

SUPREME COURT OF ARIZONA

STATE OF ARIZONA, ) Arizona Supreme Court  
 ) No. CR-13-0282-AP  
 Appellee, )  
 ) Maricopa County  
 v. ) Superior Court  
 ) No. CR2003-038541-001  
 AARON BRIAN GUNCHES, )  
 ) **FILED 2/11/2025**  
 Appellant. )  
 \_\_\_\_\_ )

**DECISION ORDER**

*Per Curiam\**

The State's Motion for Warrant of Execution establishes that the requirements pursuant to A.R.S. § 13-759(A) and Arizona Rule of Criminal Procedure 31.23 for issuance of a warrant are satisfied. Appellant Aaron Brian Gunches did not file a response opposing the State's motion. He does not dispute that the requirements of § 13-759(A) and Rule 31.23 are satisfied, and he does not oppose issuance of a warrant of execution.

This Court has a limited role at this stage of the proceedings. "Upon 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." *State v. Wagstaff*, 164 Ariz. 485, 488-89 (1990). When the State seeks a warrant of execution, § 13-759(A) and Rule 31.23(a) require the Court to verify that an inmate's appellate and post-conviction reviews (and where appropriate federal habeas corpus proceedings and habeas appellate review) have concluded. If so, the

Court *must* issue a warrant authorizing the State to carry out an execution. See § 13-759(A); Ariz. R. Crim. P. 31.23(a).

On January 10, 2025, the State filed a Motion for Warrant of Execution notifying the Court that the requirements of Rule 31.23(a)(1), (a)(2), and (a)(3) have all been satisfied, requiring the Court to issue the requested warrant of execution. See § 13-759(A). Neither Gunches nor Amici dispute these facts. Thus, we are required to issue the warrant of execution. See § 13-759(A); Ariz. R. Crim. P. 31.23.

Nevertheless, contrary to the statement in our January 8, 2025 amended order inviting amicus briefs that “provide[] information, perspective, or argument *on the narrow issues before the Court* on a motion for warrant of execution pursuant to Rule 31.23(a),” several Amici submitted briefs arguing that this Court should deny the State’s Motion for Warrant of Execution for reasons unrelated to the requirements of § 13-759(A) and Rule 31.23. (Emphasis added). These arguments do not persuade us to refuse to issue the warrant.

First, neither party raised the issues presented by Amici. Therefore, those issues are not properly before us. See *Vangilder v. Ariz. Dep’t of Revenue*, 252 Ariz. 481, 493 ¶ 46 (2022) (explaining that amici curiae “will not be permitted to create, extend, or enlarge the issues” (citation omitted)). Second, even if a party had made these arguments, it would not affect our statutory duty to issue a warrant of execution in this matter. As we stated in March 2023,

after the State had moved for a warrant of execution of Gunches in December 2022:

The narrow question before this Court is whether the criteria for issuing a warrant that authorizes [an] execution . . . , set forth in statute and this Court's rules, are satisfied. If those criteria are met, under statute and rule the Court "shall" and "must" issue the warrant. As the State has placed the Court on notice that the criteria are satisfied, and no party having asserted otherwise, the Court's duty is to issue the warrant that authorizes the execution.

See *State v. Gunches*, No. CR-13-0282-AP, at 1 (Ariz. Mar. 2, 2023) (dec. order).

Amici present no arguments germane to the criteria that must guide us in determining whether to issue a warrant of execution. They critique the method by which the State intends to carry out Gunches' execution, seeking to litigate in this proceeding whether the State can lawfully carry out an execution by lethal injection at this time. But this proceeding is not the appropriate forum for any such challenge. The present matter before the Court on the State's Motion for Warrant of Execution only concerns whether the requirements under § 13-759(A) and Rule 31.23 have been satisfied. Because they have been, this Court must issue the warrant of execution that authorizes the Arizona Department of Corrections, Rehabilitation, and Reentry to carry out Gunches' execution.

Therefore, because the State has filed a Motion for Warrant of Execution that establishes the requirements for the issuance of a warrant of execution pursuant to § 13-759(A) and Rule 31.23, and there having been no showing that those requirements have not been

satisfied,

**IT IS ORDERED** that the State's Motion for Warrant of Execution is granted.

DATED this 11th day of February 2025.

\_\_\_\_\_/s/\_\_\_\_\_  
ANN A. SCOTT TIMMER  
Chief Justice

\* Vice Chief Justice John R. Lopez IV, Justice James P. Beene, and Justice William G. Montgomery are recused and did not participate in the determination of this matter. The Honorable Peter Eckerstrom, Judge of the Arizona Court of Appeals—Division Two, and the Honorable David D. Weinzwieg, Judge of the Arizona Court of Appeals—Division One, are designated to sit on this case until it is finally determined.

TO:

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Aaron Brian Gunches, ADCRR 145371, Arizona State Prison, Tucson -  
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