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**IN THE SUPREME COURT
STATE OF ARIZONA**

PETITION TO AMEND RULE
31.23, ARIZONA RULES OF
CRIMINAL PROCEDURE

Supreme Court No. R–25–0016

**Petitioner’s Reply to Response to
Petition to Amend Arizona Rule of
Criminal Procedure 31.23**

Pursuant to Rule 28(e)(5), the undersigned respectfully replies to the comment to the petition raised by the Arizona Capital Representation Project, Phillips Black, Arizona Attorneys for Criminal Justice, and the Federal Public Defender for the District of Arizona (“Commentators”).

As an initial matter, Petitioner understands and appreciates the task in front of defense counsel when the State initiates execution proceedings. Under the current scheme, defense counsel has advance notice that the State will be seeking to execute their client, and that time can be spent in meaningful pursuit of “collateral challenges to the looming execution, such as competency claims, methods challenges, and clemency applications.” Comment at 6. But the reality is that inmates and their counsel are on notice that the inmate is subject to execution once they have exhausted the appellate process, and considering the

current backlog of eligible death-row inmates some eligible inmates have had years to prepare.

Petitioner also appreciates that inmates often choose to litigate myriad issues in their responses to the State’s motion for warrant of execution. Comment at 5–6. However, as this Court has recently recognized, the only question for this Court to answer when the State requests a warrant of execution is whether the requirements of A.R.S. § 13–759(A) and Arizona Rule of Criminal Procedure 31.23 have been met. *See State v. Gunches*, Arizona Supreme Court No. CR–13–0282–AP, Decision Order filed February 11, 2025. There is therefore no deprivation of process by imposing a defined timeline on a proceeding examining such a limited matter. *See also id.*, Amended Order filed January 8, 2025, at 2 (“A response to the State’s *Motion for Warrant of Execution* is not an appropriate vehicle to challenge the Appellant’s conviction or death sentence.”)

The Commentators aver that the current mechanism through which the State has chosen to pursue warrants of execution “was essential to ensure that the defendant was not prejudiced.” Comment at 8. But the Attorney General’s Office began using motions to set a brief schedule relatively recently, and the purpose of this procedure is predictability, not to ensure adequate time for defendants to prepare. Indeed, the State could proceed with a motion for warrant of execution without the benefit of requesting a briefing schedule in the first instance. The reason the State does not proceed in this manner now is to promote administrability and predictability in the process. The petition furthers these goals by codifying the effect of the motion for briefing schedule such that execution proceedings can be initiated in an orderly and predictable fashion.

Petitioner takes the point that this Court has previously rejected requests for warrant motion briefing schedules with 10-day response deadlines. Comment at 8–9. And if this Court feels that the proposed timeline in the petition is too onerous, then a 14-day response deadline largely achieves the goals of the petition. But the main thrust of the petition rings true in either case: the State requires predictability in order to effectuate the law in Arizona, and the Arizona Rules of Criminal Procedure should accommodate rather than hinder the State’s efforts to see justice through to its conclusion. The Rules should also safeguard judicial resources, which the proposed rule would do by eliminating the need for a motion to set a briefing schedule.

Contrary to the Commentators’ suggestion (at 10), the proposed rule would not restrict this Court’s discretion. The Court would retain its discretion under Rule 31.3(a) to set aside the default deadlines set forth in the proposed rule for good cause. But having default deadlines would increase predictability and transparency along with avoiding unnecessary motion practice.

Insofar as the commentators suggest that the petition proposes a universally applicable rule for the unique circumstance of compounded pentobarbital, *see* Comment at 12–15, Petitioner notes that the proposal is neutral in substance and effect concerning the method of execution. The State and victims would benefit from the rule change proposed in the petition regardless of the method of execution the State employs, and the Commentators cannot describe how the Petition would inure some greater prejudice to death-row inmate eligible for execution if the State employs a different method of execution in the future.

It was not long ago that this Court automatically imposed the warrant of execution at the conclusion of a capital defendant's state postconviction proceedings. The warrant remained in force until it was stayed pending federal habeas proceedings, a stay which was lifted sometimes days after the Ninth Circuit issued its mandate. The Petition offers no less process than this.

Petitioner has no interest in debating the genesis of the circumstances precipitating this rule change proposal. *See* Comment at 17–19. And even if the source of the timing difficulties bear on the merits of the Petition, which they do not, it suffices to say that Petitioner has submitted the rule change petition in order to support the State's duty to uphold the law and vindicate the victims' rights to a prompt and final conclusion. The need for the rule change proposal is readily apparent; the State needs a mechanism through which it can guarantee the law will be carried out in a predictable and expeditious manner. The Commentators may decry the State's efforts to carry out lawful sentences, but their protestations should not prevent this Court from simplifying an admittedly one-dimensional proceeding.

CONCLUSION

For the foregoing reasons, Petitioner respectfully asks this Court to amend Rule 31.23 as set forth in the Petition.

Respectfully submitted,

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