

**Arizona Supreme Court**  
**Criminal Death Penalty Appeal**

**CR-93-0362-AP**

**STATE OF ARIZONA v JAMES ERIN MCKINNEY**

**Appellate Case Information**

Case Filed: 3-Aug-1993  
 Case Closed: 2-Jul-1996  
 Reinstated x 1: 7-Oct-2016  
 Re-Closed:

**Dept/Composition**

**Side 1. STATE OF ARIZONA, Appellee**

(Litigant Group) STATE OF ARIZONA

- State of Arizona

**Attorneys for: Appellee**

Mark Brnovich, Esq. (AZ Bar No. 14134)  
 Lacey Stover Gard, Esq. (AZ Bar No. 22714)  
 Jon G Anderson, Esq. (AZ Bar No. 005852)  
 Jeffrey L Sparks, Esq. (AZ Bar No. 27536)

**Side 2. JAMES ERIN MCKINNEY, Appellant**

(Litigant Group) JAMES ERIN MCKINNEY

- James Erin McKinney

**Attorneys for: Appellant**

Sharmila Roy, Esq. (AZ Bar No. 10052)

**CASE STATUS**

Oct 7, 2016.....Reinstated Case

| PREDECESSOR CASE (S) | Cause/Charge/Class | Judgment/Sentence | Judge, Role <Comments>             | Trial | Dispo |
|----------------------|--------------------|-------------------|------------------------------------|-------|-------|
| MAR CR1991090926 (B) | 1st Degree Murder  | Death             | Steven Douglas Sheldon, Sentencing |       |       |

**75 PROCEEDING ENTRIES**

- 9-Sep-1993 \*\*\*\*\* Record on Appeal - MCSC: Instruments (2 Parts); MEs; Presentence Report; 3 Orig RTs (3/19/93; 3/30/93; 4/2/93); Exhibits (List; 4 Man Envs - Env No 1 [Pltf Exh No B]; Env No 2 [Def Exh Nos 1-5]; Env No 3 [Pltf Exh Nos 1-2] [Def Exh Nos 3-8]; Env No 4 [Pltf Exh Nos 7, 16, 22-24, 27-28, 29-115, 120, 73B] [sb]
- 13-Sep-1993 1 Orig RT (5/7/93 [Jackson]) [sb]
- 20-Sep-1993 1 Orig RT (7/23/93 [Wentlejewski]) [sb]
- 24-Sep-1993 1 Orig RT (7/16/93) [sb]
- 10-Jan-1994 11 Orig RTs (10/13/92; 10/14/92; 10/15/92; 10/19/92; 10/20/92; 10/21/92; 10/26/92; 10/28/92; 10/29/92; 11/2/92; 11/3/92 [Heins]) [rs]
- 3-Feb-1994 8 Orig RTs (11/4/92; 11/5/92; 11/9/92; 11/10/92; 11/12/92; 3/19/93; 7/19/93; 7/20/93 [Heins]) [sb]
- 9-Feb-1994 5 Orig RTs (7/30/91; 2/28/92; 3/19/92; 8/28/92; 9/18/92 [Heins]) [sb]
- 9-May-1994 1 Orig RT (4/11/91 GJ [Bowling]) RECORD COMPLETE [rs]
- 8-Aug-1994 1 Orig RT (7/1/91 [Stadler]) [sb]
- 29-Aug-1994 2 Orig RTs (5/13/91, 5/29/91, 6/21/91, 8/22/91, 9/12/91, 9/20/91, 10/23/91, 11/18/91, 12/18/91, 1/20/92, 2/20/92, 7/13/92; 2/19/93 [Heins]) [sb]
- 2-Feb-1999 Record returned to MCSC: Exhibits - 4 manila envelopes (Env #1 [List; Pltf Exh No B]; Env #2 [Def Exh Nos 1-5]; Env #3 [Pltf Exh Nos 7, 16, 22-24, 27-73, 73-B, 74-115, 120]; Env #4 [Pltf Exh Nos 1-2; Def Exh Nos 3-8]) [rs]
- 3-Aug-1993 Notice of Appeal [Appellant McKinney] [Judgment filed in MCSC] [sb]
- 28-Sep-1993 Reporter's Motion for Extension of Time for Record on Appeal [Heins, Court Reporter] [sb]
- 30-Sep-1993 ORDERED: granting Penny Heins, Court Reporter, one extension of time to and including the 3rd day of November, 1993, in which to file Reporter's Transcripts in the above-entitled matter. [Dessaint, Clerk] [T 11/3/93] [sb]
- 2-Nov-1993 Reporter's Motion for Extension of Time [2nd Request] [Heins, Court Reporter] [sb]

