

STATE V. MARTINEZ: THE ARIZONA SUPREME COURT APPLIES AND UPHOLDS THE STATE SENTENCING SCHEME IN LIGHT OF *BLAKELY*

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I. INTRODUCTION

In *State v. Martinez*, the Arizona Supreme Court considered Arizona's sentencing structure.¹ The court responded to recent U.S. Supreme Court Sixth Amendment cases which held that any aggravating fact that extends a defendant's sentence beyond a statutory maximum must be found by the jury. In *Martinez*, the court held that the jury only has to find one aggravating factor for the judge to extend the sentencing range to the statutory maximum.²

II. FACTS

On September 1, 2000, Mabel Lopez's truck crashed through the fence of a residence.³ The occupants of the truck fled the vehicle and escaped.⁴ The next day, Lopez was found dead in her home with stab wounds.⁵ On September 15, the police arrested Pablo Arciniega Martinez.⁶ The police interviewed Martinez, and he confessed to the murder of Lopez.⁷ Martinez was charged with, and found guilty by a jury, of one count of first-degree murder, one count of burglary in the second degree, and one count of theft of a means of transportation.⁸ The State sought the death penalty.⁹ However, the jury did not find the necessary aggravating factors to invoke the death penalty.¹⁰ Instead, Martinez was sentenced to serve his natural life in prison for the murder.¹¹

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1. *State v. Martinez*, 115 P.3d 618 (Ariz. 2005).
 2. *Id.* at 625.
 3. *State v. Martinez*, 100 P.3d 30, 32 (Ariz. Ct. App. 2004).
 4. *Id.*
 5. *Id.*
 6. *Id.*
 7. *Id.*
 8. *Id.*
 9. *Id.*
 10. ARIZ. REV. STAT. ANN. § 13-703(F)(5), (6) (2005).
 11. *State v. Martinez*, 100 P.3d 30, 32 (Ariz. Ct. App. 2004).

During sentencing on the burglary and theft counts, the trial judge found eight different aggravating factors, pursuant to Arizona statute, by a preponderance of the evidence.¹² The judge then imposed two consecutive aggravated seven-year sentences, one for each count.¹³

Martinez argued, on appeal, that the aggravated sentences violated the Sixth Amendment as interpreted by *Blakely v. Washington*¹⁴ since the trial court improperly considered aggravating factors not found by a jury.¹⁵ The Arizona Court of Appeals held that if the jury finds, or the defendant admits to, at least one aggravating factor, the trial judge may constitutionally consider other aggravating factors.¹⁶ Martinez appealed this part of the decision to the Arizona Supreme Court.¹⁷ The court noted the split of authority at the appellate level¹⁸ and took the appeal.¹⁹ The court ultimately affirmed the appellate court's decision.²⁰

III. RECENT U.S. SUPREME COURT SENTENCING DECISIONS

Blakely is based on a string of U.S. Supreme Court decisions determining the constitutionality of judges giving aggravated sentences without factual findings by a jury.²¹ The Arizona Supreme Court contemplated each decision's effect on the constitutionality of Martinez's sentence.²² The Arizona Supreme Court specifically noted that the purpose of the Sixth Amendment is to ensure that the defendant has a right "to demand that a jury find him guilty of all the elements of the crime with which he is charged."²³ The court further noted that the defendant has a *right* to

12. *Martinez*, 115 P.3d at 619; *see also* ARIZ. REV. STAT. ANN. § 13-703(C) (2000), *amended by* ARIZ. REV. STAT. ANN. § 13-703(C) (2005). The statute lists a number of potential aggravating factors, the most important to this case being "the severe injuries or death of the victim."

13. *Martinez*, 115 P.3d at 619.

14. *Blakely v. Washington*, 542 U.S. 296 (2004).

15. *Martinez*, 115 P.3d at 619.

16. *State v. Martinez*, 100 P.3d 30, 34 (Ariz. Ct. App. 2004).

17. *Martinez*, 115 P.3d at 620. Martinez only challenged the aggravated sentence for the burglary and theft charges—not the life sentence charge. *Id.*

18. *Id.* The conflict between the appeals courts was whether or not Arizona's statutory scheme required a jury to find every aggravating factor in order to comport with *Blakely* or whether the finding of one aggravating factor (which triggers the possibility of an aggravated sentence) was enough to put it within the Constitution. *Compare* *State v. Estrada*, 108 P.3d 262, 262 (Ariz. Ct. App. 2005); *State v. Martinez*, 100 P.3d 30, 31–32 (Ariz. Ct. App. 2004), *with* *State v. Alire*, 105 P.3d 163, 166–67 (Ariz. Ct. App. 2005); *State v. Munninger*, 104 P.3d 204, 211 (Ariz. Ct. App. 2005).

