

APPENDIX A

For purposes of clarity, the cases discussed on pages 4-6 of the petition are combined and arranged in alphabetical order here.

State v. Wendi Andriano

Petitioner states that an evidentiary hearing is pending in this case thirteen years after the crime and nine years after trial. (Pet. at 5.) However, Petitioner does not explain the reasons for the time spent on this case. Following more than two years on direct appeal, the opinion in this case was issued on July 9, 2007, *State v. Andriano*, 215 Ariz. 497, 161 P.3d 540 (2007), and certiorari was denied on October 1, 2007, *Andriano v. Arizona*, 552 U.S. 923 (2007). Counsel was not located for Ms. Andriano's post-conviction proceedings until an out-of-state law firm accepted the case on a pro bono basis on October 26, 2009—more than two and a half years after the opinion was filed and more than two years after certiorari was denied. In all, Ms. Andriano waited 840 days for her post-conviction proceedings to begin. Her post-conviction petition was filed on February 17, 2012, and the hearing was held in February 2014, after delays requested by both parties to prepare for the hearing. The superior court held regular status conferences in this case, and found good cause or extraordinary circumstances for each of the extensions granted in this case.

State v. Steve Boggs

Petitioner states that three years and eight months elapsed between the denial of certiorari and the filing of the post-conviction petition (Pet. at 4), and that the petition was dismissed without a hearing nearly eleven years after the crime and almost eight years after the trial (Pet. at 5). After the case was on direct appeal for nearly three years, this Court issued its direct appeal opinion on April 9, 2008, *State v. Boggs*, 218 Ariz. 89, 180 P.3d 392, amended by 218 Ariz. 325, 185 P.3d 111(2008), and the petition for certiorari was denied December 15, 2008, *Boggs v. Arizona*, 555 U.S. 1086 (2008). Post-conviction counsel was not appointed until September 29, 2010, nearly two years later. In all, Mr. Boggs waited 903 days, or more than two years and five months, for his post-conviction proceedings to begin. An initial petition was filed March 15, 2012, and the amended petition was filed August 31, 2012.

In addition to the delay attributable to his lack of counsel, Petitioner fails to note that this is a complex case involving convictions for eight different crimes, a co-defendant, and three victims, or that the case involves significant mitigation evidence, including serious mental illnesses, repeated suicide attempts, and a traumatic and abusive childhood. Further, the superior court held twelve status conferences to ensure that the case was proceeding appropriately, and found good cause for each of the extensions of time Mr. Boggs's counsel requested.

State v. Albert Carreon

Petitioner states that the post-conviction proceedings are pending in this case more than twelve years after the crime and ten years after trial. (Pet. at 5.) This statement ignores the record of proceedings in Mr. Carreon's case. After almost two years on direct appeal, the opinion in this case was issued on February 24, 2005, *State v. Carreon*, 107 P.3d 900 (Ariz. 2005), a supplemental opinion was issued on August 9, 2005, *State v. Carreon*, 210 Ariz. 54, 116 P.3d 1192 (2005), and certiorari was denied on October 3, 2005, *Carreon v. Arizona*, 546 U.S. 854 (2005). Post-conviction counsel was appointed for Mr. Carreon on March 18, 2005, after a delay of just twenty-two days, and a petition was filed a year later on March 13, 2006. The superior court denied the petition without a hearing on October 16, 2006, but prior to filing the motion for rehearing, counsel was removed from the case in January 2007 after counsel had been hospitalized and failed to comply with a subsequent court-ordered competency evaluation.

An out-of-state law firm accepted representation in Mr. Carreon's case on a pro bono basis after prior counsel was removed. A review of the post-conviction record and prior counsel's files revealed that despite two years on the case, prior counsel had failed to request funding for an investigator or any expert witnesses, and had received funding for a mitigation specialist but failed to retain one. As a result, no mitigation investigation had been conducted. After Mr. Carreon's new

counsel began an investigation of the case, they discovered, among other things, that Mr. Carreon is a Mexican national. After new counsel alerted the superior court of the deficiencies in prior counsel's representation of Mr. Carreon, the superior court reopened Mr. Carreon's post-conviction proceedings to allow investigation and filing of an amended petition. An amended petition was filed on May 28, 2010, and supplemented on April 29, 2013. An evidentiary hearing has been set on numerous claims. The superior court has held regular status conferences throughout the pendency of these proceedings, and the court has found good cause or extraordinary circumstances for any extensions of time requested in this case.