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16. 5-Nov-1993 ORDERED: granting Penny Heins, Official Court Reporter, a second extension of time to and including the 3rd day of December, 1993, in which to file Reporter's Transcripts in the above-entitled matter. FURTHER ORDERED: that no additional extensions will be granted unless there are exceptional circumstances. [Zlaket] [T 12/3/93] [js]
17. 26-Nov-1993 Reporter's Motion for Extension of Time [3rd Request] [Heins, Court Reporter] [sb]
18. 6-Dec-1993 ORDERED: granting Penny Heins, Official Court Reporter, a third extension of time to and including the 3rd day of January, 1994, in which to file Reporter's Transcripts in the above-entitled matter. FURTHER ORDERED: that no additional extensions will be granted unless there are exceptional circumstances. [Martone] [sb]
19. 5-Jan-1994 Reporter's Motion for Extension of Time [4th Request] [Heins, Court Reporter] [T 1/14/94] [sb]
20. 10-Jan-1994 Penny Heins, Official Court Reporter, having filed a fourth Reporter's Motion For Extension Of Time to file transcripts in this matter, citing as exceptional circumstances, illness, an obligation to prepare transcripts in other appeals, and her daily responsibilities in the trial court, ORDERED: granting Penny Heins, Official Court Reporter, a fourth extension of time to and including the 3rd day of February, 1994, in which to file Reporter's Transcripts in the above entitled matter. No further extensions will be granted. [Zlaket] [T 2/3/94] [sb]
21. 16-Feb-1994 Motion to Withdraw [Appellant McKinney] [T 2/28/94] [sb]
22. 18-Mar-1994 Counsel for Appellant having filed a Motion To Withdraw, no objection having been filed by Appellee, and it appearing that the Maricopa County Public Defender's Office would have a conflict of interest if the motion were not granted, ORDERED: granting counsel's Motion To Withdraw. FURTHER ORDERED: remanding this matter to the Maricopa County Superior Court for the sole purpose of appointment of appellate counsel. On the Court's own motion, ORDERED: that Court Reporters Sandra Bowling, Laura Ashbrook, Barbara Jackson, and Penny Heins shall prepare and file transcripts of the proceedings of the dates indicated below and furnish copies to all counsel on or before April 22, 1994: April 11, 1991 (Grand Jury) (Bowling); March 30, April 2, 1993 (Ashbrook); May 7, 1993 (Jackson); June 20, 1993 (Heins) [Moeller] [T 4/22/94] [sb]
23. 26-Apr-1994 Reporter's Motion for Extension of Time to File Transcript Requested [1st Request] [Bowling, Court Reporter] [js]
24. 25-Apr-1994 LETTER: Transcript dated 6/20/93 is actually 7/20/93 - transcript is already filed [Heins, Court Reporter] [js]
25. 27-Apr-1994 ORDERED: granting Sandra Bowling, Court Reporter, a first extension of time to file the transcript dated April 11, 1991, to and including May 6, 1994. [Kempley, Chief Deputy Clerk] [T 5/6/94] [js]
26. 12-May-1994 Notice of Withdrawal of Trial Counsel [Scott Allen/Alex Gonzalez, trial attys for Appellant McKinney] [sb]
27. 15-Jun-1994 MCSC ME dated 5/25/94 - Appointing Atty Neal Bassett to represent Appellant McKinney on Appeal [sb]
28. 24-Jun-1994 On the Court's own motion, ORDERED: assigning this matter for a pre-submission telephonic conference between Staff Attorney Lloyd Anderson and appellate counsel on Friday, July 22, 1994, beginning at 10:00 a.m. Counsel for Appellant shall make all arrangements for the conference call. Prior to the conference, counsel shall review the provisions of Rules 31.8 and 31.13, Ariz. R. Crim. P., 17 A.R.S. Matters to be discussed during the conference include the record on appeal and timetables for filing briefs. [Zlaket] [jl]
29. 11-Jul-1994 Motion to Supplement Record (Transcripts, Tape Recording of Supreme Court Argument) [Appellant McKinney] [T 7/20/94] [sb]
30. 11-Jul-1994 Motion to Supplement Record (Co-Defendant's Record) [Appellant McKinney] [T 7/20/94] [sb]
31. 25-Jul-1994 Appellant having filed a Motion To Supplement Record (Transcripts, Tape Recording of Supreme Court Argument) and a Motion To Supplement Record (Co-defendant's Record); the Court having considered the motions, having been advised that Appellee has no objections to the motions, and having been advised further that the records of this Court show Hedlund v. Superior Court, 173 Ariz. 143, 840 P.2d 1008 (1992), was not orally argued in this Court and that a duplicate set of instruments on appeal was filed in State v. Hedlund, No. CR-93-0377-AP, ORDERED: granting Appellant's Motion To Supplement Record (Transcripts, Tape Recording of Supreme Court Argument) in part. Court Reporters Penny Heins and Jennifer Stadler shall prepare and file in this Court transcripts of the proceedings of the dates indicated below and shall furnish copies directly to counsel on or before August 22, 1994: May 13, May 29, June 21, August 22, September 12, September 20, October 23, November 18, and December 18, 1991; January 20, February 20, and July 13, 1992; February 19, 1993 (Heins); July 1, 1991 (Stadler). FURTHER ORDERED: granting Appellant's Motion To Supplement Record (Co-defendant's Record) in part. The Clerk of this Court is directed to release the copy of the instruments on appeal in State v. Hedlund, Items numbered 1-262, filed in Division One of the Court of Appeals on September 20, 1993 and bearing that court's file stamp "CR 93-511," to Attorney Neal W. Bassett for use in this appeal. FURTHER ORDERED: that Appellant's Opening Brief shall be filed on or before October 20, 1994, that Appellee's Answering Brief shall be filed on or before December 19, 1994, and that Appellant's Reply Brief shall be filed on or before January 13, 1995. [Moeller] [T 8/22/94] [sb]
32. 18-Oct-1994 Motion for Extension of Time to File Opening Brief [Appellant McKinney] [T 11/4/94] [sb]

