

LYNN V. REINSTEIN: LIMITING VICTIMS' RIGHTS TO RECOMMEND SENTENCES IN CAPITAL CASES

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I. INTRODUCTION

On November 6, 1990, Arizona voters passed Proposition 104, which amended the state constitution to add the Arizona Victims' Bill of Rights guaranteeing victims broad rights.¹ These rights include the right to be informed, present, and heard at all post-conviction proceedings involving the convicted person, including sentencing.² Then on January 1, 1991, the Arizona Legislature passed the Victims' Rights Implementation Act to "define, implement, preserve and protect" victims' constitutional rights.³ The Victims' Rights Implementation Act commands that "[t]his chapter shall be liberally construed to preserve and protect the rights to which victims are entitled."⁴ In 2002, the Arizona Legislature removed the statutory bar to victims' sentencing recommendations in cases where the death penalty is a possible punishment.⁵

1. See ARIZ. CONST. art. II, § 2.1, historical and statutory notes.

2. ARIZ. CONST. art II, § 2.1(A)(4). The other provisions of the Victims' Bill of Rights include rights to be treated with fairness, respect, and dignity; to be informed and present at all other proceedings involving the accused or convicted person; to refuse the defendant's pre-trial discovery requests; to confer with the prosecution; to receive restitution from the convicted person for the victim's loss or injury; and to be informed of these constitutional rights. ARIZ. CONST. art II, § 2.1. "Victim" is defined as "a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused." ARIZ. CONST. art. II, § 2.1(C) (emphasis added).

3. ARIZ. REV. STAT. tit. 13, ch. 40, hist. and stat. nn., § 2(1) (2004).

4. ARIZ. REV. STAT. § 13-4418 (2004).

5. See ARIZ. REV. STAT. § 13-703(E) (amended 2002) ("In evaluating the mitigating circumstances, the court . . . shall not consider any recommendation made by the victim regarding the sentence to be imposed."). Amended during fifth special session of the 45th Legislature, 2002. See Ariz. S. 1001, 45th Leg., 5th Spec. Sess. (Ariz. 2002) (amending § 13-703).

Richard Glassel ("Glassel") shot and killed Duane Lynn's ("Lynn") wife, Nila Lynn, at a homeowners' association meeting.⁶ Glassel was subsequently convicted of first-degree murder.⁷ At sentencing, Lynn sought to give jurors victim impact information,⁸ claiming his right to do so under the Arizona Victims' Bill of Rights.⁹ The information Lynn intended to relate to jurors included his sentencing recommendations for Glassel, in addition to the nature of his own loss and Nila Lynn's character.¹⁰ At that time, Lynn wished to recommend a life sentence rather than the harsher death penalty also available for Glassel's crime.¹¹ The State objected to Lynn's recommendations.¹²

Maricopa Superior Court Judge Peter C. Reinstein did not permit Lynn to give sentencing recommendations, but he did admit the other victim information.¹³ In denying Lynn's motion, Judge Reinstein stated that the recommendations were irrelevant to mitigating or aggravating capital sentencing factors, and that denying the portion of Lynn's request pertaining to sentencing did not violate his rights under the Victims' Bill of Rights.¹⁴

The Arizona Court of Appeals affirmed Judge Reinstein's decision.¹⁵ The court noted that Arizona case law found victims' sentencing recommendations irrelevant in capital cases and that virtually all states prohibit victims from presenting capital case sentencing recommendations.¹⁶

The Arizona Supreme Court, adhering to binding precedent from the United States Supreme Court, unanimously affirmed and held that the Eighth Amendment of the United States Constitution proscribes victims' sentencing recommendations in capital cases.¹⁷ In doing so, the Arizona Supreme Court bypassed inquiry into whether Arizona law permits victims' sentencing recommendations.¹⁸ The Arizona Supreme Court also rejected Lynn's contention

6. Lynn v. Reinstein, 68 P.3d 412, 413 (Ariz. 2003).

7. *Id.*

8. "Victim impact information" generally includes information about the victim's characteristics, the impact on the victim's family, and the victim's opinions about the crime and the appropriate sentence. See *infra* at notes 34–35 and accompanying text.

