

Court of Appeals, Division One

Criminal

1 CA-CR 22-0135

STATE v. BRYARS

Appellate Case Information

Case Filed: 28-Mar-2022

Case Closed:

Dept/Composition

Department A

Hon. Samuel A Thumma
Hon. Randall M Howe
Hon. Anni Hill Foster

Side 1. STATE OF ARIZONA, Appellee

(Litigant Group) STATE OF ARIZONA

- State of Arizona

Attorneys for: Appellee

Diane L Hunt, Esq. (AZ Bar No. 16566)

Side 2. PERRY JEROME BRYARS, Appellant

(Litigant Group) PERRY JEROME BRYARS

- Perry Jerome Bryars

Attorneys for: Appellant

Jennifer Roach, Esq. (AZ Bar No. 24525)

CASE STATUS

Feb 6, 2024.....Under Advisement

Table with 6 columns: PREDECESSOR CASE(S), Cause/Charge/Class, Judgment/Sentence, Judge, Role <Comments>, Trial, Dispo. Row 1: MAR, CR2019-101287-001, See File, See File, Jacki Ireland, Sentencing, JURY

Table with 2 columns: DESCENDENT CASE(S), Cause/Charge/Class. Row 1: ASC, CR-23-0148-PR

CASE DECISION

16-May-2023 MEMORANDUM DECISION

Paragraphs 15 and 16 of COA1 Memorandum vacated by ASC letter filed 02/06/2024

Filed: 16-May-2023 Mandate:

Decision Disposition

Affirmed

Anni Foster.....Author

Samuel Thumma.....Concur

Randall Howe.....Concur

74 PROCEEDING ENTRIES

- 1. 28-Mar-2022 FILED: Notice of Appeal from Maricopa County Superior Court filed 03/21/22. Notification sent to Court Reporters dated 03/25/2022.
2. 31-Mar-2022 ORDERED: Appointing the Maricopa County Public Defender as counsel for appellant for all remaining proceedings on appeal. FURTHER ORDERED: Court Reporters Scott Coniam and Kristine Mayo transcripts due by 05/16/2022. Benjamin A Armstrong ProTem Judge - Author
3. 4-May-2022 FILED: e-Record on Appeal: Instruments/Minute Entries: Combined Disposition Report: 208 Exhibits: None sent with e-Record
4. 4-May-2022 FILED: Additional Record on Appeal Physical Exhibits: Hearing Date: 09/09/2021 List # 4 5 6 7 8 10 16 17 in manila envelope Sealed Exhibit: Confidential Criminal History Report in Sealed Manila Envelope
5. 15-May-2022 FILED: Motion for Extension of Time to File Transcripts (Kristine Mayo)