19. *Martinez*, 115 P.3d at 625–26.

20. *Id.* at 626.

21. The cases in question are, in chronological order: *Jones v. United States*, 526 U.S. 227 (1999); *Apprendi v. New Jersey*, 530 U.S. 466 (2000); *Harris v. United States*, 536 U.S. 545 (2002); *Ring v. Arizona (Ring II)*, 536 U.S. 584 (2002); *Blakely v. Washington*, 542 U.S. 296 (2004); *United States v. Booker*, 125 S. Ct. 738 (2005).

22. *Martinez*, 115 P.3d at 620–26.

23. *Id.* at 620 (quoting *Booker*, 125 S. Ct. at 748).

demand that “a jury find the existence of any specific fact that the law makes essential to his punishment.”²⁴

The first of the U.S. Supreme Court decisions regarding aggravating factors was *Jones v. United States*.²⁵ In *Jones*, the Court suggested that “any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt.”²⁶

A year later, in *Apprendi v. New Jersey*,²⁷ the Court clarified *Jones*. In this case, the defendant pled guilty to two counts of second-degree possession of a firearm for an unlawful purpose.²⁸ As part of the plea bargain, the trial judge considered whether an enhanced sentence was appropriate if the offense was committed with a “biased purpose.”²⁹ If the judge found a “biased purpose,” the defendant’s maximum sentence would be extended by ten years.³⁰ The trial judge found, by a preponderance of the evidence, that the crime was motivated by racial bias and sentenced Apprendi to twelve years on that count—two more years than that allowed had the aggravating factor not been found.³¹ New Jersey argued that “biased purpose” was a sentencing factor and not an element of a hate crime, since the “biased purpose” factor was not necessary to convict the defendant. The Court held that whether the aggravating factor is a “sentencing guideline” or an “element” of an offense, “any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.”³² Since Apprendi’s sentence was extended two years past the statutory maximum because of the trial judge’s finding, the Court reversed and remanded for further proceedings.³³

Next, the U.S. Supreme Court decided *Harris v. United States*.³⁴ In *Harris*, the Court considered the constitutionality of a statute requiring a judge to factfind in order to determine whether or not a minimum mandatory sentence applied.³⁵ The Court concluded, after applying *Jones* and *Apprendi*, that so long as the factfinding only limited the judge’s discretion within the *prescribed statutory range*, the statute was constitutional.³⁶ The clear implication of this holding is that

24. *Booker*, 125 S. Ct. at 749.

25. 526 U.S. 227 (1999). The *Jones* decision never actually reaches the question of whether a jury must decide facts related to sentencing, but it set the table for future cases.

26. *Id.* at 243 n.6.

27. 530 U.S. 466 (2000).

28. *Id.* at 470–71.

29. *Id.* The defendant had fired bullets into the home of an African-American family in a previously all white neighborhood. The “biased purpose” offense was an aggravating factor under N.J. STAT. ANN. § 2C:44-3(e) (West 1995) (repealed 2001).

30. *Apprendi*, 530 U.S. at 471.

31. *Id.*

32. *Id.* at 490.

33. *Id.* at 497.

34. 536 U.S. 545 (2002).

35. *Id.* at 567.

36. *Id.*

judicial factfinding within the authorized sentencing range of a statute does not implicate the Sixth Amendment.³⁷

*Blakely v. Washington*³⁸ set the standard for the modern statutory sentencing scheme.³⁹ In *Blakely*, the defendant was sentenced 90 months for kidnapping.⁴⁰ While the sentence was 30 months less than the maximum kidnapping sentence established by statute, it was 37 more months than the statutory maximum without any aggravating factors.⁴¹ During sentencing, the judge relied on aggravating factors discussed in an evidentiary hearing.⁴² Those factors were not presented to the jury.⁴³ The State argued that because the statutory maximum was 120 months, it did not violate *Apprendi*.⁴⁴ The Court disagreed, stating that “the ‘statutory maximum’ for *Apprendi* purposes is the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.*”⁴⁵

