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**IN THE SUPREME COURT OF
THE STATE OF ARIZONA**

STATE OF ARIZONA,

Appellee,

vs.

AARON BRIAN GUNCHES,

Appellant.

No. CR-13-0282-AP

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

**CRIME VICTIMS' JOINT BRIEF
RE: MERITS OF EXTENSION OF
WARRANT DATE AND SOURCE OF
THIS COURT'S AUTHORITY**

INTRODUCTION

On the heels of three successful executions in 2022, Aaron Gunches asked this Court to issue a warrant for his execution (Warrant). The Arizona Attorney General's Office (AGO) joined that request by filing a motion for a warrant of execution, and the Arizona Department of Corrections, Rehabilitation, and Reform (ADCRR) compounded pentobarbital for the execution, pursuant to ADCRR

Department Order 710 (DO 710). The Crime Victims finally expected a conclusion to this case more than 20 years after Gunches murdered Ted Price. That changed when Governor Hobbs announced that she intended to appoint a commissioner to review Arizona's execution protocols in late January 2023. The Governor's announcement sparked subsequent and ongoing litigation, first involving the issuance of the Warrant and now the Governor's and ADCRR Director's obligations to carry out the execution. The Crime Victims request an extension of the Warrant to complete that litigation and to enforce their constitutional rights.

Even if the Crime Victims are successful, the AGO has suggested that it would not request a subsequent warrant and has argued that it does not believe the Maricopa County Attorney's Office (MCAO) can request a subsequent warrant. Rather than pursue unnecessary litigation over a request for a warrant in the future, the Crime Victims asked this Court to extend the Warrant by 25 days, until May 1, under Arizona Rule of Criminal Procedure 31.23(c). Extending the Warrant 25 days is the most practicable way to now move forward.

The circumstances here are unique, so this Court ordered the parties to address "the merits of the *Motion to Extend Warrant of Execution* and the source and extent of the Court's authority in these circumstances to issue such order." (4/3/23 Order.) The relevant portion of Rule 31.23(c) reads, "[i]f the Supreme Court finds that it is impracticable to carry out an execution [35 days after the Warrant's issuance], it may

extend the execution date but may not extend it more than 60 days after the warrant’s issuance.” No similar extension is included in A.R.S. § 13–759.

To address this Court’s order, the Crime Victims respond: (1) that Rule 31.23(c) authorizes an extension of the warrant because an execution on April 6, 2023, is “impracticable” based on ADCRR’s refusal to comply with the timelines in DO 710; (2) this Court has authority to extend the Warrant under Rule 31.23(c) which implements § 13–759; and (3) and the Crime Victims’ constitutional rights pursuant to Article 2, § 2.1(A) and (A)(10) support extending the warrant.

BACKGROUND

This Court is aware of the procedural history of this case, having recently issued the Warrant and considering the Victim Karen Price’s special action for a writ of mandamus. Since this Court considered Victim Price’s request to stay the warrant and to reconsider, Victim Karen Price and Maricopa County Attorney Rachel Mitchell, on behalf of Victim Brittney Kay, (collectively Plaintiff Victims) filed a complaint and petition for special action (Complaint) against Defendants Governor Hobbs and ADCRR Director Ryan Thornell in the Maricopa County Superior Court on March 31, 2023.

Their complaint alleges that the Governor and ADCRR’s refusal to carry out the sentence imposed on Gunches (1) has resulted in a *de facto* reprieve in violation of Plaintiff Victims’ constitutional rights to justice and finality, (2) have failed to

perform a duty required by law to which they have no discretion; and (3) are proceeding or threatening to proceed in excess of their authority. Plaintiff Victims also requested an order to show cause hearing, requesting the superior court order Defendants to show cause why the relief requested in the Complaint should not be granted. This show cause hearing is currently set on April 6, 2023.

ARGUMENT

I. ADCRR’s Refusal to Take Any Steps to Comply with DO 710 Has Made it Currently “Impracticable” to Carry Out the Execution on April 6, 2023.

Both Governor Hobbs’s and ADCRR representatives have publicly stated that Arizona will not execute Aaron Gunches on April 6, 2023. (Appx. A, Statement from Governor Hobbs, 3/3/23; Appx. B, Thornell Declaration, 3/15/23.) Presumably because of the Governor’s stance, ADCRR has not complied with the strict timelines imposed by ADCRR’s Department Order 710.¹ *See First. Amend. Coal. of Ariz., Inc. v. Ryan*, No. 2:14-cv-01447-NVW-JFM (D. Ariz. 2014) (prohibiting ADCRR from deviating “from timeframes set forth in the execution procedures beyond those relating to minor or routine contingencies not central to the execution process” and “permanently enjoin[ing] [ADCRR] . . . from engaging in any conduct that violates”

¹ Department Order 710 requires that ADCRR perform certain tasks 35 days, 21 days, 14 days, two days, 24 hours, and 12 hours before an execution. ADCRR, *Department Order 710: – Execution Procedures* (April 20, 2022), available at <https://corrections.az.gov/sites/default/files/documents/policies/700/0710.pdf>.

the stipulated settlement). These actions, or inactions, make carrying out the execution on April 6, 2023, “impracticable.”

This Court found that “[u]pon entry of a final judgment and sentence of imprisonment, legal authority over the accused passes by operation of law to the Department of Corrections” and the executive branch “bear[s] full responsibility for executing the judgment and sentence.” Decision Order 3/2/23 (citing *State v. Wagstaff*, 164 Ariz. 485, 488-89 (1990)). Thus, it is the Governor’s and ADCRR’s responsibility to take steps to carry out Gunches’s execution.

Admittedly, it is now April 4, and ADCRR will not be in compliance with a portion of DO 710 if this Court extends the warrant because May 1, is 27 days away. Yet, ADCRR should have had ample notice to take steps to comply with its legal obligations. This Court recognized that Victim Karen Price’s petition for special action raised “mixed question of law and fact” and dismissed her petition without prejudice. That the Victims’ filed their current complaint is unsurprising, but Governor Hobbs’s statements make clear that she has unilaterally chosen to focus on other ADCRR needs, rather than prepare for an execution in the event the Victims’ special action petition is successful.²

² Governor Hobbs issued a statement on March 3, 2023:

[T]he State and ADCRR does not intend to proceed with an execution on April 6, 2023. Director Thornell will continue to build up ADCRR’s staffing and competencies to be able to conduct an

Extending the warrant by 25 days may allow ADCRR to come into compliance with Department Order 710. Whether the ADCRR’s actions has created the potential for civil liability is a question the victims cannot answer, but this Court is not a party to ADCRR’s settlement agreement and the victims should not be constitutionally harmed by ADCRR’s refusal to even pursue basic requirements under DO 710, such as “issu[ing] a news advisory announcing the date of the execution.” DO 710 at 8.3.1. *See Fitzgerald v. Myers*, 243 Ariz. 84, 92, ¶ 25 (2017) (any stay in a PCR proceeding should be limited in scope and duration to protect victims’ right to finality); *State v. Gates*, 243 Ariz. 451, 454-55, ¶ 16 (2018) (noting the trial court must consider victims’ right to a speedy trial and a prompt and final conclusion of the case); *State v. Towery*, 204 Ariz. 386, 391, ¶ 14 (2003) (noting the importance of victims’ constitutional right to finality).

ADCRR’s refusal to follow DO 710 has made an execution impracticable, thus triggering Rule 31.23(c)’s requirement for an extension of the Warrant. This Court should extend the Warrant by 25 days to ensure the victims have time to litigate their constitutional claims in superior court.

execution in compliance with state and federal laws, and will balance that work with the work needed to solve the urgent medical, mental health, and other critical problems the Director has inherited from the prior administration.

Statement from Governor Katie Hobbs on Warrant of Execution for Aaron Brian Gunches (Mach 3, 2023) (Appx. A).

II. Rule 31.23(c) Implements this Court’s Authority to Regulate the Time Limits Set for a Warrant of Execution.

Last month, this Court concluded that A.R.S. § 13–759(A) and Rule 31.23(a) and (b) “expressly confer limited discretion on this Court” concerning the decision whether to issue a warrant of execution. Decision Order 3/2/23, at 10-11. Unlike those provisions, the victims recognize that Rule 31.23(c) is discretionary, but it implements A.R.S. § 13–759(A) and plainly falls within this Court’s procedural constitutional rulemaking authority. *See* Ariz. Const. art. 6, § 5(5); *see also State v. Reed*, 248 Ariz. 72, 76-77, ¶¶ 10, 16 (2020).

Unlike Rule 31.23(c), § 13–759(A) does not reference an extension of a warrant for execution. It reads:

After a conviction and sentence of death are affirmed and the first post-conviction relief proceedings have concluded, the supreme court shall issue a warrant of execution that authorizes the director of the state department of corrections to carry out the execution thirty-five days after the supreme court’s mandate or order denying review or upon motion by the state. The supreme court shall grant subsequent warrants of execution on a motion by the state. The time for execution shall be fixed for thirty-five days after the state’s motion is granted.

Id.

Section 13–759 (then A.R.S. § 13–706) was amended in 1994 to require this Court, once postconviction relief proceedings concluded, to issue a death warrant and fix the execution date for 35 days “after the supreme court’s mandate or order denying review or upon motion by the state.” *See* 1994 Ariz. Sess. Laws Ch. 76, § 2

(2nd Reg. Sess.). Recognizing that “Supreme Court rules prescribe that the Supreme Court issues death warrants, but no time frames exist within which to do so,” the Arizona Legislature fixed a time limit on the date of execution in order to “motivate persons to begin procedures in federal court if they wish to appeal.” Revised Fact Sheet, S.B.1002, 41st Leg., 2d Reg. Sess. (Feb. 22, 1994) (Appx. C).

Two years later, this Court responded to the legislature’s amendments by proposing its own amendment to Rule 31.17(c), the direct predecessor to Rule 31.23(c). Proposed Amendment to Rule 31.17, Criminal Rules of Procedure, Sup. Ct. No. R-96-0023 (Appx. D). As originally drafted, the proposed amendment would have brought Rule 31.17(c) in line with A.R.S. § 13–759(A) and set the date of execution for 35 days “after the Supreme Court’s order denying review or granting a motion for warrant of execution.” (Appx. D at 22-28.) This Court received comments asserting that (1) the 35-day period was too onerous for a defendant’s counsel to raise any remaining meritorious arguments before the execution and (2) this Court had routinely issued warrants setting execution dates for 60 to 90 after the issuance of the warrant. (Appx. D at 1-6, 10-21.)

