

Court of Appeals, Division One

Criminal

1 CA-CR 22-0415

STATE v. MCKINNEY

Appellate Case Information

Case Filed: 13-Sep-2022
Case Closed:

Dept/Composition

Side 1. STATE OF ARIZONA, Appellee
(Litigant Group) STATE OF ARIZONA

- State of Arizona

Attorneys for: Appellee
Jacob R Lines, Esq. (AZ Bar No. 22560)

Side 2. DAVID JAMES MCKINNEY, Appellant
(Litigant Group) DAVID JAMES MCKINNEY

- David James McKinney

Attorneys for: Appellant
Sheri M Lauritano, Esq. (AZ Bar No. 16087)

CASE STATUS

Aug 7, 2024.....At Issue

May 23, 2024....Record Complete

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
MAR CR2019-138240-001	Agg DUI-Lic Susp/Rev for DUI, Class 4; Agg DUI-Lic Susp/Rev for DUI Class 4	10 Years, ADOC; 10 Years, ADOC	Laura Johnson Giaquinto, Sentencing	JURY	

CALENDAR

Friday MOTION CALENDAR

30-Aug-2024 Department M;

File date: 8/26/2024.....Motion for Leave to File a Pro Per Sur-reply (Appellant Pro Per)

DECISION RENDERED: See proceeding entry for ORDER dated 4-Sep-2024 for more information...

102 PROCEEDING ENTRIES

- 13-Sep-2022 FILED: Notice of Appeal from Maricopa County Superior Court filed 09/06/22. Notification sent to Court Reporters dated 09/12/2022.
- 22-Sep-2022 FILED: Appellate Clerk Notice (31.2(g))
- 26-Sep-2022 ORDERED: Affirming the appointment of the Maricopa County Public Defender as counsel for appellant. FURTHER ORDERED: Court Reporters Robin Lawlor, Treva Colwell, Scott Kindle, Hope Yeager, Wendy Ricard and Ken Crenshaw transcripts due by 11/07/2022. Benjamin A Armstrong ProTem Judge - Author
- 30-Sep-2022 FILED: Designation of Record for Appeal (Appellant)
- 3-Oct-2022 ORDERED: Ken Crenshaw transcripts dated 10/10/2019; 01/07/2020; 02/12/2020; 09/02/2020; 07/02/2021; 07/09/2021; 09/08/2021; 11/16/2022; 05/27/2022; 06/20/2022; 09/06/2022 due by 11/17/2022. FURTHER ORDERED: Reaffirming this previously set due date of 11/07/2022 for transcripts dated 06/21/2022; 03/11/2022 for Ken Crenshaw. Hon David B Gass - Author
- 3-Oct-2022 FILED: Letter, undated, from Appellant to Court requesting counsel information
- 6-Oct-2022 FILED: Letter, 10/06/22, from Court to Appellant re: counsel
- 17-Oct-2022 FILED: Reporter's Transcript - 09/06/2022 - Sentencing (Robin Lawlor)
- 20-Oct-2022 FILED: Record on Appeal: Combined Instruments/Minute Entries Disposition Report: #186, Filed 9/28/22 Exhibits: None sent with e-Record

