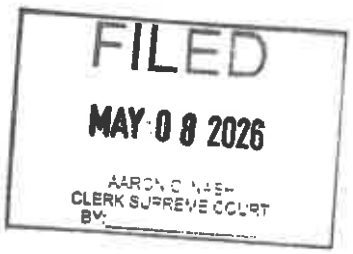

AZ SUPREME COURT
1501 W WASHINGTON
PHOENIX AZ 85007

m11763628

Clerk of the Superior Court
*** Electronically Filed ***
05/05/2026 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2003-005315-001 DT

05/04/2026

HONORABLE JENNIFER E. GREEN

CLERK OF THE COURT
B. Navarro
Deputy

STATE OF ARIZONA

JASON DALE LEWIS
JEFFREY LEE SPARKS

v.

LEROY DEAN MCGILL (001)

CHARLOTTE MERRILL
JENNIFER Y GARCIA

AZ SUPREME COURT
CAPITAL CASE MANAGER
COURT ADMIN-CRIMINAL-PCR
JUDGE GREEN
VICTIM WITNESS DIV-AG-CCC

SUCCESSIVE PCR DISMISSED

In 2004, a jury convicted Defendant Leroy Dean McGill (McGill) of multiple felony offenses, including first-degree murder and two counts of arson of an occupied structure. The sentencing jury returned a death verdict for the first-degree murder. [Dkt. 145, 155] On August 14, 2006, the Arizona Supreme Court (ASC) issued its opinion affirming McGill's convictions and sentences. *State v. McGill*, 213 Ariz. 147 (2004). The Arizona Supreme Court subsequently denied McGill's motion to reconsider, the Supreme Court of the United States denied certiorari, and the Arizona Supreme Court issued the mandate in this case on April 24, 2007. [Dkt. 176]

Post-conviction relief (PCR) proceedings under Arizona Rule of Criminal Procedure (Rule) 32 were timely commenced. [Dkt. 176] *See* Ariz. R. Crim. P. 32.4(b)(3)(c). After conducting an evidentiary hearing on McGill's PCR petition, [Dkt. 236] the Superior Court denied relief on November 8, 2011. [Dkt. 238] McGill unsuccessfully petitioned the Arizona Supreme Court for review. [Dkt. 240, 244]

According to McGill, his current PCR counsel was appointed to represent him in federal habeas proceedings on June 1, 2012, and she filed a petition for writ of habeas corpus on

McGill's behalf on April 8, 2013. [Pet. at 53; see also Notice at 6; DC Dkt. No. 30 = Habeas petition] The District Court denied the petition, and the Ninth Circuit Court of Appeals affirmed. *McGill v. Shinn*, 16 F.4th 666 (9th Cir. 2021) (certiorari denied by *McGill v. Shinn*, 143 S. Ct. 429 (2022)).

On March 6, 2026, the State filed a Motion for Warrant of Execution in the Arizona Supreme Court. McGill responded to the motion on March 20, 2026, and on that same day, he filed in this court a successive Notice of Post-Conviction Relief (Notice). [Dkt. 251] The Arizona Supreme Court granted the State's motion on March 26, 2026, and set the execution date as May 20, 2026. [Dkt. 256]

McGill filed his successive Petition for Post-Conviction Relief in this court on March 31, 2026 (Petition or Pet.). [Dkt. 254] On April 8, 2026, the State responded (Response), and McGill replied on April 17, 2026 (Reply). [Dkt. 258, 260] This Court held a status conference on April 20, 2026, [Dkt. 261] and on that same day, McGill filed a Motion to Stay Execution in the Arizona Supreme Court. On April 23, 2026, the State responded to the motion to stay. McGill replied in support of his motion on April 28, 2026. On April 30, 2026, the Arizona Supreme Court denied the stay request and directed this court to promptly rule on McGill's Petition.

