No. 22A____

IN THE
Supreme Court of the United States

WILLIAM MICHAEL MEYER,
Petitioner,

vs.

DAVID SHINN, FORMER DIRECTOR OF THE
ARIZONA DEPARTMENT OF CORRECTIONS, ET AL.,
Respondents.

**ON APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI**

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE ELENA KAGAN, CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

Pursuant to Rules 13.5 and 30, petitioner William Meyer respectfully asks the Court for a 61-day extension of time, to and including March 27, 2023, to file a petition for a writ of certiorari in this matter. (The present deadline for filing the petition for certiorari is January 25, 2023; the 60th day following that is Sunday, March 26, 2023. A 60-day extension of time would be automatically extended to Monday, March 27, 2023. *See* Sup. Ct. R. 30.1.)

The court of appeals issued its decision affirming the district court's denial of habeas corpus relief on October 4, 2022. (App. A) The court of appeals denied a timely filed petition for rehearing on October 27, 2022. (App. B) This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

This extension is necessary to accommodate Mr. Meyer's counsel's other workload. Since the court of appeals denied rehearing in this case, counsel has (1) filed petitions for writs of certiorari in *Michael Jessup v. David Shinn*, No. 22-5889, *Tonatihu Aguilar v. David Shinn*, No. 22-6023, and *Cedric Rue v. David Shinn*, No. 22-6027; (2) filed opening

briefs and motions to withdraw in *Duane Lee v. United States*, No. 18-16965 (9th Cir.), and *Shawn Percy v. United States*, No. 17-16365 (9th Cir.); (3) presented oral argument in *Eulandas Flowers v. James Kimble*, No. 19-15116 (9th Cir.), and *Clinton Eldridge v. Catricia Howard*, No. 21-15616 (9th Cir.); and (4) handled the detention appeal in *United States v. Stuart Newell*, No. 22-10297 (9th Cir.). Counsel is also scheduled for annual leave January 13, 2023, and to present at an out-of-state conference March 1–4, 2023.

Accordingly, Mr. Meyer respectfully asks the Court to extend the time for filing a petition for certiorari to and including March 27, 2023.

Respectfully submitted: January 10, 2023.

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APPENDIX A

NOT FOR PUBLICATION

FILED

OCT 4 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM MICHAEL MEYER, Petitioner-Appellant, v. ATTORNEY GENERAL OF THE STATE OF ARIZONA; DAVID SHINN, Director, Respondents-Appellees, and CHARLES L. RYAN, Respondent.	No. 21-15374 D.C. No. 3:19-cv-08112-JAT MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
James A. Teilborg, District Judge, Presiding

Argued and Submitted September 20, 2022
San Francisco, California

Before: GRABER, FRIEDLAND, and SUNG, Circuit Judges.
Concurrence by Judge FRIEDLAND.

Petitioner William Meyer appeals from the district court's denial of his 28

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

U.S.C. § 2254 petition for a writ of habeas corpus. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253, and we affirm.

Meyer was convicted of twenty-three counts of sexual exploitation of a minor, in violation of Ariz. Rev. Stat. § 13-3553(A)(2), after being found in possession of twenty-three images of child pornography on his desktop computer. Because the children in the images were under the age of fifteen, Meyer was subject to an enhanced sentencing scheme under which each count carries a mandatory minimum sentence of ten years, to be served consecutively, without the possibility of a suspended sentence, probation, pardon, or early release. Ariz. Rev. Stat. §§ 13-3553(C), 13-705(E), 13-705(I), 13-705(N); *see State v. Berger*, 134 P.3d 378, 379 (Ariz. 2006). In accordance with that sentencing scheme, Meyer received a total of 230 years in prison.

Meyer appealed his conviction to the Arizona Court of Appeals, arguing, among other things, that his cumulative 230-year sentence violated the Eighth Amendment because it was grossly disproportionate to his crime. Applying *State v. Berger*, the court held that Meyer's sentences did not violate the Eighth Amendment. Meyer petitioned for review by the Arizona Supreme Court, which the court denied, and he filed two unsuccessful petitions for state post-conviction relief based primarily on ineffective assistance of counsel. He then renewed his Eighth Amendment claim in federal district court in this Section 2254 petition for

writ of habeas corpus.

We review de novo the district court's denial of a Section 2254 habeas petition. *Cain v. Chappell*, 870 F.3d 1003, 1012 (9th Cir. 2017). Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), federal courts may grant habeas relief on a claim adjudicated on the merits in state court proceedings only if the state court's decision was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," 28 U.S.C. § 2254(d)(1), or if it was "based on an unreasonable determination of the facts in light of the evidence presented" in state court, *id.* § 2254(d)(2).

1. The Arizona Court of Appeals concluded that "Meyer's sentences do not violate the Eighth Amendment." That conclusion rejected Meyer's Eighth Amendment claim on the merits. Accordingly, AEDPA deference applies. *See Cullen v. Pinholster*, 563 U.S. 170, 187 (2011) ("Section 2254(d) applies even where there has been a summary denial.").