State v. Derek Chappell

Petitioner states that two years and five months passed between denial of certiorari and the filing date of the post-conviction petition. (Pet. at 4.) The direct appeal opinion in *Chappell* was issued August 3, 2010, *State v. Chappell*, 225 Ariz. 229, 236 P.3d 1176 (2010), and certiorari was denied February 22, 2011, *Chappell v. Arizona*, 131 S. Ct. 1485 (2011). Post-conviction counsel, however, was not appointed until October 31, 2011, approximately eight months after the United States Supreme Court denied certiorari. In all, Mr. Chappell waited 454 days for his post-conviction proceedings to begin. An initial post-conviction petition was filed October 3, 2012. Accordingly, the time between appointment of

counsel and filing of the petition was just over one year. During that time, the superior court held six status conferences to discuss counsel's progress, and found good cause for each of the extensions of time that Mr. Chappell's counsel requested. In addition, the post-conviction proceedings were delayed by litigation of a special action petition regarding post-conviction counsel's ability to interview trial jurors. *See State v. Rayes ex rel. Cnty. of Maricopa*, 2012 WL 2929434 (Ariz. Ct. App. July 19, 2012).

State v. John Cruz

Petitioner states that three years passed between the denial of certiorari and the filing date of the post-conviction petition (Pet. at 4), and that the post-conviction petition in this case was filed nearly nine years after the crime and seven years after trial (Pet. at 5). After the case spent almost three years on direct appeal, the opinion in *Cruz* was issued on April 21, 2008, *State v. Cruz*, 218 Ariz. 149, 181 P.3d 196 (2008), and certiorari was denied January 12, 2009, *Cruz v. Arizona*, 555 U.S. 1104 (2009). Post-conviction counsel, however, was not appointed for Mr. Cruz until June 29, 2010—more than a year and a half after certiorari was denied, and more than two years after the direct appeal opinion. In all, Mr. Cruz waited 799 days for his post-conviction proceedings to begin. An initial petition was filed on December 10, 2010, and an amended petition was filed on January 27, 2012, about fourteen months later. During that time, approximately

two months were spent investigating and resolving an apparent conflict with the assigned mitigation specialist. For each of the requested extensions prior to the filing date of the amended petition, the Pima County Superior Court found good cause and granted the requested extensions.

State v. Ruben Garza

Petitioner states that the post-conviction petition was dismissed without a hearing almost nine years after trial. (Pet. at 5-6.) After two and a half years on direct appeal, the opinion in Mr. Garza's case was issued on June 29, 2007, *State v. Garza*, 216 Ariz. 56, 163 P.3d 1006 (2007), and certiorari was denied on January 7, 2008, *Garza v. Arizona*, 552 U.S. 1107 (2008). Post-conviction counsel was appointed to represent Mr. Garza on May 26, 2010, more than two years after certiorari was denied, and replacement counsel was appointed on June 28, 2010. In all, Mr. Garza waited 1062 days for his post-conviction proceedings to begin. His post-conviction petition was filed on October 26, 2012, and it was denied on July 30, 2013. Mr. Garza's petition was filed with more than 6000 pages of exhibits, and included a claim under *Atkins v. Virginia*, 536 U.S. 304 (2002). The superior court held frequent status conferences and found good cause or extraordinary circumstances for each requested extension.

State v. Tracy Hampton

Petitioner states that a post-conviction hearing was conducted more than ten years after Mr. Hampton's resentencing proceeding. (Pet. at 6.) After more than three years on direct appeal, including litigation of appellate counsel's motion to withdraw, *see State v. Hampton*, 208 Ariz. 241, 92 P.3d 871 (2004), the opinion in Mr. Hampton's case was filed on August 15, 2006, *State v. Hampton*, 213 Ariz. 167, 140 P.3d 950 (2006), and certiorari was denied on January 8, 2007, *Hampton v. Arizona*, 549 U.S. 1132 (2007). Counsel was appointed to represent Mr. Hampton in his post-conviction proceedings on November 4, 2009, almost three years after certiorari was denied. In all, Mr. Hampton waited 1177 days for his post-conviction proceedings to begin. His post-conviction petition was filed on December 2, 2010, and was amended on August 18, 2011. The superior court held frequent status conferences and found good cause or extraordinary circumstances for each requested extension. On January 31, 2012, the superior court ordered an evidentiary hearing, and after both parties requested additional time, the hearing was held in May and June 2013. Following additional briefing, the court denied the petition on February 26, 2014.

