

## ***State v. Hedlund***

**Full Citation:** State v. Hedlund, 431 P.3d 181 (Ariz. 2018).

**Date Filed:** December 10, 2018

**Opinion's Author:** Justice Bolick

**Joined By:** Chief Justice Bales, Vice Chief Justice Brutinel, Justices Pelander, Timmer, & Gould. (Justice Lopez recused himself).

*Practitioners: For quick reference, please see the "Issue" and "Holding" sections.*

**Facts:** Hedlund was convicted by jury of first degree murder and second degree murder in 1992.<sup>1</sup> Both killings were during a burglary spree committed by Hedlund and James McKinney (co-defendant). At sentencing, Hedlund presented mitigating evidence of an extremely abusive childhood, resulting alcohol abuse, minor participation, remorse, and plea agreement.

**Procedural History:** This case is currently before the Arizona Supreme Court. The trial judge sentenced Hedlund to death after finding two aggravating factors regarding the first degree murder: (1) Hedlund was previously convicted of a serious offense; and (2) he committed the murder for pecuniary gain.<sup>2</sup>

On appeal, the Arizona Supreme Court affirmed Hedlund's death sentence despite striking the prior conviction aggravator because the mitigating evidence was not sufficiently substantial to outweigh the pecuniary gain aggravator.

The trial court then denied Hedlund's petition for post-conviction relief. The Arizona Supreme Court denied his subsequent petition for review.

Next, the U.S. District Court for the District of Arizona denied Hedlund's 2003 writ of habeas corpus and motion to expand the evidentiary record, ruling he was not entitled to habeas relief.

In 2017, the Ninth Circuit reversed, determining that the Arizona Supreme Court erred when considering Hedlund's mitigating evidence during its independent review of the death sentence. The court of appeals reasoned that the Arizona Supreme Court's application of the unconstitutional causal nexus test to exclude mitigating evidence not causally related to the crimes was an error under *Eddings v. Oklahoma*.<sup>3</sup> Further, this error had a substantial and injurious effect on the sentencing decision.<sup>4</sup>

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<sup>1</sup> State v. McKinney, 917 P.2d 1214, 1218 (1996).

<sup>2</sup> See A.R.S. § 13-751(F)(2), (F)(5).

<sup>3</sup> 455 U.S. 104 (1982).

<sup>4</sup> Hedlund v. Ryan, 854 F.3d 557, 586-87 (9th Cir. 2017).

Finally, the Arizona Supreme Court granted the State's motion to conduct a new independent review, consistent with *State v. Styers*,<sup>5</sup> to correct the constitutional error.

**Issue:** In an independent sentencing review, all mitigating evidence presented must be considered against any aggravating factors. The mitigating evidence cannot be excluded entirely by a lack of causal nexus to the crime. Are Hedlund's mitigating factors of childhood abuse, alcohol abuse and intoxication, minor participation, remorse, and plea agreements, reweighed against the pecuniary gain aggravator, sufficiently substantial to call for resentencing?

**Holding:** No, the mitigating evidence presented is not sufficient to warrant leniency in light of murder with a pecuniary gain as the sole aggravating factor.

**Disposition:** The trial court's sentencing of Hedlund to death is affirmed.

**Rule:** In an independent sentencing review, a sole but strong aggravating factor will not be outweighed unless all mitigating evidence is sufficiently substantial.

**Reasoning:**

- **Mitigation factors assessment.** The court stated that the convicted has burden of proving mitigation factors by a preponderance, otherwise the mitigation is given no weight.<sup>6</sup> Although the court must consider all mitigating evidence without regard to their causal nexus to the crime, the failure to show such connection may reduce the mitigating evidence's weight.<sup>7</sup> Both statutory and non-statutory mitigating evidence is considered.<sup>8</sup> Hedlund argued that the mitigating evidence of his extremely abusive childhood, resulting alcohol abuse, minor participation, remorse, and plea agreement was substantial enough to call for leniency.<sup>9</sup> However, the court held that all of Hedlund's mitigating evidence was not sufficiently substantial to justify leniency when compared to the strength of the pecuniary gain aggravating factor.<sup>10</sup>
- **Expert opinion regarding mental impairment given little weight.** The court recognized that mitigation is statutorily allowed when the defendant's capacity to appreciate the wrongfulness of his conduct or conform their conduct to the law was significantly impaired.<sup>11</sup> The defense did present two experts who testified as to Hedlund's mental impairment.<sup>12</sup> However, the court found that the cross-examinations of the defense experts effectively impeached their opinions, and

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<sup>5</sup> 254 P.3d 1132, 1133–34 (2011).

<sup>6</sup> *State v. Jones*, 937 P.2d 310, 322 (1997).

<sup>7</sup> *Styers*, 154 P.3d at 1135.

<sup>8</sup> See ARIZ. REV. STAT. § 13-751(G); *State v. Gallegos*, 870 P.2d 1097, 1113–14 (1994).

<sup>9</sup> *State v. Hedlund*, 431 P.3d 181, 185 (Ariz. 2018).

<sup>10</sup> *Id.*

<sup>11</sup> § 13-751(G)(1).

<sup>12</sup> *Hedlund*, 431 P.3d. at 186.

rendered the evidence of little credibility and probative value.<sup>13</sup> Neither could testify with certainty as to Hedlund's actual level of impairment.<sup>14</sup> Furthermore, one testified that Hedlund could have modified his behavior if an officer had been present, and the other opined that Hedlund remained aware of what was moral.<sup>15</sup>

- **Abusive childhood given little weight.** The court acknowledged the terrible conditions in which Hedlund was raised.<sup>16</sup> Still, his childhood abuse was more than ten years before the murders.<sup>17</sup> Moreover, it was not shown the abuse had any impact on Hedlund's ability to distinguish right from wrong or his ability to control his actions.<sup>18</sup>
- **Intoxication at time of murder given little weight.** The court assigned little credibility to Hedlund's self-reported intoxication level because of his motive to lie and contradictory witness testimony.<sup>19</sup> Also, the crime was committed methodically and deliberately, suggesting Hedlund was not so impaired as to be a significant mitigation.<sup>20</sup>
- **Minor participation given no weight.** The court found Hedlund's claim that he was only involved in the crime spree as the driver was contradicted by the jury finding him guilty of premeditated murder in a special verdict.<sup>21</sup> Additionally, the court found ample evidence indicating Hedlund had done the killing.<sup>22</sup>
- **Remorse given little or no weight.** The court reasoned that Hedlund's continued maintaining that he was not involved in the murder undercut the sincerity of his expressed remorse.<sup>23</sup>
- **Plea agreements given little weight.** The court recognized that plea offers can be made for reasons unrelated to whether a prosecutor believes a defendant deserves the death penalty.<sup>24</sup> A court also has discretion whether to accept or reject a plea offer.<sup>25</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 187.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 188.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 189.

<sup>25</sup> *Id.*

- **Pecuniary gain aggravating factor was strong.** The court regarded the sole aggravator of pecuniary gain as “especially strong” in light of Hedlund’s premeditated intent, active complicity and conscious involvement in the crimes.<sup>26</sup> The evidence of pecuniary gain being the primary purpose of the murders was “overwhelming and inescapable.”<sup>27</sup>

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 185 (quoting *State v. McKinney*, 917 P.2d 1214, 1230–31 (1996)).