

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

**RESPONSE TO MOTION:
ISSUANCE OF DEATH
WARRANT/STATE’S MOTION
FOR WARRANT OF EXECUTION**

On November 25, 2022, Appellant Aaron Brian Gunches filed a “Motion: Issuance of Death Warrant” in which he requested that “this Court Issue a Death Warrant for him so his Sentence of Death may be carried out immediately” and “so that Justice may be Lawfully served and give closure to the Victims [sic] Family.” Motion at 1. On November 30, 2022, this Court ordered the State to respond to Gunches’ motion. Because Gunches’ case meets the requirements for issuance of a warrant, the State joins in Gunches’ motion and also moves this Court to issue a warrant of execution.

Under A.R.S. § 13–759(A), a warrant of execution shall issue upon motion by the State “[a]fter a conviction and sentence of death are affirmed and the first post-conviction relief proceedings have concluded.” Additionally, Arizona Rule of Criminal Procedure 31.23(b) provides for issuance of a warrant of execution upon notice by the State 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.

In Gunches' case, the conditions for issuance of a warrant of execution have been met.

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’ convictions and sentence of death have been affirmed and his first post-conviction proceedings have concluded. *See* A.R.S. § 13–759(A). Additionally, even though only one of these conditions need exist, Gunches “has not filed a first Rule 32 petition for post-conviction relief and the time for filing a petition has expired” because he voluntarily dismissed his first post-conviction proceeding, *see* Ariz. R. Crim. P. 31.23(a)(1), and Gunches did not “initiate[] habeas corpus proceedings in federal district court within 15 days after . . . the denial of [his] first Rule 32 petition for post-conviction relief,” *id.* 31.23(a)(3). The State therefore joins in Gunches’ motion and also moves this Court to issue a

warrant of execution.

RESPECTFULLY SUBMITTED this 7th day of December, 2022.

Mark Brnovich
Attorney General
(Firm State Bar No. 14000)

/s/Jeffrey L. Sparks
Deputy Solicitor General/Chief Counsel
Capital Litigation Section
2005 N. Central Ave.
Phoenix, AZ 85004
Telephone: (602) 542-4686
cldocket@azag.gov
(State Bar Number 027536)
Attorneys for Appellee

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