2. Applying deference under AEDPA, we can grant relief on Meyer's claim only if the Arizona Court of Appeals' decision rejecting his cumulative-impact argument was "contrary to, or involved an unreasonable application of, clearly established" Supreme Court precedent. 28 U.S.C. § 2254(d)(1). Meyer argues that the Arizona Court of Appeals violated clearly established Supreme Court

precedent by declining to consider whether his sentence was grossly disproportionate when viewed in the aggregate. But as another panel of our court recently held, "[t]here is no clearly established law from the Supreme Court on whether Eighth Amendment sentence proportionality must be analyzed on a cumulative or individual basis when a defendant is sentenced on multiple offenses." *Patsalis v. Shinn*, No. 20-16800, 2022 WL 4076129, at *7, --- F.4th --- (9th Cir. Sept. 6, 2022). And there is no possibility all fairminded jurists would agree "that the Arizona Court of Appeals' decision conflicts with the Supreme Court's clearly established precedents, . . . given the limited Supreme Court precedent regarding the prohibition against disproportionality of a sentence to a term of years." *Id.* at *8 (internal quotation marks omitted). We are therefore unable to say that the Arizona Court of Appeals' decision was contrary to or unreasonably applied "clearly established Federal law, as determined by the Supreme Court," 28 U.S.C. § 2254(d), and cannot grant relief on Meyer's claim.

AFFIRMED.

FILED

OCT 4 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Meyer v. Attorney General, No. 21-15374

FRIEDLAND, Circuit Judge, with whom SUNG, Circuit Judge, joins, concurring:

On April 10, 2010, then-26-year-old William Meyer downloaded twenty-three images of child pornography, apparently within the span of a few minutes. A month and a half later, he was indicted on twenty-three separate counts of sexual exploitation of a minor under the age of fifteen. But the prosecutor offered Meyer a deal: instead of standing trial for twenty-three separate crimes, he could plead guilty to one and receive the mandatory minimum sentence of ten years in prison. Meyer rejected that offer, and a jury subsequently found him guilty on all twenty-three counts. Instead of the ten years offered by the prosecutor, he received 230 years in prison—a decade for each image he had been found guilty of possessing.

Meyer's cumulative sentence spans several natural lifetimes, with no possibility of early release. His sentence is functionally equivalent to life without parole, which is "the second-harshest sentence available under [Supreme Court] precedents for *any* crime, and the most severe sanction available for a nonhomicide offense." *Graham v. Florida*, 560 U.S. 48, 92 (2010) (Roberts, C.J., concurring in the judgment). Because the Supreme Court's holdings do not clearly establish that Meyer's sentence is grossly disproportionate to his act of possessing twenty-three images of child pornography, we must affirm the denial of habeas under AEDPA. But if a sentence like Meyer's were to come before the Supreme Court on direct

review, I would hope that the Court would consider it one of the "exceedingly rare" non-capital sentences that violate the Eighth Amendment. *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (Kennedy, J., concurring in part and concurring in the judgment) (quoting *Solem v. Helm*, 463 U.S. 277, 289-90 (1983)). Because the Arizona Supreme Court has already upheld a similar sentence in a precedential opinion, *State v. Berger*, 134 P.3d 378 (Ariz. 2006), and because our court will nearly always review such cases under AEDPA deference, the only court that is likely to be in a position to hold that a sentence like Meyer's is unconstitutional is the United States Supreme Court. I hope that future defendants sentenced under this framework will file petitions for certiorari to the Supreme Court on direct review, giving the Court the opportunity to evaluate the constitutionality of their sentences de novo.

I also encourage the Arizona Legislature to reconsider the sentencing laws that dictated Meyer's sentence. As Meyer has shown, Arizona punishes certain violent crimes against children less harshly than it punishes the possession of twenty-three images of child pornography. A person convicted of sexual assault or second-degree murder of a child between the ages of twelve and fourteen would receive a presumptive sentence of 20 years, *see* Ariz. Rev. Stat. § 13-705(D)—far less than Meyer's sentence of three lifetimes without the possibility of parole. And no other state punishes possession of child pornography this harshly. That is

because nearly every other state to have considered the issue either defines the criminal violation as the act of possession regardless of the number of images, or, if it defines the violation at the level of the image, either permits concurrent sentences or imposes a cap on the total sentence. To achieve conformity with other states, and to eliminate what seem like nonsensical disparities in Arizona sentences for crimes involving children, I urge the Arizona Legislature to amend its laws to allow sentences on multiple counts of possession to run concurrently. Such an amendment would permit a sentencing court to impose a sentence that is proportional to the crime in light of the particular circumstances.

APPENDIX B

FILED

OCT 27 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM MICHAEL MEYER, Petitioner-Appellant, v. ATTORNEY GENERAL OF THE STATE OF ARIZONA; DAVID SHINN, Director, Respondents-Appellees, and CHARLES L. RYAN, Respondent.	No. 21-15374 D.C. No. 3:19-cv-08112-JAT District of Arizona, Prescott ORDER

Before: GRABER, FRIEDLAND, and SUNG, Circuit Judges.

Judge Friedland and Judge Sung have voted to deny the petition for rehearing en banc, and Judge Graber so recommends. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is DENIED.