

No. _____

IN THE
Supreme Court of the United States

SCOTT DESHAW, BOBBY PURCELL, BOBBY TATUM, WILLIAM NAJAR,
RALPH CRUZ, JOSEPH CONLEY, JOSE BOSQUEZ, & JERMAINE RUTLEDGE,

Petitioners,

v.

STATE OF ARIZONA,

Respondent.

On Petition for Writ of Certiorari
To the Arizona Court of Appeals

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

David J. Euchner
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Tucson, Arizona 85701

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Phoenix, Arizona 85016

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Stephen Duncan
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Mikel Steinfeld
Counsel of Record
Maricopa County Public Defender's Office
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10611 N. Hayden Rd., Ste. D106
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MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioners Scott DeShaw, Bobby Purcell, Bobby Tatum, William Najar, Ralph Cruz, Joseph Conley, Jose Bosquez, and Jermaine Rutledge ask for leave to file the attached petition for a writ of certiorari to the Arizona Court of Appeals without prepayment of costs and to proceed in forma pauperis pursuant to Supreme Court Rule 39.

Each Petitioner is currently represented by indigent defense counsel:

- Scott DeShaw has been represented by the Maricopa County Public Defender's Office since appointment on March 26, 2018.
- Bobby Purcell has been represented by the Maricopa County Public Defender's Office since at least a status conference at which Public Defender attorneys appeared on April 12, 2018.
- Bobby Tatum has been represented by contract counsel through the Maricopa County Office of Public Defense Services since appointment on June 20, 2018.
- William Najar has been represented by contract counsel through the Maricopa County Office of Public Defense Services since appointment on August 21, 2018.
- Joseph Conley has been represented by contract counsel through the Maricopa County Office of Public Defense Services since appointment on February 6, 2017.
- Jose Bosquez has been represented by contract counsel through the Maricopa County Office of Public Defense Services since appointment on January 27, 2017.
- Jermaine Rutledge has been represented by contract counsel through the Maricopa County Office of Public Defense Services since appointment on November 28, 2016.
- Ralph Cruz has been represented by the Pima County Public Defender's Office since appointment on March 11, 2016.

Respectfully submitted this 1st day of April, 2025.

Mikel Steinfeld

Mikel Steinfeld

Counsel of Record

Maricopa County Public Defender's Office

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 1994-011396

03/26/2018

HONORABLE MICHAEL J. HERROD

CLERK OF THE COURT

B. Navarro
Deputy

STATE OF ARIZONA

DIANE M MELOCHE

v.

SCOTT LEE DESHAW (B)

SCOTT LEE DESHAW
#130816
PO BOX 3100
BUCKEYE AZ 85132
NICHOLAUS ANTHONY PODSIADLIK

PUBLIC DEFENDER-APPOINT
COUNSEL-CCC

MINUTE ENTRY

The Court has reviewed Defendant's Motion to Appoint the Maricopa County Public Defender as Counsel.

IT IS ORDERED granting Defendant's Motion and appointing the Public Defender's Office to continue to represent the Defendant for his resentencing.

Chris DeRose, Clerk of Court
*** Electronically Filed ***
04/16/2018 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 1998-008705

04/12/2018

HON. JOHN REA

CLERK OF THE COURT

D. Concholar
Deputy

STATE OF ARIZONA

DIANE M MELOCHE

v.

BOBBY CHARLES PURCELL (A)

JAMAAR WILLIAMS
TARA DEGEORGE

COURT ADMIN-CRIMINAL-PCR

STATUS CONFERENCE SET

Court having reviewed the Court of Appeals Order filed 4/2/2018 and good cause appearing,

IT IS ORDERED setting Status Conference for 4/17/2018 at 8:30 a.m. before this division. Defense counsel has waived Defendant's appearance for this hearing only.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 1994-005821

06/20/2018

HONORABLE MARK H. BRAIN

CLERK OF THE COURT

S. Yoder
Deputy

STATE OF ARIZONA

DIANE M MELOCHE

v.

