

ARIZONA SUPREME COURT

STATE OF ARIZONA,
Appellee,
v.
LEROY DEAN MCGILL,
Appellant.

CR-04-0405-AP

Maricopa County Superior Court
No. CR2003-005315

Ninth Circuit No. 19-99002

U.S. District Court
No. CV-12-01149-PHX-JJT

**REPLY RE: MOTION TO SET
BRIEFING SCHEDULE FOR MOTION
FOR WARRANT OF EXECUTION**

McGill does not ask this Court to deny the State's Motion to Set Briefing Schedule for Warrant of Execution. Instead, he requests that the Court delay the briefing schedule "as far out as possible." The State has consulted with the victims in this case, who do not take a position on McGill's request. For the following reasons, this Court should reject McGill's request and set a briefing schedule to begin on the timeline proposed in the State's motion.

The reason for McGill's request to delay the briefing schedule is a cyberattack suffered by the Arizona Federal Public Defender's Office in the spring of 2025. McGill states that the cyberattack resulted in the loss of his casefile and asserts that, without additional time to obtain releases and materials for end-stage litigation or clemency proceedings, his right to due process will be violated. Although the State is sympathetic to the difficulties caused by the cyberattack, McGill fails to establish that a briefing schedule beginning in January 2026 will

violate any constitutional or statutory right he possesses, or will otherwise impair his ability to pursue a meaningful clemency proceeding.

First, McGill does not attempt to argue that he requires more time to respond to the State's motion for warrant. Instead, he requests more time to prepare for a clemency proceeding—a proceeding that has no bearing on whether an execution warrant should issue, the question that will be before this Court under the State's proposed briefing schedule. McGill's desire for more time to prepare for a future clemency proceeding does not justify a lengthy delay in briefing on whether a warrant should issue.

Additionally, while McGill cites various authorities in his response, none establish that he is entitled to representation by counsel with prior detailed knowledge of his case. McGill argues that the Constitution provides him minimal procedural safeguards regarding his clemency proceedings and that the Rules of Professional Conduct and the ABA Guidelines require his counsel to adequately prepare for potential clemency proceedings. The State does not necessarily disagree with these broad propositions, but does disagree that these generalized protections entitle McGill to additional time for counsel who has represented him for many years to reconstruct their casefile before briefing on a motion for warrant of execution may proceed.

If the briefing schedule were to proceed on the State's proposed timeline, McGill would be in no worse position than an inmate who was previously unrepresented or previously represented by different counsel, but received newly-appointed counsel to represent him in a clemency proceeding. Nothing in McGill's argument or the authorities he cites suggest that this hypothetical inmate's rights would be violated by appointment of new counsel who was not previously acquainted with his case. Because he is represented by counsel, any right to counsel for clemency will be respected even if the briefing schedule on a motion for warrant of execution begins next month.

Furthermore, McGill and his lawyers will have time to prepare for a clemency proceeding even under a briefing schedule that begins on January 16. If the motion for warrant were granted under the State's proposed timeline, a warrant would issue on February 10, 2026, which would result in a scheduled execution date of approximately March 18, 2026. In the recent example of the executions occurring in 2022, clemency hearings took place approximately two weeks before the scheduled execution dates. This would mean that, if a warrant of execution were issued in this case on the State's proposed timeline, McGill could expect a clemency hearing to be scheduled sometime during the week of March 2, 2026.

McGill received notice that the State intends to seek a warrant of execution when it filed the Motion for Briefing Schedule on December 12, 2025, meaning

that if his execution is scheduled for March 18, he will have had nearly three months to prepare for a clemency hearing. While his counsel might want more time, McGill has failed to demonstrate that the State's proposed timeline is constitutionally inadequate, especially considering the fact that current counsel's office has represented him for more than two decades and is familiar with the details of his case.

In addition, the impetus for McGill's request to delay the State's requested briefing schedule is to allow time for his counsel to "obtain releases and those materials that might be necessary for end-stage litigation or clemency proceedings, and consult with Mr. McGill." Response at 3. Presumably, the vast majority—if not all—of the records that would be relevant to a clemency proceeding have been presented by McGill to the state and federal courts in which he has challenged his convictions and sentences. It is difficult to imagine a scenario in which there are extensive records relevant to a clemency proceeding that McGill has not previously presented at trial or in postconviction. McGill's counsel has access to these pleadings and court records from court files, even if their own files are unavailable. Furthermore, the State will assist McGill's counsel by freely sharing any publicly filed material in the State's possession. Thus, while the State is sympathetic to the difficulties caused by the cyberattack, McGill should have access to most of the materials he would use in a clemency proceeding from court records and from the

State's file. His counsel's inability to access their casefile thus does not justify further delay the State's efforts to carry out McGill's sentence.

DATED this 30th day of December, 2025.

Respectfully submitted,

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