This Court ultimately adopted a modified version of the original proposed amendment. (Appx. D at 1-6, 10-21.) The modified version specifically provided this Court with authority to extend the date of execution, if “good cause renders it impracticable to fix it at thirty-five,” to “no more than sixty days after the order

denying review or order granting the motion.” (Appx. D at 2.) The time-extending provision of Rule 31.17(c), now Rule 31.23(c), has remained substantively unchanged since that date. *See* Ariz. R. Crim. P. 31.23(c).

Accordingly, at its core, the 25-day extension provided under Rule 31.23(c) is the product of a deliberate and reasoned exercise of this Court’s authority, under its rulemaking powers, to supplement the 35-day timeline provided by A.R.S. § 13–759(A), where appropriate. *See, e.g., State ex rel. Napolitano v. Brown*, 194 Ariz. 340, 342, ¶ 7 (1999) (finding unconstitutional statute that cut time limits for filing petitions for post-conviction relief in capital cases set forth by court rule in half); *State v. Fowler*, 156 Ariz. 408, 413 (App. 1987) (because “[t]he right to post-conviction relief is substantive but the time limits are purely procedural,” court rule governing time to file petition for post-conviction relief controlled over statute); *Del Castillo v. Wells*, 22 Ariz. App. 41, 45 (1974) (“[R]easonable time limits placed by courts upon the exercise of a substantive right, have uniformly been held to be procedural.”).

While the decision to issue a warrant of execution remains a ministerial, non-discretionary act, this Court has long recognized its authority to regulate procedural matters related to the timing of the execution. *See State ex rel. Conway v. Superior Court*, 60 Ariz. 69, 73-75, 82 (1942), *overruled in part on other grounds by Adams v. Bolin*, 74 Ariz. 269, 275 (1952) (addressing a rule and statute conflict

for the timing of an execution and concluding that this Court retained the power to override the legislative rule if it “hamper[ed] the court unduly in its administration of its constitutional duties”). Indeed, several parties in the litigation surrounding inmate Gunches’s pending execution have already recognized and argued the same. Brief of Fed. Pub. Defender for Dist. of Ariz. as Amicus Curiae, *State v. Gunches*, CR-13-0282-AP, at 8, 10-11, 12-13 (filed Feb. 16, 2023); The State’s Response to Brief of Amici Curiae, *State v. Gunches*, CR 13-0282-AP, at 2, 6 (filed Feb. 23, 2023).

Rule 31.23(c) is a logical and limited extension of § 13–759(A). It gives this Court discretion to extend a warrant by an additional 25 days before requiring that the State request a new warrant of execution. It does not impermissibly conflict with § 13–759(A) and is authorized by this Court’s constitutional rulemaking authority.

III. This Court Also Has Authority to Extend the Execution Date Based Upon the Crime Victims’ Constitutional Right to Justice and Finality.

If there was any lingering doubt that this Court could extend the warrant pursuant to Rule 31.23(c) in this unusual circumstance, it should be resolved by Arizona’s Victims’ Bill of Rights (VBR), which vests this Court with authority to extend the Warrant through the mandatory directive to protect victims’ rights.

A victim of a crime has a constitutional right “[t]o have all rules governing criminal procedure . . . in all criminal proceedings *protect* victims’ rights and to have these rules be subject to amendment or repeal by the legislature to ensure the

protection of these rights.” Ariz. Const. art. 2, § 2.1(A)(11) (emphasis added); Ariz. Const. art. 2, § 32 (“The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.”). The plain language of Article 2, § 2.1(A)(11) makes clear that the Victims’ rights cannot be ignored.

Specifically, here, the VBR is intended to preserve and protect victims’ rights to justice and due process. Ariz. Const. art. 2, § 2.1(A). Justice is defined as “the administration of what is just (*as by assigning merited rewards or punishments*).” Merriam-Webster Dictionary (1990) (emphasis added). It is the very foundation for the execution of the death warrant in this case. In preserving and protecting the right to justice, the VBR provides victims with a right to finality. Ariz. Const. art. 2, § 2.1(A)(10) (Victims have a constitutional right to “a...prompt and final conclusion of the case after the conviction and sentence.”). Indeed, although this Court denied special action relief in CV-23-0055-SA, it expressly recognized that “‘a victim of crime has a right’ to a ‘prompt and final conclusion of the case after the conviction and sentence.’ Ariz. Const. art. 2, § 2.1(A)(10).” Decision Order 3/22/23, at 2-3.

While a request for a 25-day extension of the Warrant may seem contradictory to the pursuit of justice and finality, this case presents an unusual circumstance where the Governor and ADCRR Director intend to let the Warrant expire and unconstitutionally delay inmate Gunches’s execution indefinitely. Allowing the Warrant to expire before the factual and legal issues are resolved directly impacts

Crime Victims' constitutional rights to justice and finality and will, undoubtedly, contribute to further delay.

The plain language of the VBR gives victims a sweeping right to have Arizona's Rules of Criminal Procedure protect victims' constitutional rights to justice and finality, and Rule 31.23(c) is not an exception to this constitutional mandate. To ensure that Plaintiff Victims have an opportunity to litigate the mixed issues of facts and law before the Warrant expires, an extension of the Warrant is necessary. The very fact that this Court has an obligation to preserve and protect the Victims' rights to justice and finality provides this Court with the power and authority to extend the warrant.

CONCLUSION

This Court should grant the Crime Victims' Motion to Extend Warrant of Execution. The Victims are seeking to prove the sentence may lawfully be carried out through a recently filed complaint and petition for special action in the Superior Court. This Court can extend the execution date because it is a procedural matter within the Court's discretion. Accordingly, Crime Victims urge this Court to extend the execution date until May 1, 2023.

Respectfully submitted this 4th day of April, 2023.

RACHEL H. MITCHELL
MARICOPA COUNTY ATTORNEY

BY: /s/ _____
Nicholas Klingerman
Deputy County Attorney

BY: /s/ _____
Colleen Clase
Arizona Voice for Crime Victims
Attorney for Victim, Karen Price

State v. Aaron Gunches
Appendices

- Appendix A: Statement of Gov. Hobbs
- Appendix B: Thornell Declaration
- Appendix C: Revised Fact Sheet SB1002 (Rule 31.23 Brief)
- Appendix D: Rule 31.17 (1996)

APPENDIX A

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FOR IMMEDIATE RELEASE

March 3, 2023

CONTACT:

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Statement From Governor Katie Hobbs on Warrant of Execution for Aaron Brian Gunches

PHOENIX—Governor Hobbs has issued the following statement after the Arizona Supreme Court issued a warrant of execution for Aaron Brian Gunches:

"Yesterday, the Arizona Supreme Court issued a warrant of execution for Aaron Brian Gunches, despite the State withdrawing its motion and informing the Court that the State does not seek to carry out an execution at this time. The Court's decision order and warrant make clear, however, that the warrant authorizes an execution and does not require it. This is consistent with the law and separation of powers between the judicial and executive branches on this most serious exercise of the power of the State.

Recent executions in Arizona have raised serious questions about the State's execution protocols. We must ensure that any execution occurs in compliance with all state and federal laws and regulations before proceeding. To this end, I am appointing retired Judge David Duncan to conduct an independent review of Arizona's execution protocol. Under my Administration, an execution will not occur until the people of Arizona can have confidence that the State is not violating the law in carrying out the gravest of penalties.

From day one, we've known that we inherited a deeply broken corrections system. Judge Roslyn Silver's June 30, 2022 ruling found ADCRR in violation of the Constitution and detailed how the system is plagued with inadequate medical and mental healthcare and other critical, systemic problems that could be life or death issues for people in the Department's custody if not properly addressed. And Judge Silver's sweeping January 9, 2023 proposed injunction makes clear that just remedying those constitutional violations and simply bringing the system up to constitutional compliance will take a Herculean amount of time and resources, including significant additional staffing. I am grateful for Director Ryan Thornell's leadership and diligent work towards fixing this system.

Being adequately staffed and prepared to carry out an execution is just one of many urgent and critical duties ADCRR faces concurrently. Getting the Department to that point will take time and my hope is, in that time, the Death Penalty Independent Review Commissioner will also be able to complete his analysis and recommendations, which ADCRR will work to implement.

Therefore, the State and ADCRR does not intend to proceed with an execution on April 6, 2023. Director Thornell will continue to build up ADCRR's staffing and competencies to be able to conduct an execution in compliance with state and federal laws, and will balance that work with the work needed to solve the urgent medical, mental health, and other critical problems the Director has inherited from the prior administration."

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APPENDIX B

EXHIBIT 1
(Declaration)

IN THE ARIZONA SUPREME COURT

Karen Price,
Petitioner,

v.

Honorable Katie Hobbs in her capacity as
the Governor of the state of Arizona, and
Director Ryan Thornell in his capacity as
the Director of the Arizona Department
of Corrections, Rehabilitation, and
Reentry (ADCRR),

Defendants/

Respondents,

Aaron Brian Gunches,

Real Party in Interest

No. CV-23-0055-SA

Maricopa County Superior Court

No. CR-2003-038541-001

(Capital Case)

**DECLARATION OF DIRECTOR
RYAN THORNELL**

Sambo (Bo) Dul
General Counsel
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Attorneys for Director Thornell

I, Ryan Thornell, declare as follows:

1. I am serving as the Director of Arizona's Department of Corrections, Rehabilitation, and Reentry ("Department"). In this role, I oversee the day-to-day operations of Arizona's corrections system, which includes 16 prison facilities, including 9 state prison complexes and 7 private prisons that collectively house approximately 33,800 inmates. I have served in this role since January 30, 2023.

2. Prior to this, I served 5 years as the Deputy Commissioner of Corrections for Maine and served another 4 years in corrections leadership roles in Maine's corrections system. I have 19 years of experience in corrections, which includes experience in 5 different states. I have a Master's Degree in Criminal Justice (with a concentration in corrections) and a Ph.D. in Political Science (with concentrations in public administration and public policy). Attached as Exhibit A is a true and correct copy of my resume.

General State of Affairs

3. I began this job approximately six weeks ago and inherited critical, systemic problems affecting operations and safety across the Department, including problems with fundamental issues like staffing, infrastructure, and healthcare.

4. For example, the Department has historically struggled to recruit, hire, and retain employees. Since November 2018, more than 1,000 Correctional Officer II

positions have remained vacant across the agency. The current vacancy rate is 25% across all state facilities and 32% at Eyman Complex, the location of Housing Unit 9 where executions occur. Lack of adequate staffing creates safety concerns for team members and inmates, which necessitates dedicated staffing and funding resources to find solutions to this problem.