Having considered the Petition, Response, Reply, and the record in this matter, the Court finds—as explained below—the Petition's claims are untimely, precluded, or both. McGill does not meet his burden to establish otherwise. Accordingly, the Petition is summarily dismissed in its entirety.[1]

---

[1] To the extent McGill contends *Anderson* and *Diaz* require a different result because the Arizona Supreme Court requires "flexibility in applying preclusion rules[,]" and he is "blameless" for the failure to raise his current claims on direct appeal or in the initial PCR proceeding, the court disagrees. [Notice at 7; Pet. at 54-58] Those cases are to be narrowly construed as applicable only under the "extremely rare" or "unusual circumstances" presented there that are not present here. *See State v. Anderson*, 257 Ariz. 226, 232-33 ¶¶ 25-26 (2024); *State v. Diaz*, 236 Ariz. 361, 362-63 ¶ 10 (2014); *see also State v. Traverso*, ___ Ariz. ___, 576 P.3d 97, 107 ¶ 41 n. 12 (2025). *Anderson* and *Diaz* are therefore inapposite and not controlling in this case.

The Court also rejects McGill's general assertion that "the equities weigh in favor of relaxation of the preclusion rules." [Pet. at 57] Given the requirement of strict compliance with Rule 32, *State v. Carriger*, 143 Ariz. 142, 146 (1984), the Court declines to excuse untimeliness or preclusion on equitable grounds. *See* A.R.S. § 13–4234(G); Ariz. R. Crim. P. 32.2(b), 32.4(b)(3), 32.11(a); *see also State v. Swoopes*, 216 Ariz. 390, 396, ¶ 19 (App. 2007) ("our

MCGILL'S CURRENT CLAIMS FOR PCR

The Petition presents the following claims under Arizona Rule of Criminal Procedure (Rule) 32:

> Claim I: McGill contends the sentencing jury was incorrectly instructed that, absent a death verdict, he was eligible for parole.[2] [Pet. at 59] *See State v. Rosario*, 195 Ariz. 264, 268, ¶ 26 (App. 1999) ("The Arizona legislature enacted laws effective January 1, 1994, eliminating the possibility of parole for crimes committed after that date. *See* A.R.S. § 41-1604.09(I)."). As described *infra*, Claim I consists of three sub-claims.
>
> Claim II: Related to Claim I, McGill argues trial counsel provided ineffective assistance in violation of the Sixth and Fourteenth Amendments by submitting a jury questionnaire and proposing jury instructions that improperly indicated McGill was parole eligible. [Pet. at 75]
>
> Claim III: In this claim of ineffective assistance of counsel (IAC), McGill contends trial counsel failed to obtain an expert arson investigator to challenge the State's arson witnesses at trial. [Pet. at 85]
>
> Claim IV: McGill claims the State violated his Fifth and Fourteenth Amendment rights by failing to disclose 1998 and 2007 police reports that impeached a State witness. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution").

---

supreme court has not recognized fairness as a relevant, let alone controlling, factor in resolving preclusion issues").

Finally, McGill's attempt to blame the "constitutionally ineffective assistance" of initial PCR counsel for his current claims' untimeliness and/or waiver fails for its faulty premise. [i.e. Notice at 7; Pet. at 95] As a non-pleading defendant, McGill did not (and does not) have a constitutionally recognized right to PCR counsel. *See State v. Escareno-Meraz*, 232 Ariz. 586, 587 ¶ 4 (App. 2013) ("Non-pleading defendants [] have no constitutional right to counsel in post-conviction proceedings[.]") (citing cases).

[2] The State properly concedes the instructions were "inaccurate because McGill could not have been given a parole-eligible sentence." [Response at 24, 30]

Claim V: McGill asserts the State committed misconduct by soliciting and failing to correct trial testimony it knew was false. *See Napue v. Illinois*, 360 U.S. 264 (1959).

APPLICABLE PCR LAW

Although Rule 32 "is a safeguard in addition to the many others that are part of our system," it "may not be abused." *Carriger*, 143 Ariz. at 146. Rule 32 is "designed to accommodate the unusual situation where justice ran its course and yet went awry." *Id.* (internal quotation marks and citation omitted).

Thus, to be entitled to post-conviction relief, a defendant has the "burden to assert grounds that bring him within the provisions of [Rule 32 and] must strictly comply with [that Rule.]" *Id.*

> Rule 32 is separate and apart from the right to appeal, and it is not designed to afford a second appeal. It is not intended to unnecessarily delay the renditions of justice or add a third day in court when fewer days are sufficient to do substantial justice. In all cases, civil or criminal, there must be an end to litigation.

Id. at 145 (internal citations omitted).