State v. Ruben Johnson

Petitioner states that the first amended petition was filed five years and nine months after certiorari was denied (Pet. at 4), and that the post-conviction

proceedings in this case are pending more than thirteen years after the crime and ten years after trial (Pet. at 6). After two and a half years on direct appeal, the opinion in Mr. Johnson's case was issued on May 9, 2006, *State v. Johnson*, 212 Ariz. 425, 133 P.3d 735 (2006), and certiorari was denied November 6, 2006, *Johnson v. Arizona*, 549 U.S. 1022 (2006). The state post-conviction office was appointed to represent Mr. Johnson on November 17, 2008—two-and-a-half years after the direct appeal opinion was issued and two years after certiorari was denied. In all, Mr. Johnson waited 923 days for his post-conviction proceedings to begin.

In addition to the delay in appointment of counsel, Petitioner ignores the fact that the case was stayed from April 21, 2011, to July 30, 2012, due to the resignation of the director of the state post-conviction office and the subsequent defunding of that office by the Arizona Legislature. The stay was lifted after Maricopa County absorbed the staff and the Maricopa County cases from the state post-conviction office, but the case was again stayed from April 30, 2013, to August 22, 2013, due to the lack of qualified counsel for the case. Accordingly, Petitioner's statements regarding the length of time this case has been pending are misleading—out of the five years and nine months cited, Mr. Johnson was without any counsel for two years and without Rule 6.8-qualified counsel for an additional year and a half. And, even during the time that qualified counsel was working on the case, the Legislature's failure to appropriately fund the post-conviction office

resulted in additional delays as counsel litigated the question of court-funded experts. After four months of litigation, the superior court granted Mr. Johnson's motion and agreed to fund the necessary experts. During the remaining time, the superior court found good cause or extraordinary circumstances for each requested extension of the petition's filing date.

State v. Frank McCray

Petitioner states that the petition in this case was filed four years and eight months after certiorari was denied (Pet. at 4), and that the post-conviction proceedings in this case are pending more than eight years after trial (Pet. at 6). After two years on direct appeal, the direct appeal opinion in Mr. McCray's case was filed on February 14, 2008, *State v. McCray*, 218 Ariz. 252, 183 P.3d 503 (2008), and certiorari was denied on October 6, 2008, *McCray v. Arizona*, 555 U.S. 841(2008). However, post-conviction counsel was not appointed to represent Mr. McCray until August 17, 2010, almost two years after certiorari was denied. In all, Mr. McCray waited 915 days for his post-conviction proceedings to begin. The superior court held regular status conferences, and found good cause or extraordinary circumstances for each extension of time. Mr. McCray's initial petition was filed on March 6, 2013, and an amended petition was filed on June 10, 2013. The petition included claims regarding both the guilt and penalty phases of trial, and the exhibits to the petition detail both Mr. McCray's serious mental

health problems and the problems his defense team had in working with him during the post-conviction proceedings as a result. On September 11, 2013, the superior court ordered an evidentiary hearing on Mr. McCray's claims.

State v. LeRoy McGill

Petitioner notes that the post-conviction petition in this case was filed three years and two months after certiorari was denied (Pet. at 4), and that the post-conviction evidentiary hearing in this case was conducted nearly nine years after the crime and seven years after trial (Pet. at 6). After nearly two years on direct appeal, the opinion in Mr. McGill's case was filed August 14, 2006, *State v. McGill*, 213 Ariz. 147, 140 P.3d 930 (2006), and certiorari was denied April 2, 2007, *McGill v. Arizona*, 549 U.S. 1324 (2007). Post-conviction counsel, however, was not appointed until June 1, 2009—two years and two months after certiorari was denied, and more than 1,000 days after the direct appeal opinion was issued. The post-conviction petition was filed on June 1, 2010, exactly one year after counsel was appointed. The superior court held regular status conferences and found good cause for each of counsel's requested extensions during that year.

