

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

FILED BY: [Signature]

IN AND FOR THE COUNTY OF MOHAVE

2013 APR 29 AM 11:32

HONORABLE STEVEN F. CONN  
DIVISION 3  
DATE: APR. 25, 2013

VIRLYNN TINNELL SC\*  
SUPERIOR COURT CLERK

COURT NOTICE/ORDER/RULING

STATE OF ARIZONA,  
Plaintiff,

vs.

JOHN CHARLES McCLUSKEY,  
Defendant.

No. CR-2010-00823

The Defendant has filed a pro per Request for Extension of Time to File Supplemental Petition for Post-Conviction Relief. The pleading was dated April 17, 2013, but file-stamped April 19, 2013, at 12:45 p.m. The date sought to be extended by the Defendant was April 19, 2013. Since the Court did not even see this pleading until April 23, 2013, it has had no opportunity to rule on the motion before the time expired. If it denies the motion, it will in effect be denying the Defendant's request for post-conviction relief. Although a copy of the Defendant's request is indicated as having been provided to the State, the Court has no way of knowing when they received it or whether they had any meaningful opportunity to file a response before the expiration of the time in question. The Defendant is asking for an extension until January 2014.

To put this in some sort of procedural perspective, the Defendant went to Trial and was found guilty by the jury on June 17, 2011. The Defendant waived time for sentencing and was sentenced later that same day. He filed a timely notice of appeal and was appointed different counsel to



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represent him on direct appeal. The Court of Appeals affirmed the trial court proceedings by Memorandum Decision dated August 16, 2012.

The Defendant filed a timely Notice of Post-Conviction Relief on November 1, 2012, and counsel was appointed to represent him in the Rule 32 proceeding. This attorney was different from those who represented him at trial and on direct appeal. His appointed Rule 32 attorney filed a pleading on March 5, 2013, advising the Court that he could identify no meritorious claim for relief to raise under Rule 32. The Court by Minute Order dated March 11, 2013, gave the Defendant until April 19, 2013, to file a pro per petition for post-conviction relief. The Court in that Order indicated that no extension of the due date would be granted without a showing of extraordinary circumstances.

The Defendant indicates several reasons why his requested extension should be granted. He indicates that he was very ill between the end of 2012 and into early 2013 but provides no further detail as how his illness impacted his ability to file a pro per petition by April 19, 2013. He indicates that he is facing capital charges in New Mexico in which the death penalty is being sought, that his trial is set to start July 22, 2013, and that he must spend the next few months preparing for that trial. The Court is aware that the convictions in this case could be relevant in the New Mexico case in several different ways. With all due respect to the Defendant, the Court wonders how many demands there are on the Defendant's time that would prevent him from filing a pro per petition in this case.

The Court notes that his Rule 32 attorney has indicated that there were no claims for post-conviction relief that he could raise. The Defendant himself has identified no claims he plans to make. The Court understands that a defendant might need additional time to quote portions of the

record and cite applicable law to flesh out a particular claim, but the Defendant has not even indicated what claim he would make in greater detail if given the opportunity. It would seem that he has had more than sufficient time to contemplate what Rule 32 claim for relief he would make. The Court determines that the Defendant has not made a showing of extraordinary circumstances to justify the extension being requested.

IT IS ORDERED denying the Defendant's Request for Extension of Time to File Supplemental Petition for Post-Conviction Relief.

The Court determines that the Defendant has raised no claim presenting a material issue of fact or law which would entitle the Defendant to relief under Rule 32 and that no purpose would be served by any further proceedings.

IT IS ORDERED denying the Defendant's request for post-conviction relief and dismissing the pending Rule 32 proceeding in this matter.

cc:

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