5. Additionally, the Department maintains 1,518 structures that cover 8.8 million square feet. Much of this infrastructure requires a complete overhaul, including some prison complexes that need critical fire and life safety improvements. These facilities require replacement fire systems, doors, and locks to ensure safety, as well as camera technology upgrades to provide security support. This is a massive undertaking that requires extensive staffing to carry out.

6. The ongoing federal litigation in *Jensen v. Thornell*, filed in 2012 as *Parsons v. Ryan*, highlights the severity and scope of the issues the Department must fix. In January 2023, a Proposed Order was issued indicating that the Department would be required to make extensive changes to staffing and conditions of confinement because operations did not meet constitutional standards for health and mental health care. The judge noted that the Department's operations created an "unconstitutional substantial risk of serious harm" to inmates in the Department's custody and that this problem has persisted for years. We expect a Final Order to be issued this spring.

7. Items contemplated in the Proposed Order include revamping how and what medical and mental health care is provided across the corrections system. Additionally, the Department must increase staffing levels for medical, mental health, and correctional staff since current levels were found not to provide constitutionally adequate care. While many of these issues will take months, if not years, to fix, the impending Final Order is also expected to prescribe timeframes by which the Department must act.

8. The severity and scope of these issues requires that we begin implementing solutions without further delay. My team is already spending countless hours reviewing proposals, analyzing budgets, and identifying solutions to bring Arizona's corrections system into constitutional compliance. This work will require significant financial and human resources that the Department currently does not have. It will require that I dedicate time to acquiring these resources and building a team that can competently carry out the work and ensure we are in compliance.

9. In my short tenure as Director, I have spent significant time in reviewing facilities, meeting with staff, and assessing what changes must be made to ensure Arizona has a functioning and secure corrections system. Given the magnitude of Arizona's corrections system and the scope of issues that must be addressed, this work will continue to require extensive time and personnel.

Department Leadership Turnover

10. As Director, I am responsible for ensuring that the Department's execution protocols found in Department Order 710 ("DO 710")¹ are carried out in compliance with state and federal requirements. The protocols included in DO 710 were created following extensive federal litigation that resulted in a settlement that mandated the Department follow DO 710 when conducting an execution.

11. I have undertaken and continue to conduct a review of all procedures in DO 710 to ensure that the Department has the expertise and capability to conduct an execution. Based on my initial review of prior execution procedures, I have so far been unable to locate sufficient documentation about what previously occurred. I have not been able to locate standard operating procedures for items outlined in the protocol, contracts, or other written information about what the prior administration did. To obtain important information, I have had to interview staff members who were employed during prior executions to piece together what might have occurred.

12. As is detailed in other portions of this declaration, my inquiries have revealed cause for concern with the Department's present ability to carry out an execution consistent with its constitutional and legal obligations. Moreover, I have serious concerns that there might be additional problems that I have not yet identified given

¹ Available at: <https://corrections.az.gov/sites/default/files/documents/policies/700/0710.pdf>.

the lack of documentation located thus far. However, while I continue to track down information, I have identified several critical issues that impact the Department's present ability to conduct an execution: inadequate knowledge and expertise; efficacy of the lethal injection drugs; and procedures concerning the Intravenous (IV) Team.

13. DO 710 charges specific Department staff with implementing critical procedures under the protocol. For example, the Assistant Director of Prison Operations serves a leading role in managing the planning and overall direction of all pre-execution, execution, and post-execution activities. The Assistant Director must have the knowledge to prepare others for conducting the execution and is responsible for training team members participating in the execution. They also must have the technical expertise to ensure that all equipment is functioning properly.

14. Given the change in administration, the Department experienced significant turnover in senior leadership, including the Director, Deputy Director, and Assistant Director of Prison Operations roles. While I recently hired a Deputy Director, this person has never carried out the responsibilities under the protocol and needs time to learn what to do. The Assistant Director role—which is critical to the execution process—remains vacant, and I am working to fill this position. At this time, no one on the Department's executive leadership team has the institutional knowledge or ability to fulfill the key requirements that DO 710 outlines to competently carry out

an execution, and these vacancies are not the only critical vacancies I am working hard to fill across the Department.

Lethal Injection Drugs

15. The Department's current supply of compounded Pentobarbital, the lethal injection drug, requires updated efficacy testing to ensure sufficient quality and effectiveness in the execution. I have yet to find documentation from the prior administration that identifies the pharmacist who compounded the drugs. I have been able to gather anecdotal accounts from staff members who have shared that the prior Deputy Director was the main point of contact with the pharmacist and that he didn't record anything. As mentioned above, this person is no longer with the Department.

16. Based on these conversations, I have serious concerns about the qualification and competency of the compounding pharmacist and the process used to compound the current supply of lethal injection drugs. To cite one example underlying my concerns, a staff member informed me that the prior administration struggled to find a pharmacist and met the contracted pharmacist through a chance encounter. At this time, there is no known information about the contract that was used for procuring this service.

17. Additionally, the current supply was compounded in December 2022, so the drug is over three months old. Given that the shelf-life of the compounded drug may vary and is reported to expire within six months of compounding, the effectiveness

of the current supply cannot currently be guaranteed and thus must be tested to ensure safety and efficacy prior to use.

18. This testing requires coordination with the Department of Public Safety and must follow specific procedures. Given limited staffing and that the Department's primary focus has been ensuring that critical operations come into compliance, this testing has not yet been undertaken.

19. The Department does not currently have a contract with a compound pharmacist to compound any further Pentobarbital for use. Given the concerns about the prior pharmacist and the lack of clear information, the Department would have to spend significant time identifying and contracting with a compounding pharmacist to proceed with a future execution that uses newly compounded Pentobarbital.

Intravenous ("IV") Team

20. The Department must also identify and contract with IV team members who are responsible for inserting the IV lines, ensuring the lines work, and monitoring the administration of the lethal injection drugs. Historically, the Department has contracted with individuals from outside of corrections and outside of Arizona to perform this work.

21. Prior to each execution, potential IV team members must submit their qualifications to the Director. I am responsible for reviewing their qualifications and selecting who will serve on the IV team.

22. Given that these are contracted positions, it requires time to identify and confirm the availability of an IV team. Once IV team members are confirmed, the IV team must receive training to ensure they understand the Department's requirements and procedures. This is critical to ensure that the execution proceeds in compliance with all laws and policies.

23. Despite attempts, no IV team has yet been identified as available for contracting to perform an execution on April 6, 2023.

24. As with other matters mentioned above and below, the information I've been able to obtain thus far causes me concern. For example, I have been told that IV team members who participated in the most recent execution were directed by the prior administration to only use the inmate's femoral central line, which goes against Department policy. New IV team members must be identified and trained on proper procedure prior to an execution, which will require advance planning and work for staff that are already over-extended.

Additional Concerns

25. The items identified above are not the only sources of concern. I am still gathering important information about the Department's recent practices and ability to carry out an execution. Each day I learn more, and I am concerned that other problems have yet to be identified or fully understood. Particularly in light of the alarming lack of documentation and record-keeping based on my review thus far, I


cannot confidently say that there won't be additional issues that must be addressed before any execution can proceed.

26. For example, I recently learned that there is an issue with our closed circuit camera system. The Department is required to ensure that the execution proceedings can be viewed by those in attendance. The closed circuit camera system used in Housing Unit 9 for execution observation currently needs maintenance and upgrades that will require updated technology before it will properly work. The timeline to fix that issue has not yet been determined.

27. I am concerned that I will learn about additional problems with prior execution practices and the Department's current ability to conduct an execution as my review continues.

I declare under penalty of perjury under the laws of the State of Arizona and the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATED this 15th day of March, 2023, at Phoenix, Arizona.



Ryan Thornell

EXHIBIT 1(A)
(Resume)

Ryan F. Thornell, Ph.D.

Email: rthornell@azadc.gov

Professional Experience

Arizona Department of Corrections, Rehabilitation, and Reentry, Phoenix, AZ (2023-Present)

Director of Corrections, *Appointed* January 2023 – Present;

Maine Department of Corrections, Augusta, ME (2015-2023)

Deputy Commissioner of Corrections, *Appointed* January 2018 – January 2023;

- Oversee all aspects of the Department's daily operations, which includes public policy and legislation, personnel management, budgets and finance, corrections facilities security operations, medical and behavioral health services, community corrections, and all major reform initiatives
 - MDOC includes approximately 1,300 employees and contracted staff, \$180 million annual budget, 7 adult corrections facilities and 1 juvenile facility
- Established the Maine Model of Corrections, committed to instilling a culture of wellness, humanization and normalization, service connection, and de-stigmatization
- Developed and implemented Medication Assisted Treatment across all Department facilities, including universal and normalized access for all facility residents
- Reformed the Department's restrictive housing practices, intervention models, and specialty units to better meet the needs to the resident population
- Facilitated the rollout of a trauma-informed, gender-responsive communication and de-escalation model program for corrections
- Transformed traditional, archaic operations into modern, evidence-based practices, such as the use of modern technology resources for the broad delivery of justice education and programming in non-traditional environments
- Implemented Department-wide data systems and reporting that ensure accountability, transparency, and practice improvement
- Accomplished significant growth, reform, and modernization while maintaining a neutral budget
- Led the Department's COVID-19 Pandemic Plan and Response, serving as statewide ICS Commander
- Serve in the Commissioner's role during his absence

Associate Commissioner of Corrections, May 2016 – January 2018

- Oversee the operations, policy, personnel, legislation, budget and initiatives of adult corrections, including the following: Evidence-based practices; Correctional programming and treatment; Policy analysis; Adult behavioral health; Classification, records and transfer; Adult education and vocational services; Mountain View Correctional Facility; Women's Services, including Women's Center and Women's Reentry Center; Data, performance measurement and research, Grants and strategic planning; Reentry programming and services; Adult restrictive housing units; Risk assessment, case management and unit management
- Established Department focus on development and implementation of strategic planning
- Led the reform of Maine's most challenged and troubled corrections units, developing models of best practice, safety, and rehabilitation

Director, Correctional Program Practices, June 2015 – May 2016

- Divisions directed: Adult programming, education and vocational services, Mountain View Correctional Facility, Data and research, Grants and strategic planning, Reentry programming and services, Restrictive housing, Risk assessment and case management, and Unit management

Ryan Thornell Consulting, Rockport, ME

Contracted Consultant

Technical assistance provider/trainer, strategic advisor/partner, and policy consultant

Crime and Justice Institute at Community Resources for Justice, Boston, MA – 2020 - present

- NIC Restrictive Housing Training and Technical Assistance Program (2020-)
- BJA Restrictive Housing Reform Implementation Assistance Program (2022-)

Groups Recover Together, Burlington, MA – 2020 – 2021

- MAT corrections consultant, strategic advisor, technical assistance provider and trainer

Department of Corrections, SD – 2013

- Assisted in developing and implementing state corrections' policies and programs related to the 2013 Criminal Justice Initiative and Legislation.

