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ARIZONA SUPREME COURT

M.A., as Mother of J.D.,

Petitioner,

vs.

**The Honorable José Padilla, Judge
of the Superior Court of the State of
Arizona, in and for the County of
Maricopa,**

Respondent Judge;

**State of Arizona, Chris A. Simcox,
aka Christopher Allen Simcox,**

Real Parties in Interest.

Court of Appeals
Division One
No. 1 CA-SA 15-0087

Maricopa County Superior Court
Case No. CR2013-428563-001 DT

**EMERGENCY PETITION FOR
SPECIAL ACTION – REQUEST
FOR STAY**

**(EXPEDITED RULING
REQUESTED – TRIAL PENDING)**

**(ORAL ARGUMENT
REQUESTED)**

Petitioner M.A., as Mother of minor victim J.D. (“Petitioner,” or “Victim”) petitions the Supreme Court of Arizona to order a stay of the ongoing trial in this matter pending special action review by the Court of Appeals, in order to prevent the Petitioner, a child victim of sexual abuse, from being personally cross-examined by her own abuser, who recently made the decision to represent himself

in propria persona. This Motion is filed on an emergency basis because Petitioner is expected to be called as a trial witness either tomorrow afternoon (April 9th, 2015) or on Monday, April 13th. If the Court allows the child Victim to be subject to cross-examination by her abuser, then the Victim's constitutional rights to protection, dignity, and to be free from harassment and intimidation will be permanently violated.¹

Petitioner asks only that the trial be stayed while the important issue over which the Court of Appeals has retained special action jurisdiction is resolved: whether the trial judge correctly ruled that the court cannot prevent a criminal defendant from personally cross-examining his own sexual abuse victim, unless an evidentiary hearing is held at which the State shows that actual emotional harm to the Defendant will likely result from the cross-examination. The Court of Appeals has already set oral argument on the special action for this April 29, 2015, so the effect of a stay on the Defendant's right to a speedy trial is limited. Further, Rule 8 (governing the granting of continuances in a criminal case) specifically requires that the victim's interests be considered in granting a continuance.

This Court has special action jurisdiction because there is no "equally plain, speedy, and adequate remedy by appeal." 7B A.R.S. Special Actions Rules of Proc., Rule 1(a). The decision of the Court of Appeals to deny the request for stay but retain jurisdiction over the petition for special action prevents Victim from seeking any remedy besides through special action to this Court. Finally, the

¹ Ariz. Const. art. II, § 2.1(A)(1).

underlying issues are also issues of statewide importance and of first impression to the Arizona courts.

Petitioner has standing to make this request under A.R.S. § 13-4437(A), which provides that “[t]he victim has standing to seek an order, to bring a special action or to file a notice of appearance in an appellate proceeding seeking to enforce any right or to challenge an order denying any right guaranteed to victims under the victims' bill of rights, article II, § 2.1, Constitution of Arizona, any implementing legislation or court rules.” Pursuant to A.R.S. § 13-4403(C), the parent of a minor victim may also “exercise all of the victim’s rights on behalf of the victim.”

STATEMENT OF FACTS

Christopher Allen Simcox (“Defendant”) is charged with three counts of Sexual Conduct with a Minor, class 2 felonies; two counts of Child Molestation, class 2 felonies; and one count of Furnishing Harmful Items to Minors, a class 4 felony. His victims are presently between eight and nine years old. (Victim is eight years old.) On February 12, 2015, Defendant filed a motion to represent himself, which was granted by the trial court. Advisory counsel was appointed to assist Defendant with his defense. On March 6, 2015, the State filed a Motion for Victim Trial Accommodations, requesting that the trial court order advisory counsel to conduct the cross-examinations of the child victims in order to protect the victims’ and Defendant’s constitutional rights simultaneously. Respondent Judge denied the State’s motion immediately after oral argument on April 2, 2015. The State requested a stay of the trial court’s order directly after Respondent Judge ruled from the bench. The Defendant took no position on the State’s stay request. The

trial court denied the State's request for stay and set jury selection to begin on Tuesday, April 7, 2015. On April 3rd, the State filed a Petition for Special Action with the Court of Appeals, as well as Request for Stay asking to stay the trial court proceedings pending special action review by the Court of Appeals. On April 6th, the Court of Appeals denied the State's Request for Stay and set a briefing schedule on the State's Petition, with oral argument scheduled for the morning of April 29th, 2015. The State expects to call Victim as a witness either tomorrow afternoon (April 9th) or on Monday, April 13th. Without a stay from this Court, the child Victim's constitutional rights will be forever violated, without the opportunity to seek appellate review as guaranteed to the Victim pursuant to A.R.S. §§ 13-4436, 13-4437(A).

