

## **APPENDIX**

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**APPENDIX A**

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**SUPREME COURT OF ARIZONA**

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**STATE OF ARIZONA,**

*Appellee,*

v.

**JAMES ERIN MCKINNEY,**

*Appellant.*

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**No. CR-93-0362-AP**

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**Filed: September 27, 2018**

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Mark Brnovich, Arizona Attorney General, Dominic E. Draye, Solicitor General, Lacey Stover Gard, Chief Counsel, Capital Litigation Section, Jeffrey L. Sparks (argued), Assistant Attorney General, Phoenix, Attorneys for State of Arizona

Sharmila Roy (argued), Laveen, Attorney for James Erin McKinney

JUSTICE GOULD authored the opinion of the Court, in which CHIEF JUSTICE BALES, VICE CHIEF JUSTICE BRUTINEL and JUSTICES PELANDER, TIMMER, BOLICK, and JUDGE VÁSQUEZ\* joined.

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\* Justice John R. Lopez IV has recused himself from this case. Pursuant to article 6, section 3, of the Arizona Constitution, the Honorable Garye L. Vásquez, Judge of the Arizona Court of Appeals, Division Two, was designated to sit in this matter.

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**OPINION**

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JUSTICE GOULD, opinion of the Court:

¶ 1 We previously affirmed James Erin McKinney’s two death sentences on independent review. *State v. McKinney (McKinney I)*, 185 Ariz. 567, 587, 917 P.2d 1214, 1234 (1996). However, in *McKinney v. Ryan (McKinney V)*, 813 F.3d 798, 804, 823–24 (9th Cir. 2015) (en banc), the Ninth Circuit Court of Appeals held that *McKinney I* applied an unconstitutional “causal nexus” test to McKinney’s mitigation evidence. We subsequently granted the State’s motion to conduct a new independent review of McKinney’s death sentences and, following such review, we affirm both sentences.

I.

¶ 2 In March 1991, McKinney and his half-brother, Charles Michael Hedlund, burglarized the home of Christine Mertens. *McKinney I*, 185 Ariz. at 572, 917 P.2d at 1219. Inside the residence, McKinney beat Mertens and stabbed her several times before holding her face-down on the floor and shooting her in the back of the head. *Id.* Two weeks later, the brothers burglarized the home of sixty-five-year-old Jim McClain and shot him in the back of the head while he slept in his bed. *Id.* The cases were consolidated for trial, and a jury found McKinney guilty of first degree murder as to both victims. *Id.*

¶ 3 During the sentencing phase, the trial court found several aggravating and mitigating circumstances. *See infra* ¶¶ 7–9, 15–16. After determining that the

mitigating circumstances were not sufficiently substantial to call for leniency, the court sentenced McKinney to death for both murders. *McKinney I*, 185 Ariz. at 571, 917 P.2d at 1218.

¶ 4 We affirmed McKinney’s convictions and sentences upon independent review. *Id.* at 587, 917 P.2d at 1234. McKinney subsequently filed a petition for habeas corpus, which the federal district court denied. *McKinney v. Ryan*, 2009 WL 2432738 (D. Ariz. 2009). On appeal, the Ninth Circuit reversed and remanded the case to the federal district court with instructions to grant McKinney’s writ of habeas corpus “unless the [S]tate, within a reasonable period, either corrects the constitutional error in his death sentence or vacates the sentence and imposes a lesser sentence consistent with law.” *Id.* at 827.

¶ 5 Following the Ninth Circuit’s reversal in *McKinney V*, the State requested this Court to conduct a new independent review. McKinney opposed that motion, arguing that in light of *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002), he is entitled to a new sentencing trial before a jury. We disagree. Independent review is warranted here because McKinney’s case was “final” before the decision in *Ring*. See *State v. Styers*, 227 Ariz. 186, 187–88 ¶¶ 5–6, 254 P.3d 1132, 1133–34 (2011) (holding that “[b]ecause Styers had exhausted available appeals, his petition for certiorari had been denied, and the mandate had issued almost eight years before *Ring* was decided, his case was final, and he therefore is not entitled to have his case reconsidered in light of *Ring*”).

