Minnehaha County Administration, SD – 2012 – 2013

- Significant reform of the county's Juvenile Detention Center,
- Managed county's development and implementation of Juvenile Detention Center policies,
- Provided consulting and project management services to the Juvenile Detention Center on facility operations and implementation of Juvenile Detention Alternatives Initiative.

Crime and Justice Institute at Community Resources for Justice, Boston, MA

Associate, January 2015 – June 2015

- Provided technical assistance to criminal justice institutions implementing adult and juvenile criminal justice policy reforms,
 - Sites assisted: Kentucky (juvenile), Mississippi (adult)
- Conducted policy research and analysis, develop evidence-based policy options, policy maker and stakeholder outreach, and policy reform implementation,
- Conducted on-site training for criminal justice agencies,
- Facilitated working group and task force meetings,
- Specific areas of focus: risk assessment, graduated responses, program fidelity and evaluation, effective case management, core correctional practices, implementation science and fidelity;

Maine Department of Corrections / Maine Board of Corrections, Augusta, ME

Executive Director, January 2014 – January 2015

- Provided leadership and management to the operations of the Board of Corrections and the state's coordinated jail system comprised of 15 county jails,
- Developed and implemented agency rules / policies to govern coordinated jail system and jails,
- Drafted and testified on corrections legislation,
- Responsible management of the coordinated jail system's \$80 million budget,
- Directed the budgeting and planning process, including legislative testimony,
- Provided strategic leadership and analysis to the coordinated jail system and its stakeholders,
- Collaborated with legislators, department administration, jail administration, Sheriffs, county administration, domestic violence organizations, and other stakeholders on complex issues.

University of Sioux Falls, Sioux Falls, SD

Assistant Professor of Criminal Justice and Sociology, September 2010 – December 2013

- Served on faculty and university committees, as part of the university governance structure,
- Provided assessment and retention services, as related to the social science area,
- Conducted research and community outreach,
- Courses taught: Institutional Corrections; Community Corrections; Deviant Behavior; Criminology; Drugs and Crime; White Collar Crime; Crime Victims; Serial Offenders; Fundamentals of Sociology; Sociological Theory; Social Problems; Social Policy
- Committee service: Assessment (2011-2012); Student Development (2012); Graduate Policy (2012); Institutional Review Board (2013)
- Co-team leader - Minnehaha County JDAI Facility Inspection Team (2012-2013)

Parole Division, South Dakota Department of Corrections, Sioux Falls, SD

Parole Board Office Manager (2009 –2010), *Appointed to serve as Deputy Director of Parole Board*

- Member, Reentry Task Force
- Duties: Hiring and supervision of office staff, project manager of policy development and implementation, budget oversight, grant management, parole board process manager, liaison between Board and crime victims, and communication manager.

Corrections Specialist (2008 –2009), Appointed to serve as Deputy Director of Field Services

- Member, Parole Division Training Committee
- Subject-matter expert, Comprehensive Offender Management System
- Duties: Oversight of and collaboration with parole agents, case management, and community providers, policy manager, budget input, training program manager, and liaison between field officers and crime victims.

River City Correctional Center, Hamilton County, Cincinnati, OH

Case Manager (2007 –2008)

- Provide case management services to adult offenders,
- Conduct risk assessments and develop case plans fostering offender rehabilitation and reentry,
- Provide group programming sessions,
- Serve as member of facility's ACA accreditation team.

Professional Education

University of South Dakota, Vermillion, SD

Doctor of Philosophy (Ph.D.), Political Science, December 2016

- Areas of emphasis: Public Administration and Public Policy
- Dissertation: *Policy Analysis in Corrections: Finding an Effective, Efficient, and Comprehensive Analysis Framework*

University of Cincinnati, Cincinnati, OH

Master of Science (M.S.), Criminal Justice, August 2008

- Concentration area: Corrections

University of Sioux Falls, Sioux Falls, South Dakota

Bachelor of Arts (B.A.), Criminal Justice, Sociology, May 2007

- Research (co-author): *South Dakota's Perception of the Death Penalty (2007)*

Professional Service

- Five Town CSD/Camden Rockport Schools Strategic Planning Committee, Member (2022-present)
- New England Commission on the Future of Higher Education Behind Bars, Member (2022-present)
- Five Town CSD/Camden Rockport Schools, Volunteer (2020-present)
- Academic Consortium on Criminal Justice Health, Member (2020-2022)
- Groups Recover Together Maine Advisory Council, Member (2021)
- Maine Opioid Summit Abstract Review and Planning Team, Member (2021)
- Maine Justice Assistance Council (JAC), Member (2015-present)
- American Correctional Association, Member (2019-present)
- Maine Department of Corrections Leadership Academy, Instructor (2019)
- Maine Statistical Analysis Center (SAC) Committee, Member (2015-2018)
- U.S. Attorney's (ME) Corrections Collaborative Steering Committee, Member (2017)
- Selection Committee for Construction Manager At-Risk, Chair (2017)
- South Dakota Juvenile Detention Alternative Initiative (JDAI), Minnehaha County Case Processing Committee, Member (2013)
- Minnehaha County Disproportionate Minority Contact (DMC) Committee, Member (2013)
- The National Society of Leadership and Success (NSLS), Member (2013)
- South Dakota Juvenile Detention Alternative Initiative (JDAI), Minnehaha County Facility Inspection Team, Member and Team Leader (2012)
- National Institute of Corrections (NIC), Learning Administrators' Virtual Community Steering Committee, Member (2011)

Professional Presentations

- 2022 National Institute of Corrections Training (trainer)
Managing Restrictive Housing Populations (prisons)
- 2022 American Correctional Association, 152nd Congress of Corrections (presenter)
The Maine Model of Corrections: Using normalized and humanized approaches to advance corrections in the 21st century
- 2022 Governor Mills' 4th Annual Opioid Summit (presenter)
Treating SUD in Incarcerated Populations
- 2022 Prison Fellowship Warden Exchange Program (presenter)
Destigmatizing Corrections: Language Matters
- 2022 Academic Consortium on Criminal Justice Health Conference (presenter)
Implementation of Medication Assisted treatment Services at the Maine Department of Corrections
- 2022 Correctional Leaders Association, Winter Conference (presenter)
Restrictive Housing Committee: Maine DOC Project: The Impacts of Systemic Wellness
- 2021 American Correctional Association, 151st Congress of Corrections (presenter)
How Partnership with Outpatient Addiction Treatment Providers Can Improve Transition to Community and Reduce Recidivism
- 2021 Academic Consortium on Criminal Justice Health Conference (presenter)
A Paradigm Shift in Corrections in Maine: Creating a Culture of Wellness in a Maximum Security Prison
- 2020 Education Symposium, Educate Maine Conference (presenter)
Education Inside and Outside the Bars in Maine
- 2020 American Institute of Architects (AIA), Academy of Architecture for Justice (AAJ) Conference (presenter)
A Focus on Wellness for Clients & Community
- 2020 National Academy for State Health Policy Webinar (invited presenter)
State Approaches to Incarceration-Based Treatment for OUD
- 2020 The Educational Justice Institute at MIT's Expert Panel on COVID-19 (panelist)
Corrections and COVID-19: Challenges & Best Practices
- 2019 Maine Judicial Training Conference (presenter)
Behavioral Health Services and Programming in Maine
- 2019 North American Correctional and Criminal Justice Psychology (N4) Conference (presenter)
Becoming Well as the Purpose of Incarceration: A Correctional Paradigm Shift
- 2017 American Psychological Association annual meeting:
Implications and Results of Statewide Restrictive Housing Reform (invited presenter)
- 2016 Maine Prosecutors Association annual meeting:
Correctional Programming in Maine
- 2013 Midwestern Criminal Justice Association annual meeting:
Developing Ethical Constraints for Correctional Officer Decision-Making in Use of Force Situations
How Path Dependence Has Led to the Court's Unwillingness to Exercise its Institutional Role in Constraining the Use of Solitary Confinement in America's Prisons
Knowledge and Persistence: Structuration Theory as an Explanation of the Practice of Solitary Confinement
- 2008 Academy of Criminal Justice Science conference
Public Perception of Capital Punishment in South Dakota
- 2007 Academy of Criminal Justice Science conference
Lessons from the Playground: A Model for Integrating Mentoring in the Juvenile Justice Curriculum
- 2006 Academy of Criminal Justice Science conference
The Effects of School-based Mentoring on At-Risk Youth

Professional Awards

- *Manager of the Year*, Maine Department of Corrections (2020)
- *Transformational Leadership Award*, Maine State Prison (2016)
- *Excellence in Teaching Award*, National Society of Leadership and Success, University of Sioux Falls (2011-2012)

Professional Training

Maine Community Foundation

- Leadership Learning Exchange for Equity (Cohort 5, 2021)
- Advanced Leadership Learning Exchange for Equity (Cohort 1, 2021)

Maine Intercultural Communication Consultants

- Exploring the Ripple Effects of Culture: A Key to Effective Work Across Difference (2020)

Maine Emergency Management Agency:

- Incident Command System: Overview (ICS402) – Executive/Senior Officials (2019)

ALICE Training Institute:

- ALICE Basic Certification Training for Business (2019)

National Institute of Corrections:

- Gender Responsive Sanctions, Policy (NIC, Aurora, CO, 2016)
- Managing Restrictive Housing Populations (NIC, Aurora, CO, 2016)

APPENDIX C

For Committee on JUD

For Caucus &
Floor Action

As passed by
the Senate

ARIZONA STATE SENATE
Phoenix, Arizona

REVISED
FACT SHEET FOR S.B. 1002

death sentences; review

Purpose

Requires an independent review by the Supreme Court of death sentences.

Background

State law provides that when a person is found guilty of first degree murder, the court shall impose the death sentence if the court finds that one or more of the aggravating circumstances listed in statute exist and there are no applicable mitigating circumstances listed in statute sufficiently substantial to call for leniency. A sentence of death is automatically reviewed by the Arizona Supreme Court.

If the Supreme Court finds error in the trial court's sentencing in a capital case, the Supreme Court may either remand the case to the trial court for resentencing or conduct its own review of the aggravating and mitigating circumstances and resentence the person if required.

This bill requires the Court to conduct an independent review of the trial court's aggravation and mitigation findings and resentence the person if appropriate except under two circumstances.