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6. 16-May-2022 ORDERED: Motion for Extension of Time to File Transcripts (Kristine Mayo) = GRANTED. Due Dates EXTENDED to 06/15/2022 for Transcripts dated 09/27/2021, 09/23/2021, 09/21/2021, 09/20/2021, 09/15/2021, 09/13/2021, 09/14/2021, 09/09/2021 or OSC set for 07/06/2022. Hon David B Gass - Author
7. 17-May-2022 FILED: Reporter's Transcript - 03/15/2022 - Sentencing (Scott Coniam)
8. 26-May-2022 FILED: Reporter's Transcript - 09/09/2021 - Trial Day 1 (Kristine Mayo)
9. 30-May-2022 FILED: Reporter's Transcript - 09/13/2021 - Trial Day 2 (Kristine Mayo)
10. 6-Jun-2022 FILED: Reporter's Transcript - 09/14/2021 - Trial Day 3 (Kristine Mayo)
11. 6-Jun-2022 FILED: Reporter's Transcript - 09/15/2021 - Trial Day 4 (Kristine Mayo)
12. 9-Jun-2022 FILED: Motion to Unseal Documents; Certificate of Service (Appellant)
13. 9-Jun-2022 FILED: Reporter's Transcripts - 09/20/2021 - Trial Day 5 (Kristine Mayo)
14. 12-Jun-2022 FILED: Reporter's Transcripts - 09/21/2021 - Trial Day 6 (Kristine Mayo)
15. 15-Jun-2022 FILED: Reporter's Transcripts - 09/23/2021 - Trial Day 7 (Kristine Mayo)
16. 15-Jun-2022 FILED: Reporter's Transcript - 09/27/2021 - Trial Day 8 (Kristine Mayo)
17. 16-Jun-2022 FILED: Notice of Completion of Record
18. 16-Jun-2022 ORDERED: Upon presentation of this order, unsealing the confidential Court Information Sheets (I.O.R. 5 and 11) and the Random Jury List (I.O.R. 166) for parties/agents on this appeal only. Benjamin A Armstrong ProTem Judge - Author
19. 5-Jul-2022 FILED: Notice of Appearance; Certificate of Service (Appellant)
20. 16-Jul-2022 FILED: Motion to Supplement the Record on Appeal and to Extend the Time to File the Opening Brief; Certificate of Service (Appellant)
21. 18-Jul-2022 FILED: Reporter's Transcript - 01/09/2020 Final Trial Management Conference (Kristen Kasprzyk)
22. 26-Jul-2022 ORDERED: Motion to Supplement the Record On Appeal = GRANTED. Court Reporters Mike Babicky, Kristin DeCasas, Diane Donoho, Kristen Brown, Kristine Mayo and Monica Hill-Morrisette and Ken Crenshaw transcripts due by 08/24/2022. FURTHER ORDERED: Extend the Time to File the Opening Brief (Appellant) = GRANTED. Due date EXTENDED from Monday, 08-01-2022 to Friday, 09-23-2022. Benjamin A Armstrong ProTem Judge - Author
23. 18-Aug-2022 FILED: Reporter's Transcript - 09/08/2021 - Trial Procedure Conference (Kristine Mayo)
24. 22-Aug-2022 FILED: Reporter's Transcript - 06/28/2019 - Settlement Conference (Michael Babicky)
25. 23-Aug-2022 FILED: Reporter's Transcript - 03/23/2021 - Status Conference (Diane Donoho)
26. 23-Aug-2022 FILED: Reporter's Transcript - 05/26/2021 - Continuance (Diane Donoho)
27. 23-Aug-2022 FILED: Reporter's Transcript - 06/07/2021 - Final Trial Management Conference (Diane Donoho)
28. 23-Aug-2022 FILED: Reporter's Transcript - 09/24/2019 - Status Conference (Kristin DeCasas)
29. 24-Aug-2022 FILED: Reporter's Transcript - 01/21/2022 - Sentencing Reset (Monica S Hill-Morrisette)
30. 26-Aug-2022 ORDERED: Court Reporter Kristin DeCasas set for OSC on 09/07/2022 for transcript dated 09/24/2019. Hon David B Gass - Author
31. 26-Aug-2022 ORDERED: Court Reporter Kristen Kasprzyk set for OSC on 09/07/2022 for transcript dated 01/09/2020. Hon David B Gass - Author
32. 26-Aug-2022 ORDERED: Ken Crenshaw transcripts dated 01/22/2019; 05/09/2019; 07/25/2019; 08/13/2019; 10/09/2019; 02/27/2020; 07/30/2020; 08/06/2020; 09/08/2020; 10/01/2020; 11/19/2020; 06/22/2021 due by 09/26/2022 or OSC set for 10/05/2022. Hon David B Gass - Author
33. 30-Aug-2022 ORDERED: Vacating the Order to Show Cause hearing for Court Reporter Kristen Kasprzyk scheduled on Wednesday, 09/07/2022, at 2:30 p.m. Hon David B Gass - Author
34. 30-Aug-2022 ORDERED: Vacating the Order to Show Cause hearing for Court Reporter Kristin DeCasas scheduled on Wednesday, 09/07/2022, at 2:30 p.m. Hon David B Gass - Author

