

ARIZONA SUPREME COURT

STATE OF ARIZONA,

Appellee,

vs.

LEROY DEAN 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

MOTION TO STAY EXECUTION

(Capital Case)

Pursuant to Arizona Rule of Criminal Procedure 32.18, Defendant Leroy Dean McGill hereby moves the Court to stay his execution that is scheduled to take place on May 20, 2026 (*see* Dkt. No. 69) due to his successive post-conviction petition pending before the superior court.

Background

On March 6, 2026, the State filed a motion for warrant of execution in this case. (Dkt. No. 65.) In his opposition to that motion, Mr. McGill stated that he had initiated a successive post-conviction proceeding in the Maricopa County Superior Court. (Dkt. No. 66 at 1-2.) On March 26, 2026, this Court granted the State's motion and issued a

warrant of execution for Mr. McGill with a scheduled execution date of May 20, 2026. (Dkt. No. 69.)

Mr. McGill filed his successive post-conviction petition on March 31, 2026. (Petition for Post-Conviction Relief, *State v. Leroy McGill*, CR2003-005315 (Maricopa Cnty. Super. Ct. March 31, 2026 (hereinafter “Succ. Pet.”).) The State responded on April 8, 2026. (Post-Conviction Relief Response, *State v. McGill*, No. CR2003-005315 (Maricopa Cnty. Super. Ct. April 8, 2026) (hereinafter “Resp.”).) The superior court issued a minute entry setting a status conference in this case on April 20, 2026 (Minute Entry Order, *State v. McGill*, CR2003-005315 (Maricopa Cnty. Super. Ct. April 10, 2026), and Mr. McGill filed his reply on April 17, 2026 (Reply in Support of Petition for Post-Conviction Relief, *State v. McGill*, CR2003-005315 (Maricopa Cnty. Super. Ct. April 17, 2026).

During the status conference on the afternoon of April 20, 2026, Maricopa County Superior Court Presiding Criminal Judge Jennifer Green indicated to the parties that the court did not expect to resolve the pending successive proceedings prior to the scheduled execution date.¹ Judge Green stated that the petition will be assigned to a different superior court judge for review of the petition and responsive pleadings and any subsequent proceedings. Judge Green asked Mr. McGill’s counsel if they intended

¹ This status conference took place at 1:30 pm on April 20, 2026, and this motion is being filed shortly thereafter. No minute entry or transcript of the proceedings is yet available, but counsel for both parties have requested the transcript and can supplement the record with those documents when they are obtained.

to file a motion for stay of execution in this Court to allow the superior court proceedings to continue, and Mr. McGill’s counsel agreed that if the superior court did not anticipate resolving these proceedings prior to the scheduled execution date, a motion for stay of execution would be necessary.

Argument

Arizona Rule of Criminal Procedure 32.18 requires defense counsel to apply to the Arizona Supreme Court for a stay of execution when a successive post-conviction petition had been filed that contains at least one claim that is not precluded under Rule 32.2. In his petition, Mr. McGill raised five claims and has argued exceptions to Rule 32.2’s preclusion requirements for all five. (Ex. 1.) As for Claim One regarding the incorrect parole instructions given to the jury and Claim Two regarding the ineffective assistance of counsel at trial for failing to object to the incorrect instructions, Mr. McGill argued that he did not personally waive these claims and is blameless for any waiver by his prior counsel due to the unusual circumstances regarding the abolishment of parole in Arizona. *See, e.g., State v. Anderson*, 257 Ariz. 226, 229, 232-33, ¶¶ 5-6, 24-26 (2024) (explaining that Arizona law recognizes exceptions to untimely and procedurally barred claims when there are unusual circumstances and doing so would be equitable); *see also State v. Traverso (Traverso II)*, --- Ariz. ---, 576 P.3d 97, 101-02, ¶¶ 11-13 (2025) (acknowledging circumstances where post-conviction counsels’ failures render a petitioner “blameless” for a waiver, including when PCR counsel fails to file a petition, understand the law, or include an allegation in an IAC claim). (Ex. 1, Succ. Pet. at 54-

58.) He also argued that a significant change in the law made these claims cognizable under Rule 32.1(g). (Ex. 1, Succ. Pet. at 58-59.)² As for Claims Three, Four, and Five, those claims were raised pursuant to Rule 32.1(e) because they were based on evidence developed during Mr. McGill’s federal habeas proceedings and never presented to the state courts. (Ex. 1, Succ. Pet. at 58.)

While the preclusion status of Mr. McGill’s claims has not yet been decided by the superior court, the State did not argue preclusion for part of one claim and for two others. (Ex. 2, Resp. at 26 (“Initially, the State does not contest that Claim 1(C) is cognizable under 32.1(g) or that *Lynch III* is a significant change in the law applicable to McGill’s case.”); 64 (no preclusion argument regarding Claim 4), 70 (no preclusion argument regarding Claim 5).) The State has argued that all Mr. McGill’s claims were untimely and meritless, but Mr. McGill responded to those arguments in his reply filed on April 17, 2026 (Ex. 3), and the superior court has not yet ruled on those issues.

Mr. McGill maintains that the claims pending before the superior court are not precluded and are colorable. Because the superior court has indicated that it will not be able to resolve these claims prior to the scheduled execution date, he respectfully asks

² As the Court is aware, a number of petitioners with Arizona death sentences have filed successive petitions raising claims regarding the incorrect parole instructions like those in this case and those petitions are currently pending in this Court or the state superior courts. *See, e.g., State v. Rose*, CR-23-0315-PC (Ariz. Sup. Ct.) (argued and submitted on Dec. 16, 2025).

this Court to issue a stay of the execution warrant to allow the superior court to consider and rule on the claims raised in his petition as contemplated by Rule 32.18.

Conclusion

For the preceding reasons, Mr. McGill moves this Court to stay his scheduled execution and allow his successive post-conviction claims to be litigated in the Maricopa County Superior Court in due course.

RESPECTFULLY SUBMITTED this 20th day of April, 2026.

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