

**IN THE ARIZONA SUPREME COURT**

STATE OF ARIZONA, ) No. CR-13-0282-AP  
)  
Appellee, ) Maricopa County Superior Court  
) No. CR2003-038541  
v. )  
)  
AARON BRIAN GUNCHES, ) (Capital Case)  
)  
Appellant. )  
)  
\_\_\_\_\_ )

**APPELLANT’S PROCEDURAL MOTION FOR ORDER TO CONTINUE  
DEADLINES AND CONFERENCE**

Aaron Gunches, *pro se*  
ADCRR #145371  
ASPC – Eyman – Rynning  
P.O. Box 3400  
Florence, AZ 85132

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Advisory Counsel for Mr. Gunches

Appellant Aaron Gunches, acting *pro se* and through undersigned advisory counsel, respectfully moves this Court to extend the deadlines set by the December 9, 2022, Amended Scheduling Order by 60 days. Mr. Gunches further requests this Court continue consideration of the motions for an execution warrant until its March 2023 motions agenda. This motion is made in good faith and not for purposes of delay and is necessary to protect Mr. Gunches' state and federal rights to due process, the effective assistance of counsel, equal protection, and freedom from cruel and unusual punishment. U.S. Const. amend. V, VI, VIII, XIV; Ariz. Const. Art. 2, §§4, 14, 15, 24, & 31.

As this Court is aware, Mr. Gunches filed a Motion for the Appointment of Advisory Counsel, which the court granted on December 13, 2022. Undersigned, Emily Skinner, has been in contact with Mr. Gunches who indicated he would like her to serve as his Advisory Counsel. On December 14, 2022, Emily Skinner agreed to accept the appointment.<sup>1</sup> Ms. Skinner immediately began working on the case, but Mr. Gunches seeks a reasonable extension to allow Ms. Skinner to collect the file, review

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<sup>1</sup> Ms. Skinner has not received an appointment order yet, but the Office of Public Defender Services has assented to her appointment and her name is listed on the Maricopa County Superior Court docket. Ms. Skinner is qualified to represent Mr. Gunches pursuant to Rule 6.8.

relevant portions of the file, and competently offer advice on the motions pending before this Court.

Mr. Gunches brings this motion in good faith. Indeed, he filed the original motion to request an execution warrant. Although he has waived his right to counsel in prior proceedings and has not pursued post-conviction litigation, he has not waived his Eighth Amendment right that any execution be conducted in a manner free from cruel and unusual punishment. Mr. Gunches must have the assistance of advisory counsel to protect that right.

In addition, an extension is necessary due to the delay Mr. Gunches has experienced as a *pro se* litigant in receiving this Court's orders. Mr. Gunches did not receive this Court's order amending the briefing schedule or granting his request for advisory counsel until December 17. The orders were postmarked December 14, five days after the Court issued its order amending the briefing schedule. A person facing execution is entitled to timely receipt of this Court's orders. Because he is representing himself and forced to rely on mail for receipt of orders and legal briefing, it is even more crucial that Mr. Gunches has adequate time to review and respond to orders.

Proceeding with this litigation as currently scheduled will violate Mr. Gunches' state and federal constitutional rights to due process, the effective assistance of counsel, and equal protection. *Montgomery v. Superior Court*, 178 Ariz. 84, 87 (App. 1993) quoting *Ross v. Moffitt*, 417 U.S. 600, 616 (1974) (“[A]t a minimum, the United States Constitution requires that the states provide every postconviction] litigant an

‘adequate opportunity to present his claims fairly.’”); *Ross, supra*, at 612 (equal protection prohibits “unreasoned distinctions” between similarly situated defendants and requires the state to provide “an adequate opportunity to present their claims fairly within the adversary system”) (quotation omitted); *Halbert v. Michigan*, 545 U.S. 605, 617-18 (2005) (due process and equal protection right to counsel during first-tier post-conviction review); *Harbison v. Bell*, 556 U.S. 180 (2009) (right to counsel during clemency proceedings). Moreover, continuing with scheduling Mr. Gunches’ execution without giving him the opportunity to received competent advice from counsel will result in a proceeding that falls below the heightened standards of reliability in capital cases required by the Eighth Amendment. *Caldwell v. Mississippi*, 472 U.S. 320, 323 (1985); *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976).

Counsel for the State, Assistant Attorney General Jeffrey Sparks, has indicated the State objects to any continuance of the deadlines.

Mr. Gunches respectfully requests this Court extend all deadlines by 60 days, resulting in a due date of February 27 for his reply to the State’s response to the Motion: Issuance of Death Warrant and response to State’s Motion for Warrant of Execution and a due date of March 6, 2023, for the State’s reply to the response to the State’s Motion for Warrant of Execution.

Respectfully submitted this 19<sup>th</sup> day of December, 2022 by:

s/ Emily Skinner

Emily Skinner  
Advisory Counsel for Aaron Gunches