

**ARIZONA SUPREME COURT**

STATE OF ARIZONA,

Appellee,

vs.

CLARENCE WAYNE DIXON,

Appellant.

No. CR-08-0025-AP

Maricopa County Superior Court No.  
CR-2002-019595

Ninth Circuit No. 16-99006

U.S. District Court No. CV-14-258-  
PHX-DJH

**SUPPLEMENT TO OPPOSITION  
TO MOTION FOR WARRANT OF  
EXECUTION**

**(Capital Case)**

**(Oral Argument Requested)**

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Clarence Wayne Dixon, through undersigned counsel, hereby supplements his opposition to the State of Arizona’s Motion for Warrant of Execution [hereinafter Warrant Motion], with the supplemental report of expert pharmacologist Dr. Michaela Almgren which is attached hereto as Exhibit Q. Dr. Almgren’s supplemental report addresses her review of documents pertaining to the testing of the State’s compounded execution drug that were produced after Mr. Dixon’s Opposition to the Warrant Motion was filed. *See* Opposition to Motion for Warrant of Execution at 10, *State of Arizona v. Clarence Wayne Dixon*, No. CR-08-0025-AP (Ariz. Mar. 10, 2022) (noting that “Mr. Dixon requested that the State produce

all documents related to the specialized testing of its compounded execution drug” and that “the State agreed do to so in the coming days and noted it would not object to Mr. Dixon supplementing this Opposition following his receipt of that information”); *see also* Exhibit Q ¶ 1 (discussing review of “additional documents (attached hereto as Exhibit 4), which are a partial component of stability reports[ ]”).

According to Dr. Almgren, the alleged stability report produced by the State’s compounding pharmacist “is insufficient to be used for the assignment of [the drug’s beyond-use date] BUD, as it does not contain all the required information needed for the determination of a parenteral drug’s expiry.” (Exhibit Q ¶ 5.) The State therefore appears to be in noncompliance with its execution protocol’s requirement that an execution drug’s BUD extend beyond the anticipated execution date. *Compare Dep’t Order 710—Execution Procedures*, Attachment D at 1 (mandating that “ADC[RR] will only use chemicals in an execution that have an expiration or beyond-use date that is after the date that an execution is carried out”), *with* Motion to Modify Briefing Schedule at 2–3, *State of Arizona v. Clarence Wayne Dixon*, No. CR-08-0025-AP (Ariz. June 22, 2021) (the State advising the Court that “until certain specialized testing of a sample batch is conducted, pentobarbital that is compounded for Dixon’s execution will have an initial beyond-use date of 45 days” and “will expire prior to Dixon’s anticipated execution”), *and* Exhibit Q ¶¶ 5, 7–11 (Dr. Almgren explaining why the “stability data” produced by the State “lack many

basic elements of a typical stability study specific for compounded parenteral medication and are insufficient to extend the drug's BUD[[]"). In the absence of information demonstrating that the compounded drug intended for Mr. Dixon's execution will not be expired by the time his execution is carried out, the Court should deny the State's Warrant Motion.<sup>1</sup>

The issuance of an Execution Warrant under these circumstances not only sacrifices Mr. Dixon's state and federal due process rights (*see* Opposition to Warrant Motion at 7–11), but also creates a constitutionally unacceptable risk that the compounded drug will cause “unnecessary pain and suffering when injected” (*see* Exhibit Q ¶ 24). Mr. Dixon thus respectfully asks that the Court decline the State's invitation to do so at this juncture.

Finally, in light of the importance of the issues at stake and the heightened reliability that the Eighth Amendment to the U.S. Constitution and corresponding provisions of the Arizona Constitution demand in death penalty cases, *see* Ariz. Const. art. II, § 15; U.S. Const. amend. VIII; *see also Caldwell v. Mississippi*, 472 U.S. 320, 340 (1985) (discussing “the Eighth Amendment's heightened need for reliability in the determination that death is the appropriate punishment in a specific case” (internal quotations omitted)); *State v. Davis*, 206 Ariz. 377, 380–81 ¶¶ 12–13

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<sup>1</sup> The State has provided no BUD whatsoever for the drug intended for use in Mr. Dixon's execution. There is thus no way to determine whether a BUD has been assigned to the drugs at all, or when those drugs will expire.

(2003) (interpreting the prohibition against cruel and unusual punishment contained in Article 2, Section 15 of the Arizona Constitution consistently with the Eighth Amendment to the U.S. Constitution), Mr. Dixon respectfully asks the Court to schedule this matter for Oral Argument so these important issues may be fully aired before a Warrant of Execution issues.

RESPECTFULLY SUBMITTED this 31st day of March, 2022.

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