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VIRLYNN TINHELL
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7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MOHAVE**

9 **STATE OF ARIZONA,**

10 Plaintiff,

11 vs.

12 **JUSTIN JAMES RECTOR**
13 Defendant.

14 NO: CR 2014-01193

15 **DEFENDANT JUSTIN JAMES**
16 **RECTOR'S NOTICE OF OBJECTIONS**
17 **TO ARIZONA'S DEATH PENALTY**
18 **SENTENCING SCHEME**
19 **[A.R.S. § 13-703, ET SEQ.]**

20 (ASSIGNED TO THE HON. LEE JANTZEN)

21 Defendant Justin James Rector, by and through undersigned counsel,
22 respectfully lodges the following objections to Arizona's death penalty sentencing
23 scheme, A.R.S. 13-703 et. Seq., to preserve his actual and potential review rights,
24 detailed in the Memorandum of Points and Authorities attached hereto and incorporated
25 herein.

26 **RESPECTFULLY SUBMITTED** this 28th day of August, 2015.

27 By: _____

28 **GERALD T. GAVIN**

Co-Counsel for the Defendant

By: _____

RON GILLES

Co-Counsel for Defendant



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MEMORANDUM OF POINTS AND AUTHORITIES

1. Arizona Revised Statutes § 13 – 703 [C] unconstitutionally creates presumption of death whenever a single aggravating factor is found by the that mitigating factors are sufficiently substantial to call for leniency, thereby requiring him to convince jurors that his life should be spared, in violation of the Eighth and Fourteenth Amendments to the United States Constitution, and Article II, § 15 of the Arizona Constitution. This argument has been previously rejected by the Arizona Supreme Court in State v. Hampton, 213 Ariz. 167, 140 P.3d 950 (2006).
2. The death penalty is imposed arbitrarily and irrationally in Arizona in violation of the Eighth and Fourteenth Amendments to the United States Constitution and Article II, § 15 of the Arizona Constitution, and Article II, § 4 of the Arizona Constitution. This argument was also previously rejected by the Arizona Supreme Court as applied to the facts in Hampton, supra.
3. Application of the death penalty on the facts of this case would constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution and Article II, §§ 1, 4, and 15 of the Arizona Constitution. This argument was rejected by the Arizona Supreme Court in Hampton, supra.
4. The prosecutor's discretion to seek the death penalty has no standards, and therefore violates the Eighth and Fourteenth Amendments to the United States Constitution, and Article II, §§ 1, 4, and 15 of the Arizona Constitution. This argument was rejected by the Arizona Supreme Court in State v. Boggs,

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5. Arizona's death penalty scheme is applied so as to discriminate against poor, young, male defendant's in violation of the Eighth and Fourteenth Amendments to the United States Constitution and Article II, §§ 1, 4, and 13 of the Arizona Constitution. This argument was also rejected by the Arizona Supreme Court in Boggs, supra.
 6. Arizona's death penalty scheme is unconstitutional because it does not require the sentencer to find, beyond a reasonable doubt that the aggravating circumstances outweigh the accumulated mitigating circumstances, in violation of the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article II, §§ 1, 4, and 15 of the Arizona Constitution. This argument was rejected by the Arizona Supreme Court in Hampton, supra.
 7. Arizona's death penalty scheme unconstitutionally requires imposition of the death penalty whenever at least one aggravating circumstance and no mitigating circumstances exist, in violation of the Eighth and Fourteenth Amendments to the United States Constitution, and Article II, §15 of the Arizona Constitution. This argument was rejected by the Arizona Supreme Court in Boggs, supra.
 8. The death penalty is irrational and arbitrarily imposed; it serves no purpose that is not adequately addressed by life in prison, in violation of the defendant's right to due process under the Fourteenth Amendment to the United States Constitution, and Article II, §§ 1 and 4 of the Arizona Constitution, and the prohibition against cruel and unusual punishment in the Eighth Amendment to the United States Constitution, and Article II, § 15 of the Arizona Constitution. This argument was also rejected by the Arizona Supreme Court in Boggs, supra.