Here, the asserted grounds for PCR under Rule 32.1 are:

> (a) the defendant's conviction as obtained, or the sentence was imposed, in violation of the United States or Arizona constitutions;
> . . .
>
> (e) newly discovered material facts probably exist, and those facts probably would have changed the judgment or sentence. Newly discovered material facts exist if:
>
> (1) the facts were discovered after the trial or sentencing;
>
> (2) the defendant exercised due diligence in discovering these facts; and
>
> (3) the newly discovered facts are material and not merely cumulative or used solely for impeachment, unless the impeachment evidence substantially undermines testimony

> that was of such critical significance that the impeachment evidence probably would have changed the judgment or sentence.
>
> . . .
>
> (g) there has been a significant change in the law that, if applicable to defendant's case, would probably overturn the defendant's judgment or sentence[.]

A defendant must raise PCR claims in a timely manner. A.R.S. § 13–4234(G). Claims under Rule 32.1(a) must be raised within 30 days of the mandate in a defendant's direct appeal. Ariz. R. Crim. P. 32.4(b)(3)(A). However, untimeliness will be excused "if the defendant adequately explains why the failure to timely file a notice was not the defendant's fault." Ariz. R. Crim. P. 32.4(b)(3)(D). Claims under Rule 32.1(b) through (h) are not subject to an express time limit; rather, a defendant must raise such a claim "within a reasonable time after discovering the basis of the claim." Ariz. R. Crim. P. 32.4(b)(3)(B). A defendant's failure to sufficiently explain the reasons for not raising a claim that arises under Rule 32.1(b) through (h) in a previous PCR proceeding or within a reasonable time after discovering the claim's basis may result in summary dismissal. Ariz. R. Crim. P. 32.2(b).

Additionally, PCR claims that are precluded may be summarily dismissed. A defendant "is precluded from relief under Rule 32.1(a) based on any ground:"

> . . .
>
> (2) finally adjudicated on the merits in an appeal or in any previous post-conviction proceeding; or
>
> (3) waived at trial or on appeal, or in any previous post-conviction proceeding, except when the claim raises a violation of a constitutional right that can only be waived knowingly, voluntarily, and personally by the defendant.

Ariz. R. Crim. P. 32.2(a).[3]

---

[3] McGill appears to generally contend that his Rule 32.1(a) claims cannot be precluded under Rule 32.2(a)(3) because he did not personally waive the constitutional rights implicated by those claims. [Pet. at 54] However, for the claims the Court determines are precluded under Rule 32.2(a)(3), *see* Claims I(A), I(B), II, III, and IV *infra*, McGill provides no authority that recognizes a valid waiver of those rights only when a defendant personally waives them. *See Traverso*, 576 P.3d at 105-07 ¶¶ 36 & 41 ("Only a narrow category of rights is of sufficient

The preclusion rule "'prevent[s] endless or nearly endless reviews of the same case in the same trial court." *State v. Shrum*, 220 Ariz. 115, 118, ¶ 12 (2009) (quoting *Stewart v. Smith*, 202 Ariz. 446, 450, ¶ 11 (2002)). "Because the general rule of preclusion serves important societal interests, Rule 32 recognizes few exceptions." *Id.* at ¶ 13. Claims arising under Rules 32.1(b) through (h) "are not subject to preclusion under Rule 32.2(a)(3)." Ariz. R. Crim. P. 32.2(b). However, they are subject to preclusion under Rule 32.2(a)(2). *See id.*

Rule 32 requires the Court to first identify all precluded and untimely claims, and "[i]f . . . no remaining claim presents a material issue of fact or law that would entitle the defendant to relief under [Rule 32], the court must summarily dismiss the petition." Ariz. R. Crim. P. 32.11(a).

MCGILL'S CLAIMS ARE PRECLUDED AND/OR UNTIMELY

CLAIM I: Purported Error in Jury Instructions

Claim I(A): In this sub-claim, McGill alleges that the following jury instruction suggesting he was parole eligible if sentenced to life violated the Eighth Amendment and Article II, section 15 of the Arizona Constitution: [Pet. at 63, 65, 72-73 (citing ROA 202); Response at 26]

> Your [sentencing] decision is not a recommendation. Your decision will be binding. If your verdict is that the defendant should be sentenced to death, the defendant will be sentenced to death. If your verdict is that the defendant should be sentenced to life, the defendant will not be sentenced to death, and the Court will sentence the defendant to either *life without parole until 25 calendar years* in

