

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

MOTION FOR WARRANT OF EXECUTION

Pursuant to A.R.S. § 13-759(A) and Arizona Rule of Criminal Procedure 31.23(a) and (b), the State of Arizona moves this Court for a Warrant of Execution for Leroy Dean McGill. McGill's direct appeal, first post-conviction proceeding, and federal habeas proceeding have concluded, and the State is prepared to carry out his sentence of execution. Accordingly, under § 13-759(A) and Rule 31.23(a) and (b), a warrant of execution must issue. *See State v. Gunches*, No. CR-13-0282-AP (Decision Order, February 18, 2025).

Issuance of a warrant of execution is governed by A.R.S. § 13-759(A) and Rules 31.23(a) and (b). The statute provides:

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.

A.R.S. § 13–759(A) (emphasis added). Rule 31.23 outlines the process for implementing this statute, stating:

(a) Issuance of Warrant. After affirming a death sentence, the Supreme Court *must* issue a warrant of execution if the State files a notice stating that:

- (1) the defendant has not filed a first Rule 32 petition for post-conviction relief and the time for filing a petition has expired;
- (2) the defendant has not filed a petition for review seeking review of a superior court denial of the defendant's first Rule 32 petition for post-conviction relief and the time for filing a petition for review has expired; or
- (3) the defendant has not initiated habeas corpus proceedings in federal district court within 15 days after the Supreme Court's denial of a petition for review seeking review of the denial of the defendant's first Rule 32 petition for post-conviction relief.

(b) Post-Habeas Warrant. On the State’s motion, the Supreme Court *must* issue a warrant of execution when federal habeas corpus proceedings and habeas appellate review conclude.

Ariz. R. Crim. P. 31.23 (emphasis added). As this Court recently recognized, once the State provides notice that these conditions are met, “this Court *must* issue a warrant authorizing the State to carry out an execution.” *State v. Gunches*, No. CR–13–0282–AP (Decision Order, February 18, 2025), at 2 (emphasis in original).

In 2004, McGill was convicted of first-degree murder, attempted first-degree murder, arson, and endangerment for pouring a mixture of gasoline and styrofoam on Charles Perez and Nova Banta, then lighting them on fire, causing Perez's death and severe burns to Banta. *State v. McGill*, 213 Ariz. 147, 150–51, ¶¶ 1–10 (2006). A jury sentenced McGill to death for Perez's murder. *Id.* at 151, ¶ 12. This Court affirmed McGill's sentences and convictions on direct appeal, *see id.* at 163, ¶ 84, and the Supreme Court denied certiorari, *McGill v. Arizona*, 549 U.S. 1324 (2007) (Mem.). The trial court subsequently denied McGill's first petition for post-conviction relief, and this Court denied review. No. CR–11–0399–PC.

McGill then filed a federal habeas petition, and the district court denied relief in January 2019. *McGill v. Shinn*, 16 F.4th 666, 678 (9th Cir. 2021). McGill appealed to the Ninth Circuit Court of Appeals, which affirmed the denial of habeas relief. *Id.* at 673. On November 14, 2022, the Supreme Court denied certiorari. *McGill v. Shinn*, 143 S. Ct. 429 (2022) (Mem.).

McGill's federal habeas appeals have thus concluded. McGill currently has no actions challenging his convictions or sentences pending in any state or federal court. *See* A.R.S. § 13–759(A); Ariz. R. Crim. P. 31.23(b). The State therefore requests that this Court issue a warrant of execution.

DATED this 6th day of March, 2026.

Respectfully submitted,

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