Arizona Supreme Court

Criminal Post Conviction

CR-22-0272-PC — **STATE OF ARIZONA v DAVID SCOTT DETRICH**

Appellate Case Information

Case Filed: 17-Nov-2022

Case Closed:

Dept/Composition

Side 1. STATE OF ARIZONA, Plaintiff

(Litigant Group) STATE OF ARIZONA

- **State of Arizona, Respondent**

Attorneys for: Plaintiff

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Side 2. DAVID SCOTT DETRICH, Defendant

(Litigant Group) DAVID SCOTT DETRICH

- **David Scott Detrich, Petitioner**

Attorneys for: Defendant

Amy Armstrong, Esq. (AZ Bar No. 22795)

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CASE STATUS

Aug 2, 2024.....Decision Rendered Nov 17, 2022....**Pending**

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
PIM CR-029267			Renee T Bennett, Judge on PC		

CASE DECISION

02-Aug-2024 ORDER

* Per Curiam

On September 2, 2022, the superior court summarily dismissed Petitioner's successive petition for post-conviction relief, which alleged (1) his conviction or sentence was obtained in violations of the United States or Arizona constitution

Filed: **02-Aug-2024** Mandate:

Decision Disposition
Relief Denied

Ann Timmer

19 PROCEEDING ENTRIES

1.	17-Nov-2022	FILED: Motion for Procedural Order for Extension of Word Limit; Certificate of Service (Petitioner Detrich)
2.	17-Nov-2022	FILED: Petition for Review; Certificate of Service; Certificate of Compliance (Petitioner Detrich)
3.	17-Nov-2022	FILED: Appendices to Petition for Review; Certificate of Service (Petitioner Detrich)
4.	18-Nov-2022	FILED: Supplement to Motion for Procedural Order for Extension of Word Limit; Certificate of Service (Petitioner Detrich)
5.	18-Nov-2022	FILED: Notice of Errata Re: Incomplete Appendix; Certificate of Service (Petitioner Detrich)
6.	18-Nov-2022	FILED: Appendices to Petition for Review; Certificate of Service (Petitioner Detrich)
7.	14-Dec-2022	FILED: The State of Arizona's Response to Petition for Review; Certificate of Service (Respondent)
8.	14-Dec-2022	FILED: Certificate of Compliance; Certificate of Service (Respondent State)
9.	16-Dec-2022	FILED: Unopposed Motion for Procedural Order for Extension of Time to File Reply; Certificate of Service (Petitioner Detrich)

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19 PROCEEDING ENTRIES

10.	21-Dec-2022	An "Unopposed Motion for Procedural Order for Extension of Time to File Reply" (Petitioner Detrich) having been filed on December 16, 2022, IT IS ORDERED granting a first extension of time to file the reply to response to petition for review on or before January 26, 2023. No further extensions of time shall be granted absent extraordinary circumstances. (Tracie K. Lindeman Clerk)
11.	21-Dec-2022	A "Motion for Procedural Order for Extension of Word Limit" (Petitioner Detrich) having been filed with a 17,798 or word count petition for review, and the Clerk of the Court having been authorized by the Supreme Court to enter orders granting or denying requests for extended word count, IT IS ORDERED granting Petitioner's request to exceed the twelve-thousand-word count stated in Arizona Rule of Criminal Procedure Rule 32.16(c)(1) by 5,798 words. The petition for review is filed as of November 17, 2022. (Tracie K. Lindeman Clerk)
12.	25-Jan-2023	FILED: Unopposed Motion for Procedural Order for Extension of Time to File Reply; Certificate of Service (Petitioner Detrich)
13.	25-Jan-2023	An "Unopposed Motion for Procedural Order for Extension of Time to File Reply" (Petitioner Detrich) having been filed on January 25, 2023, IT IS ORDERED granting a 6-day extension of time to file the reply to response to petition for review on or before February 1, 2023. No further extensions of time shall be granted absent extraordinary circumstances. (Tracie K. Lindeman, Clerk)
14.	26-Jan-2023	FILED: Motion for Procedural Order for Expansion of Word Limit; Certificate of Service (Petitioner Detrich)
15.	26-Jan-2023	FILED: Reply to Response to Petition for Review; Certificate of Service; Certificate of Compliance (Petitioner Detrich)
16.	27-Jan-2023	FILED: Notice of Errata [Cited Wrong Rule for Word Count]; Certificate of Service (Petitioner Detrich)
17.	13-Mar-2024	A "Motion for Procedural Order for Expansion of Word Limit" having been filed by Petitioner Detrich with Petitioner's 6,862-word "Reply to Response to Petition for Review" and the Clerk of the Court having been authorized by the Supreme Court to enter orders granting or denying requests for extended word count, IT IS ORDERED consistent with the provisions applicable to briefs in capital cases in Ariz. R. Crim. P. 32.16(c)(1) and (f)(3) that Petitioner's request to file the 6,862-word reply is granted. The "Reply to Response to Petition for Review" is filed as of January 26, 2023. (Tracie K. Lindeman Clerk)