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33. 7-Nov-1994 Appellant having filed a Motion For Extension Of Time To File Opening Brief, no response having been filed, but Appellant's counsel having advised the Court that Appellee takes no position on the motion, and cause appearing, ORDERED: granting an extension of time to file Appellant's Opening Brief to and including December 2, 1994. No further extensions of time to file the Opening Brief will be granted. FURTHER ORDERED: that Appellee shall file the Answering Brief within 60 days after the filing of the Opening Brief and that Appellant shall file any Reply Brief within 25 days thereafter. [Moeller] [T 12/2/94] [sb]
34. 6-Dec-1994 APPELLANT'S OPENING BRIEF [McKinney] [sb]
35. 6-Feb-1995 APPELLEE'S ANSWERING BRIEF [State] [ct]
36. 6-Mar-1995 Motion for Extension of Time to File Reply Brief [Appellant McKinney] [T 3/24/95] [sb]
37. 24-Mar-1995 Appellant's first "Motion for Extension of Time to File Reply Brief" having been filed, ORDERED: granting a first extension of time to file appellant's reply brief to and including April 3, 1995. [Dessaint, Clerk] [sb]
38. 10-Apr-1995 Motion to Accept Late Filing of Reply Brief [Appellant McKinney] [Brief Rec'd] [sb]
39. 11-Apr-1995 Appellant's first "Motion to Accept Late Filing of Reply Brief" having been filed with sufficient cause shown, ORDERED: granting the motion to accept filing of Appellant's reply brief. The reply brief, submitted with the motion to accept late filing, shall be filed as of April 10, 1995. [Dessaint, Clerk] [sb]
40. 10-Apr-1995 APPELLANT'S REPLY BRIEF [McKinney] AT ISSUE [sb]
41. 11-Apr-1995 ORDERED: The above-entitled and numbered matter will be argued to the Court on the next available hearing date. Counsel shall be advised of the date and time of oral argument at such time as the hearing date is determined. [Dessaint, Clerk] [sb]
42. 12-Sep-1995 NOTICE OF ORAL ARGUMENT - Set for Thursday, October 26, 1995, at 9:30 A.M. [Consolidated for OA with CR-93-0377-AP] Time allotted for OA: 40 minutes for defendants on both cases; 30 minutes for the state on both cases] [ls]
43. 20-Oct-1995 Motion for Supplemental Authority [Appellee State] [ct]
44. 26-Oct-1995 ORAL ARGUMENT - Submitted for decision en banc [Attorneys who argued: Mona S. Peugh-Baskin; Neal W. Bassett] [lk]
45. 16-May-1996 OPINION - Convictions and Sentences Affirmed in all Respects [Feldman]; Dissenting in Part [Martone] Opinion Distribution List [T 5-Jun-1996] [rs]
46. 28-May-1996 Motion for Reconsideration [Appellant McKinney] [ct]
47. 2-Jul-1996 ORDERED: Motion for Reconsideration = DENIED.  
FURTHER ORDERED: The mandate is stayed pursuant to Rule 31.23(b)(1), Arizona Rules of Criminal Procedure. Justice Jones and Justice Corcoran (retired) did not participate in the determination of this matter. [ct]  
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48. 2-Feb-1999 MANDATE (Affirming the Judgment of Convictions and Sentences, including the Sentences of death)  
Issued Mandate and copy of Opinion, together with record, to trial court [rs]
49. 2-Feb-1999 Upon the Court's own motion, ORDERED: that Jamie McAlister is appointed to represent James Erin McKinney in post-conviction proceedings pursuant to A.R.S. Sec. 13-4041 and Rule 6.8(d), Ariz. R. Crim. P. FURTHER ORDERED: that Jess Lorona is Appointed as associate counsel pursuant to Rule 6.8(d). The superior court and the state shall send copies of orders and pleadings in the post- conviction proceedings to associate counsel as well as lead counsel. FURTHER ORDERED that lead counsel and associate counsel each shall be compensated at the rate of \$100.00 per hour plus reasonable costs incurred in the representation. If the attorneys' work hours, combined, are over two hundred hours, the superior court shall review and approve additional reasonable fees and costs pursuant to A.R.S. Sec. 13-4041(H). Counsel shall direct request for the appointment of investigators and experts to the superior court pursuant to A.R.S. Sec. 13-4013(B) and Sec. 13-4041(J). [Jones] [rs]
50. 2-Feb-1999 Notice for Post-Conviction Relief sent to Michael K. Jeanes, Clerk, MCSC [rs]
51. 16-Apr-1999 Motion to Withdraw Mandate [Appellant McKinney] [T 05/05/99] [rs]