REASONS FOR GRANTING THIS PETITION

A request for a stay is evaluated on the traditional four criteria for the issuance of preliminary injunctions²:

(1) **A strong likelihood of success on the merits**

The State argues on appeal that the trial judge incorrectly ruled that the court could not prevent the Defendant from personally cross-examining his own sexual abuse victim, unless the State presented evidence showing that actual emotional harm to the Defendant would result. In making this ruling, the trial court appeared to rely on *Maryland v. Craig*, 497 U.S. 836, 110 S.Ct. 3157, 111 L.Ed.2d 666 (1990), in which the United States Supreme Court ruled that such a showing is

² *Smith v. Az Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410-11, 132 P.2d 1187, 1190-91 (2006).

necessary before allowing a child sexual abuse victim to testify from outside the courtroom via closed-circuit television. However, the issue at bar is in fact whether Defendant has the right to personally cross-examine his own minor victim in court — a much lesser right, as acknowledged by the Fourth Circuit in the case of *Fields v. Murray*, 49 F.3d 1024, 1036 (4th Cir. 1995)³: “the right denied here, that of cross-examining witnesses personally, lacks the fundamental importance of the right denied in *Craig*, that of confronting adverse witnesses face-to-face.” *Fields*, 49 F.3d at 1036 (internal citations omitted). So while “the Court in *Craig* indicated that the trial court should ‘hear evidence’ and conclude whether each child would be traumatized by the presence of the defendant in the courtroom during her testimony,” “[i]t is far less difficult to conclude that a child sexual abuse victim will be emotionally harmed by being personally cross-examined by her alleged abuser than by being required merely to testify in his presence.” *Id.* Therefore the Court does not need to hear “[p]sychological evidence of the probable emotional harm to each of the girls” in order for it to order that Defendant may not personally cross-examine his own minor child sexual abuse victim. *Id.*, 49 F.3d at 1037. Petitioner is aware of no contrary authority in the State, which has long recognized that “safeguarding the victim’s interests is especially important in cases of child sexual abuse.” *State v. Krum*, 183 Ariz. 288, 294, 903 P.2d 596, 602 (1995).

(2) Irreparable harm if the stay is not granted

The psychological trauma to a child sexual abuse victim of being personally cross-examined by her own abuser constitutes irreparable harm. *See Maryland v.*

³ This is an apparent issue of first impression to the Arizona courts.

Craig, 497 U.S. 836, 855, 110 S.Ct. 3157, 3168–69, 111 L.Ed.2d 666 (1990) (citing authorities documenting psychological trauma suffered by sexually abused children who must face defendants in court).

(3) **That the harm to the requesting party outweighs the harm to the party opposing the stay**

A trauma of this kind can never be undone; whereas trials can be continued, and cases can be retried. The Defendant’s only arguable right at interest here—the right to speedy trial—does not outweigh the irreparable harm to the Victim. Even Rule 8 itself acknowledges that the right to a speedy trial belongs in part to the victim, and that the court “shall consider” the right of the victim in allowing for a continuance. Under Ariz. R. Crim. P. 8.5(a), a continuance of any trial date shall be granted if extraordinary circumstances exist and delay is indispensable to the interests of justice; and “[i]n ruling on a motion for continuance, the court shall consider the rights of the defendant **and any victim** to a speedy disposition of the case.” Both the language of the Rule and the overriding constitutional concerns implicated by the Victim’s Rights Act militate in favor of granting the stay because “extraordinary circumstances” are present here—so extraordinary that they constitute a matter of first impression in this State; and because “delay is indispensable to the interests of justice.” Finally, the Court of Appeals has already set forth an Order setting dates and fixing a time for response, with a judicial conference and oral argument to occur on April 29, 2015 (Order attached), so that the delay will be minimal.

(4) That public policy favors the granting of the stay

Preventing a child molester from personally cross-examining his own victim is likely the most important protection imaginable for a child victim of sexual abuse; and this Court has previously acknowledged the special importance of protecting the rights that belong to victims of child sexual abuse. *Krum*, 183 Ariz. at 294, 903 P.2d at 602. Public policy clearly favors granting the stay.

CONCLUSION

For the above reasons, Petition/Victim requests that the Court of Appeals's decision to deny the State's Request for Stay be reversed, and that the ongoing trial of this matter be stayed pending the decision by the Court of Appeals on the State's petition for special action.

RESPECTFULLY SUBMITTED this 8th day of April, 2015.

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