The final U.S. Supreme Court decision in the line of sentencing cases was *United States v. Booker*.⁴⁶ *Booker* applied *Blakely* in invalidating the Federal Sentencing Guidelines.⁴⁷ The Federal Sentencing Guidelines were essentially the same as the guidelines that were found unconstitutional in *Blakely*.⁴⁸ The Court emphasized that “its decision would not limit the discretion of a judge to determine a defendant’s sentence within a prescribed range permitted by a jury verdict.”⁴⁹ The Arizona Supreme Court specifically also considered Justice Stevens’s partial dissent in which he stated that the guidelines should not be made advisory because it was possible to apply them constitutionally in the vast majority of cases.⁵⁰

IV. ARIZONA SUPREME COURT’S APPLICATION OF U.S. SUPREME COURT PRECEDENT

The Arizona Supreme Court previously considered the effects of *Blakely* on Arizona’s general felony sentencing scheme. In *State v. Brown*,⁵¹ the State argued that the maximum sentence was a super-aggravated sentence of twelve-

37. *Id.* at 558.

38. 542 U.S. 296 (2004).

39. *State v. Martinez*, 115 P.3d 618, 622 (Ariz. 2005).

40. *Blakely*, 542 U.S. at 299–301.

41. *Id.* The maximum sentence by statute was 120 months. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* at 303.

45. *Id.* (emphasis in original). The *Martinez* court specifically cited this statement for its impact on the case at hand. *State v. Martinez*, 115 P.3d 618, 622 (Ariz. 2005).

46. 125 S. Ct. 738 (2005).

47. *Id.* at 755–56.

48. Katie M. McVoy, “*What I have Feared Most Has Now Come to Pass*”: *Blakely*, *Booker*, and the *Future of Sentencing*, 80 NOTRE DAME L. REV. 1613, 1621 (2005).

49. *Martinez*, 115 P.3d at 622.

50. *Id.* at 623 (citing *Booker*, 125 S. Ct. at 771–72 (Stevens, J., dissenting in part)).

51. 99 P.3d 15 (Ariz. 2004).

and-a-half years as set by the Arizona Revised Statutes.⁵² While the case was pending before the Arizona Supreme Court, the U.S. Supreme Court decided *Blakely*.⁵³ The *Brown* court, applying *Blakely*, held that if the jury did not find aggravating factors, the maximum sentence was dictated by the presumptive sentence established by the Arizona Revised Statutes.⁵⁴

The final case in which the Arizona Supreme Court examined the constitutionality of judicial factfinding was its decision in *Ring III*.⁵⁵ In *Ring III*, the court rejected the State's argument that in a *capital case*, only one aggravating factor was required to make the defendant "death eligible."⁵⁶ The court affirmed its prior decisions that the Arizona capital sentencing statute required the jury, not the judge, to weigh the aggravating and mitigating factors.⁵⁷

V. ANALYSIS OF THE ARIZONA STATUTORY SENTENCING SCHEME UNDER *APPRENDI* AND *BLAKELY*

In *Martinez*, the Arizona Supreme Court decided whether Arizona's noncapital sentencing scheme required the jury to consider all aggravating factors or whether the jury's finding of a sole aggravating factor exposed the defendant to the "maximum sentence" under Arizona law.⁵⁸ *Martinez* argued that because the Arizona statute required the court to balance the aggravating and mitigating factors in deciding whether to impose an aggravated sentence,⁵⁹ the jury must find all the aggravating and mitigating factors beyond a reasonable doubt.⁶⁰ *Martinez* reasoned that since each aggravating factor relied on by a judge in sentencing "is a fact that increases the penalty," each aggravating factor must be found by a jury.⁶¹

The court disagreed.⁶² It determined that the U.S. Supreme Court's sentencing cases clearly state that "only those factors that increase the maximum potential sentence to which a defendant is exposed are 'legally essential' for Sixth Amendment purposes."⁶³ The court stated that, "Section 13-702(A) allows an increase of this presumptive sentence upon a finding of *one or more* of the

52. *Id.* at 17; see also ARIZ. REV. STAT. ANN. § 13-702.01(A)(1) (2001). The appeals court agreed with the State.

53. *Brown*, 99 P.3d at 18.

54. *Martinez*, 115 P.3d at 623 (citing *Brown*, 99 P.3d at 18).

55. *State v. Ring (Ring III)*, 65 P.3d 915 (Ariz. 2003).

56. *Martinez*, 115 P.3d at 623 (citing *Ring III*, 65 P.3d at 943-43). *Ring III* is based on the U.S. Supreme Court's decision in *Ring II* which invalidated Arizona's capital sentencing statute as not being in compliance with *Apprendi* and *Blakely*. See *Ring v. Arizona (Ring II)*, 536 U.S. 584 (2002).