9. Lynn, 68 P.3d at 414; see also ARIZ. CONST. art. II, § 2.1. Lynn, as the spouse of a murdered person, also qualified as a victim under the Victims' Bill of Rights. See *supra* at note 2.

10. Lynn, 68 P.3d at 414.

11. *Id.*

12. *Id.* Glassel did not oppose Lynn's exercise of his rights as a victim because Lynn's intended recommendation of life in prison was more lenient than the death penalty that the State sought. *Id.* Further on in the proceedings, Lynn changed his recommendation to the death penalty, and Glassel then objected. *Id.* at 415 n.3.

13. *Id.* at 414.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 414 n.2 ("Because we hold that the Eighth Amendment prohibits a victim from making a recommendation to a jury in a capital case, we do not discuss whether Arizona law would permit such a recommendation.").

that victims are "limited part[ies]" in capital cases, and thus, permitted to offer sentencing recommendations.¹⁹ Instead, the *Lynn* court held that victims, because they are not parties to a defendant's criminal case, have standing only to assert the rights enumerated in the Victims' Bill of Rights.²⁰ The United States Supreme Court denied certiorari.²¹

II. UNITED STATES SUPREME COURT ANALYSIS OF THE CONSTITUTIONALITY OF ADMITTING VICTIM IMPACT STATEMENTS AT SENTENCING

In 1987, the United States Supreme Court analyzed the constitutionality of admitting victims' impact statements in *Booth v. Maryland*.²² In a five to four decision, the Court narrowly erected a per se bar on all victim impact statements in capital case sentencing.²³ The majority decided that such information could only lead jurors away from considering the evidence in a reasoned manner and toward arbitrary decision making.²⁴ Jurors would instead be tempted to rely on their emotions.²⁵ Furthermore, the majority reasoned it would be tactically detrimental for the defendant to rebut victim impact statements.²⁶ Therefore, the Court held that victim statements during capital sentencing violated defendants' Eighth Amendment rights.²⁷

The minority believed that excluding victim statements fundamentally failed to allow jurors to fit the punishment to the crime.²⁸ Justice White noted that states have traditionally been given great latitude to develop their own systems of criminal justice,²⁹ while Justice Scalia, in a separate dissent, pointed out society's newly fostered and growing concern with victims' rights.³⁰

19. *Id.* at 417 (citing *State v. Lamberton*, 899 P.2d 939, 942 (Ariz. 1995)).

20. *Id.* at 417.

21. *Lynn v. Reinstein*, 124 S. Ct. 1037, 1037 (2004).

22. *Booth v. Maryland*, 482 U.S. 496, 497 (1987).

23. *Id.* at 509.

24. *Id.* at 505, 508-09.

25. *Id.* at 508.

26. *Id.* at 506-07. However, the Court probably assumed that a victim's sentencing recommendation would exert a negative impact on the defendant. In some cases, such as in the early stages of *Lynn*, the victim may advocate leniency, and it can be assumed that a defendant would not need to rebut the recommendation. It would be directly detrimental for a defendant to rebut a recommendation of leniency. Then, though, the detriment would be the defendant's own choice, and the Eighth Amendment would be satisfied because it would be waived. Others cannot look to the Eighth Amendment for support because it only creates a defendant's negative right against imposition of excessive fines or infliction of cruel and unusual punishments. U.S. CONST. amend. VIII.

27. *Booth*, 482 U.S. at 509.

28. *Id.* at 515 (White, J., dissenting); *id.* at 520 (Scalia, J., dissenting).

29. *Id.* at 515 (White, J., dissenting).

30. *Id.* at 520 (Scalia, J., dissenting).

