

**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

**REPLY IN SUPPORT OF  
MOTION TO STAY EXECUTION**

(Capital Case)

Leroy Dean McGill hereby replies to the State’s response to his motion for stay of execution (Dkt. No. 73, hereinafter “Resp.”).

The State argues that a stay would be premature. (Resp. at 4.) Mr. McGill filed his motion for stay of execution on the same afternoon that Presiding Criminal Judge Jennifer Green of the Maricopa County Superior Court informed his counsel that the claims in his successive petition would not be resolved prior to the scheduled execution date of May 20, 2026. (Resp. Ex. A (transcript of status conference) at 6.) Arizona Rule of Criminal Procedure 32.18 provides an avenue to request a stay of execution from this Court when a successive post-conviction petition has been filed that contains at least one non-precluded claim.

The State acknowledges that at least three of Mr. McGill’s claims are not subject to preclusion (Resp. at 9), making application of that rule appropriate here. Mr. McGill

acted immediately upon receiving the information that the superior court would not be able to resolve his claims in the relevant time period and respectfully requests that this Court recognize the limitations expressed by Judge Green and stay his scheduled execution to allow resolution of Mr. McGill's claims. While a motion for stay of execution may not have been ripe prior to the superior court status conference on April 20, 2026, it is certainly ripe now that Mr. McGill's counsel was informed that the petition would not be resolved prior to the execution date. As this Court has noted, "[r]ipeness reflects the judiciary's reluctance to adjudicate hypothetical or abstract questions." *Mills v. Ariz. Bd. of Tech. Registration*, 253 Ariz. 415, 423 (2022). Mr. McGill's concern here is not hypothetical or abstract and his motion was filed only after receiving express information regarding his petition.

The State also argues that Mr. McGill's claims are all untimely and that Mr. McGill has not attempted to explain the delay. (Resp. at 7.) This is incorrect. Arizona Rule of Criminal Procedure 32.2(b) requires only that a petitioner "explain the reasons for not raising the claim in a previous notice or petition, or for not raising the claim in a timely manner." Mr. McGill has done so by noting the constitutionally ineffective assistance of his prior counsel, the newly discovered evidence, and the significant change in law giving rise to his claims.

As an initial matter, as the State notes, Claims 3, 4, and 5 were all raised in Mr. McGill's federal habeas petition. They were unexhausted claims, meaning that they had not been previously raised in state court, and were raised in federal court pursuant to

*Martinez v. Ryan*, 566 U.S. 1 (2012). It would not have been reasonable for Mr. McGill to simultaneously seek permission to file those claims in state court when he was arguing for an exception to the procedural default doctrine based on the ineffective assistance of counsel he received from his initial state post-conviction counsel. Arizona courts have previously decided claims on the merits that were not raised until federal proceedings had concluded. (See Ex. 1, Order, *State v. Miles*, No. CR 04038 (Pima Cnty. Super. Ct. Mar. 31, 2014) (“However, the Court finds that it would be unjust to require a defendant to litigate simultaneously in two jurisdictions when the federal case is dependent upon the rulings and findings of the state case and when the two cases involve the same set of facts. Therefore, the Court finds that Petitioner has provided a meritorious reason for delay.”).) And, until the U.S. Supreme Court’s ruling in *Cruz v. Arizona*, 598 U.S. 17 (2023) (*Cruz III*), Arizona provided no mechanism for remedying errors regarding incorrect parole instructions in cases decided before that time.

Further, Mr. McGill’s notice of post-conviction relief explained:

The failure to raise these allegations sooner was not due to any fault by Mr. McGill. See, e.g., *State v. Anderson*, 257 Ariz. 226, 457 P.3d 945 (2024) (finding ineffective assistance claim not precluded when subject of claim was not known at the time of the prior post-conviction petition). These allegations are of significant constitutional magnitude and were not knowingly, voluntarily, and intelligently waived by Mr. McGill. Rule 32.2(a)(3). Further, Mr. McGill received constitutionally ineffective assistance of counsel in his initial post-conviction proceedings, which were the first and only opportunity as of right to challenge the constitutional effectiveness of trial counsel’s representation. Until recently, it was possible to introduce evidence neglected by ineffective initial post-conviction counsel in federal court; the Supreme Court only recently eliminated that avenue in *Shinn v. Ramirez*, 596 U.S. 366 (2022). In

addition, the claims depend on newly discovered facts, which satisfy an exception to preclusion under Rule 32.1(e).

(Notice of PCR, *State v. McGill*, No. (Maricopa Cnty. Super. Ct. Mar. 20, 2006); *see also id.* at 8.) He also discussed the timeliness and preclusion status of his claims at length in his filings. (*See, e.g.*, Succ. Pet. at 54-59; Reply at 1-4.) At a minimum, Mr. McGill has provided sufficient explanation of why the superior court should consider the merits of his colorable claims, making a stay of execution appropriate under Rule 32.18.

### **Conclusion**

For the preceding reasons and those discussed in his underlying motion for stay, Mr. McGill respectfully requests that the Court grant a stay of execution to allow the superior court to resolve the claims raised in his successive petition for post-conviction relief.

RESPECTFULLY SUBMITTED this 28th day of April, 2026.

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