BOBBY JERRY TATUM (A)

BOBBY JERRY TATUM
#124754 ASPC LEWIS STINER
PO BOX 3100
BUCKEYE AZ 85326
REGINALD L COOKE

OFFICE OF PUBLIC DEFENSE
SERVICES-CCC

STATUS CONFERENCE SET

In accordance with the stipulation to remand pursuant to *Montgomery v. Louisiana*, 136 S. Ct. 718 (2017), the Arizona Court of Appeals has remanded this case for resentencing. *State v. Tatum*, 2 CA-CR 2014-0460-PR. Accordingly, the Court is scheduling a status conference.

IT IS THEREFORE ORDERED appointing Reginald Cooke to represent Defendant for the purpose of resentencing.

IT IS FURTHER ORDERED counsel Reginald Cooke and either Diane Meloche or the Deputy County Attorney assigned to this case must personally appear on **July 16, 2018 at 8:30 a.m.** in Courtroom 1201 located at 201 West Jefferson, Phoenix, Arizona 85003 for a status conference.

IT IS FURTHER ORDERED that inmate Bobby Jerry Tatum, date of birth 08/10/1976, inmate number 124754, shall telephonically appear for said hearing. The Arizona Department of Corrections shall make arrangements for the inmate to have telephone access at the hearing set

**SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY**

CR 1994-005821

06/20/2018

on **July 16, 2018 at 8:30 a.m.** The telephone call shall be placed by DOC to (602) 372-1141 using the in-state long-distance telephone service when necessary.

Certified copy mailed directly to: AZ DOC CO3
Inmate Records
ASPC-Lewis
PO Box 70
Buckeye, AZ 85326

CHRIS DEROSA, CLERK
BY *D. Casales* DEP
D. CASALES, FILED

18 AUG 29 AM 8:43

8/21/2018 5:13 PM



OFFICE OF CONTRACT COUNSEL

Notice of Attorney Appointment or Change of Attorney

Client:	Najar, William Franklin	DOB:	02/13/1982
Case Number:	CR1998-093180-002	Booking Number:	DOC 163926
Charges:	Bond Amount:		
Hearings:	Date:	Time:	
Attorney Assigned:	De La Torre, Daniela (021690)	Attorney Phone:	(602) 344-0036
Case ID:	35325		

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2004-035015-001 SE

02/06/2017

CLERK OF THE COURT

HON. DAVID K. UDALL

L. Popovic
Deputy

STATE OF ARIZONA

DIANE M MELOCHE

v.

JOSEPH LEE CONLEY (001)

JOSEPH LEE CONLEY
#217749 ASPC TUCSON CIMARRON U
P O BOX 24408
TUCSON AZ 85734
KERRIE M DROBAN

COURT ADMIN-CRIMINAL-PCR
COURT REPORTER ADMINISTRATOR

**ORDER RE: APPOINTMENT OF COUNSEL
RULE 32 BRIEFING SCHEDULE SET**

Pending before the Court is Defendant's Notice of Request for Post-Conviction Relief filed on January 13, 2017. This is Defendant's third Rule 32 proceeding.

This case arises out of a fatal stabbing with a butcher knife. A jury found Defendant guilty of one count of first-degree murder and two counts of burglary. He was 17 at the time of the offenses. This Court entered judgment and sentenced Defendant on May 25, 2007 to concurrent terms of imprisonment, including a natural life sentence for murder. Thereafter, this Court summarily dismissed Defendant's first Rule 32 proceeding, alleging a Sixth Amendment violation, after briefing in an order filed on February 10, 2011. Next, the Court dismissed Defendant's second Rule 32 proceeding, seeking Arizona Rule of Criminal Procedure 32.1(g) relief based upon *Miller v. Alabama*, 132 S. Ct. 2455 (2012), in an order filed on August 17, 2012.