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35. 8-Sep-2022 ORDERED: Extending the time to file the opening brief to 10/26/2022. Benjamin A Armstrong ProTem Judge - Author
36. 23-Sep-2022 FILED: Reporter's Transcript - 08/06/2020 - Continuance (Brenda Clark)
37. 23-Sep-2022 FILED: Reporter's Transcript - 09/08/2020 - Continuance (Brenda Clark)
38. 23-Sep-2022 FILED: Reporter's Transcript - 10/01/2020 - Trial Continuance Past Last Day (Brenda Clark)
39. 23-Sep-2022 FILED: Reporter's Transcript - 10/09/2019 - Trial Continuance Past Last Day (Brenda Clark)
40. 23-Sep-2022 FILED: Reporter's Transcript - 11/19/2020 - Trial Continuance Past Last Day (Brenda Clark)
41. 23-Sep-2022 FILED: Reporter's Transcript - 02/27/2020 - Trial Continuance Past Last Day (Brenda Clark)
42. 23-Sep-2022 FILED: Reporter's Transcript - 07/30/2020 - Continuance (Brenda Clark)
43. 23-Sep-2022 FILED: Reporter's Transcript - 01/22/2019 - Not Guilty Arraignment (Brenda Clark)
44. 23-Sep-2022 FILED: Reporter's Transcript - 05/09/2019 - Trial Vacated (Brenda Clark)
45. 23-Sep-2022 FILED: Reporter's Transcript - 07/25/2019 - Oral Argument (Brenda Clark)
46. 23-Sep-2022 FILED: Reporter's Transcript - 08/13/2019 - Trial Continuance Past Last Day (Brenda Clark)
47. 4-Oct-2022 FILED: Courtesy copy - Maricopa Superior Court Minute Entry dated 09/30/2022.
48. 4-Oct-2022 ORDERED: Vacating this court's orders directing Ken Crenshaw to arrange for the preparation of the transcript of the proceedings designated above (see order). FURTHER ORDERED: Vacating the order to show cause hearing set for Ken Crenshaw on 10/26/2022. Benjamin A Armstrong ProTem Judge - Author
49. 14-Oct-2022 FILED: Motion for Procedural Order: Request to Extend Time to File the Opening Brief; Certificate of Service (Appellant)
50. 17-Oct-2022 ORDERED: Motion for Procedural Order: Request to Extend Time to File the Opening Brief (Appellant) = GRANTED. Due date EXTENDED from Wednesday, 10-26-2022 to Friday, 11-25-2022. Benjamin A Armstrong ProTem Judge - Author
51. 25-Oct-2022 FILED: Motion to Supplement the Record and to Issue an Updated Electronic Index of Record; Certificate of Service (Appellant)
52. 31-Oct-2022 ORDERED: Motion to Supplement the Record and to Issue an Updated Electronic Index of Record (Appellant) = GRANTING granting the motion and supplementing the record on appeal by including the documents designated above. FURTHER ORDERED: Directing the Clerk of the Maricopa County Superior Court to forward to this court by 11/10/2022, certified copies of the documents designated above, marked for filing in this appeal. FURTHER ORDERED: Extending the time to file the opening brief from 11/25/2022 to 12/12/2022. FURTHER ORDERED: Directing the Clerk of the Maricopa County Superior Court to issue an updated index of record that includes the documents designated above. Benjamin A Armstrong ProTem Judge - Author
53. 4-Nov-2022 FILED: Courtesy Copy - Maricopa County Superior Court, Delayed Notice of Appeal from Superior Court and Designation of Record for Appeal
54. 16-Nov-2022 FILED: Supplemented Superior Court e-Record with Revised Index of Record
55. 12-Dec-2022 FILED: Appellant's Opening Brief; Certification of Compliance with Ariz. R. Crim. P. 31.12; Certificate of Service (Appellant)
56. 15-Dec-2022 FILED: Notice of Appearance; Certificate of Service (Appellee)
57. 20-Jan-2023 FILED: Unopposed Motion for Procedural Order (Extension for Answering Brief); Certificate of Service (Appellee)
58. 23-Jan-2023 ORDERED: Unopposed Motion for Procedural Order (Extension for Answering Brief) (Appellee) = GRANTED. Due date EXTENDED from Monday, 01-23-2023 to Monday, 01-30-2023. Benjamin A Armstrong ProTem Judge - Author
59. 30-Jan-2023 FILED: Unopposed Motion for Procedural Order (Extension for Answering Brief); Certificate of Service (Appellee)
60. 1-Feb-2023 ORDERED: Unopposed Motion for Procedural Order (Extension for Answering Brief) (Appellee) = GRANTED. Due date EXTENDED from Monday, 01-30-2023 to Wednesday, 02-01-2023. Benjamin A Armstrong ProTem Judge - Author
61. 1-Feb-2023 FILED: Appellee's Answering Brief; Certificate of Compliance; Certificate of Service (Appellee)
62. 21-Feb-2023 FILED: Appellant's Reply Brief; Certification of Compliance With Rule 31.12, ARCP; Certificate of Service (Appellant)
63. 3-Mar-2023 FILED: Memorandum – to Clerk of Superior Court Re: any additional record not already transmitted due within 10 days
64. 14-Mar-2023 FILED: Supplemented Superior Court e-Record with Revised Index of Record