State v. Julius Moore

Petitioner notes that certiorari was denied more than four years ago, and that no petition has yet been filed. (Pet. at 4.) In Mr. Moore's case, the direct appeal opinion was issued on July 24, 2009, *State v. Moore*, 222 Ariz. 1, 213 P.3d 150

(2009), and certiorari was denied November 30, 2009, *Moore v. Arizona*, 558 U.S. 1053 (2009). Post-conviction counsel, however, was not appointed until June 6, 2011—more than one year and seven months after certiorari was denied, and just under two years from when the direct appeal opinion was issued. In all, Mr. Moore waited 682 days for his post-conviction proceedings to begin. During the time that post-conviction counsel has been on this case, the parties have litigated numerous forensic and DNA-testing issues, including a third-party culpability issue, and the superior court has held regular status conferences and found good cause or extraordinary circumstances for each requested extension.

State v. John Sansing

Petitioner notes that three years and seven months passed between denial of certiorari and the filing date of the post-conviction petition (Pet. at 4), and that the post-conviction evidentiary hearing in this case was held nearly twelve years after the crime and ten years after the sentencing proceeding (Pet. at 6). As an initial matter, Mr. Sansing's case spent more than four years on direct appeal due to the United States Supreme Court's remand of this case to the Arizona Supreme Court following the opinion in *Ring v. Arizona*, 536 U.S. 584 (2002).

Following remand, the supplemental direct appeal opinion in Mr. Sansing's case was issued on September 24, 2003, *State v. Sansing*, 206 Ariz. 232, 77 P.3d 30 (2003), and certiorari was denied June 28, 2004, *Sansing v. Arizona*, 542 U.S.

939 (2004). Post-conviction counsel was appointed prior to the denial of certiorari on October 6, 2003, but due to problems in locating and receiving approval for the appointment of competent defense team members, no investigator was appointed to Mr. Sansing's case until September 2, 2004, and no mitigation specialist was appointed until June 14, 2005. In the remaining time, counsel filed an initial post-conviction petition on October 19, 2004, an amended petition on April 23, 2007, and a second amended petition on March 13, 2008. At the same time, the superior court held regular status conferences and found good cause or extraordinary circumstances for each requested extension of time.

State v. Eugene Tucker

Petitioner states that certiorari was denied more than six years ago, and no petition has yet been filed. (Pet. at 5.) The opinion in Mr. Tucker's case was issued on June 13, 2007, *State v. Tucker*, 215 Ariz. 298, 160 P.3d 177 (2007), and certiorari was denied October 1, 2007, *Tucker v. Arizona*, 552 U.S. 923 (2007). Post-conviction counsel, however, was not appointed for Mr. Tucker until November 3, 2009—more than two years and one month after certiorari was denied and two and a half years after the opinion in his case. In all, Mr. Tucker waited 874 days for his post-conviction proceedings to begin. In addition, like Mr. Johnson above, because the state PCR office was appointed to represent him, Mr. Tucker experienced additional delays. The case was stayed for more than a year due to the

resignation of the director of the state post-conviction office and the subsequent defunding of that office by the Arizona Legislature. The stay was lifted after Maricopa County absorbed the staff and the Maricopa County cases from the state post-conviction office, but the case was again stayed for several months due to the lack of qualified counsel for the case.

Just as with Mr. Johnson, above, Petitioner's statements regarding the length of time this case has been pending are misleading—out of the six years cited, Mr. Johnson was without any counsel for two and a half years and without Rule 6.8-qualified counsel for an additional year and a half. And, even during the time that qualified counsel was working on the case, the Legislature's failure to appropriately fund the post-conviction office resulted in additional delays. During the remaining time, the superior court has found good cause or extraordinary circumstances for each requested extension of the petition's filing date.

State v. Velazquez

Petitioner states that certiorari was denied more than five years ago, and no petition has yet been filed. (Pet. at 5.) The opinion in Mr. Velazquez's case was issued on August 9, 2007, *State v. Velazquez*, 216 Ariz. 300, 166 P.3d 91 (2007), and certiorari was denied on April 21, 2008, *Velazquez v. Arizona*, 553 U.S. 1014 (2008). However, post-conviction counsel was not appointed for Mr. Velazquez until July 30, 2010, three years after the opinion in his case was issued and more

than two years after certiorari was denied. In all, Mr. Velazquez waited 1086 days for his post-conviction proceedings to begin. In addition to the delay prior to the post-conviction proceedings, Mr. Velazquez's case was delayed due to litigation of his first post-conviction counsel's motion to withdraw from the case, and by the removal of his second post-conviction counsel due to an actual conflict of interest. Counsel was again appointed to represent Mr. Velazquez, but subsequently the case has been stayed since August 2013 while Mr. Velazquez has undergone competency evaluations regarding his request to represent himself in his post-conviction proceedings.