In his current submission, the defendant again claims relief based upon a significant change in the law that, if applied retroactively, would alter the case outcome under Rule 32.1(g). (Notice at 3) According to Defendant, one such change occurred when the United States Supreme Court decided *Miller*. That Court subsequently held that the *Miller* decision, prohibiting mandatory life sentences without parole for juvenile offenders, announced a new substantive constitutional rule that applied retroactively on state collateral review. *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016). The Court

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2004-035015-001 SE

02/06/2017

clarified that the Eighth Amendment requires more than consideration of “a child’s age before sentencing him or her to a lifetime in prison” and permits a natural life sentence only for “the rare juvenile offender whose crime reflects irreparable corruption” as opposed to “transient immaturity.” *Id.* More recently, the Arizona Supreme Court held that, in order to be entitled to resentencing, a defendant must establish that *Miller* applies and would probably overturn the sentence. *State v. Valencia*, 2016 WL 7422256, at ¶ 17 (Ariz. Dec. 23, 2016).

Defendant asserts that he may be entitled to Rule 32.1(g) relief arising from his juvenile status at the time of his offenses. (Notice at 3) There is no indication that a court has previously addressed whether the crimes reflected transient immaturity. Nor is his Rule 32.1(g) claim precluded by the earlier ruling. *See State v. Bonnell*, 171 Ariz. 435, 438, 831 P.2d 434, 437 (App. 1992) (applying the Rule 32.1(g) exception even though the first petition was filed after the decision establishing the change, and the subsequent decision entitling the defendant to retroactive application was filed after the first petition’s denial). In addition, Defendant asserts a Rule 32.1(a) claim of ineffective assistance of counsel. (Notice at 2)

Although the information available to this Court at this time would likely lead to the same sentences, this Court also recognizes that there may be new information or further developments in the law to suggest otherwise. Out of an abundance of caution and solely to ensure that Defendant has the opportunity to fully develop his claims, the Court is electing to appoint counsel. This appointment is for the sole purpose of conferring with Defendant and assessing whether there are any viable Rule 32 claims.

IT IS THEREFORE ORDERED appointing counsel Kerrie Droban to represent Defendant in these proceedings.

IT IS FURTHER ORDERED that counsel shall determine whether Defendant has an actionable Rule 32 claim and, if so, to file a Petition for Post-Conviction Relief. The pleading on Defendant’s behalf shall be filed no later than **April 7th, 2017**. The State’s Response shall be filed within **45** days thereafter. The Reply, if any, shall be filed no later than **15** days after the Response is filed.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2010-013094-001 DT

01/27/2017

HONORABLE MARK H. BRAIN

CLERK OF THE COURT

K. Hampton
Deputy

STATE OF ARIZONA

DIANE M MELOCHE

v.

JOSE LEWIS BOSQUEZ (001)

JOSE LEWIS BOSQUEZ
#272320 ASPC FLORENCE KASSON
PO BOX 8200
FLORENCE AZ 85132
KERRIE M DROBAN

COURT ADMIN-CRIMINAL-PCR

**ORDER RE: APPOINTMENT OF COUNSEL
RULE 32 BRIEFING SCHEDULE SET**

Pending before the Court is Defendant's Notice of Request for Post-Conviction Relief filed on January 9, 2017. This is Defendant's third Rule 32 proceeding.

This case arises out of the death of man in the trunk of his own vehicle. Defendant pled guilty to first-degree murder, conspiracy to commit aggravated robbery, kidnapping, armed robbery, theft of means of transportation, and trafficking in stolen property. He was 17 at the time of the offenses. This Court entered judgment and sentenced Defendant on May 25, 2012 to consecutive and concurrent terms of imprisonment, including a natural life sentence for murder. Thereafter, this Court dismissed Defendant's first Rule 32 proceeding, seeking Arizona Rule of Criminal Procedure 32.1(g) relief based upon *Miller v. Alabama*, 132 S. Ct. 2455 (2012), in an order filed on February 19, 2013. Likewise, this Court dismissed a second Rule 32 proceeding based upon Arizona Rule of Criminal Procedure 32.1(a) in an order filed on July 10, 2013.