Also, Supreme Court rules prescribe that the Supreme Court issues death warrants, but no time frames exist within which to do so. When a capital case's state procedures are complete, there is no automatic mechanism to begin proceedings in federal court. This bill requires the Supreme Court to issue the death warrant to authorize the director of the Department of Corrections to execute the person 35 days after the Supreme Court denies review or affirms the sentence. This action will motivate persons to begin procedures in federal court if they wish to appeal.

The bill also requires the Supreme Court to grant subsequent motions by the state to issue a death warrant and to fix the time of death for 35 days later. This would typically occur after the person has exhausted his or her federal court remedies.

Provisions

- Requires the Supreme Court to conduct an independent review of all death sentences.

- O V E R -

- Provides that the Supreme Court independent review include an examination of the trial court's findings of aggravating and mitigating circumstances.
- Provides that if the Supreme Court finds error in the trial court's aggravation or mitigation finding, the Supreme Court shall determine on its own whether there are mitigating circumstances sufficiently substantial to outweigh the aggravating circumstances. If so, the Supreme Court shall impose a life sentence.
- Allows the Supreme Court to remand the case to the trial court if either:
 1. The trial court excluded evidence erroneously.
 2. The appellate record does not adequately reflect the evidence presented.
- Requires that once post-conviction relief proceedings have concluded at the state court level in a capital case, the Supreme Court shall issue a death warrant allowing the director of the Department of Corrections to execute the convicted person 35 days after the Court's mandate or order denying review.
- Requires the Supreme Court to grant subsequent death warrants on the state's motion which set the execution date for 35 days later after the motion is granted.

Amendments Adopted by Committee

- Allows the Supreme Court to remand the case to the trial court under two circumstances.

Amendments Adopted by Committee of the Whole

- Changed the time frames in the bill from 25 days to 35 days.

Senate Action

JUD	DPA	8-1-0
3rd Read		24-4-2-0

Prepared by Senate Staff
February 22, 1994

APPENDIX D

THE SUPREME COURT OF THE STATE OF ARIZONA

R-96-0023
FILED
JUN - 5 1997
NOEL K. DESSAINT
CLERK SUPREME COURT
BY: [Signature]

ORDER AMENDING
RULE 31.17, ARIZONA RULES OF
CRIMINAL PROCEDURE

IT IS ORDERED amending Rule 31.17, Arizona Rules of Criminal Procedure,
as set forth in the attachment hereto,* effective December 1, 1997.

DATED in the City of Phoenix, Arizona at the Arizona Courts
Building, this 5th day of June, 1997.

For the Court:



THOMAS A. ZLAKET
Chief Justice

* Changes or additions in text are indicated by underlining and deletions from text are indicated by ~~strikeouts~~.

ARIZONA RULES OF CRIMINAL PROCEDURE

RULE 31.17 DISPOSITION AND ANCILLARY ORDERS

a. Ancillary Orders. [No change.]

b. Disposition, in General. [No change.]

c. **Fixing the Date of Execution After a Death Sentence Is Affirmed.** ~~When~~ After a conviction and sentence of death is are affirmed; and the first post-conviction relief proceeding pursuant to Rule 32.4(a) has concluded by the denial of a petition for review filed pursuant to Rule 32.9(c) or, if no petition for review has been filed, by the expiration of the time for filing such petition, the Supreme Court shall fix the time for execution of the sentence and shall issue a warrant to ~~the superintendent of the state prison directing him or her to execute the sentence.~~ of execution. In the event the warrant is stayed by any court beyond the date fixed for the execution of sentence, the Supreme Court shall issue subsequent warrants of execution upon motion by the state. The date of execution shall be fixed for thirty-five days after the Supreme Court's order denying review or order granting a motion for warrant of execution, unless good cause renders it impracticable to fix it at thirty-five, but in such case no more than sixty days after the order denying review or order granting the motion. The warrant shall authorize the director of the state department of corrections to carry out the execution. The superintendent of the state prison shall make a return on the warrant to the Supreme Court showing the manner and time of execution.

d. **Modification of Judgment Upon Finding of Insufficient Evidence at Trial.**
[No change.]

e. **Brief Form of Opinion.** [No change.]

**RULE 28 FINAL RULE DISTRIBUTION LIST
for R-96-0023
DESIGNATED BY RULE 28:**

R. 2/12/97

TO:

Petitioner Lloyd D. Anderson, Esq., Supreme Court Staff Attorney
Hercules A. Dellas, Esq., General Counsel, State Bar of Arizona
Hon. Fife Symington, Governor, State of Arizona
Hon. Donald R. Aldridge, Speaker, Arizona House of Representatives
Hon. Brenda Burns, President, Arizona State Senate
Hon. Grant Woods, Attorney General, State of Arizona
Michael E. Braun, Executive Director, Arizona Legislative Council
Richard Morgan, Dean, Arizona State University, College of Law
Joel Seligman, Dean, University of Arizona, College of Law
Glen D. Clark, Clerk, Court of Appeals, Division One
Joyce A. Goldsmith, Clerk, Court of Appeals, Division Two
Executive Director, State Bar of Arizona
Hon. Sherry L. Geisler, President, Justice of the Peace Assoc
Hon. Raymond W. Weaver, Jr., President, Arizona Judges Assn
Patricia Horgan, Exec Dir, Arizona Attorneys for Criminal Justice
Edwin M. Cook, Exec Dir, AZ Prosecuting Atty's Advisory Council
Sheri Newman, President, Superior Court Clerk's Association
Denis Malm, Executive Director, Arizona Trial Lawyers Association
Douglas L. Christian, President, Arizona Assn of Defense Counsel
Judy A. Ferguson, President, Arizona Magistrates Association
Charles R. Pyle, President, Tucson Defense Bar Association
Code-Co Law Publishers
Editor, Arizona Attorney
Editor, Maricopa Lawyer
Editor, The Writ

COURT OF APPEALS PRESIDING JUDGES:

Hon. Ruth V. McGregor, Chief Judge, Court of Appeals, Div One
Hon. William E. Druke, Chief Judge, Court of Appeals, Div Two

SUPERIOR COURT PRESIDING JUDGES:

Apache County - Hon. Michael C. Nelson
Cochise County - Hon. Matthew W. Borowiec
Coconino County - Hon. H. Jeffrey Coker
Gila County - Hon. Edward L. Dawson
Graham County - Hon. Dudley S. Welker
Greenlee County - Hon. Allen Minker
La Paz County - Hon. Michael Irwin
Maricopa County - Hon. Robert D. Myers
Mohave County - Gary R. Pope
Navajo County - Hon. Tom Wing
Pima County - Hon. Michael D. Brown
Pinal County - Hon. James E. Don
Santa Cruz - Hon. Roberto C. Montiel
Yavapai County - Hon. Raymond Weaver
Yuma County - Hon. H. Stewart Bradshaw

BAR ASSOCIATION PRESIDENTS:

Cochise County - Anita Sanchez
Coconino County - Michael H. Hinson
Gila County - Jefferson R. Dalton
Graham-Greenlee County - Jack M. Williams
Maricopa County - Nancy L. R. Bodinet
Mohave County - Richard L. Scholz
Navajo-Apache County - Sanford Edelman

Pima County - Ellen K. Wheeler
Pinal County - Joseph R. Georgini
Santa Cruz County - Laurie Martin
Yavapai County - Nicholas A. Mocerri, Jr.
Yuma County - Thomas E. Varela
East Valley - William M. Spence
Scottsdale - Ralph Mahowald
West Maricopa - Patricia Crowder

COUNTY PUBLIC DEFENDERS DESIGNATED BY THE COURT:

Cochise County - Vincent J. Frey
Coconino County - H. Allen Gerhardt
La Paz County - Michael J. Burke
Maricopa County - Dean W. Trebesch
Mohave County - Kenneth D. Everett
Navajo County - Myrna Parker
Pima County - Susan A. Kettlewell
Pinal County - Michael F. Beers
City of Phoenix - James Padish
Yuma County - Ronald F. Jones

LEGAL DEFENDERS DESIGNATED BY THE COURT:

Cochise County - James G. White
Maricopa County - Robert S. Briney
Maricopa County Office of Court Appointed Counsel - John W. Rood
Mohave County - Gerald Gavin
Navajo County Alternative Defender - Dale P. Nielson
Pima County - Isabel Garcia de Romo
Pima County - Sharon B. Hekman, Dir, Justice & Law Enforcement

OTHERS:

COUNTY ATTORNEYS:

Apache County - Stephen G. Udall
Cochise County - Alan K. Polley
Coconino County - Terence C. Hance
Gila County - Jerry B. DeRose
Graham County - Jack M. Williams
Greenlee County - Dennis L. Lusk
La Paz County - Steven P. Suskin
Maricopa County - Richard M. Romley
Mohave County - William J. Ekstrom, Jr.
Navajo County - Melvin R. Bowers, Jr.
Pima County - Barbara LaWall
Pinal County - Robert Carter Olson
Santa Cruz County - Martha S. Chase
Yavapai County - Charles R. Hastings
Yuma County - David S. Ellsworth

SUPERIOR COURT CLERKS:

Apache County - Sue Hall
Cochise County - Denise Lundin Glass
Coconino County - Julie Carlson
Gila County - Margaret Toot
Graham County - Amelia Sainz
Greenlee County - Jean McTavish
Maricopa County - Judith Allen
Mohave County - Linda Seapy
Navajo County - Juanita Mann
Pima County - James N. Corbett
Pinal County - Alma Jennings Haught

Santa Cruz County - Delfina Bauch
Yavapai County - Norbert Wedepohl
Yuma County - Beverly Frame

COURT ADMINISTRATORS:

Cochise County - Karen D. Ferrara
Coconino County - Gary Krcmarik
Gila County - Mary Hawkins
Graham County - Joyce Taylor
La Paz County - Richard Tozer
Maricopa County - Gordon Griller
Mohave County - Rick Lewis
Navajo County - Wayne Eiting
Pima County - Don Stiles
Pinal County - John Woods
Santa Cruz County - Frank Corrales
Yavapai County - Deborah Schaefer
Yuma County Court - Steve Gallaher

LAW LIBRARIES:

Apache County
Cochise County
Coconino County
Gila County
Graham County
Greenlee County
La Paz County
Maricopa County
Maricopa County-Southeast Branch
Mohave County
Navajo County
Pima County
Pinal County
Santa Cruz
Yavapai County
Yuma County Law
Arizona State University
University of Arizona

SPECIFIC INDIVIDUALS DESIGNATED BY THE COURT:

Carolyne K. Bass, Executive Director, Pima County Bar Association
Tom R. Clark, Regional Chairman, American Bd of Trial Advocates
Tim Delaney, Solicitor General, Arizona Attorney General's Office
Hon. B. Robert Dorfman, Chief Presiding Judge, Phx Municipal Ct
Anthony R. Lucia, Chair, Civil Practice & Procedures Committee
Daniel J. McAuliffe, Esq., Snell & Wilmer
Peter A. Neisser, Chair, State Bar Sole Practitioners Section
Edward F. Novak, Chair, Criminal Rules Committee
E. Keith Stott, Jr., Exec Dir, Commission on Judicial Conduct
Brenda Thomas, Exec Dir, Maricopa County Bar Association
Jennifer Might, Administrator, Arizona Capital Representation Project
Daily Journal Corp. - ATTN: Terry Yoshikawa
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Supreme Court Justices
Staff Attorneys
Gary Graham
Press Folders



Supreme Court

NOËL K. DESSAINT
CLERK OF COURT

STATE OF ARIZONA
402 ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON
PHOENIX, ARIZONA 85007-3329

KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK

TELEPHONE: (602) 542-9396

June 5, 1997

**RE: In the Matter of PROPOSED AMENDMENT TO RULE 31.17, CRIMINAL RULES
OF PROCEDURE
Supreme Court No. R-96-0023**

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on June 5, 1997, in regard to the above-referenced cause:

ORDERED: Proposed Amendment to Rule 31.17, Rules of Criminal Procedure = Approved as modified.