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10. 20-Oct-2022 FILED: Additional Record on Appeal
Physical Exhibits:
Hearing Date: 06/27/2022 List # 1 2 7 8 12 14 31 32 39 in manila envelope
Hearing Date: 08/02/2022 List # 1 2 3 4 in manila envelope
Sealed Exhibit:
Confidential Criminal History Report in Sealed Manila Envelope
11. 31-Oct-2022 FILED: Reporter's Transcript - 08/02/2022 - Trial on Priors (Trevia B. Colwell)
12. 3-Nov-2022 FILED: Request for Extension of Time (Time to File Transcript)(Wendy Ricard)
13. 3-Nov-2022 FILED: Request for Extension of Time (Time to File Transcript)(Wendy Ricard)
14. 4-Nov-2022 ORDERED: Request for Extension of Time (Time to File Transcript)(Wendy Ricard) = GRANTED. Due Dates EXTENDED to 12/07/2022 for Transcripts dated 06/28/2022, 06/27/2022 or OSC set for 12/21/2022. Hon David B Gass - Author
15. 4-Nov-2022 ORDERED: Request for Extension of Time (Time to File Transcript)(Wendy Ricard) = GRANTED. Due Dates EXTENDED to 12/07/2022 for Transcripts dated 06/28/2022, 06/27/2022 or OSC set for 12/21/2022. Hon David B Gass - Author
16. 7-Nov-2022 FILED: Reporter's Transcript - 06/30/2022 - Trial Day 4 (Scott Kindle)
17. 7-Nov-2022 FILED: Reporter's Transcript - 06/29/2022 - Trial Day 3 (Scott Kindle)
18. 9-Nov-2022 ORDERED: Ken Crenshaw transcripts dated 03/11/2022; 06/21/2022 due by 12/09/2022 or OSC set for 12/21/2022. Hon David B Gass - Author
19. 9-Nov-2022 FILED: Motion for Extension of Time (Time to File Transcripts)(Hope Yeager)
20. 15-Nov-2022 ORDERED: Motion for Extension of Time (Time to File Transcripts)(Hope Yeager) = GRANTED. Due date EXTENDED from Monday, 11-07-2022 to Wednesday, 12-07-2022 or OSC set for 12/21/2022. Hon David B Gass - Author
21. 21-Nov-2022 ORDERED: Ken Crenshaw transcripts dated 10/10/2019; 01/07/2020; 02/12/2020; 09/02/2020; 07/02/2021; 07/09/2021; 09/08/2021; 11/16/2021; 05/27/2022; 06/20/2022; 09/06/2022 due by 12/21/2022 or OSC set for 01/04/2023. Hon David B Gass - Author
22. 11-Dec-2022 FILED: Reporter's Transcript - 06/27/2022 - Voir Dire/Trial (Wendy Ricard)
23. 11-Dec-2022 FILED: Reporter's Transcript - 06/28/2022 - Trial (Wendy Ricard)
24. 11-Dec-2022 FILED: Reporter's Transcript - 06/28/2022 - Trial Day 2 PM (Hope J Yeager)
25. 19-Dec-2022 FILED: Motion for Extension of Time to File Transcripts (Ken Crenshaw)
26. 20-Dec-2022 ORDERED: Motion for Extension of Time to File Transcripts (Ken Crenshaw) = GRANTED. Due Dates EXTENDED to 01/20/2023 for Transcripts dated 06/21/2022, 03/11/2022, 09/06/2022, 06/20/2022, 05/27/2022, 11/16/2021, 09/08/2021, 07/09/2021, 07/02/2021, 09/02/2020, 02/12/2020, 01/07/2020, 10/10/2019 or OSC set for 02/01/2023. Hon David B Gass - Author
27. 21-Dec-2022 AMENDED ORDER: Motion for Extension of Time to File Transcripts (Ken Crenshaw) = GRANTED. Due Dates EXTENDED to 01/20/2023 for Transcripts dated 06/21/2022, 03/11/2022, 09/06/2022, 06/20/2022, 05/27/2022, 11/16/2021, 09/08/2021, 07/09/2021, 07/02/2021, 09/02/2020, 02/12/2020, 01/07/2020, 10/10/2019 or OSC set for 02/01/2023. FURTHER ORDERED: Vacating the Order to Show Cause hearing on 01/04/2023 for Ken Crenshaw. Hon David B Gass - Author
28. 31-Jan-2023 FILED: Motion for Extension of Time to File Transcripts (Ken Crenshaw)
29. 1-Feb-2023 ORDERED: Motion for Extension of Time to File Transcripts (Ken Crenshaw) = GRANTED. Due Dates EXTENDED to 03/03/2023 for Transcripts dated 06/21/2022, 03/11/2022, 09/06/2022, 06/20/2022, 05/27/2022, 11/16/2021, 09/08/2021, 07/09/2021, 07/02/2021, 09/02/2020, 02/12/2020, 01/07/2020, 10/10/2019 or OSC set for 03/15/2023. FURTHER ORDERED: Vacating the Order to Show Cause hearing on 02/01/2023 for Ken Crenshaw. Hon David B Gass - Author
30. 3-Mar-2023 FILED: Reporter's Transcript - 07/02/2021 - Settlement Conference (Kimberly McCright)
31. 3-Mar-2023 FILED: Reporter's Transcript - 07/09/2021 - Final Trial Management Conference (Kimberly McCright)
32. 3-Mar-2023 FILED: Reporter's Transcript - 09/08/2021 - Final Trial Mangement Conference (Kimberly McCright)
33. 3-Mar-2023 FILED: Reporter's Transcript - 11/16/2021 - Final Trial Mangement Conference (Kimberly McCright)
34. 3-Mar-2023 FILED: Reporter's Transcript - 10/10/2019 - Status Conference (Kimberly McCright)
35. 3-Mar-2023 FILED: Reporter's Transcript - 01/07/2020 - Comprehensive Pretrial Conference / Trial Orders (Kimberly McCright)

