

SUPREME COURT OF ARIZONA

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-13-0282-AP
 Appellee,)
) Maricopa County
 v.) Superior Court
) No. CR2003-038541-001
 AARON BRIAN GUNCHES,)
) **FILED: 12/21/2022**
 Appellant.)
 _____)

O R D E R

On November 25, 2022, Appellant Aaron Brian Gunches filed a "Motion: Issuance of Death Warrant." Appellant's motion requests that the Court issue an "immediate death warrant. . . so his sentence of death may be carried out immediately. . . so that justice may be lawfully served and give closure to the victim's family."

On November 30, 2022, the Court ordered that the Appellee State of Arizona file a response to the Appellant's motion on or before December 7, 2022, and that the Appellant may file a reply on or before December 20, 2022.

On December 7, 2022, the State filed a response to Appellant's motion "join[ing] in Gunches' motion." The response also included the "State's Motion for Warrant of Execution" and "mov[ed] this Court to issue a warrant of execution[,]" citing A.R.S. § 13-759(A) and Ariz. R. Crim. P. 31.23(b). Therefore, pursuant to Arizona Department of Corrections, Rehabilitation, and Reentry ("ADCRR") Dep't Order 710, Attach. D, ¶ C.2., ADCRR is required to disclose to Appellant upon request (which has or will presumably be made), a quantitative

analysis of the chemical to be used in his execution within 10 days of Appellee's filing of a motion for warrant of execution. Furthermore, ADCRR Dep't Order 710, Attach. D, ¶ A.1.III and a related civil settlement prohibit ADCRR from using or selecting for use any drug that will be expired or past its beyond-use-date or use-by date at the time the execution is carried out. Additionally, as Appellee has previously advised this Court, ADCRR currently uses compounded pentobarbital to carry out sentence by lethal injection and once compounded, based on specialized testing, the compounded pentobarbital has a beyond-use-date of 180 days from the date of compounding.

On December 9, 2022, the Court amended its November 30, 2022, scheduling order and ordered that the Appellant may file a reply to Appellee's Response to Appellant's "Motion: Issuance of Death Warrant" and a response to "State's Motion for Warrant of Execution" on or before December 27, 2022. The Court's December 9, 2022, Order also ordered that Appellee may file a reply to Appellant's response to "State's Motion for Warrant of Execution" on or before January 3, 2023. Finally, the Court's December 9, 2022, Order advised that the Court anticipates that Appellant's "Motion: Issuance of Death Warrant" and the "State's Motion for Warrant of Execution" would be conferenced on January 4, 2023, with issuance of the Warrant of Execution that day, if the motion is granted.

On December 12, 2022, Appellant filed a "Motion: Appointment of Advisory Counsel," requesting that the Court appoint advisory counsel to assist the *pro se* Appellant "better prepare to navigate these proceedings." The Court granted the motion by Order on December 13, 2022, directing the Maricopa County Superior Court to appoint advisory counsel.

On December 19, 2022, "acting *pro se* and through" advisory counsel, Appellant filed "Appellant's Procedural Motion for Order to Continue Deadlines and Conference," requesting that the Court continue the due dates and anticipated conference of the motions for warrant of execution for sixty days. In his motion, Appellant seeks to continue the briefing schedule set by this Court because: (1) advisory counsel requires additional time "to collect the file, review relevant portions of the file, and competently offer advice on the motions pending before this Court;" (2) as an incarcerated *pro se* litigant, there has been a delay of several days in his receipt of this Court's orders; and (3) 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."

On December 20, 2022, the Appellee State of Arizona filed a Response objecting to Appellant's requested sixty-day continuance, requesting that the Court "deny [Appellant's] request" because: (1)

the issues pending before the Court "were initiated by [Appellant] himself when he affirmatively requested issuance of a warrant of execution;" (2) the "request does not explain why additional time is necessary to allow [] advisory counsel to advise [Appellant] on his own motion that he has already filed;" (3) Appellant "does not assert that [] delayed receipt [of the Court's orders] [leaves Appellant] with insufficient time to file his pleading that is currently due by December 27;" (4) Appellant "is proceeding pro se. . . , any right to the effective assistance of counsel is not at issue," all the cases Appellant cites "to support his contention his rights will be violated by the current schedule address criminal defendants' ability to bring challenges to their convictions and sentences," however, Appellant's "cited cases are [] not applicable in this context" and Appellant "has already had his statutorily mandated direct appeal and voluntarily waived all post-conviction review of his case;" and (5) the cases that Appellant "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." Additionally, the Appellee State points out that "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)."

Upon consideration by the full Court, and **GOOD CAUSE APPEARING,**

THE COURT FINDS that the Appellee State of Arizona and the crime victim's constitutional rights would be prejudiced by a sixty-day continuance.

Therefore,

IT IS ORDERED that "Appellant's Procedural Motion for Order to Continue Deadlines and Conference" is denied in part and granted in part.

IT IS FURTHER ORDERED that Appellant's "Motion: Issuance of Death Warrant" and "State's Motion for Warrant of Execution" are **continued for consideration on the Court's January 31, 2023** Agenda, and the Court's December 9, 2022, Order is amended, as follows:

IT IS FURTHER ORDERED that Appellant may file a reply to Appellee's response to Appellant's "Motion: Issuance of Death Warrant" and a response to "State's Motion for Warrant of Execution" in a single document. Appellant's reply/response shall be filed on or before **January 23, 2023**. Appellant's reply/response shall not exceed 10 typed or 15 handwritten pages.

IT IS FURTHER ORDERED that Appellee may file a reply to Appellant's response to "State's Motion for Warrant of Execution." Appellee's reply shall not exceed 5 pages and shall be filed on or before **January 30, 2023, no later than 12:00 p.m.** If Appellee opts to not file a reply, it shall file a notice so advising the Court at the

TO:

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