NOEL K. DESSAINT, Clerk

j1

Supreme Court

NOËL K. DESSAINT
CLERK OF COURT

STATE OF ARIZONA
402 ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON
PHOENIX, ARIZONA 85007-3329

KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK

TELEPHONE: (602) 542-9396

May 27, 1997

**RE: In the Matter of PROPOSED AMENDMENT TO RULE 31.17, CRIMINAL RULES
OF PROCEDURE
Supreme Court No. R-96-0023**

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on May 20, 1997, in regard to the above-referenced cause:

ORDERED: Proposed Amendment to Rule 31.17, Rules of Criminal Procedure = Approved, as modified.

NOEL K. DESSAINT, Clerk



Supreme Court

NOEL K. DESSAINT
CLERK OF COURT

STATE OF ARIZONA
402 ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON
PHOENIX, ARIZONA 85007-3329

KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK

TELEPHONE: (602) 542-9396

March 27, 1997

**RE: In the Matter of PROPOSED AMENDMENT TO RULE 31.17, CRIMINAL RULES
OF PROCEDURE
Supreme Court No. R-96-0023**

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on March 25, 1997, in regard to the above-referenced cause:

ORDERED: Proposed Amendment to Rule 31.17, Rules of Criminal Procedure = CONTINUED.

NOEL K. DESSAINT, Clerk



Supreme Court

**NOEL K. DESSAINT
CLERK OF COURT**

**STATE OF ARIZONA
402 ARIZONA STATE COURTS BUILDING
1801 WEST WASHINGTON
PHOENIX, ARIZONA 85007-3329**

**KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK**

TELEPHONE: (602) 542-9398

February 27, 1997

**RE: In the Matter of PROPOSED AMENDMENT TO RULE 31.17, CRIMINAL RULES
OF PROCEDURE
Supreme Court No. R-96-0023**

GREETINGS:

**The following action was taken by the Supreme Court of the State of
Arizona on February 26, 1997, in regard to the above-referenced cause:**

**Proposed Amendment to Rule 31.17, Rules of Criminal Procedure =
CONTINUED.**

NOEL K. DESSAINT, Clerk

j1

Hercules A. Dellas
General Counsel
State Bar of Arizona
111 W. Monroe, Suite 1800
Phoenix AZ 85003-1742
Attorney number: 010839
(602)340-7240

FILED
DEC 30 1996
NOEL K. DESSAINT
CLERK SUPREME COURT
BY: [Signature]

RECEIVED

DEC 30 1996

CLERK SUPREME COURT

Rule 31.17, Arizona Rules)
Criminal Procedure)
)
)
)

Supreme Court
No. R-96-0023

COMMENTS TO
PROPOSED AMENDMENT

The State Bar of Arizona, by and through its undersigned General Counsel, pursuant to Rule 28, Ariz.R.S.Ct. respectfully submits the following comments to Rule 31.17, Ariz.R.CR.P. Comments were received from the State Bar's Criminal Rules Committee and Criminal Justice Section. The Board of Governors approved submission of comments from both groups at its board meeting on December 20, 1996. The Criminal Justice Section's comments include both a Majority and Minority report. The Criminal Rules Committee's comments are enclosed herein as Attachment A. The Criminal Justice Section's comments are enclosed as Attachment B. Also enclosed as Attachment C, please find a copy of A.R.S. § 13-706 referred to in the Minority position submitted by the Criminal Justice Section.

RESPECTFULLY SUBMITTED this 30th day of December, 1996.

STATE BAR OF ARIZONA


Hercules A. Dellas, General Counsel
State Bar of Arizona

Original petition and six copies filed
with the Supreme Court Clerk
this 30th day of December, 1996.

by: 

Copies of the Petition mailed this 30th day of December, 1996, to:

Members of the Board of Governors
of the State Bar of Arizona

Edward F. Novak, Chair
Criminal Rules Committee

William Baker, Chair
Criminal Justice Section

by: 

ATTACHMENT A

**CRIMINAL RULES COMMITTEE'S COMMENTS TO PROPOSED CHANGES
TO ARIZONA RULES OF CRIMINAL PROCEDURE 31.17**

CRIMINAL RULES COMMITTEE'S COMMENT TO PROPOSED CHANGES
TO ARIZONA RULES OF CRIMINAL PROCEDURE 31.17

The State Bar of Arizona opposes the proposed changes to Arizona Rules of Criminal Procedure 31.17. The automatic issuance of a mandate provides an inflexible and frequently inappropriate method of dealing with the necessity of the issuance of a warrant of execution.

Issuance of First Automatic Execution Warrant

Under the proposal a warrant of execution will automatically issue when one of two events occurs: (1) a petition for review to the Arizona Supreme Court, filed under Ariz. R. Crim. P. Rule 32.9(c),¹ is denied, or (2) the time to file the petition for review has expired.

The proposed amendment disregards the fact that upon the completion of the state capital post-conviction proceedings, the condemned post-conviction petitioner is without counsel. In almost all cases, following the denial of a petition for review under Ariz. R. Crim. P. 43.9(c) by the Arizona Supreme Court, counsel no longer represents the client.

Representation ceases when counsel withdraws from representation formally, or *de facto* by taking no further action of any kind.²

Thus, the rule mandates that an execution warrant be issued scheduling the capital petitioner's execution despite the fact that the capital petitioner likely is without counsel. Although the clear intent of the rule is to force the capital petitioner into federal court--where he can request a stay of execution date--the preparation and filing of the appropriate pleadings cannot be accomplished by the condemned inmate without the assistance of counsel.

¹Rule 32.9(c) provides for discretionary appeal to the Arizona Supreme Court following the dismissal of state post-conviction proceedings or the denial of post-conviction relief by the trial court.

²In some cases, counsel has withdrawn before a petition for review, following the denial of state post-conviction relief by the trial court, is filed in the Arizona Supreme Court. In these circumstances, the capital petitioner is without counsel at a critical stage of the post-conviction proceedings. To exhaust the state post-conviction claims for potential federal review under a writ of habeas corpus, an appeal to the highest state court must be taken from the trial court's order denying post-conviction relief.

Moreover, automatic procedures such as this do not permit consideration of special circumstances where a warrant of execution *should not* issue following the conclusion of post-conviction proceedings. The inability of the Arizona Supreme Court, under the proposed rule, to exercise judicial discretion and decide the case on its individual merit, forces the capital petitioner to enter federal court

to seek a stay of execution. This has in fact occurred in the past and can be remedied in most cases simply by allowing the Arizona Supreme Court to review the specific circumstances of each case following briefing by the state and the petitioner's counsel before issuing a warrant of execution.

Issuance of the Second Automatic Execution Warrant

The proposed rule also provides that a second *automatic* warrant will issue "upon motion by the state" when an earlier warrant has been stayed "by any court" beyond the execution date. This requires the Supreme Court to issue execution warrants any time the state, through the Attorney General, requests one regardless of the stage of the proceedings. For example, even where the case is pending consideration in the state or federal court, the Attorney General could request a warrant, and the Arizona Supreme Court would be mandated to issue it under this proposal.

Also, if the federal court issues a stay of execution in a pending habeas case and then later dismisses the federal proceedings without prejudice to allow the capital defendant to exhaust his claims in state court, the Attorney General's office could request another warrant of execution. Again under this proposed rule, the Arizona Supreme Court must issue the execution warrant. Yet there is no question that under these circumstances, all the parties believe the federal court proceedings will ultimately be initiated again, if relief is not granted in the state courts.

Under the current practice the Attorney General moves the Arizona Supreme Court to issue a warrant of execution in a particular case. The petitioner's appointed counsel, or another attorney specially appearing to protect the capital petitioner's interests, can respond to the state's motion with the reasons, if any, why such a warrant should not issue. The Arizona Supreme Court then evaluates the merits of those reasons and determines whether a warrant should issue. This procedure allows the court to have full and timely information from all parties concerned before acting on such a serious matter.

Conclusion

The State Bar does recognize the need to amend Rule 31.17 which presently calls for issuance of a warrant following the conclusion of direct appellate review where the petitioner is denied all relief. The State Bar approves of the proposed change to delay issuing such a warrant until after the conclusion of the state post-conviction proceedings. However, the State Bar suggests that the proposed amendment's language be changed from a *mandatory* issuance of a warrant to the *discretionary* issuance of a warrant after motion by the state and briefing by the parties.

In sum, the *mandatory* and *automatic* issuance of warrants of execution as proposed by the amendment of Ariz. R. Crim. P. 31.17 are improper because they remove the essential decision-making authority of the Arizona Supreme Court to decide whether a warrant of execution is timely and proper.³

³The amendment also proposes that a warrant of execution provide for the execution within 35 days of its issuance. Once again, the capital petitioner under warrant is typically without court-appointed counsel. Assuming counsel can be found to represent the petitioner under warrant, that counsel must attempt to review the entire proceedings--which may include a trial, direct appeal, state post-conviction and federal post-conviction proceedings and appellate review--conduct necessary investigation to determine whether any issues support a stay of execution, and prepare appropriate pleadings to stay the execution. This extremely time-consuming and stressful work simply cannot be accomplished in 35 days.

Until recently, the Arizona Supreme Court had scheduled execution dates for 60 to 90 days following issuance of the warrant. Ninety days is the minimum time period required to allow counsel to complete the basic review and investigation that must be completed to undertake the tasks necessary to ensure that all meritorious issues have been raised before the client is executed. Substantial reasons exist for providing more time between issuance of the warrant and the execution.

