 3, 2020, defendant/petitioner submits herein his Supplemental Brief:

PARTIAL RESTITUTION DIRECTIVE OF A.R.S. § 8-344(A)

For the first time in its Reply Brief in the Court of Appeals, to which defendant had no right of sur-reply, the State argued that notwithstanding the above subsection, subsection (C) of the statute "apportions responsibility" between parent and child "but does not reduce the amount of restitution the victim is entitled to..." (*At page 13*).

This is incorrect. The State did not review subsection (C) in its entirety:

The court shall determine the amount of restitution ordered pursuant to this subsection, *except that the amount shall not exceed the liability limit established pursuant to A.R.S. § 12-661.*

(emphasis supplied)

That amount, since 1994 (*post-VBR*), has been ten thousand dollars.

Thus, not only does A.R.S. § 8-344 permit *partial* restitution (also *post-VBR*) it likewise imposes a *cap* of \$10,000, same as in the statute under consideration.

A.R.S. § 13-809(B) AND INAPPLICABILITY TO TRAFFIC OFFENSES

This statute was in effect prior to and after passage of the VBR. The only changes were to the Title 28 exceptions and their renumbering.

In the State's Response to Petition for Review, to which defendant had no right of reply, it also maintained, on page 3, that even though A.R.S. § 13-809 specifically excluded traffic offenses, that exclusion *only* referenced A.R.S. § 13-804, and *not* A.R.S. § 13-603, which the State claims is controlling.

Once again, the State did not read the statute far enough. A.R.S. § 13-804(E) provides in pertinent part that:

The Court shall make all reasonable efforts to ensure that all persons who are entitled to restitution pursuant to a court order *promptly receive full restitution.*

(emphasis supplied)

Thus, A.R.S. § 13-804 is the *specific implementation* of A.R.S. § 13-603, although *both* provide *generally* for full restitution. ¹ If, as conceded, A.R.S. § 13-809 bars A.R.S. § 13-804 from traffic offenses, then by definition A.R.S. § 13-603 is also excluded. ²

INTERPRETATION OF VOTER INITIATIVES

This Court recently determined that

¶9 Because initiatives are no less an exercise of the legislative power when carried out by the people than are statutes enacted by the legislature, *we apply the same interpretive standards to initiatives as we do to statutes. See, e.g., Calik v. Kongable*, 195 Ariz. 496, 500 ¶¶ 16–17 (1999). The “primary purpose” in construing a voter initiative “is to effectuate the intent of ... the electorate that adopted it.” *Id.* at 498 ¶ 10 (quoting *Jett v. City of Tucson*, 180 Ariz. 115, 119 (1994)).

State v. Green, ___ Ariz. ___, ___ P.3d ___, 2020 WL 1038063 (March 4, 2020).

Defendant has consistently argued throughout that had the electorate desired to require “full” restitution in each and every criminal case, it would have

¹ A.R.S. § 13-804(B) specifically refers to A.R.S. § 13-603(C).

²This is why undersigned, throughout the entirety of the briefings, has referred to the statutes as “A.R.S. § 13-603/804.”

explicitly said so, instead of inserting the modifier “prompt,” or indeed, any modifier *at all*, before the word “restitution.”

Defendant submits this subsection of the VBR is clear on its face. The Court of Appeals did not address the word “prompt.” Rather, it delved into a lengthy discourse on the word “restitution,” concluding that it meant “full.” This, of course, renders the modifier “prompt” useless or superfluous, a cardinal sin in statutory interpretation. *Nicaise v. Sundaram*, 245 Ariz. 566, ¶11, 432 P.3d 925 (2019).

THE LEGISLATURE MAY REGULATE VBR POLICY MATTERS

This Court’s recent decision in *State v. Reed*, ___ Ariz. ___, ___ P.3d ___, 10 Ariz. Cases Digest 41 (January 24, 2020) makes clear that under the VBR, the Legislature may act substantively in its implementation:

¶18 We reach a different conclusion concerning § 13-106(B). Whether a conviction, sentence, restitution order, or fine should stand or abate when a convicted defendant dies pending appeal *is a policy matter affecting competing interests and rights held by victims, the state, the defendant’s family, and society*. The legislature’s abolition of the abatement *ab initio* doctrine regulates the primacy of those interests and rights, making § 13-106(B) a substantive law.

(emphasis supplied) *At ¶ 18.*

¶24 We also disagree with the State that § 13-106(A) preserves and protects victims’ rights as guaranteed by

VBR §§ 2.1(A)(1) & (8). Subsection (A)(1)'s requirement that victims “be treated with fairness, respect, and dignity, and ... be free from intimidation, harassment, or abuse, throughout the criminal justice process” concerns treatment of victims in the criminal justice process; *it does not create rights to any particular disposition.*

(emphasis supplied) At ¶ 24.

Reed underscores defendant's position that the Legislature has acted substantively in promulgating statutes regulating payment of restitution. A.R.S. §§ 13-603(C)/13-804, provide *generally* for “full” restitution in the amount of economic loss. In contrast, A.R.S. § 8-344(A), allows the juvenile court to impose *either* “full” *or* “partial” restitution after an adjudication of delinquency. Indeed, it imposes a *cap* of \$10,000 on the ultimate financial responsibility of the parents, *supra*.

Finally, A.R.S. § 13-809(B) *exempts* A.R.S. § 28-672 *entirely* from the “full” restitution requirements of A.R.S. §§ 13-603(C)/13-804(B).

RESPECTFULLY SUBMITTED: March 20, 2020.

MICHAEL J. DEW