In his current submission, the defendant again claims relief based upon a significant change in the law that, if applied retroactively, would alter the case outcome under Rule 32.1(g). (Notice at 3) According to Defendant, one such change occurred when the United States Supreme Court decided *Miller*. That Court subsequently held that the *Miller* decision, prohibiting mandatory life sentences

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2010-013094-001 DT

01/27/2017

without parole for juvenile offenders, announced a new substantive constitutional rule that applied retroactively on state collateral review. *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016). The Court clarified that the Eighth Amendment requires more than consideration of “a child’s age before sentencing him or her to a lifetime in prison” and permits a natural life sentence only for “the rare juvenile offender whose crime reflects irreparable corruption” as opposed to “transient immaturity.” *Id.* More recently, the Arizona Supreme Court held that, in order to be entitled to resentencing, a defendant must establish that *Miller* applies and would probably overturn the sentence. *State v. Valencia*, 2016 WL 7422256, at ¶ 17 (Ariz. Dec. 23, 2016).

Defendant asserts that he may be entitled to Rule 32.1(g) relief arising from his juvenile status at the time of his offenses. (Notice at 3) There is no indication that a court has previously addressed whether the crimes reflected transient immaturity. Nor is his Rule 32.1(g) claim precluded by the earlier ruling. *See State v. Bonnell*, 171 Ariz. 435, 438, 831 P.2d 434, 437 (App. 1992) (applying the Rule 32.1(g) exception even though the first petition was filed after the decision establishing the change, and the subsequent decision entitling the defendant to retroactive application was filed after the first petition’s denial). In addition, Defendant asserts a Rule 32.1(a) claim of ineffective assistance of counsel. (Notice at 2)

Although the information available to this Court at this time would likely lead to the same sentences, this Court also recognizes that there may be new information or further developments in the law to suggest otherwise. Out of an abundance of caution and solely to ensure that Defendant has the opportunity to fully develop his claims, the Court is electing to appoint counsel. This appointment is for the sole purpose of conferring with Defendant and assessing whether there are any viable Rule 32 claims.

IT IS THEREFORE ORDERED appointing Kerrie Droban as counsel to represent Defendant in these proceedings.

IT IS FURTHER ORDERED that counsel shall determine whether Defendant has an actionable Rule 32 claim and, if so, to file a Petition for Post-Conviction Relief. The pleading on Defendant’s behalf shall be filed no later than ***60 DAYS**. The State’s Response shall be filed within 45 days thereafter. The Reply, if any, shall be filed no later than 15 days after the Response is filed.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 1997-005555

11/28/2016

HONORABLE MICHAEL W. KEMP

CLERK OF THE COURT

A. Moore
Deputy

STATE OF ARIZONA

DIANE M MELOCHE

v.

JERMAINE L RUTLEDGE (B)

JERMAINE L RUTLEDGE
#142462 ASPC TUCSON/CIMARRON
P O BOX 24408
TUCSON AZ 85734
NATALEE SEGAL

COURT ADMIN-CRIMINAL-PCR

**ORDER RE: APPOINTMENT OF COUNSEL
RULE 32 BRIEFING SCHEDULE SET**

Pending before the Court are Defendant's Notice of Post-Conviction Relief and Petition for Post-Conviction Relief, both filed on November 4, 2016. The Court deems these submissions a single Notice of Post-Conviction Relief. This is Defendant's third Rule 32 proceeding. It is untimely.