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52. 25-May-1999 The Court has considered Appellant's Motion to Withdraw Mandate. Regarding the concerns expressed about funding for post-conviction relief proceedings, the Court finds that such concerns should be addressed first to the Maricopa County Superior Court. Appellant and his counsel can request the superior court to approve additional reasonable fees and costs pursuant to A.R.S. Sec. 13-4041(H), request it to consider a case management plan and pre-approve additional fees, on a provisional basis, and/or request the superior court, or the Office of Court Appointed Counsel, to authorize interim payments of compensation. The Court also notes that Sec. 13-4041(I) provides that the county can obtain reimbursement from the state for fifty per cent of the amount paid to fund a capital post-conviction relief proceeding. Regarding the concern expressed about the uncertainty surrounding the statute of limitations for federal habeas corpus petitions, the Court finds that such uncertainty is not sufficient basis for withdrawing the Mandate in this case. Therefore, ORDERED: that the Motion to Withdraw Mandate is denied. Justice Feldman recused himself and did not participate in this matter. [Zlaket] [rs]
53. 9-Aug-1999 Notice of Appearance [Monica D. Beerling, Esq., counsel for Appellee State] [jt]
54. 23-Apr-2003 WARRANT OF EXECUTION - Execution set for Wednesday, June 11, 2003 [kab]  
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55. 28-Apr-2003 TELEPHONIC NOTIFICATION by USDC: Stay of Execution pending HC [CV-03-0774-PHX-SMM] Faxed copy of Stay of Execution received 4/28/03 [McNamee, USDC] [Certified copy of Order for Stay of Execution received 4/30/03] [kab]
56. 24-Jan-2005 FILED: Copy of USDC Order dated 1/21/05 - ORDERED: That the Clerk of the Arizona Supreme Court transmit a certified copy of Petitioner's entire state court record (Arizona Supreme Court No. CR-93-0362-AP; Maricopa County Superior Court No. CR1991-090926; and any related Rule 32 proceedings) excluding trial exhibits. [Hon David G. Campbell]
57. 26-Jan-2005 Pursuant to the United States District Court for the District of Arizona's order dated January 21, 2005, IT IS ORDERED releasing to the Clerk of the United States District Court for the District of Arizona, certified copies of the Arizona Supreme Court records on file and docketed in the matter of JAMES ERIN MCKINNEY, including copies of Appellant's Opening Brief, Appellee's Answering Brief and Appellant's Reply Brief.  
IT IS FURTHER ORDERED releasing the following Maricopa County Superior Court Record in the possession of the Arizona Supreme Court in the above-entitled matter to the Clerk of the United States District Court for the District of Arizona, Phoenix, Arizona, in  
CV-03-774-PHX-DGC, for use in relation to the Petition for Habeas Corpus, filed in that Court:  
  