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36. 3-Mar-2023 FILED: Reporter's Transcript - 02/12/2020 - Status Conference (Kimberly McCright)
37. 3-Mar-2023 FILED: Reporter's Transcript - 09/02/2020 - Trial Continuance Past Last Day (Kimberly McCright)
38. 3-Mar-2023 FILED: Reporter's Transcript - 03/11/2022 - Final Trial Management Conference (Kimberly McCright)
39. 3-Mar-2023 FILED: Reporter's Transcript - 05/27/2022 - Final Trial Management Conference (Kimberly McCright)
40. 3-Mar-2023 FILED: Reporter's Transcript - 06/20/2022 - Oral Argument (Kimberly McCright)
41. 3-Mar-2023 FILED: Reporter's Transcript - 06/21/2022 - Trial Procedure Conference (Kimberly McCright)
42. 3-Mar-2023 FILED: Reporter's Transcript - 09/06/2022 - Sentencing (Kimberly McCright)
43. 28-Apr-2023 FILED: Motion to Unseal Documents; Certificate of Service (Appellant)
44. 2-May-2023 ORDERED: Motion to Unseal Documents (Appellant) = GRANTED. Upon presentation of this order, unsealing the Court Information Sheets (I.O.R. 2 and 18) and the Random Jury List (I.O.R. 150), for parties/agents for this appeal only. Benjamin A Armstrong ProTem Judge - Author
45. 8-Sep-2023 FILED: Notice of Completion of Record
46. 8-Sep-2023 FILED: Request of Status Update (Appellant Pro Per)
47. 15-Sep-2023 FILED: Letter, 9/15/23, from Court to Appellant, enclosing copy of docket
48. 15-Sep-2023 FILED: Motion to Withdraw and Substitute New Counsel; Motion to Extend Opening Brief Due Date; Certificate of Service (Appellant)
49. 25-Sep-2023 ORDERED: Motion to Withdraw and Substitute New Counsel (Appellant) = GRANTED. FURTHER ORDERED: Appointing attorney Sheri Lauritano as attorney for appellant in this appeal. FURTHER ORDERED: Maricopa County Public Defender must immediately forward all files, records, transcripts, and other documents that relate to this appeal to newly appointed counsel. FURTHER ORDERED: Motion to Extend Opening Brief Due Date = GRANTED. Due date EXTENDED from Monday, 10-23-2023 to Thursday, 11-09-2023. Benjamin A Armstrong ProTem Judge - Author
50. 23-Oct-2023 FILED: Appellant's Notice of Appearance; Appellant's Notice of Appearance Certificate of Service (Appellant)
51. 1-Nov-2023 FILED: Appellant's Opening Brief (Anders Brief); Certification of Compliance; Certificate of Service (Appellant)
[STRICKEN per order filed 05/23/2024]
52. 1-Nov-2023 ORDERED: If appellant wishes to file a pro se supplemental opening brief raising additional issues on appeal, appellant must do so by 12/11/2023. If appellant chooses to file a supplemental opening brief, appellant must file an original and one copy with the Clerk of this Court, provide two copies to appellee and provide one copy to appellant's counsel. FURTHER ORDERED: Directing appellant's counsel to furnish appellant a paper copy of the opening brief, together with a paper copy of all records on appeal, including all transcripts in counsel's possession. Counsel shall provide the Clerk of this Court and appellee a copy of counsel's transmittal letter, specifying the documents forwarded to appellant. FURTHER ORDERED: The filing of an answering brief shall await further order of the Court. Benjamin A Armstrong ProTem Judge - Author
53. 1-Nov-2023 FILED: Letter, dated 11/01/2023 to Appellant from Counsel re: Forwarding records on appeal (Appellant)
54. 27-Nov-2023 FILED: Motion for Extend Opening Brief Due Date (Anders Supplemental Brief) (Appellant Pro Per)
55. 27-Nov-2023 FILED: Motion to Strike Anders Brief (Appellant Pro Per)
56. 29-Nov-2023 ORDERED: Motion for Extend Opening Brief Due Date (Anders Supplemental Brief) (Appellant Pro Per) = GRANTED. Due date EXTENDED from 12/11/2023 to 01/10/2024 Benjamin A Armstrong ProTem Judge - Author
57. 1-Dec-2023 ORDERED: Motion to Strike Anders Brief (Appellant Pro Per) = DENIED. FURTHER ORDERED: That this order be sent to appellant personally. Benjamin A Armstrong ProTem Judge - Author
58. 5-Jan-2024 FILED: Appellant's Opening Brief (Appellant Pro Per)
[STRICKEN per order filed 05/23/2024]
59. 9-Jan-2024 FILED: (Stricken per order dated 03/12/2024) Assigning Anders appeal to Dept I for consideration and disposition. [Amy M. Wood, Clerk]
60. 9-Jan-2024 FILED: Memorandum – to Clerk of Superior Court Re: any additional record not already transmitted due within 10 days