**Court of Appeals, Division One**

**Criminal**

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**74 PROCEEDING ENTRIES**

- 65. 29-Mar-2023 CLNDR: CONFERENCE, Department A, 5-2-23, CONFERENCE ROOM.
- 66. 16-May-2023 MEMORANDUM DECISION (Affirmed) Hon Anni Hill Foster - Author; Hon Samuel A Thumma - Concur; Hon Randall M Howe - Concur
- 67. 16-May-2023 FILED: Memorandum Decision Distribution List
- 68. 8-Jun-2023 FILED: ASC Order filed 06/08/2023 re: extending time for filing Petition for Review to 07/17/2023. This matter is subject to dismissal if the Petition for Review is not filed by 07/17/2023.
- 69. 19-Jul-2023 FILED: Email Notice from ASC re: Petition for Review filed 07/17/2023; request for partial record
- 70. 19-Jul-2023 FILED: Letter forwarding partial record to Arizona Supreme Court
- 71. 6-Feb-2024 FILED: Letter from ASC, 02/06/2024, re: Petition for Review GRANTED as to Issue 2 only on 02/06/2024; vacating paragraphs 15 and 16 of the court of appeals' memorandum decision and remanding this matter to the court of appeals to address (1) whether A.R.S. § 13-3601 applies to attempted sexual assault in light of State v. Peek, 219 Ariz. 182, 184–85 ¶¶ 11–20 (2008); and (2) if not, whether an erroneous designation in a judgment of conviction can be corrected under A.R.S. § 13–4036, see State v. Montano, No. 1 CA-CR 14-0060, 2015 WL 770325, at \*3 (Ariz. App. Feb. 24, 2015) (mem. dec.) (finding dangerous designation erroneous for lack of jury finding and correcting error under A.R.S. § 13–4036).
- 72. 14-Feb-2024 FILED: Copy of Letter forwarding complete record to ASC
- 73. 15-Feb-2024 FILED: Letter from ASC, dated 02/15/2024, returning the physical record as follows; Hearing Date: 09/09/2021 List # 4 5 6 7 8 10 16 17 in manila envelope; Sealed Exhibit: Confidential Criminal History Report in Sealed Manila Envelope
- 74. 22-Feb-2024 FILED: Arizona Supreme Court Mandate - COA1 Decision Vacated Paragraphs 15 and 16 - Remanded to COA1