Four years later, the Court partially overruled *Booth* in *Payne v. Tennessee*.³¹ In a virtual about-face, the Court permitted victim impact statements to show the specific effect of a crime on a victim and his or her family.³² The *Payne* court categorized victim statements into three types,³³ and permitted admission of the first two types of statements: (1) descriptions about the victim's characteristics; and (2) the impact of the crime on the victim's family.³⁴ The Court held that the third category, however, including opinions of a victim's family members about the crime, the defendant, and the potential sentence, was still barred from admission because those statements are irrelevant and prejudicial.³⁵

III. ARIZONA SUPREME COURT APPLICATION OF THE *BOOTH-PAYNE* FRAMEWORK TO ARIZONA'S VICTIMS' BILL OF RIGHTS

The Arizona Supreme Court bypassed state law to look at the applicability of *Booth* and *Payne* to Lynn's petition.³⁶ Recognizing that United States Supreme Court decisions on the Eighth Amendment are binding authority, the Arizona Supreme Court started with the constitutionality question and then looked to whether *Booth-Payne* completely precluded Lynn's petition.³⁷

Lynn offered Oklahoma court decisions as the anchor of his position that *Payne* completely reversed *Booth* and opened the gate to all types of victim statements, including sentencing recommendations.³⁸ The Court quickly recognized, however, that the Oklahoma courts were unsure whether their

31. *Payne v. Tennessee*, 501 U.S. 808, 830 (1991). After *Booth* but before *Payne*, the United States Supreme Court upheld its per se prohibition against victim impact statements in capital sentencing in *South Carolina v. Gathers*. See *South Carolina v. Gathers*, 490 U.S. 805 (1989). *Gathers*, also a five to four decision, depended on Justice White's defection to the majority for the sake of stare decisis. *Id.* at 812 (White, J., concurring) ("Unless *Booth v. Maryland* . . . is to be overruled, the judgment below must be affirmed. Hence, I joined Justice Brennan's opinion for the Court."). In *Payne*, Justice White joined the majority to completely overrule *Gathers* in addition to partially overruling *Booth*. *Payne*, 501 U.S. at 830 n.2.

32. *Id.* at 825.

33. *Id.* at 830 n.2 ("Our holding today is limited to the holdings of *Booth v. Maryland* and *South Carolina v. Gathers* that evidence and argument relating to the victim and the impact of the victim's death on the victim's family are inadmissible at a capital sentencing hearing. *Booth* also held that the admission of a victim's family members' characterizations and opinions about the crime, the defendant, and the appropriate sentence violates the Eighth Amendment.") (citations omitted); *id.* at 832-33 (O'Connor, J., concurring); *id.* at 835, 835 n.1 (Souter, J., concurring).

34. *Id.* at 827.

35. *Id.* at 830 n.2; *id.* at 833 (O'Connor, J., concurring); *id.* at 835 n.1 (Souter, J., concurring).

36. *Lynn v. Reinstein*, 68 P.3d 412, 414 n.2 (Ariz. 2003).

37. *Id.*

38. *Id.* at 417 (citing e.g., *Ledbetter v. State*, 933 P.2d 880 (Okla. Crim. App. 1997)).

decisions would pass higher-level scrutiny,³⁹ and it noted that the Tenth Circuit had rejected the Oklahoma courts' interpretation on habeas corpus review.⁴⁰

Mr. Lynn's final argument was that victims are "limited part[ies]" in capital cases and that such status gives victims the right to recommend sentencing options.⁴¹ If this were true, a victim's "limited party" status could probably be analogized to "a recommendation of leniency from authorities who are intimately involved in a case[, which] carries significant weight and may constitute a mitigating circumstance."⁴² Lynn, however, offered no precedent for his proposed interpretation.⁴³ The Court was unimpressed, and it turned to its decision in *State v. Lamberton* for guidance.⁴⁴ *Lamberton* held that the only standing afforded to victims in criminal cases is to assert one of the enumerated rights of Arizona's Victims' Bill of Rights.⁴⁵ Thus, the Court's decision of whether the Constitution permits victims' sentencing recommendations determined whether victims even have this limited standing bestowed by the Victims' Bill of Rights. Furthermore, Lynn conceded at oral argument that even parties are not permitted to offer opinions on irrelevant facts or unfairly prejudicial issues.⁴⁶ The Arizona Supreme Court therefore held that victims are not parties in a criminal case.⁴⁷