- 1 9. The requirement in Arizona's death penalty scheme that the defendant prove
2 mitigating circumstances by a preponderance of the evidence improperly
3 precludes jurors from considering all the mitigating facts, in violation of the
4 Eighth and Fourteenth Amendments to the United States Constitution, and
5 Article II, §§ 4 and 15 of the Arizona Constitution. This argument was
6 rejected by the Arizona Supreme Court in Boggs, supra.
- 7 10. Arizona's death penalty scheme unconstitutionally fails to require either
8 cumulative consideration of multiple mitigating factors, or that the jury make
9 specific findings as to each mitigating factor, in violation of the Due Process
10 Clause of the United States Constitution. This argument was rejected by the
11 Arizona Supreme Court in State v. Anderson, 210 Ariz. 327, 111 P.3d 369
12 (2005).
- 13 11. Arizona's death penalty scheme for considering mitigating evidence is
14 unconstitutional because it limits full consideration of that evidence in violation
15 of the Due Process Clauses of the United States Constitution. This argument
16 was rejected by the Arizona Supreme Court in Anderson, supra.
- 17 12. Death sentences in Arizona have been applied arbitrarily and irrationally and
18 in a discriminatory manner against impoverished males whose victims have
19 been Caucasian in violation of Article II, §§ 1, 4, and 13 of the Arizona
20 Constitution. This argument was rejected by the Arizona Supreme Court in
21 Anderson, supra.
- 22 13. Arizona 's death penalty scheme provides not meaningful distinction between
23 capital and noncapital cases. This argument was rejected by the Arizona
24 Supreme Court in Anderson, supra.
- 25 14. The death penalty is cruel and unusual under any circumstances and violates
26 the Eighth and Fourteenth Amendments, and Article II, § 15 of the Arizona
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1 Constitution. This argument was rejected by the Arizona Supreme Court in
2 Boggs, supra.

3 15. The absence of proportionality review of death sentences by Arizona Courts
4 denies capital defendant's due process of law under the Fourteenth
5 Amendment to the United States Constitution, and Article II, § 4 of the
6 Arizona Constitution, denies capital defendant's Equal Protection under the
7 Fourteenth Amendment the United States Constitution, and Article II, § 15 of
8 the Arizona Constitution. This argument was rejected by the Arizona
9 Supreme Court in Hampton, supra.

10 16. Arizona's death penalty scheme is unconstitutional because it does not
11 require the State prove that the death penalty is appropriate or require the
12 jury to find beyond a reasonable doubt that the aggravating circumstances
13 outweigh the accumulated mitigating circumstances, in violation of the Fifth,
14 Eighth and Fourteenth Amendments to the United States Constitution, and
15 Article II, § 15 of the Arizona Constitution. This argument was rejected by the
16 Arizona Supreme Court in Boggs, supra.

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18 17. Arizona's death penalty scheme does not sufficiently channel the sentencer's
19 discretion because it fails to narrow the class of persons eligible for the death
20 penalty. Aggravating circumstances should narrow the class of persons
21 eligible for the death penalty and reasonably justify the imposition of a
22 harsher penalty. Arizona Revised Statutes § 13-703.1 is unconstitutional
23 because it provides no objective standards to guide the jury in weighing the
24 aggravating and mitigating circumstances. The broad scope of Arizona's
25 aggravating factors encompass nearly anyone involved in a murder, in
26 violation of the Eighth and Fourteenth Amendments to the United States
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1 Constitution, and Article II, § 15 of the Arizona Constitution. This argument
2 was rejected by the Arizona Supreme Court in Boggs, supra.

3 18. Execution by lethal injection is cruel and unusual punishment in violation of
4 the Eighth and Fourteenth Amendments to the United States Constitution and
5 Article II, §§ 1,4, and 15 of the Arizona Constitution. This argument was
6 rejected by the Arizona Supreme Court in Boggs, supra.

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8 The defendant raises each of these issues, and despite the prior rulings from
9 the Court believes each has validity, and each is a concern that calls any
10 imposition of sentence into question. The defendant asserts that, while
11 perhaps not legally permissible in the present, the current state of the law is
12 incorrect. For years, defense attorneys in Arizona lobbied for jury
13 sentencings in capital cases, and were told, up until State v. Ring, 536 U.S.
14 534 (2002) that determinations of life and death sentences were the
15 province of judges, not juries. The law changed when Ring was decided. It
16 is under this spirit the defense proffers these positions, and insist Mr. Rector
17 is entitled to proper consideration of his case, without the shackles of
18 respectfully....incorrectly established authority.
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1 ORIGINAL of the foregoing filed
2 this 20th day of August, 2015 with:

3 Clerk of Court
4 401 E Spring Street
5 Kingman Arizona 86401

6 COPY of the forgoing
7 Delivered this 20th day
8 Of August, 2015, to:

9 Honorable Lee Jantzen
10 Judge of the Superior Court
11 Mohave County Courthouse
12 2nd floor
13 Kingman Arizona 86401

14 Greg McPhillips
15 Assigned Deputy County Attorney
16 PO Box 7000
17 Kingman Arizona 86401

18 Ron Gilleo
19 Mohave County Legal Defender
20 Co-Counsel for Justin James Rector
21 313 Pine Street
22 PO Box 7000
23 Kingman Arizona 86401

24 Client Justin James Rector
25 Mohave County Jail

26 File

27 BY: 

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