

**STATE V. GOMEZ, NO. CR–10–0358–AP,
2012 WL 6061679 (ARIZ. 2012)**

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After an automatic appeal, the Arizona Supreme Court affirmed Fabio Gomez’s death sentence for his conviction for the December 1999 kidnapping, rape, and murder of Joan Morane.¹ Gomez alleged his death sentence was in error for three reasons: first, because the trial court had revoked his pro per status; second, his motion for new counsel was denied; and finally, because the State failed to present evidence that Morane’s murder met the elevated cruelty standard under Arizona law.² The statute requires the evaluation of any “especially heinous, cruel or depraved” circumstances when considering the imposition of a death sentence.³

For the majority of the trial, Gomez had invoked his right to appear “pro per,” meaning that he represented himself. The Supreme Court found no abuse of discretion when the trial court revoked Gomez’s pro per status. Even though the Sixth Amendment right to counsel includes the right to represent oneself, the Court noted that self-representation depends upon the defendant’s ability to comply with procedural rules and courtroom protocol.⁴ Additionally, the trial court had repeatedly admonished Gomez that his failure to follow court rules could result in the loss of his pro per status, yet Gomez continued to undermine the trial court’s ability to conduct his trial efficiently, which the Supreme Court held was sufficient reason for revocation of his pro per status.⁵

Additionally, the Court found no abuse of discretion in the trial court’s decision to deny Gomez’s requests to change counsel.⁶ Although the trial court denied the motions without an evidentiary hearing, such a hearing is not mandatory, and the trial court was able to adequately review the factors relevant to the requests on the facts alleged in the motions.⁷ A defendant’s Sixth Amendment

1. *State v. Gomez*, No. CR–10–0358–AP, 2012 WL 6061679, at ¶¶ 1, 44 (Ariz. 2012).

2. *Id.* at ¶¶ 7, 18, 30.

3. ARIZ. REV. STAT. § 13-751(F)(6) (2011).

4. *Id.* at ¶ 8.

5. *Id.* at ¶ 16.

6. *Id.* at ¶ 29.

7. *Id.* at ¶¶ 25-29.

right to counsel is only violated upon a complete breakdown of communication or irreconcilable differences with his appointed attorney.⁸ However, the facts pleaded by both Gomez and his appointed counsel did not demonstrate the need for new counsel based on this standard.⁹

Finally, the Court conducted an independent review of the (F)(6) aggravating factors to review suitability of the death sentence.¹⁰ The Court determined that by presenting evidence that the victim had been conscious during the attack and murder, the State had met its burden of demonstrating that the murder was “especially cruel.”¹¹ The Court held that the State’s inability to prove when the victim lost consciousness was irrelevant because she was aware for at least part of the attack and Gomez knew or should have known of her suffering.¹²

8. *Id.* at ¶ 19.
9. *Id.* at ¶ 27.
10. *Id.* at ¶ 31-32.
11. *Id.* at ¶ 33.
12. *Id.* at ¶ 37.