IV. VICTIM IMPACT STATEMENTS IN ARIZONA SENTENCING

Despite the statutory requirement that victims' rights "be liberally construed,"⁴⁸ the *Lynn* court held that victims may not offer sentencing recommendations in capital cases.⁴⁹ This decision is narrowly circumscribed, however, as it applies only to sentencing recommendations in capital cases, and conceivably, then, victims in non-capital cases may still offer their sentencing recommendations.⁵⁰ It also does not address the other two types of victim impact statements. The Arizona Supreme Court stayed safely within the confines of binding precedent from the United States Supreme Court's decisions in *Booth* and *Payne*.⁵¹ The United States Supreme Court jurisprudence merely defines the federal limits on victim impact statements, but the Arizona Supreme Court may still find that Arizona's analogue to the Eighth Amendment is more expansive than the federal standard instead of coterminous with it, in which case defendants'

39. *Id.* (citing *State v. Hain*, 919 P.2d 1130, 1144 n.3 (Okla. Crim. App. 1996)).

40. *Id.* (citing *Hain v. Gibson*, 287 P.3d 1224, 1238-39 (10th Cir. 2002)).

41. *Id.* at 417.

42. *State v. White*, 982 P.2d 819, 825 (1999) (citing *State v. Gallegos*, 870 P.2d 1097, 1116 (1994)).

43. *Lynn*, 68 P.3d at 417.

44. *Id.*

45. See *State v. Lamberton*, 899 P.2d 939, 942 (Ariz. 1995) (citing ARIZ. REV. STAT. § 13-4437).

46. *Lynn*, 68 P.3d at 417.

47. *Id.*

48. ARIZ. REV. STAT. § 13-4418 (2004).

49. *Lynn*, 68 P.3d at 414.

50. *Id.* at 417.

51. *Id.* at 414.

protections could further restrict the scope and depth of victims' rights.⁵² On the other hand, the Arizona Legislature waits for the United States Supreme Court to change its stance and remove its final prohibition against victim statements.⁵³

A. The Arizona Legislature's Response to Lynn v. Reinstein

The power of the Victims' Rights movement cannot be ignored. On the same day the Arizona Supreme Court handed down its decision in *Lynn*, the Legislature reaffirmed its support of a victim's right to offer all types of information or opinions at sentencing.⁵⁴ This legislation conditionally repeals the current statute governing victim statements at sentencing; the legislation becomes effective if sometime in the ten years following that reaffirmation either the United States Supreme Court or the Arizona Supreme Court holds victims' sentencing recommendations in capital cases constitutional.⁵⁵ The Arizona House Committee on the Judiciary heard specific testimony demonstrating that *Payne* still holds victims' recommendations unconstitutional, but the Committee wanted the United States Supreme Court to clearly understand Arizona's policy.⁵⁶ The Legislature's stance on victims' rights is unmistakable.

52. Compare U.S. CONST. amend VIII, with ARIZ. CONST. art. II, § 15. The two constitutions contain identical language: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. *Id.*

53. See ARIZ. REV. STAT. § 13-4426 historical and statutory notes at § 7(A) ("The Legislature reaffirms its action in Laws 2002, fifth special session, chapter 1, in which the Legislature eliminated the statutory prohibition on considering a victim's sentencing recommendation in a capital case. The Legislature reaffirms that, under the Constitution and statutes of Arizona, victims in capital cases have the right to make recommendations regarding the appropriate sentence, in the same manner as defendants, and that the only thing that stands in the way of exercising this right is the lack of a decision by the Arizona supreme court [sic] or the supreme court [sic] of the United States affirming this right."); see also *Crime Victims; Sentencing Proceedings: Hearing on S. 1267 Before the House Comm. on Judiciary*, 46th Leg., 1st Reg. Sess. (Ariz. Apr. 3, 2003) [hereinafter *Hearing on S. 1267*].

54. Bill Status Overview: Ariz. S. 1267, at <http://www.azleg.state.az.us> (signed by governor seven days later on May 26, 2003). See also *Hearing on S. 1267*, *supra* note 53; Ariz. S. 1267, 46th Leg., 1st Reg. Sess. (as passed by Ariz. House Judiciary Comm. Apr. 3, 2003). This case was under deliberation when the Legislature started to consider this bill on March 26, 2003. *Hearing on S. 1267*, *supra* note 53 (statement of Paul McMurdie, Rep., Maricopa County Attorney's Office). It appears that, following *Ring v. Arizona*, the Legislature had high hopes that this case would be heard by the United States Supreme Court. *Id.* (statements of Keli Luther and Stephen Tully, Chairman, House Comm. on Judiciary); see also *Ring v. Arizona*, 536 U.S. 584 (2002). However, the United States Supreme Court denied certiorari in this case. *Lynn v. Reinstein*, 124 S. Ct. 1037, 1037 (2004).

