

ARIZONA SUPREME COURT

KRISTIN K. MAYES,
ARIZONA ATTORNEY GENERAL,

Petitioner,
v.

RACHEL H. MITCHELL,
MARICOPA COUNTY ATTORNEY,

Respondent,

AARON BRIAN GUNCHES,

Real Party in Interest.

Arizona Supreme Court
No. CV-24-0127-SA

Maricopa County Superior Court
No. CR-2003-038541-001

**BRIEF OF AMICI CURIAE IN
SUPPORT OF THE MARICOPA
COUNTY ATTORNEY ¹**

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¹ Counsel for Amici Curiae received consent from the parties via email. Ariz. R. Civ. App. P. (b)(1)(A).

INTEREST OF AMICI

Arizona Voice for Crime Victims, Inc. (AVCV) is an Arizona nonprofit organization that works to promote and protect crime victims' interests throughout the criminal justice process. AVCV seeks to foster a fair justice system that (1) provides crime victims with resources and information to help them seek immediate crisis intervention, (2) informs crime victims of their rights under the laws of the United States and Arizona, (3) ensures that crime victims fully understand their rights, and (4) promotes meaningful ways for crime victims to assert and enforce their rights, including through direct legal representation. AVCV also participates as amicus curiae to provide a victims' rights perspective to the judiciary when it is faced with considering issues that will impact the constitutional rights of crime victims.

Karen Price is the victim in the underlying criminal case. She is the sister of murder victim, Ted Price, and represented by AVCV. Ms. Price's interest in this litigation is to ensure that her constitutional rights to justice and finality are protected and upheld by this Court and that the ongoing unconstitutional delay will not be permitted to continue.

Pursuant to Ariz. R. Civ. App. P. 16(b)(3), no person or entity other than AVCV provided financial resources for the preparation of this brief.

SUMMARY OF THE ARGUMENT

Victims in Arizona have rights to justice and due process. Ariz. Const. art. II,

§ 2.1. To preserve and protect these rights, Arizona’s Victims’ Bill of Rights (VBR) guarantees victims a right to a “prompt and final conclusion of the case after the conviction and sentence.” Ariz. Const. art. II, § 2.1(A)(10). Additionally, victims also have a right “[t]o be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse throughout the criminal justice process.” Ariz. Const. art. II, § 2.1(A)(1).

This Court has recognized the purpose of victims’ rights: to provide victims with “the basic rights of respect, protection, participation, and healing of their ordeals.” *Champlin v. Sargeant*, 192 Ariz. 371, 375 (1998). Additionally, this Court has consistently recognized the importance of a victim’s constitutional right to finality. *Fitzgerald v. Myers*, 243 Ariz. 84, 92, ¶ 25 (2017); *State v. Gates*, 243 Ariz. 451, 455, ¶ 16 (2018). The right to justice, that preexisted Arizona’s VBR, is the fundamental basis for Ms. Price’s constitutional right to finality as well as the other rights that our constitution affords to victims.

To ensure Ms. Price’s rights to justice and finality are not thwarted by the continued unconstitutional, unilateral delay imposed by Governor Hobbs and Attorney General Mayes, this Court should hold that the constitutional and statutory authority, power, and duty to request a warrant of execution pursuant to A.R.S. § 13-759(A) and Ariz. R. Crim. P. 31.23(a) and (b) does not rest exclusively with the Arizona Attorney General and allow the Maricopa County Attorney to seek a

warrant of execution for Inmate Gunches. Otherwise, this unconstitutional delay will be permitted to continue. The denial of justice and finality is detrimental to emotional recovery for families of homicide victims. Ms. Price and her family deserve to have all of the criminal proceedings behind them.

STATEMENT OF THE CASE

AVCV accepts the facts and procedural history submitted by the Maricopa County Attorney in its *Motion to Set Briefing Schedule for Motion for Warrant of Execution*, filed on June 5, 2024.

ARGUMENT

When this Court considers “[w]hether the constitutional and statutory authority, power, and duty to request a warrant of execution pursuant to A.R.S. § 13-759(A) and Ariz. R. Crim. P. 31.23(a) and (b) rests exclusively with the Arizona Attorney General[,]” AVCV and Ms. Price respectfully urge this Court to consider victims’ constitutional rights to justice and finality as well as the traumatic impact of delay.