57. *Martinez*, 115 P.3d at 623 (citing *Ring III*, 65 P.3d at 943).

58. *Id.* at 623-26.

59. ARIZ. REV. STAT. ANN. § 13-702(A) (Supp. 2000), amended by ARIZ. REV. STAT. ANN. § 13-702(A) (2005).

60. *Martinez*, 115 P.3d at 623.

61. *Id.*

62. *Id.*

63. *Id.*

aggravating circumstances set forth in § 13-702(C).⁶⁴ Thus, the court held that if the jury found a single aggravating factor, the jury established the legal facts necessary to expose the defendant to the maximum sentence under Arizona law.⁶⁵

The Arizona Supreme Court next distinguished *Ring III* from Martinez's case by stating the difference between Arizona's capital and noncapital sentencing schemes.⁶⁶ The court stated that Arizona's *noncapital* sentencing scheme "provide[s] no indication that the legislature intended to vest responsibility for finding all aggravating facts in a single factfinder."⁶⁷ The Arizona Supreme Court interpreted the statute as vesting sentencing responsibility in both the jury and the judge in noncapital cases.

VI. THE ARIZONA SUPREME COURT'S CONCLUSION

The court determined that the jury in Martinez's trial found beyond a reasonable doubt the facts necessary to expose the defendant to the maximum sentence under Arizona statute.⁶⁸ One aggravating factor that the judge considered was the "infliction or threatened infliction of serious physical injury."⁶⁹ The court determined that the jury implicitly found this aggravating factor by convicting Martinez of first-degree murder.⁷⁰ Since the jury had found an aggravating factor, the defendant was exposed to the maximum sentence for each burglary and theft conviction.⁷¹ It was then within the judge's discretion to weigh all the aggravating and mitigating factors and determine the length of the sentence.⁷² In so holding, the court affirmed the appellate decision.⁷³

VII. CONSTITUTIONAL ISSUES INVOLVING THE STATUTE

The Arizona Supreme Court made an unusual decision in upholding sentencing guidelines similar to the guidelines the U.S. Supreme Court found unconstitutional in *Booker*.⁷⁴ In *Martinez*, the Arizona Supreme Court noted Justice Stevens's dissent in *Booker*, where he argued that sentencing guidelines similar to Arizona's should be upheld.⁷⁵ Justice Stevens stated that a constitutional violation will rarely occur under the guidelines and that these violations could be avoided by only enforcing the presumptive sentence in situations where

64. *Id.* (emphasis in original) (citing *State v. Brown*, 99 P.3d 15, 17 (Ariz. 2004)).

65. *Id.* at 624; *see also* ARIZ. REV. STAT. ANN. § 13-702 (Supp. 2000).

66. *Martinez*, 115 P.3d at 624–26.

67. *Id.* at 625.

68. *Id.* at 625–26.

69. ARIZ. REV. STAT. ANN. § 13-702(C)(1) (Supp. 2000).

70. *Martinez*, 115 P.3d at 626. A.R.S. § 13-105.34 (2000) defines "serious physical injury" as including "physical injury which creates a reasonable risk of death." Neither of the parties argued that injury that actually results in death falls outside of this definition. *Martinez*, 115 P.3d at 626 n.6.

71. *Id.* at 626.

72. *Id.*

73. *Id.*

74. 125 S. Ct. 738, 755–56 (2005).

75. *Martinez*, 115 P.3d at 622–23.

unconstitutional sentencing would occur.⁷⁶ Justice Stevens's dissent became especially important when the Arizona legislature amended Arizona Revised Statute sections 13-702 and 13-702.1 to conform with *Blakely* and *Apprendi* during consideration of *Martinez*.⁷⁷ The amendments bifurcated the sentencing process and required the jury to find an aggravating factor beyond a reasonable doubt.⁷⁸ The amendments then permitted the judge to find additional aggravating factors by a preponderance of the evidence.⁷⁹ Since it would be moot to invalidate a now-amended statute and since the *Martinez* sentence stands on its own facts, the court followed the Stevens dissent and allowed the sentence to stand on its own merits—not the merits of the statute upon which it was based.