ATTACHMENT B

**CRIMINAL JUSTICE SECTION'S COMMENTS TO PROPOSED CHANGES
TO ARIZONA RULES OF CRIMINAL PROCEDURE 31.17**

**CRIMINAL JUSTICE SECTION'S COMMENTS TO PROPOSED CHANGES
TO ARIZONA RULES OF CRIMINAL PROCEDURE 31.17**

COUNCIL MAJORITY VIEW AGAINST RULE AMENDMENT

A majority of the Executive Council of the Criminal Justice Section opposes the proposed amendment to Ariz.R.Crim.P. 31.17 for the reasons stated herein.

This amendment proposes two procedures under which the Arizona Supreme Court will automatically issue a warrant of execution for defendants sentenced to death. First, a warrant of execution will automatically issue when one of two events occurs: 1) a petition for review filed under Ariz.R.Crim.P. 32.9(c) (which provides an appeal to the Arizona Supreme Court following the denial of state post-conviction proceedings by the trial court) is denied, or 2) when the time to file the petition for review has expired. Second, a warrant of execution will automatically issue when "the warrant is stayed by any court beyond the date fixed for the execution of sentence" whenever the state requests a warrant.

Although discussed more specifically below, this rule turns the state's highest decision making body into a mere rubber stamp when confronted with the most serious action it can ever take--whether to issue a warrant for a person's execution. The automatic issuance rule eliminates the Arizona Supreme Court's most important and inherent power: to decide what action is appropriate after consideration of the merits of a case.

Moreover, as discussed below, the proposed time limit in the rule for the execution date, 35 days following the issuance of the warrant, is unreasonable.

Issuance Of First Automatic Execution Warrant

What this amendment ignores is that at the completion of the state capital post-conviction proceedings, the condemned defendant is without counsel. In almost all cases, following the denial of a petition for review under Ariz.R.Crim.P. 32.9¹ by the Arizona Supreme Court, counsel either withdraws formally from representation or *de facto* by taking no further action of any kind.

Thus, the rule mandates that an execution warrant be issued scheduling the capital defendant's execution for 35 days despite the fact that the defendant is without counsel to represent him. Although the implicit intent of the rule is to force the capital defendant into federal court where he can request a stay of the execution date, that cannot be accomplished by the condemned inmate without counsel to prepare the appropriate pleadings.

Moreover, automatic procedures such as this do not permit consideration of special circumstances where a warrant of execution should not issue following the conclusion of post-conviction

¹ In some cases, counsel has withdrawn before a petition for review following the denial of capital state post-conviction proceedings is filed. In these circumstances, the capital defendant is without counsel at a critical stage of his post-conviction proceedings. To exhaust the state post-conviction claims for potential federal review under a writ of habeas corpus, an appeal to the highest state court must be taken from the trial court's order denying post-conviction relief.

proceedings, and the capital defendant should not be forced to enter federal court to stop the execution. Some examples illustrate the problem of non-discretionary issuance of execution warrants.

In one recent case, a notice of post-conviction relief issued to a county superior court instructed that counsel be appointed to represent the capital defendant in post-conviction proceedings. The superior court, however, did not appoint counsel. After the time set forth in the rules governing post-conviction proceedings to file a post-conviction petition had passed, the state, through the attorney general's office, moved to dismiss the proceedings because a post-conviction petition had not been filed. That motion was granted.

The state then moved the Arizona Supreme Court to issue a warrant for the capital defendant's execution on the ground that the post-conviction proceedings had been dismissed, and no petition for review had been filed. The Arizona Supreme Court issued the warrant for execution. After the warrant issued, counsel was found who agreed to specially appear on the capital defendant's behalf in a special action to the Arizona Supreme Court asking, among other things, that the execution be stayed and the post-conviction proceedings reinstated and counsel appointed. The Arizona Supreme Court granted the special action, stayed the execution, and ordered the superior court to vacate its earlier order and to appoint counsel.

In another case, the state moved for a warrant of execution following the conclusion of state post-conviction proceedings. In response to the warrant, counsel argued that a petition for writ of habeas corpus had been filed in the federal court and an execution warrant should not issue. Under the proposed rule, the Arizona Supreme Court would have no authority but to issue the warrant of execution, despite the fact that the case was presently pending in federal court for review.

Other examples may include newly discovered facts or recent decisions demonstrating the unconstitutionality of a conviction or death sentence in a case in which one state post-conviction proceeding had been completed. Under the automatic rule, the Arizona Supreme Court will be required to issue a warrant of execution only to later grant a motion to stay the execution based on these new facts or law.

Under the mandatory rule proposed, circumstances such as these will occur, and a warrant of execution will automatically issue. The mandatory rule does not allow the Arizona Supreme Court to first consider the individual merits of each case before it decides whether an execution warrant should issue. In the first example, because the defendant was without counsel, a warrant for his execution was improperly issued, as the Arizona Supreme Court later recognized. In the second example, an execution warrant is unnecessary because the defendant is actively pursuing his federal post-conviction remedies. Allowing the Arizona Supreme Court to determine whether to issue the warrant only after consideration of the circumstances of each case provides some barrier against such unfortunate events.

Issuance Of The Second Automatic Execution Warrant.

The amendment proposes that a second automatic warrant issue "upon motion by the state" when an earlier warrant has been stayed "by any court" beyond the execution date. This requires execution warrants to issue any time the state, through the Attorney General's office, requests one regardless of the stage of the proceedings, or the individual circumstances of the case. For

example, under any of the cases discussed above, the Attorney General's office could request a warrant, and the Arizona Supreme Court is mandated to issue it under this proposal.

Also, if the federal court issues a stay of execution in a pending habeas case and then later dismisses the federal proceedings without prejudice to allow the capital defendant to exhaust his claims in state court, the Attorney General's office could request another warrant of execution. Again under this proposed rule, the Arizona Supreme court must issue the execution warrant. Yet there is no question that under these circumstances, all the parties believe that federal court proceedings will ultimately be initiated again, if relief is not granted in the state courts.

Under the current practice (although by no means perfect, because as discussed earlier, the capital defendant is often without counsel at this time), the Attorney General's office moves the Arizona Supreme Court to issue a warrant of execution in a particular case. The capital defendant's appointed counsel, or another attorney specially appearing to protect the capital defendant's interests, can respond to the state's motion with the reasons, if any, why such a warrant should not issue. The Arizona Supreme Court can then evaluate the merits of those reasons and determine whether a warrant should issue. This procedure allows the court to have full and timely information from all parties concerned before acting on such a serious matter.

In sum, automatic issuance of warrants of execution are improper because they remove the essential decision-making authority of the Arizona Supreme Court to decide whether a warrant of execution is timely and proper.

Thirty-Five Day Execution Warrant

The amendment also proposes that a warrant of execution provide for the execution within thirty-five days of its issuance. Once again, the capital defendant under warrant is typically without court-appointed counsel. Assuming counsel can be found to represent the capital defendant under warrant, that counsel must attempt to review the entire proceedings which may include a trial, direct appeal, state post-conviction and federal post-conviction proceedings and appellate review, conduct necessary investigation to determine whether any issues support a stay of execution, and research and prepare appropriate pleadings to stay the execution. This extremely time-consuming and stressful work simply cannot be accomplished in thirty-five days.

Until recently, the Arizona Supreme Court had scheduled execution dates for 60 to 90 days following issuance of the warrant. Ninety days is the minimum time period required to allow counsel to complete the basic steps that must be completed to undertake the tasks necessary to ensure that all meritorious issues have been raised before the client is executed. No reasons have been provided as to why this period should be reduced to this unreasonable time.

COUNCIL MINORITY VIEW IN FAVOR OF AMENDMENT

A minority of the Executive Council of the Criminal Justice Section believes the proposed amendment to Ariz.R.Crim.P. 31.17 should be approved by the Arizona Supreme Court because the amendment brings the Rule into closer conformance with A.R.S. § 13-706.

ATTACHMENT C

A.R.S. § 13-706

The 1996 amendment by Ch. 74 deleted "a physician" following "shall invite"; and made nonsubstantive changes.

Law Review and Journal Commentaries

Capital punishment in Arizona. Crane McClenen, 29 Ariz.Att'y 17 (Oct. 1992)

§ 13-706. Death warrant; return

A. After a conviction and sentence of death are affirmed and the first post-conviction relief proceedings have concluded, the supreme court shall issue a warrant of execution that authorizes the director of the state department of corrections to carry out the execution thirty-five days after the supreme court's mandate or order denying review or upon motion by the state. The supreme court shall grant subsequent warrants of execution on a motion by the state. The time for execution shall be fixed for thirty-five days after the state's motion is granted.

B. Upon the execution of a sentence of death, the director of the state department of corrections shall make a return upon the death warrant to the court which pronounced sentence and the supreme court, showing the time, mode and manner in which it was executed.

Amended by Laws 1998, Ch. 2, § 3, eff. Feb. 11, 1998; Laws 1994, Ch. 76, § 2.

Historical and Statutory Notes

The 1998 amendment substituted "director of the state department of corrections" for "superintendent of the state prison"; and inserted "and the supreme court".

The 1994 amendment inserted the provisions designated subsec. A; and designated the existing provisions as subsec. B.

1994 Reviser's Note:

Pursuant to authority of § 41-1804.02, "Death warrant; return" was substituted for the previous section heading.

Law Review and Journal Commentaries

Capital punishment in Arizona. Crane McClenen, 29 Ariz.Att'y 17 (Oct. 1992)

§ 13-707. Sentence of imprisonment for misdemeanor

Notes of Decisions

Term 3

1990) 164 Ariz. 316; 792 P.2d 778, review denied, certiorari denied 111 S.Ct. 979, 498 U.S. 1098, 112 L.Ed.2d 1064.

1. Concurrent sentences

Trial court's order that misdemeanor jail sentences were to run concurrently with defendant's term of imprisonment on felony charge was improper, however, Court of Appeals would not disturb sentence where State did not cross appeal and error ran in favor of defendant. State v. Garcia (App. 1990) 165 Ariz. 547, 799 P.2d 888, review denied.

3. Term

Sentence begins on day court imposes sentence or on day defendant surrenders to custody, regardless of whether that "day" consists of full twenty-four hours. State v. Carnegie (App. Div.1 1998) 174 Ariz. 452, 850 P.2d 690.

2. Flat time sentences

Municipal court sentences of \$408 fine and suspension of driver's license for 90 days for two civil violations and \$40 fine for violating restriction on driver's license requiring defendant to wear glasses were within prescribed legal limits; municipal court had no obligation to sentence defendant to driver's education classes. State v. Harrison (App.