I. This Court should give effect to Ms. Price’s constitutional rights to justice and finality and allow MCAO to seek a warrant of execution.

Decades prior to the enactment of Arizona’s Victims’ Bill of Rights (VBR), Ariz. Const. art. II, § 2.1, the U.S. Supreme Court expressed the idea of justice for victims of crime when Justice Cardozo wrote that “[j]ustice, though due to the accused, is due to the accuser also.” *Snyder v. Massachusetts*, 291 U.S. 97, 122

(1934). This preexisting and express right to justice, as expressly stated in Arizona’s VBR, is the basis for each of the constitutional rights guaranteed to victims by our VBR. For this fundamental right to justice to be preserved and protected, victims in Arizona have a constitutional right to a “...prompt and final conclusion of the case after the conviction and sentence.” Ariz. Const. art. II, § 2.1(A)(10). The provisions of the VBR are mandatory, “unless by express words they are declared to be otherwise.” Ariz. Const. art. II, § 32.

The terms of the VBR expressly require protection of victims’ rights to justice and finality. The plain language of our constitution cannot be ignored. *Deer Valley Unified School Dist. No. 97 of Maricopa County v. Superior Court*, 157 Ariz. 537, 540 (1988) (holding that state may not dispose of its school trust lands other than *by compliance with the specific terms and conditions of the Arizona Constitution*) (emphasis added). This Court has previously held the same in the context of the VBR. *Knapp v. Martone*, 170 Ariz. 237 (1992) (holding a mother not charged with the offense met the constitutional definition of a victim affording her the right to refuse a defense interview). “It is important to emphasize that Arizona courts must follow and apply the plain language of this new amendment to our constitution.” *Id.* at 239.

“When interpreting the Arizona Constitution, ‘we seek to give terms the original public meaning understood by those who used and approved them.’”

Matthews v. Indus. Comm'n of Ariz., 254 Ariz. 157, 163, ¶ 29 (2022). This may include looking to “dictionary definitions from the time the provision was adopted.” *Id.* at ¶ 33. The plain meaning of the word “justice” is “the maintenance or administration of what is just...the assignment of merited rewards or punishments; the administration of law.” “Justice,” *Merriam-Webster Dictionary Online*, <https://www.merriam-webster.com/dictionary/justice>, last accessed August 4, 2024. The plain meaning of the word “final” is “not to be altered or undone.” “Final,” *Merriam-Webster Dictionary Online*, <https://www.merriam-webster.com/dictionary/final>, last accessed August 4, 2024. This Court has specifically defined justice for a victim, but it had previously recognized the importance of the constitutional right to finality and that it is a right that warrants protection. *Fitzgerald*, 243 Ariz. at 92; *Gates*, 243 Ariz. at 455.

Ms. Price’s constitutional rights to justice and finality warrant protection. Yet, they have been largely ignored by Gov. Hobbs and Attorney General Mayes’ as evidenced by their unconstitutional and unilaterally imposed delay of Inmate Gunches’ execution. First, by attempting to withdraw the Motion for Warrant of Execution filed by the Office of the Arizona Attorney General in December 2022. *Motion to Set Briefing Schedule for Motion for Warrant of Execution* at 3. And, then again after refusing to carry out the execution of Inmate Gunches after this Court

issued a death warrant on March 2, 2023. *Id.* These actions came on the heels of three executions in 2022 that this Court permitted to be constitutionally carried out.

The State of Arizona is obligated to carry out Inmate Gunches death sentence and it failed. It is also obligated to comply with victims' constitutional rights, but it did not. Ariz. Const. art. II, § 32. Instead, victims' rights were blatantly ignored by the highest offices in Arizona. Because this Court's "...absolute duty [is] to protect constitutional rights," it should allow the Maricopa County Attorney, Rachel H. Mitchell, to seek a death warrant for Inmate Gunches. *State v. Patel*, 251 Ariz. 131, 138, ¶ 26 (2021). The victims deserve justice, which will only come with finality.

