

ARIZONA SUPREME COURT

STATE OF ARIZONA,

Appellee,

v.

AARON BRIAN GUNCHES,

Appellant.

CR 13–0282–AP

Maricopa County Superior Court

No. CR 2003–038541–001

RESPONSE TO PROCEDURAL MOTION FOR ORDER TO CONTINUE DEADLINES AND CONFERENCE

On November 25, 2022, Appellant Aaron Brian Gunches initiated the current proceedings by filing a motion requesting that this Court issue a warrant for his execution. The State filed a response on December 7 agreeing with Gunches’ motion and also moving this Court to issue an execution warrant. This Court then gave Gunches until December 27 to file any response to the State’s pleading, and the State until noon on January 3, 2023 to file any reply. This Court’s order stated that it anticipating conferencing the issue on January 4, 2023, “with issuance of the Warrant of Execution that day, if the motion is granted.” Order, filed Dec. 9, 2022. A few days later, this Court granted Gunches’ request for advisory counsel, and ordered the superior court to immediately appoint advisory counsel to assist Gunches in these proceedings. Order, filed Dec. 13, 2022.

On December 19, Gunches, “acting *pro se* and through” advisory counsel, moved this Court to continue all deadlines set in its December 9, 2022, Order by

60 days. Appellant’s Procedural Motion for Order to Continue Deadlines and Conference, filed Dec. 19, 2022. Gunches argues that the requested delay is necessary to give advisory counsel time “to collect the file, review relevant portions of the file, and competently offer advice on the motions pending before this Court.” *Id.* at 2–3.

This Court should deny Gunches’ request. The pending issues before this Court were initiated by Gunches himself when he affirmatively requested issuance of a warrant of execution. The State’s response did not raise any new issues or questions, but simply joined in Gunches’ request and likewise moved this Court to issue an execution warrant. Gunches’ continuance request does not explain why additional time is necessary to allow his advisory counsel to advise him on his own motion that he has already filed. If Gunches does not wish a warrant of execution to be conferenced and potentially issued under this Court’s current timeline, then his course of action should have been to withdraw his motion for warrant of execution, not request that its consideration be delayed.

Gunches next contends that a continuance is necessary because, as an incarcerated pro se litigant, there has been a delay of several days in his receipt of this Court’s orders. Notably, however, Gunches does *not* assert that this delayed receipt has left him with insufficient time to file his pleading that is currently due

by December 27. Nor does he explain why a delay of only a few days in receiving this Court's order justifies a 60-day continuance, especially since advisory counsel can ensure that he has timely notice of any pleadings and orders filed from this point forward.

Finally, Gunches argues that proceeding under the current schedule will violate his rights to due process, effective assistance of counsel, equal protection, and "the heightened standard of reliability in capital cases required by the Eighth Amendment." Motion at 3–4. First, however, because Gunches is proceeding pro se (see Motion at 2, stating that Gunches is "acting *pro se*"), any right to the effective assistance of counsel is not at issue. Moreover, the cases Gunches cites to support his contention that his rights will be violated by the current schedule all address criminal defendants' ability to bring challenges to their convictions and sentences. See Motion at 3–4. Gunches, however, has already had his statutorily mandated direct appeal and voluntarily waived all post-conviction review of his case. His cited cases are thus not applicable in this context. And similarly, *Caldwell v. Mississippi*, 472 U.S. 320 (1985), and *Woodson v. North Carolina*, 428 U.S. 280 (1976), which Gunches cites for their reference to heightened reliability in capital cases, discuss that principle in the context of determining whether "death is the appropriate punishment in a specific case," a determination that was made

long ago here and is no longer at issue.

As noted in the States' response to Gunches' motion for a warrant of execution, the statutory and rule-based requirements for issuance of a warrant of execution have been satisfied. *See* A.R.S. § 13–759(A); Ariz. R. Crim. P. 31.23(a). Gunches has not sought to withdraw his original motion, and has not adequately explained why a 60-day delay is justified. As a result, this Court should deny his request for a continuance.

RESPECTFULLY SUBMITTED this 20th day of December, 2022.

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