19 PROCEEDING ENTRIES

18. 2-Aug-2024 Per Curiam

On September 2, 2022, the superior court summarily dismissed Petitioner's successive petition for post-conviction relief, which alleged (1) his conviction or sentence was obtained in violations of the United States or Arizona constitution, specifically, the State failed to disclose exculpatory materials in violation of Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150 (1972); (2) newly discovered material facts probably exist and probably would have changed the judgment and sentence; and (3) clear and convincing evidence establishes no reasonable factfinder would find Petitioner guilty beyond a reasonable doubt or that the death penalty would not have been imposed. See Ariz. R. Crim. P. 32.1(a), (e), and (h). Petitioner also requested the superior court order deoxyribonucleic acid ("DNA") testing of certain evidence. See A.R.S. § 13-4240; Ariz. R. Crim. P. 32.17.

The superior court found that many of Petitioner's claims were untimely, precluded, or both, and that all Petitioner's claims failed to state colorable claims for relief or present a material issue of fact or law that would entitle him to relief under Rule 32. The superior court also found that the results of the DNA testing were not favorable to Petitioner, and therefore declined to order an evidentiary hearing. See A.R.S. § 13-4240(J); Ariz. R. Crim. P. 32.17(g).

Specifically, as to all the mitigation claims, the superior court found that Petitioner "has not demonstrated by clear and convincing evidence that the facts underlying the claim would be sufficient to establish the trial court would not have imposed the death penalty." Regarding the mitigating evidence including mental health evidence, the court found that Petitioner "has not presented a colorable claim as to actual innocence or actual innocence of the death penalty. Even if the proffered factual allegations are true, they would not probably have changed the verdicts, aggravating circumstance findings or sentence to death."

This Court reviews the superior court's denial of post-conviction relief for an abuse of discretion. State v. Gutierrez, 229 Ariz. 573, 577 ¶ 19 (2012). It is petitioner's burden to show that the superior court abused its discretion by denying the petition for post-conviction relief. See State v. Poblete, 227 Ariz. 537, 538 ¶ 1 (App. 2011) (holding that petitioner has burden of establishing abuse of discretion on review).

For this Court to find an abuse of discretion, it must find either (1) that the superior court's decision was not supported by the evidence or (2) that its reasons are "clearly untenable, legally incorrect, or amount to a denial of justice." Bogard v. Cannon & Wendt Elec. Co., 221 Ariz. 325, 335–36 ¶ 39 (App. 2009) (quoting Charles I. Friedman, P.C. v. Microsoft Corp., 213 Ariz. 344, 350 (App. 2006)). "Misapplication of law or legal principles constitutes an abuse of discretion." Tobin v. Rea, 231 Ariz. 189, 194 ¶ 14 (2013).

We need not decide whether the superior court's timeliness and preclusion rulings were correct. Whether or not Petitioner's Rule 32.1(a), (e), and (h) claims are untimely under Rule 32.4(b)(3)(A), (D) or precluded under Rule 32.2(a)(3), the record supports the superior court's findings that Petitioner failed to assert a material dispute of fact or law that would entitle him to relief. See Ariz. R. Crim. P. 32.11(a) (court must summarily dismiss petition if it presents no "material issue of fact or law that would entitle the defendant to relief"); Ariz. R. Crim. P. 32.17(g); State v. Krum, 183 Ariz. 288, 292 (1995) ("To obtain an evidentiary hearing, a petitioner must make a colorable showing that the [factual] allegations, if true, would have changed the verdict.").

We have reviewed the record in this matter, the superior court's order denying the petition for post-conviction relief, and the petition for review, response, and reply.

Accordingly,

THE COURT FINDS that Petitioner has not established an abuse of discretion by the superior court.

THE COURT FURTHER FINDS that Petitioner is not entitled to relief under Rule 32.1(a), (e), or (h).

THE COURT FURTHER FINDS that Petitioner is not entitled to an evidentiary hearing or relief under Rule 32.17.

Based on the foregoing,

IT IS ORDERED granting review and denying relief. (Hon. Ann A. Scott Timmer)

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19. 14-Aug-2024 FILED: Motion for Reconsideration; Certificate of Service; Certificate of Compliance (Respondent State)