

THE Durango HERALD

Disturbing Colorado case to be heard by the U.S. Supreme Court next Monday

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A strange facet of a Colorado law will be the central feature of a U.S. Supreme Court case to be heard by the high court on Jan. 9. It is an interesting case and worthy of attention in that it focuses on the very meaning of due process.

At issue is the presumption of innocence and whether the state of Colorado can effectively reverse that. It is arguing that to recoup money taken seized in the course of a criminal prosecution, a defendant who has been acquitted of all charges must prove “actual innocence.”

Shannon Nelson was originally charged with 40 counts concerning alleged sexual and physical abuse of her four children. In 2006, she was convicted on five counts. She appealed. The Colorado Court of Appeals reversed the decision and sent her case back to the lower court. She was retried, and a jury acquitted her of all charges.

None of that is in dispute.

The question now is whether and under what circumstances Colorado has to refund money she was charged. With her original conviction, Nelson was sentenced to 20 years in prison and ordered to pay court costs, fees and restitution totalling more than \$8,000. In that she had no money, the Colorado Department of Corrections applied funds from her inmate account to the debt. By the time she was ultimately acquitted, the DOC had taken \$702.10 of her money. She wants it back.

She took the matter to court and a district court ruled that it had no authority to order her reimbursed. An appeals court effectively said it does. The state then appealed and the Colorado Supreme Court which said, no it does not.

Backed in part by the Cato Institute, a think tank that describes itself as “dedicated to the principles of individual liberty, limited government, free markets and peace,” Nelson’s case has been taken up by the U.S. Supreme Court.

What the court will look at in Nelson vs. Colorado is that state’s contention that she is eligible for relief by way of Colorado’s Exoneration Act, which Gov. John Hickenlooper signed into law in 2013. That bill was aimed largely at compensating people (up to \$70,000 per year) who were wrongly convicted of crimes they did not commit. Nelson just wants her money back.

What is troubling about the state's contention is the Exoneration Act's provision that Nelson must prove by "clear and convincing evidence" that she is "actually innocent" and not simply "legally innocent."

Presumably that provision exists because lawmakers did not want to be seen giving taxpayer money to someone set free on what talk show critics might call "a technicality."

But can the courts or the Legislature even make such a distinction? Can either in effect say there is a difference between guilty under the law and guilty in fact?

For the state to require Nelson to prove she committed no crime after she was acquitted by a jury raises a troubling question: Does being acquitted not mean not guilty? Or is that something that depends on what the Legislature thinks?

Nelson and her lawyers contend that provision of the Exoneration Act violates her right to due process under the Fourteenth Amendment to the U.S. Constitution. It will be interesting to find out if the Supreme Court agrees.