---

constitutional magnitude to require a defendant's knowing, voluntary, and personal waiver for purposes of Rule 32.2(a)(3)[, including, but not limited to,] the rights to counsel, to a jury trial, . . . a twelve-person jury[, and] the right to be sufficiently informed of the prosecution's plea offer to decide whether to accept it[.]") (internal citations omitted); *Diaz*, 236 Ariz. at 362 ¶ 9 ("Whether a defendant must personally waive an IAC claim to warrant preclusion under Rule 32.2(a)(3) depends on the particular right implicated by the allegedly ineffective representation."); *Swoopes*, 216 Ariz. at 399 ¶ 28 ("mere assertion by a defendant that his or her right to a fair trial has been violated is not a claim of sufficient constitutional magnitude for purposes of Rule 32.2."). The Court finds that the rights implicated in Claims (A), I(B), II, III, and IV do not require McGill's personal waiver for Rule 32.2(a)(3) to apply.

> prison are served; or natural life, which means the defendant would never be released from prison.

(Emphasis added.)

As alleged, this is not a *Simmons/Lynch/Cruz* claim that arises under Rule 32.1(g), *see* Claim I(C) *infra*, because *Simmons* error does not implicate the Eighth Amendment. *Simmons v. South Carolina*, 512 U.S. 154, 162 n.4 (1994). Instead, Claim I(A) is a constitutional claim under Rule 32.1(a). As such, it is precluded under Rule 32.2(a)(3) because it should have been raised on direct appeal. Claim I(A) is also untimely by over 18 years. McGill does not adequately explain why he was not at fault for failing to timely raise this claim.

IT IS ORDERED summarily dismissing Claim I(A) as precluded and untimely.

Claim I(B): Apparently challenging the same jury instruction as in Claim I(A), McGill alleges a violation of his Fifth and Fourteenth Amendment rights and his rights under Article II, section 4 of the Arizona Constitution. Specifically, McGill argues that the "false instructions about parole deprived [him] of sentencing by a jury with accurate information about his potential for release." [Pet. at 66] Again, based on this argument, Claim I(B)—like Claim I(A)—arises under Rule 32.1(a). And like Claim I(A), this claim is precluded under Rule 32.2(a)(3), and it is untimely. Again, McGill does not adequately explain why he was not at fault for failing to timely raise this claim.

IT IS FURTHER ORDERED summarily dismissing Claim I(B) as precluded and untimely.

Claim I(C): This is a Rule 32.1(g) claim. McGill contends the jury instructions underlying Claims I(A) and (B) also violated his Fourteenth Amendment due process right of rebuttal as recognized in *Simmons*. *See State v. Bush*, 244 Ariz. 575, 592 ¶ 73 (2018) ("[T]he due process right under *Simmons* merely affords a parole-ineligible capital defendant the right to rebut the State's case (if future dangerousness is at issue) by informing the jury that he will never be released from prison if sentenced to life.") (internal quotation marks omitted) (citing *Simmons*, 512 U.S. at 177 (O'Connor J., concurring in the judgment)). This PCR claim became viable on February 22, 2023, at the latest, when the Supreme Court of the United States issued *Cruz III* and essentially held that *Simmons* claims are cognizable under Rule 32.1(g). *See Cruz v. Arizona (Cruz III)*, 598 U.S. 17 27-28 (2023) (finding conclusion in *Lynch v. Arizona (Lynch III)*, 578 U.S. 613 (2016)—that *Simmons* instructions are required in Arizona—constituted a significant change in the law for purposes of Rule 32.1(g)). McGill does not sufficiently explain why waiting over three years after *Cruz III* is reasonable. Claim I(C) is therefore subject to summary dismissal under Rule 32.2(b).

If not untimely, Claim I(C) is subject to summary dismissal because it lacks merit. Although McGill correctly recognizes that *Simmons* established a defendant's due process right to inform the jury of his or her parole ineligibility in certain cases, he does not allege that the trial court here prevented him from so informing the jury. [Pet. at 68-70; Reply at 4-9; see Response at 26 (noting McGill did not object to or request the opportunity to inform the jury of his parole ineligibility)] Thus, McGill has not sufficiently alleged, let alone established, *Simmons* error. *See Bush*, 244 Ariz. at 593 ¶ 75 (because the trial court "neither refused to instruct, nor prevented Bush from informing, the jury regarding his parole ineligibility[,] . . . Bush has not shown that he was deprived of the right to inform the jury of his parole ineligibility. . . . Thus, Bush has not established *Simmons* error.").