Potential 195-day term of incarceration was not excessive sentence for class 6 undesignated offense of theft, even though sentence exceeded six-month maximum jail sentence for class 1 misdemeanors and trial court refrained from designating offense as felony or misdemeanor, given that statute on undesignated offenses required that offense be treated as felony for all purposes until court entered order designating offense as misdemeanor. State v. Brown (App. 1991) 169 Ariz. 35, 816 P.2d 982.



2

Supreme Court

NOËL K. DESSAINT
CLERK OF COURT

STATE OF ARIZONA
402 ARIZONA STATE COURTS BUILDING
1801 WEST WASHINGTON
PHOENIX, ARIZONA 85007-3329

KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK

TELEPHONE: (602) 542-9396

September 23, 1996

**RE: PROPOSED AMENDMENT TO RULE 31.17, CRIMINAL RULES OF PROCEDURE
Supreme Court No. R-96-0023**

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on September 19, 1996, in regard to the above-referenced cause:

ORDERED: Proposed Amendment to Rule 31.17, Rules of Criminal Procedure = CIRCULATE, comments due by December 31, 1996.

All comments shall be filed with the Clerk of the Supreme Court, 1501 West Washington Street, Room 402, Phoenix, AZ 85007, in an envelope marked "Rule Comment".

ANY PERSON FILING A COMMENT SHALL SEND A COPY THEREOF TO THE PETITIONER [Lloyd Anderson, Staff Attorney, Arizona Supreme Court].

NOEL K. DESSAINT, Clerk

RECEIVED

AUG - 1 1996

CLERK SUPREME COURT

RULE 28

SUPREME COURT RULES

**SUPREME COURT - SUA SPONTE
Requested by Lloyd Anderson
Date: August 1, 1995**

R-96-0023

FILED
AUG - 1 1996
NOEL K. DESSANT CLERK SUPREME COURT BY

Title of Rule Involved: DISPOSITION AND ANCILLARY ORDERS

Rule Number: Rule 31.17, Rules of Criminal Procedure

Subject: Fixing the date of execution after a death sentence is affirmed.

PROPOSED AMENDMENT TO CRIMINAL RULE 31.17

Rule 31.17. Disposition and Ancillary Orders

a. [No change.]

b. [No change.]

c. **Fixing the Date of Execution After a Death Sentence is Affirmed.** ~~When After a conviction and sentence of death is are affirmed, and the post-conviction relief proceedings initiated by the filing of a notice for post-conviction relief by the clerk of the Supreme Court pursuant to Rule 32.4(a) have concluded by the denial of a petition for review filed pursuant to Rule 32.9(c) or, if no petition for review has been filed, by the expiration of the time for filing such petition,~~ the Supreme Court shall fix the time for execution of the sentence and shall issue a warrant ~~to the superintendent of the state prison directing him or her to execute the sentence, of execution.~~ In the event the warrant is stayed by any court beyond the date fixed for the execution of sentence, the Supreme Court shall issue subsequent warrants of execution upon motion by the state. The date of execution shall be fixed for thirty-five days after the Supreme Court's order denying review or order granting a motion for warrant of execution. The warrant shall authorize the director of the state department of corrections to carry out the execution. The superintendent of the state prison shall make a return on the warrant to the Supreme Court showing the manner and time of execution.

d. [No change.]

e. [No change.]

DESIGNATED BY RULE 28:**TO:**

- ✓ Petitioner Lloyd Anderson, Staff Attorney, Arizona Supreme Court
- ✓ Hon. Fife Symington, Governor, State of Arizona
- ✓ Hon. Mark Killian, Speaker, Arizona House of Representatives
- ✓ Hon. John Greene, President, Arizona State Senate
- ✓ Hon. Grant Woods, Attorney General, State of Arizona
- ✓ Michael E. Braun, Executive Director, Arizona Legislative Council
- ✓ Richard Morgan, Dean, Arizona State University, College of Law
- ✓ Joel Seligman, Dean, University of Arizona
- ✓ Dave Byers, Admin Director, Administrative Office of the Courts
- ✓ Glen D. Clark, Clerk, Court of Appeals, Division One
- ✓ Joyce A. Goldsmith, Clerk, Court of Appeals, Division Two
- ✓ Bruce Hamilton, Executive Director, State Bar of Arizona
- ✓ Hon. William B. Sutton, Jr., President, Justice of the Peace Association
- ✓ Hon. Raymond W. Weaver, Jr., President, Arizona Judges Association
- ✓ Patricia Horgan, Executive Director, Arizona Attorneys for Criminal Justice
- ✓ Edwin M. Cook, Exec Dir, AZ Prosecuting Attorney's Advisory Council
- ✓ Judith Allen, President, Superior Court Clerk's Association
- ✓ Denis Malm, Executive Director, Arizona Trial Lawyers Association
- ✓ Douglas L. Christian, President, Arizona Association of Defense Counsel
- ✓ Judy A. Ferguson, President, Arizona Magistrates Association
- ✓ Charles R. Pyle, President, Tucson Defense Bar Association
- ✓ Code-Co Law Publishers
- ✓ Editor, Arizona Attorney
- ✓ Editor, Maricopa Lawyer
- ✓ Editor, The Writ

COURT OF APPEALS PRESIDING JUDGES:

- ✓ Hon. Ruth V. McGregor, Chief Judge, Court of Appeals, Division One
- ✓ Hon. William E. Druke, Chief Judge, Court of Appeals, Division Two

SUPERIOR COURT PRESIDING JUDGES:

- ✓ Apache County-Hon. Michael C. Nelson
- ✓ Cochise County-Hon. Matthew W. Borowiec
- ✓ Coconino County - Hon. H. Jeffrey Coker
- ✓ Gila County - Hon. Edward L. Dawson
- ✓ Graham County - Hon. Dudley S. Welker
- ✓ Greenlee County - Hon. Allen Minker
- ✓ La Paz County - Hon. Michael Irwin
- ✓ Maricopa County - Hon. Robert D. Myers
- ✓ Mohave County - Gary R. Pope
- ✓ Navajo County - Hon. Paul W. Colarich
- ✓ Pima County - Hon. Michael D. Brown
- ✓ Pinal County - Hon. James E. Don
- ✓ Santa Cruz County - Hon. Roberto C. Montiel
- ✓ Yavapai County - Hon. Raymond Weaver
- ✓ Yuma County - Hon. H. Stewart Bradshaw

BAR ASSOCIATION PRESIDENTS:

- ✓ Cochise County - Charles Michael Johns
- ✓ Coconino County - Bill Preston
- ✓ Gila County - Candyce Pardee
- ✓ Graham-Greenlee County - Jack M. Williams
- ✓ Maricopa County - Nancy L. R. Bodinet
- ✓ Mohave County - Richard L. Scholz
- ✓ Navajo-Apache County - Carolyn C. Holliday
- ✓ Pima County - Paul E. Tang
- ✓ Pinal County - Denis M. Fitzgibbons
- ✓ Santa Cruz County - Laurie Martin
- ✓ Yavapai County - Nicholas A. Mocerri, Jr.
- ✓ Yuma County - Patricia A. Orozco
- ✓ East Valley - William M. Spence
- ✓ Scottsdale - John Powell
- ✓ West Maricopa - Sheila E. Harmer

COUNTY PUBLIC DEFENDER DESIGNATED BY THE COURT:

- ✓ Cochise County - Vincent J. Frey
- ✓ Coconino County - H. Allen Gerhardt
- ✓ La Paz County - Michael J. Burke
- ✓ Maricopa County - Dean W. Trebesch
- ✓ Mohave County - Kenneth D. Everett
- ✓ Navajo County - Myrna Parker
- ✓ Pima County - Susan A. Kettlewell
- ✓ Pinal County - Michael F. Beers
- ✓ City of Phoenix - James Padish

LEGAL DEFENDERS DESIGNATED BY THE COURT:

- ✓ Cochise County - James G. White
- ✓ Maricopa County - Robert S. Briney
- ✓ Maricopa County Office of Court Appointed Counsel
- ✓ Mohave County - Gerald Gavin
- ✓ Navajo County Alternative Defender - Dale P. Nielson
- ✓ Pima County - Isabel Garcia de Romo
- ✓ Pima County - Sharon Hekman, Dir, Justice & Law Enforcement

OTHERS:

SPECIFIC INDIVIDUALS DESIGNATED BY THE COURT:

- ✓Carolyn K. Bass, Executive Director, Pima County Bar Association
- ✓Tim Delaney, Solicitor General, Arizona Attorney General's Office
- ✓Anthony R. Lucia, Chair, Civil Practice & Procedures Committee
- ✓Hon. B. Robert Dorfman, Chief Presiding Judge, Phoenix Municipal Ct
- ✓Denise I. Young, Federal Public Defender
- ✓Supreme Court Justices
- ✓Staff Attorneys
- ✓Press Folders

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AUG -1 1996

CLERK SUPREME COURT

RULE 28

SUPREME COURT RULES

SUPREME COURT - SUA SPONTE

Requested by Lloyd Anderson-3372

Date: August 1, 1995

R-96-0023

FILED

AUG - 1 1996

NOEL K. DESSANT
CLERK SUPREME COURT
BY

Title of Rule Involved: DISPOSITION AND ANCILLARY ORDERS

Rule Number: Rule 31.17, Rules of Criminal Procedure

Subject: Fixing the date of execution after a death sentence is affirmed.

PROPOSED AMENDMENT TO CRIMINAL RULE 31.17

Rule 31.17. Disposition and Ancillary Orders

a. [No change.]

b. [No change.]

c. **Fixing the Date of Execution After a Death Sentence is Affirmed.** ~~When~~ After a conviction and sentence of death ~~is~~ are affirmed, ~~and the post-conviction relief proceedings initiated by the filing of a notice for post-conviction relief by the clerk of the Supreme Court pursuant to Rule 32.4(a) have concluded by the denial of a petition for review filed pursuant to Rule 32.9(c) or, if no petition for review has been filed, by the expiration of the time for filing such petition,~~ the Supreme Court shall fix the time for execution of the sentence and shall issue a warrant ~~to the superintendent of the state prison directing him or her to execute the sentence,~~ of execution. In the event the warrant is stayed by any court beyond the date fixed for the execution of sentence, the Supreme Court shall issue subsequent warrants of execution upon motion by the state. The date of execution shall be fixed for thirty-five days after the Supreme Court's order denying review or order granting a motion for warrant of execution. The warrant shall authorize the director of the state department of corrections to carry out the execution. The superintendent of the state prison shall make a return on the warrant to the Supreme Court showing the manner and time of execution.

d. [No change.]

e. [No change.]