Arizona Supreme Court No. CR-93-0362-AP  
Maricopa County Superior Court No. CR-91-90926  
Instruments (2 parts)  
Minute Entries (1 part)  
Pre-Sentence Report (1 manila envelope)  
Original Reporters Transcripts - 34 Vols  
  
Arizona Supreme Court No. CR-02-0038-PC  
Maricopa County Superior Court No. CR-91-90926  
Instruments (2 parts)  
Minutes (1 part)  
  
IT IS FURTHER ORDERED that the records in the above referenced cases be returned to this Court upon completion of the Petition for Writ of Habeas Corpus matter in the federal courts. [Hon Rebecca White Berch]
58. 26-Jan-2005 CERTIFICATION of record to USDC  
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59. 7-Oct-2016 FILED: Motion to Conduct New Independent Review of Death Sentence; Certificate of Service (Appellee McKinney)  
-----CASE REINSTATED-----
60. 11-Oct-2016 FILED: (Copy of) USDC Order Granting Writ of Habeas Corpus (Hon. David G Campbell)
61. 20-Oct-2016 FILED: Appellant's Motion for Determination of Counsel; Certificate of Service (Appellant McKinney)
62. 24-Oct-2016 FILED: Appellant's Supplement to Motion for Determination of Counsel; Certificate of Service; Exhibit A; Exhibit B (Appellant McKinney)

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63. 24-Oct-2016 Upon considering Appellant's Motion for Determination of Counsel,  
  
IT IS ORDERED that the motion is granted.  
  
