

EXHIBIT A

(Motion for Warrant of Execution)

ARIZONA SUPREME COURT

STATE OF ARIZONA,

Appellee,

v.

AARON BRIAN GUNCHES,

Appellant.

CR-13-0282-AP

Maricopa County Superior Court

No. CR 2003-038541-001

MOTION FOR WARRANT OF EXECUTION

Pursuant to A.R.S. § 13-759(A) and Arizona Rule of Criminal Procedure 31.23(a) and (b), the State of Arizona moves this Court for a Warrant of Execution for Aaron Brian Gunches. Gunches' direct appeal has concluded, he has waived state post-conviction review, he has failed to initiate federal habeas corpus review, and the State is prepared to carry out his sentence of execution. Accordingly, under § 13-759(A) and Rule 31.23(a) and (b), a warrant of execution must issue. *See State v. Gunches*, No. CR-13-0282-AP (Decision Order, March 3, 2023).

Issuance of a warrant of execution is governed by A.R.S. § 13-759(A) and Rules 31.23(a) and (b). The statute provides:

After a conviction and sentence of death are affirmed and the first post-conviction relief proceedings have concluded, the supreme court *shall* issue a warrant of execution that authorizes the director of the state department of corrections to carry out the execution thirty-five days after the supreme court's mandate or order denying review or upon motion by the state. The supreme court *shall* grant subsequent warrants of execution on a motion by the state. The time for execution shall be fixed for thirty-five days after the state's motion is granted.

A.R.S. § 13–759(A) (emphasis added). Rule 31.23 outlines the process for implementing this statute, stating:

(a) Issuance of Warrant. After affirming a death sentence, the Supreme Court *must* issue a warrant of execution if the State files a notice stating that:

- (1) the defendant has not filed a first Rule 32 petition for post-conviction relief and the time for filing a petition has expired;
- (2) the defendant has not filed a petition for review seeking review of a superior court denial of the defendant's first Rule 32 petition for post-conviction relief and the time for filing a petition for review has expired; or
- (3) the defendant has not initiated habeas corpus proceedings in federal district court within 15 days after the Supreme Court's denial of a petition for review seeking review of the denial of the defendant's first Rule 32 petition for post-conviction relief.

(b) Post-Habeas Warrant. On the State's motion, the Supreme Court *must* issue a warrant of execution when federal habeas corpus proceedings and habeas appellate review conclude.

Ariz. R. Crim. P. 31.23 (emphasis added). As this Court previously decided in this case, once the State provides notice that these conditions are met, “this Court *must* issue the warrant and authorize the State to carry out the execution.” *State v. Gunches*, No. CR–13–0282–AP (Decision Order, March 3, 2023), at 9–10 (emphasis in original).

In 2007, Gunches pleaded guilty to the first-degree murder and kidnapping of Ted Price, the ex-husband of Gunches' girlfriend. *State v. Gunches*, 225 Ariz. 22, 23–24, ¶¶ 26 (Ariz. 2010) (“*Gunches I*”). Gunches had also shot at a Department of Public Safety trooper in La Paz County after Price's murder and pleaded guilty to attempted murder for that offense. *Id.* at 24, ¶¶ 5–6; *see also State v. Gunches*, 240 Ariz. 198, 204, ¶ 21 (2016) (“*Gunches II*”). Gunches stipulated that his La Paz County conviction was a previous conviction of a serious offense under A.R.S. § 13–751(F)(2) (2010), and the jury found that Price's murder was especially heinous or depraved under § 13–751(F)(6) (2010). *Gunches I*, 225 Ariz. at 24, ¶ 6. Gunches “presented virtually no mitigation evidence during the penalty phase (an objection was sustained to the only question he asked his one mitigation witness), but requested leniency in allocution.” *Id.* The jury determined that he should be sentenced to death. *Id.*

On appeal, this Court affirmed Gunches' convictions and his sentence for kidnapping, but concluded that the jury's finding of the (F)(6) aggravating circumstance was error and remanded for a new penalty phase proceeding. *Id.* at 27, ¶ 26. “On remand, Gunches again waived his right to counsel and decided to not present any mitigation evidence”; this time he did not request leniency in allocution. *Gunches II*, 240 Ariz. at 201, ¶ 4. The jury again determined that he

should be sentenced to death. *Id.* On appeal from remand, this Court affirmed Gunches' death sentence. *Id.* at 207, ¶ 42.

On March 16, 2017, this Court filed Gunches' Notice of Post-Conviction Relief. In October 2017, Gunches filed a motion to waive counsel. The post-conviction court appointed two experts to evaluate Gunches' competency. Both found him competent and, on April 2, 2018, based on the experts' reports, the court's interactions with Gunches during the post-conviction proceedings, and a colloquy, the post-conviction court accepted his waiver of counsel. *See Gunches v. Myers ex rel. Brnovich*, No. CV-18-0186-SA (State's Response to Petition for Special Action).

Gunches subsequently moved to waive his post-conviction relief proceeding. On June 4, 2018, the post-conviction court found that Gunches was competent to waive Rule 32 review and that he "knowingly, intelligently, and voluntarily waived his right to Rule 32 review," and granted Gunches' motion to dismiss the Notice of Post-Conviction Relief. *State v. Gunches*, Maricopa County Superior Court No. CR2003-038541-001 (Minute Entry, filed on June 8, 2018).

Several months later, on October 17, 2018, Gunches filed a "Notice of Waiver of Federal Habeas Review" in the federal district court. *Gunches v. Ryan*, Dist. of Ariz. No. CV-18-3346-PHX-DLR (Doc. 1). On November 11, 2018, the

district court dismissed Gunches' Notice for lack of jurisdiction. *Id.* Doc. 3. Gunches subsequently failed to initiate federal habeas corpus proceedings.

This Court previously issued a warrant of execution in this case on March 2, 2023. However, because the State had elected to undertake a review of its execution processes and protocols, that warrant lapsed. Now, however, the State's review of its execution procedures is complete and the State is prepared to carry out Gunches' execution.

Gunches' convictions and sentences have been affirmed, and he has waived or failed to pursue collateral review proceedings in state and federal court. *See* A.R.S. § 13-759(A); Ariz. R. Crim. P. 31.23(a), (b). The State therefore requests that this Court issue a warrant of execution.

DATED this _____ day of _____, _____.

Respectfully submitted,

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