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61. 9-Jan-2024 FILED: (Stricken per order dated 03/12/2024) Assigning Anders appeal to Dept I for consideration and disposition. [Amy M. Wood, Clerk]
62. 11-Jan-2024 FILED: Motion to Request an Investigator (Appellant Pro Per)
63. 16-Jan-2024 ORDERED: Motion to Request an Investigator (Appellant Pro Per) = DENIED. Benjamin A Armstrong ProTem Judge - Author
64. 26-Jan-2024 FILED: Supplemented Superior Court e-Record with Revised Index of Record
65. 12-Mar-2024 ORDERED: Striking assignment memorandum dated 01/09/2024. FURTHER ORDERED: Striking amended assignment memorandum dated 01/09/2024. Amy M Wood - Author
66. 21-Mar-2024 FILED: Request for Status Update (Appellant Pro Per)
67. 22-Mar-2024 FILED: Motion for Clarification on Order: Opening Brief Already Filed (Appellant Pro Per)
68. 1-Apr-2024 ORDERED: Advising appellant that the 01/09/2024, order simply struck a prematurely issued administrative order that assigned this matter to a panel of the court. The order did not strike the brief appellant's counsel filed pursuant to Anders v. California, 386 U.S. 738 (1967), or appellant's pro per supplemental opening brief. This appeal will be assigned to a panel for consideration in due course. Benjamin A Armstrong ProTem Judge - Author
69. 1-Apr-2024 FILED: Letter, undated, from Appellant pro per to Court, requesting copy of docket
70. 4-Apr-2024 FILED: Letter, 4/4/24, from Court to Appellant enclosing copy of docket
71. 6-May-2024 FILED: Motion for New Counsel or Substitution and Withdrawal (Appellant Pro Per)
72. 14-May-2024 ORDERED: Motion for New Counsel or Substitution and Withdrawal (Appellant Pro Per) = DENIED. Benjamin A Armstrong ProTem Judge - Author
73. 20-May-2024 FILED: Motion to Preclude Appellee's Answering Brief as Untimely, and for a Decision on Appellant's Opening Brief, Filed 01/05/2024 (Appellant Pro Per)
74. 23-May-2024 ORDERED: Striking the opening briefs filed on 11/01/2023, and 01/05/2024. FURTHER IS ORDERED: Directing appellant's counsel to file an opening brief setting forth any non-frivolous issues, including, but not necessarily limited to, the issues stated above, together with argument and applicable authority, on or before 07/03/2024. The parties shall then follow the briefing schedule set forth in Arizona Rule of Criminal Procedure 31.13(a). Hon David B Gass - Author
75. 28-May-2024 FILED: Certificate of Service [Re: Appellant's written response to Sheri Lauritano's 12/21/2023 letter refusing to provide his Grand Jury transcript, police reports and C.D. of Court Records.] (Appellant Pro Per)
76. 29-May-2024 ORDERED: Motion to Preclude Appellee's Answering Brief as Untimely, and for a Decision on Appellant's Opening Brief, Filed 01/05/2024 (Appellant Pro Per) = DENIED. Benjamin A Armstrong ProTem Judge - Author
77. 31-May-2024 ORDERED: = TAKING NO ACTION regarding the certificate of service. Benjamin A Armstrong ProTem Judge - Author
78. 3-Jun-2024 FILED: Appellant's Motion for an Appointment of New Appellant Counsel, and for an Extension of Time to File Opening Brief; Certificate of Service (Appellant Pro Per)
79. 10-Jun-2024 FILED: Motion for Reconsideration; Certificate of Service (Appellant Pro Per)
80. 10-Jun-2024 FILED: Certificate of Service re: Letter to Counsel supplementing grounds for relief to be included in opening brief
81. 12-Jun-2024 ORDERED: Appellant's Motion for an Appointment of New Appellant Counsel (Appellant Pro Per) = DENIED. FURTHER ORDERED: Denying all other relief sought in the motion. Benjamin A Armstrong ProTem Judge - Author
82. 17-Jun-2024 ORDERED: Motion for Reconsideration (Appellant Pro Per) = DENIED. Hon David B Gass - Author
83. 24-Jun-2024 FILED: Certificate of Service re: Letter to Counsel Supplementing Info to be Included in Opening Brief; Also Requesting Grand Jury transcript; Police Reports and Photos
84. 24-Jun-2024 FILED: Letter, 6/18/24, from Appellant Pro Per to Court, requesting copy of docket
85. 25-Jun-2024 FILED: Motion for Reconsideration and Request for a Change of Judge Pro Tempore (Appellant Pro Per)
86. 26-Jun-2024 FILED: Letter, 6/25/24, from Court to Appellant, enclosing copy of docket
87. 28-Jun-2024 FILED: Appellant's Opening Brief; Appellant's Opening Brief Certificate of Compliance; Appellant's Opening Brief Certificate of Service (Appellant)