A jury convicted Defendant of one count of first-degree murder, one count of attempted first-degree murder, and two counts of armed robbery. He was 15 years old at the time of the offenses. This Court entered judgment and sentenced Defendant on February 12, 1999 to a natural life sentence and three concurrent 21-year terms of imprisonment. The Arizona Court of Appeals affirmed Defendant's convictions and sentences on direct appeal, issuing its order and mandate on October 20, 2000. *See State v. Rutledge*, 197 Ariz. 389, 4 P.3d 444 (App. 2000). This Court dismissed Defendant's first Rule 32 proceeding when he failed to meet the filing deadline for the petition, and dismissed a second Rule 32 proceeding seeking Rule 32.1(g) relief based upon *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

In his current submission, the defendant claims relief based upon a significant change in the law that, if applied retroactively, would alter the case outcome under Arizona Rule of Criminal Procedure 32.1(g). According to Defendant, one such change occurred when the

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 1997-005555

11/28/2016

United States Supreme Court decided *Miller v. Alabama*, 132 S. Ct. 2455 (2012). More recently, the Court held that the *Miller* decision, prohibiting mandatory life sentences without parole for juvenile offenders, announced a new substantive constitutional rule that applied retroactively on state collateral review. *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016). The Court clarified that the Eighth Amendment requires more than consideration of “a child’s age before sentencing him or her to a lifetime in prison” and permits a natural life sentence only for “the rare juvenile offender whose crime reflects irreparable corruption” as opposed to “transient immaturity.” *Id.*

Defendant asserts that he may be entitled to Rule 32.1(g) relief arising from his juvenile status at the time of his offenses. (Notice at 3, Petition at 4) There is no indication that a court has previously addressed whether the crimes reflected irreparable corruption or transient immaturity. Nor is his Rule 32.1(g) claim precluded by the earlier ruling. *See State v. Bonnell*, 171 Ariz. 435, 438, 831 P.2d 434, 437 (App. 1992) (applying the Rule 32.1(g) exception even though the first petition was filed after the decision establishing the change, and the subsequent decision entitling the defendant to retroactive application was filed after the first petition’s denial). In addition, Defendant asserts Rule 32.1(a) claims of ineffective assistance of counsel, the use of perjured testimony, and the violation of a previously undefined right under the law or the constitution. (Petition at 2) He also asserts an actual innocence claim under Rule 32.1(h). (Notice at 3)

Although the information available to this court at this time would likely lead to the same sentences, this court also recognizes that there may be new information or further developments in the law to suggest otherwise. Out of an abundance of caution and solely to ensure that Defendant has the opportunity to fully develop his claims, if any exist, the court is electing to appoint counsel. This appointment is for the sole purpose of conferring with Defendant and assessing whether there are any viable Rule 32 claims. This appointment is not to be viewed as an acknowledgement that any such claims exist.

IT IS THEREFORE ORDERED appointing counsel Natalee Segal to represent Defendant in these proceedings.

IT IS FURTHER ORDERED that counsel shall determine whether Defendant has an actionable Rule 32 claim and, if so, to file a Petition for Post-Conviction Relief. The pleading on Defendant’s behalf shall be filed no later than **January 27, 2017**. The State’s Response shall be filed within 45 days thereafter. The Reply, if any, shall be filed no later than 15 days after the Response is filed.

FILED
TONI HELLON
CLERK, SUPERIOR COURT
3/11/2016 9:45:14 AM

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. K C STANFORD

CASE NO. CR-20002693

DATE: March 11, 2016

STATE OF ARIZONA

Plaintiff,

vs.

RALPH DAVID CRUZ

Defendant.

****AMENDED**O R D E R**

IN CHAMBERS:

The Court being advised by OCAC that the Legal Defender's Office was inadvertently appointed in the above case, for good cause:

IT IS ORDERED the In Chambers Order dated March 8, 2016 in this case is amended as to the appointed attorney **only** to reflect the appointment of the Public Defender's Office as attorney for the defendant.

All other Orders therein are to remain in full force and effect.



HON. K.C. STANFORD

cc: Hon. K C Stanford
Brick P. Storts III, Esq.
Ralph David Cruz
Attorney General - Criminal - Phoenix
Attorney General - Criminal - Tucson
Clerk of Court - Appeals Unit
Clerk of Court - Criminal Unit
County Attorney
Court Reporter Manager
Legal Defender
Office of Court-Appointed Counsel
Public Defender

Linda Foss
Judicial Administrative Assistant