IT IS FURTHER ORDERED appointing David Goldberg to represent James McKinney in proceedings in this Court. The Maricopa County Office of Public Defense Services shall pay Mr. Goldberg at the rate it determines is appropriate.  
  
IT IS FURTHER ORDERED that no later than December 27, 2016, Appellant shall file a response to the State's Motion to Conduct New Independent Review of Death Sentence. No extension will be granted absent extraordinary circumstances. (Hon. John Pelander)
64. 28-Oct-2016 FILED: Notice of Appearance of Appellant's Counsel (Attorney Goldberg for Appellant McKinney); Certificate of Service (Appellant McKinney)
65. 28-Oct-2016 FILED: (Copy of) ASC Order Appointing David Goldberg as Counsel for Appellant McKinney (Appellant McKinney)
66. 10-Nov-2016 FILED: Motion to Withdraw as Appellant's Counsel and Appoint Qualified Capital Defense Counsel; Certificate of Service (Appellant McKinney)
67. 14-Nov-2016 Upon considering the Motion to Withdraw as Appellant's Counsel and Appoint Qualified Capital Defense Counsel,  
  
IT IS ORDERED granting the motion and allowing David Goldberg to withdraw as Appellant's counsel.  
  
IT IS FURTHER ORDERED appointing Sharmila Roy to represent James McKinney in proceedings in this Court. The Maricopa County Office of Public Defense Services shall pay Ms. Roy at the rate it determines is appropriate.  
  
IT IS FURTHER ORDERED that no later than January 13, 2017, Appellant shall file a response to the State's Motion to Conduct New Independent Review of Death Sentence. No extension will be granted absent extraordinary circumstances. (Hon. Ann A. Scott Timmer)
68. 16-Dec-2016 FILED: Motion for Determination of Counsel (AND Motion for Extension of Time to File Response to State's Motion); Certificate of Service; Exhibit A; Exhibit B (Appellant McKinney)
69. 19-Dec-2016 FILED: Response to Motion to Determine Counsel (Capital Case); Certificate of Service (Appellant's Counsel Roy)
70. 19-Dec-2016 FILED: Notice of Appointment (Appellant's Counsel Roy)
71. 21-Dec-2016 Upon considering the Motion for Determination of Counsel, and the Response filed by present counsel,  
  
IT IS ORDERED denying the motion for substitution of counsel.  
  
IT IS FURTHER ORDERED granting an extension to January 27, 2017 to file a response to the State's Motion to Conduct New Independent Review of Death Sentence. (Hon. Clint Bolick)
72. 27-Jan-2017 FILED: Response to State's Motion for New Independent Review (Oral Argument Requested) (Capital Case); Certificate of Service (Appellant McKinney)
73. 30-Jan-2017 FILED: Motion for Extension of Time to File Reply to Appellant's Response to State's Motion for New Independent Review; Certificate of Service (Appellee State)
74. 30-Jan-2017 FILED: Motion for Leave to Exceed Page Limitation (Capital Case); Certificate of Service (Appellant McKinney)
75. 31-Jan-2017 On October 7, 2016, Appellee State of Arizona filed a "Motion to Conduct New Independent Review of Death Sentence." Appellant McKinney filed a 26 page "Response to State's Motion for New Independent Review," and a "Motion for Leave to Exceed Page Limitation." Appellee State filed a "Motion for Extension of Time to File Reply to Appellant's Response to State's Motion for New Independent Review," which includes a request to exceed the page limit on the Reply by 20 pages. After consideration,  
  
IT IS ORDERED granting extended pagination of 16 pages for the Response and 20 pages for the Reply, for a total of 25 pages, pursuant to Rule 35.1(b), Arizona Rules of Criminal Procedure.  
  
IT IS FURTHER ORDERED granting an extension of time to file the Reply, on or before February 13, 2017. No further extensions of time shall be granted absent extraordinary circumstances. (Janet Johnson, Clerk)