This decision is also aided by a nearly concurrent decision referred to in *Martinez*.⁸⁰ In *State v. Henderson*,⁸¹ the Arizona Supreme Court considered the reviewability of Sixth Amendment jury error at the trial court level. In *Henderson*, the defendant was sentenced in violation of *Blakely* but did not object at the trial level.⁸² The court determined that this was trial error, not structural error, and that the normal standards of review applied in these circumstances.⁸³ “Harmless error” review occurs when the defendant objects at trial and puts the burden on the state to prove beyond a reasonable doubt that the error did not “contribute or affect the verdict or sentence.”⁸⁴ However, since the defendant in *Henderson* did not object at the trial level, the trial court's actions were subject to “fundamental error” review.⁸⁵

In order to establish “fundamental error” at the trial level, the defendant must establish that fundamental error exists and that the error caused him prejudice.⁸⁶ The court determined that a violation of the defendant's Sixth Amendment rights takes away a right that is fundamental to the defendant's defense and is of such a magnitude that it prevents a fair trial.⁸⁷ As such, a violation of *Apprendi* or its progeny creates a showing of fundamental error, satisfying the first prong.⁸⁸

76. 125 S. Ct. at 771–72 (Stevens, J., dissenting in part).

77. See An Act Amending Sections 13-702 and 13-702.01, ch. 20, sec 1, §§ 13-702 & 13-702.1, 2005 Ariz. Legis. Serv. Ch. 20 (H.B. 2522) (West 2005).

78. *Martinez*, 115 P.3d at 625 n.4 (citing 2005 Ariz. Legis. Serv. Ch. 20. (H.B. 2522)).

79. *Id.*

80. *Id.* at 620 n.2. The appellate court, which the Arizona Supreme Court eventually affirmed, found no fundamental error and thus upheld the sentence. *Id.*

81. 115 P.3d 601 (Ariz. 2005).

82. *Id.* at 604. *Blakely* was decided while the case was pending appeal. *Id.*

83. *Id.* at 605–06. The court also noted that other jurisdictions agree with *Apprendi* error being trial error. See *id.* at 606 n.3.

84. *Id.* at 607 (citing *State v. Bible*, 858 P.2d 1152, 1191 (Ariz. 1993)).

85. *Id.* at 608.

86. *Id.* at 607 (citing *State v. Gendron*, 812 P.2d 626, 626 (Ariz. 1991); *State v. King*, 763 P.2d 239, 244 (Ariz. 1988); *State v. Hunter*, 688 P.2d 980, 982 (Ariz. 1984)). The court, once again, noted that other jurisdictions agree on this requirement. *Id.*

87. *Id.* at 608.

88. *Id.*

In order to satisfy the second prong, the defendant must show that the error caused him prejudice. The court determined through an analysis of the facts and the sentencing procedures that a reasonable jury, applying the correct standard of proof, could have come to a different determination as the trial judge as to the existence of aggravating factors, and that as such, the defendant had made an adequate showing of prejudice.⁸⁹ The court vacated the lower court's opinion.⁹⁰

In relation to *Martinez*, this case helps explain the Arizona Supreme Court's lack of concern over whether Martinez was exposed to unconstitutional sentencing guidelines. Even if Martinez was able to show fundamental error at being exposed to a sentencing system in violation of *Booker*, he would be unable to show prejudice by it. No reasonable jury would find that the aggravating factor of "infliction or threatened infliction of serious physical injury" did not exist. Thus, Martinez was not prejudiced by the decision, and therefore no fundamental error occurred.⁹¹

VIII. CONCLUSION

The *Martinez* decision minimizes the impact of the *Apprendi* line of cases on Arizona's sentencing procedures. Since only one aggravating factor must be found by a jury to make possible the maximum sentence, the jury can often find the factor by implication. The holding precludes a finding of unconstitutional sentencing in many pending cases where sentencing occurred before the Arizona legislature's amendment of the statute.

By affirming *Martinez*, the Arizona Supreme Court found the amended statute constitutional by default as the statute simply adopts the "legally essential" aggravating factor standard. The end effect is that, barring any future U.S. Supreme Court decisions, the *Jones*, *Apprendi*, *Harris*, *Blakely*, *Ring II*, and *Booker* opinions will have little practical effect on sentencing in Arizona.

89. *Id.* at 608–09. However, due to the fact that the defendant had been released from jail by the time the Supreme Court released its decision, the defendant received no actual benefit besides being the physical manifestation of judicial precedent. *Id.* at 610.

90. *Id.*

91. Martinez argued the *Blakely* violation for the first time at the appellate level and therefore fundamental error, not harmless error, was the appropriate reviewing standard. Whether a harmless error standard would have changed anything was probably moot in light of the amended Arizona sentencing statutes. *State v. Martinez*, 115 P.3d 618, 620 (Ariz. 2005).