

FILED *cd*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

2012 NOV -2 PM 1:14

VIRLYNN TINHELL
SUPERIOR COURT CLERK

STATE OF ARIZONA,

Plaintiff,

Vs

John Charles McCluskey, No. 74469

Defendant

Case Number: CR- 2010-0823

NOTICE OF POST-CONVICTION RELIEF

Instructions: When the notice is complete, file it with the Clerk of the Superior Court of the county in which the conviction occurred.

A person unable to pay cost of this proceeding and to obtain the services of a lawyer without substantial personal or family hardship should indicate this by requesting counsel in Question 6 of this notice and execute the AFFIDAVIT OF INDIGENCY on page 3. In the event an attorney is not appointed, a Request for Preparation of Post-Conviction Relief Record form must be filed by the defendant if some portion of the record is needed and has not previously been obtained.

NO ISSUE WHICH HAS ALREADY BEEN RAISED AND DECIDED ON APPEAL OR IN A PREVIOUS PETITION FOR POST-CONVICTION RELIEF MAY BE USED AS A BASIS FOR A SUCCESSIVE PETITION FOR POST-CONVICTION RELIEF.

1. Defendant's Name and prison number (if any): John Charles McCluskey, No. 74469
2. Defendant's address: Penitentiary of New Mexico -- Santa Fe, P.O. Box 1059, Santa Fe, New Mexico 87504-1059
3. (A) Defendant was convicted of the following crimes: Escape; Kidnapping (2 counts); Armed Robbery (2 counts); Aggravated Assault (2 counts); Misconduct Involving Weapons
 (B) Defendant was sentenced on (date) 06/17/11 to a term of 43 years commencing on (date) _____ following a Trial by
 Jury Judge without Jury
 Plea of: Guilty No Contest
 Probation Revocation: Admission Violation Hearing
 In the Superior Court of Mohave County County with Judge Steven F. Conn Presiding.



(C) The file number of the case was CR- 2010000823.

4. Defendant has taken the following actions to secure relief from his conviction or sentences:

(A) Direct Appeal: Yes No

(B) Previous Rule 32 Proceedings: Yes No.

5. Defendant was represented by the following lawyers at (provide name of counsel and counsel's address, if known)

Trial of change of plea: John Pecchia and Jason Steffen, Mohave County Public Defender's Office

Sentencing hearing: John Pecchia and Jason Steffen, Mohave County Public Defender's Office

Appeal (if any): Jill L. Evans, Mohave County Appellate Defender's Office

Previous Rule 32 Proceedings (if any) _____

6. Defendant is presently represented by a lawyer. Yes No (If yes, provide name and address.)

If no, does the defendant request the court to appoint a lawyer for this proceeding?
 Yes No

7. Respond to this section only if this is an untimely notice or the defendant has filed a previous Rule 32 petition in this case.

(A) Is a claim pursuant to Rule 32.1 (d), (e), (f), (g), or (h) being raised in this petition?
 Yes No

(B) If yes, state the specific exception:

- The defendant is being held in custody after the sentence imposed has expired.
- Newly discovered material facts exist which probably would have changed the verdict or sentence.
- The defendant's failure to file a timely notice of post-conviction relief or notice of appeal was without fault on the defendant's part.
- There has been a significant change in the law that would probably overturn the conviction or sentence.

Facts exist which establish clear and convincing evidence that the defendant is actually innocent.

(C) State the facts that support the claim and the reasons for not raising the claim in the previous petition or in a timely manner.

I AM REQUESTING POST-CONVICTION RELIEF. I UNDERSTAND THAT I MUST INCLUDE IN MY PETITION EVERY GROUND FOR RELIEF WHICH IS KNOWN AND WHICH HAS NOT BEEN RAISED AND DECIDED PREVIOUSLY. I ALSO UNDERSTAND THAT FAILURE TO RAISE ANY KNOWN GROUND FOR RELIEF IN MY PETITION WILL PROHIBIT ME FROM RAISING IT AT ANY FUTURE DATE:

10-19-12
Date

[Signature]
Defendant

AFFIDAVIT OF INDIGENCY

OATH OR AFFIRMATION

~~STATE OF ARIZONA~~)
NEW MEXICO)
SANTA FE) ss.
County of Mohave)

I have requested the appointment of a lawyer to represent me in question 6. I swear under oath and penalty of perjury that I am indigent and because of my poverty I am financially unable to pay for the cost of a lawyer to represent me without incurring substantial hardship to myself or my family.

[Signature]
Defendant's Signature

10-19-12
Date

Sworn to or affirmed before me this 19 day of Oct., 2012

by JOHN McCUSKEY

My Commission Expires: 4/24/16

[Signature]
Notary Public/Deputy Clerk