55. ARIZ. REV. STAT. § 13-4426 historical and statutory notes at § 8(A) (stating that a favorable ruling must be handed down on or before June 30, 2013).

56. *Hearing on S. 1267*, *supra* note 53 (statements of Sean Noble, Chief of Staff for Congressman John Shadegg; Keli Luther; Stephen Tully, Chairman, House Comm. on Judiciary; Paul McMurdie, Maricopa County Attorney's Office; Kent Cattani, Chief

B. Future Implications with Victims' Rights

No court gives a satisfactory explanation why the reasoning applied to limit victims' sentencing recommendations in capital cases does not apply to non-capital cases. Certainly, such statements are equally irrelevant and prejudicial to the aggravating and mitigating circumstances of a non-capital, as well as a capital, crime.⁵⁷ At best, the difference is explained by the United States Supreme Court's conclusory catchphrase that "death is a 'punishment different from all other sanctions.'"⁵⁸ Future courts favoring a more rule-based methodology may choose to reexamine the dichotomy between capital and non-capital case jurisprudence and find that the Eighth Amendment deserves a uniform application in all cases.

Finally, the Arizona Supreme Court will likely have to reconsider whether the first two types of victim impact statements—statements about the victim's own characteristics and the impact of the crime on the victim's family—are admissible under Arizona law, even if permitted by federal law.⁵⁹ Behind the central issues of constitutional interpretation and reconciliation lies a background of the Victims' Rights movement's⁶⁰ struggle with equality in criminal justice,⁶¹ and the traditional limitation of evidence to that which "has some bearing on the defendant's personal responsibility and moral guilt"⁶²

V. CONCLUSION

The Arizona Supreme Court held that the Eighth Amendment of the United States Constitution bars victims' sentencing recommendations in capital cases. The *Lynn* Court limited its analysis to United States Supreme Court case law and cautiously refrained from ruling about Arizona law, other types of victim impact statements, or recommendations in non-capital cases. Resolution of those

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57. *Cf. Booth v. Maryland*, 482 U.S. 496, 508–09 (1987).

58. *Id.* at 509 n.12 (quoting *Woodson v. North Carolina*, 482 U.S. 280, 303–04, 305 (1976)).

59. *See Payne v. Tennessee*, 501 U.S. 808, 827 (1991). Though the Arizona Supreme Court did not look at applicable Arizona statutes, it almost certainly holds both Arizona's Victims' Bill of Rights and section 13-4426(A) of Arizona's statutes partially unconstitutional by implication so far as they permit victims' sentencing recommendations for capital cases. *See* ARIZ. CONST. art. II, § 2.1(A)(4) ("[A] victim of crime has a right: . . . To be heard at any proceeding involving . . . sentencing."); ARIZ. REV. STAT. § 13-4426(A) (conditionally repealed 2003 ("The victim may present . . . opinions that concern the criminal offense, the defendant, the sentence . . . at any aggravation, mitigation, presentencing or sentencing proceeding.")). *See supra* notes 53–55 and accompanying text).

60. *Booth*, 482 U.S. at 520.

61. *Payne*, 501 U.S. at 863 (Stevens, J., dissenting); *see* Brief of Amici Curiae Southern Christian Leadership Conference at 4–7, available at 1991 WL 11007882.

62. *Payne*, 501 U.S. at 858 (Stevens, J., dissenting). *See also id.* at 859 (Stevens, J., dissenting) ("[T]he Court suggests that fairness requires the State be allowed to respond with similar evidence about the victim. . . . This argument is a classic *non sequitur*: The victim is not on trial; her character, whether good or bad, cannot therefore constitute either an aggravating or mitigating circumstance.").

issues must wait until another day as Arizona continues its struggle to define the nature and extent of victims' rights vis-à-vis a defendant's federal and state constitutional safeguards.