II. Social science research demonstrates that finality is essential to victims' emotional healing.

Ms. Price and her family have a compelling interest in finality as it is essential to their emotional healing and recovery. The murder of a loved one causes significant psychological implications conceptualized within a post-traumatic stress disorder ("PTSD") framework, the most consistently documented consequence of violent crime. Heidi M. Zinzow, et al., *Examining Posttraumatic Stress Symptoms in a National Sample of Homicide Survivors: Prevalence and Comparison to Other Violence Victims*, 24 J. Traum. Stress 743 (December 2011); Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice Involvement on Victims' Mental Health*, 23 J. Traum. Stress 182 (2010); Dean G. Kilpatrick & Ron Acierno, *Mental Health Needs of Crime Victims: Epidemiology and Outcomes*, 16 J. Traum. Stress 119

(2003); Patricia A. Resick, *The Psychological Impact of Rape*, 8 J. Interpersonal Violence 223, 225 (1993). Victims of all types of violent crime can experience PTSD or various symptom clusters, but homicide survivors are twice as likely to meet the criteria for PTSD and report more symptoms of PTSD than victims of other types of trauma. Zinzow at 744. The high prevalence of PTSD in homicide survivors may be partially due to the fact that survivors are forced to cope not only with the loss of a loved one, but also the sudden and violent nature of their death. Zinzow at 744, citing Angelynne Amick-McMullan, et al., *Family Survivors of Homicide Victims: Theoretical Perspectives and an Exploratory Study*, 2 J. Traum. Stress 21, 35 (1989). Studies also suggest a connection between initial victimization and later depression, substance abuse, panic disorder, agoraphobia, social phobia, obsessive-compulsive disorder, and even suicide. Parsons & Bergin at 182.

The criminal justice system often overlooks the effects that delayed judicial proceedings, as well as delays in punishment, have on victims. A prolonged experience in the criminal justice system adds to the intense and painful consequences of initial victimization. *Id.* at 182-183; see also Judith Lewis Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 J. Traum. Stress 159, 159 (2003). Secondary victimization often causes more harm than the initial criminal act. Uli Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, 15 Soc. Just. Res. 313, 321 (2002). A victim's experience with the

justice system often “means the difference between a healing experience and one that exacerbates the initial trauma.” Parsons & Bergin at 182. For example, one study examining the effect of offender punishment on crime victim recovery noted that most victims experienced improved recovery when there was an increased perceived punishment of the offender. Dr. Joel H. Hammer, *The Effect of Offender Punishment on Crime Victim’s Recovery and Perceived Fairness (Equity) and Process Control*, University Microfilms International 87, Ann Arbor, MI (1989).

Timely resolution is essential to victim recovery. *Id.* The emotional harm caused by a prolonged process is severe in murder cases, such as this, where more than two decades have passed without the imposition of punishment, followed by a promise of finality, and now, pulling the rug out from under the victims. Arizona, however, through the VBR and implementing statutes, seeks to minimize the traumatic impact of murder on victims by enumerating rights intended to preserve and protect victims’ rights to justice and due process. Ariz. Const. Art. II, § 2.1; Gessner H. Harrison, *The Good, The Bad, and The Ugly: Arizona’s Courts and the Crime Victims’ Bill of Rights*, 34 Ariz. St. L.J. 531, 531–32 (2002). Most relevant here is that the VBR gives victims an express right “[t]o a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.” Ariz. Const. Art. II, § 2.1(A)(10).

CONCLUSION

Ms. Price and her family thought that finality was on the horizon after Arizona carried out three constitutional executions in 2022 and when this Court issued the death warrant in March of 2023. However, the failure of Gov. Hobbs and Attorney General Mayes to ensure that their rights to justice and finality were respected and upheld has contributed to the trauma they have endured throughout the criminal justice process. Thus, AVCV and Ms. Price respectfully ask this Court to allow the Maricopa County Attorney to seek Inmate Gunches' death warrant AVCV and Ms. Price submit this brief for the Court's consideration and respectfully urge this Court to consider victims' constitutional rights to justice and finality and to construe the applicable rules of procedure in a manner that protects these rights.

RESPECTFULLY SUBMITTED this 5th day of August 2024.

By: _____/s/_____
Colleen Clase
Attorney for Amici Curiae