

ARIZONA SUPREME COURT

STATE OF ARIZONA,

Appellee,

vs.

LEROY MCGILL,

Appellant.

No. CR-04-0405-AP

Maricopa County Superior Court No.
CR-2003-005315-001

Ninth Circuit No. 19-99002

U.S. District Court No. 2:12-CV-
01149-DGC

**RESPONSE TO MOTION FOR
WARRANT OF EXECUTION**

(Capital Case)

Leroy Dean McGill, through counsel, hereby responds in opposition to the State’s Motion for Warrant of Execution filed on March 6, 2026. (Dkt. 65.) Mr. McGill respectfully requests that the Court deny the State’s motion outright or continue the matter until Mr. McGill’s successive state post-conviction proceedings are concluded.

Argument

On March 19, 2026, Mr. McGill filed a notice of post-conviction relief in the Maricopa County Superior Court. He intends to file a petition for post-conviction relief on or before March 31, 2026. That petition will include claims regarding the incorrect parole instructions given to the jury in Mr. McGill’s capital sentencing proceedings, material information about two witnesses that was not disclosed to trial counsel, and

false and highly aggravating information provided to the jury and this Court regarding the alleged use of styrofoam during the crime. Mr. McGill respectfully requests that the Court continue the State's motion to allow litigation on these claims to proceed.

In addition, Mr. McGill asked counsel to provide the following information for the Court to consider in deciding the State's motion. First, Mr. McGill has repeatedly argued that because there was no constitutional death-penalty statute in place in Arizona at the time the crime in this case occurred, he cannot be subject to a sentence of death. Most recently, Judge Milan Smith of the United States Court of Appeals for the Ninth Circuit agreed with Mr. McGill and dissented from the portion of the panel's opinion denying relief on that claim. *McGill v. Shinn*, 16 F.4th 666, 709 (9th Cir. 2021) (M. Smith, J., concurring in part and dissenting in part). As Judge Smith explained, "There was no law that permitted McGill to be punished with a death sentence during the thirty-eight days between *Ring* [*v. Arizona*, 536 U.S. 584 (2002)] and the re-enactment of [Ariz. Rev. Stat.] § 13-703. I therefore believe that a retroactive death sentence for crimes committed during this period is unconstitutional." *Id.* at 709-10 (internal footnote omitted). Because the Ninth Circuit panel was divided on this issue, Mr. McGill asks this Court to deny the State's motion and allow him to serve life in prison.

Further, for more than two decades Mr. McGill has demonstrated consistent rehabilitation, personal responsibility, and growth. After struggling with severe addiction that resulted in circumstances that undermined his ability to make positive choices, he committed himself to sobriety and has remained sober for twenty-three

years. He is a trusted and valued worker in his assigned duties, lives a disciplined and service-oriented life, and is deeply guided by his Catholic faith. He regularly participates in religious services and strives to live in accordance with his beliefs. Furthermore, his prison record is free of even a single institutional infraction and exemplifies a life lived peacefully with other prisoners and with respect for prison staff.

Mr. McGill is supported by a strong network of family, friends and his legal team, all of whom continue to stand with him. His transformation demonstrates Mr. McGill's capacity for change when paired with time, structure, and support.

Taking his life now serves no constructive or public safety purpose. Instead, it underscores systemic failures that denied him adequate resources and meaningful advocacy at the most critical moments of his case. His life today is defined not by his past struggles, but by decades of sobriety, faith, and demonstrated rehabilitation. Mr. McGill is not a danger to himself or others; his life is of great value to those who know and care about him. Executing him now would constitute a grave miscarriage of justice, and Mr. McGill respectfully requests that the Court deny the State's motion for warrant of execution and allow him to continue his life in prison.

Conclusion

For the preceding reasons, Mr. McGill asks the Court to deny the State's motion or continue its decision to allow his state-court proceedings to continue.

RESPECTFULLY SUBMITTED this 20th day of March, 2026.

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