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88. 1-Jul-2024 ORDERED: Motion for Reconsideration and Request for a Change of Judge Pro Tempore (Appellant Pro Per) = DENIED. Hon David B Gass - Author
89. 2-Jul-2024 ORDERED: Directing the clerk of this court to send a copy of the 07/01/2024, order denying reconsideration to appellant personally. Benjamin A Armstrong ProTem Judge - Author
90. 10-Jul-2024 FILED: Notice of Appearance; Certificate of Service (Appellee)
91. 19-Jul-2024 FILED: Letter, 6/15/24, from Appellant to Court, requesting copy of docket
92. 30-Jul-2024 FILED: Letter, 7/30/24, from Court to Appellant, enclosing copy of docket
93. 2-Aug-2024 FILED: Motion to Clarify Status of Opening Brief Due on July 03, 2024 (Appellant Pro Per)
94. 5-Aug-2024 FILED: Motion to Stay Opening Brief [DKT 87] filed June 28, 2024, due to Appellant not being Served a Copy by Counsel Sheri Lauritano (Appellant Pro Per)
95. 7-Aug-2024 FILED: Appellee's Answering Brief; Certificate of Compliance; Certificate of Service (Appellee)
96. 12-Aug-2024 FILED: Certificate of Service re: Letter to Counsel regarding her Failure to Raise Lack of Reasonable Suspicion in new Opening Brief
97. 12-Aug-2024 FILED: Appellant's Reply Brief; Appellant's Reply Brief Certificate of Compliance; Appellant's Reply Brief Certificate of Service (Appellant)
98. 12-Aug-2024 FILED: Letter, dated 08/12/2024, to Appellant from Counsel re: Setting forth briefs sent to Appellant (Appellant)
99. 12-Aug-2024 ORDERED: Clarifying the status of this appeal as indicated above (See Order).Regarding the motion to stay, appellant is represented by counsel on appeal and has no right to hybrid representation. State v. Dixon, 226 Ariz. 545, 553, ¶ 39 (2011). Appellant may not file motions while represented by counsel. Therefore, FURTHER ORDERED: Denying the motion to stay. FURTHER ORDERED: Directing appellant's counsel, if she has not already done so, to provide appellant a copy of the opening brief filed 06/28/2024. Benjamin A Armstrong ProTem Judge - Author
100. 13-Aug-2024 FILED: Letter, 8/13/24, from Court to Appellant, enclosing copy of docket
101. 26-Aug-2024 FILED: Motion for Leave to File a Pro Per Sur-reply (Appellant Pro Per)
102. 4-Sep-2024 ORDERED: Motion for Leave to File a Pro Per Sur-reply (Appellant Pro Per) = DENIED. Benjamin A Armstrong ProTem Judge - Author