IT IS FURTHER ORDERED summarily dismissing Claim I(C) as untimely, or alternatively, as meritless.[4]

CLAIM II: Alleged Ineffective Assistance of Counsel (IAC) Related to Trial Counsel's Purported Proposal of Legally Incorrect Jury Instruction Regarding McGill's Parole Eligibility.

This claim arises under Rule 32.1(a). *See State v. Robbins*, 166 Ariz. 531, 533 (App. 1991) (Rule 32.1(a) applies to IAC claims). Therefore, it is precluded under Rule 32.2(a)(3) because McGill waived it by failing to raise it in his initial PCR proceeding. And because Claim II is based on the incorrect jury instruction underlying Claim I, Claim II is also untimely for the same reasons Claims I(A-C) are untimely.

IT IS ORDERED summarily dismissing Claim II as precluded and untimely.

CLAIM III: Alleged IAC For Failing To Obtain An Expert Arson Investigator To Testify At Trial

Similar to Claim II, this Rule 32.1(a) claim is precluded as waived because McGill failed to raise it in the initial PCR proceeding. *See* Ariz. R. Crim. P. 32.2(a)(3). This claim is also inexcusably untimely. According to McGill, current PCR counsel raised Claim III in the habeas petition she filed in federal district court on April 8, 2013. [Pet. at 86] McGill does not explain why waiting 13 years after discovering the basis of this claim is reasonable. Claim IV is therefore subject to summary dismissal under Rule 32.2(b).

---

[4] The State apparently contends *Lynch III*, decided in 2016, constitutes the "significant change in the law" that brings Claim I(A) within the ambit of Rule 32.1(g). [Response at 26] Having resolved the timeliness issue by considering *Cruz III* as the "significant change in the law" that is applicable here, the Court declines to address the propriety of the State's contention.

IT IS ORDERED summarily dismissing Claim III as precluded and untimely.

CLAIM IV: Alleged *Brady* Violation

As a claim of constitutional error arising under Rule 32.1(a), Claim IV should have been raised on direct appeal. It was not, thus it is waived and precluded under Rule 32.2(a)(3). To the extent Claim IV is properly construed as a Rule 32.1(e) claim of newly discovered evidence, the record reveals that McGill's current PCR counsel possessed the police reports that purportedly first alerted her to the alleged *Brady* violation at least as early as September 23, 2013, when she filed them in McGill's federal habeas proceeding. [see Pet. at 92 and Exhs. 5 and 6 (file stamps)] Indeed, according to the State, McGill's habeas petition "included this very claim." [Response at 65] McGill does not dispute the State's assertion, and he fails to otherwise explain why waiting 13 years to assert Claim IV is reasonable. [Reply at 4, 16-21] Claim IV is therefore subject to summary dismissal under Rule 32.2(b).

IT IS ORDERED summarily dismissing Claim IV as precluded, or alternatively, untimely.

CLAIM V: Alleged False Testimony

Apparently attempting to excuse Claim V's untimeliness, McGill contends that "the evidentiary basis for this claim was not discovered until [his] federal habeas proceedings." [Pet. at 95] McGill, however, does not indicate precisely when he became aware of the basis for this purported Rule 32.1(e) claim, but presumably it was before the District Court denied his habeas petition in January 2019. *See McGill,* 14 F.th at 678 (noting District Court denied McGill's habeas petition in January 2019). Indeed, according to the State as relating to Claim IV, McGill's habeas petition "included this very claim." [Response at 71] Again, McGill does not dispute the State's assertion, and he fails to otherwise explain why waiting 13 years to assert Claim V is reasonable. [Reply at 4, 21-25] Accordingly, Claim V is subject to summary dismissal under Rule 32.2(b).

IT IS ORDERED summarily dismissing Claim V as untimely.

Having dismissed all claims raised in the Petition as untimely, precluded, or both, no claims remain for further evaluation under Rule 32.11(a).

IT IS FURTHER ORDERED summarily dismissing McGill's successive Petition filed March 31, 2026. *See* Ariz. R. Crim. P. 32.11(a).