

Arizona Supreme Court
Criminal Petition for Review - Special Action

CR-22-0227-PR

STATE OF ARIZONA v HON. COOPER/BASSETT

Appellate Case Information

Case Filed: 9-Sep-2022
Case Closed:

Dept/Composition

En Banc

Hon. Robert Brutinel
Hon. Ann A. Scott Timmer
Hon. Clint Bolick
Hon. John R Lopez
Hon. James P Beene
Hon. Kathryn H. King
Hon. Rebecca White Berch

Side 1. STATE OF ARIZONA ex rel. RACHEL H. MITCHELL, Maricopa County Attorney, Petitioner

(Litigant Group) STATE OF ARIZONA ex rel. RACHEL H. MITCHELL, Maricopa County Attorney

- State of Arizona
- Rachel H Mitchell, Maricopa County Attorney's Office

Attorneys for: Petitioner

Rachel H Mitchell, Esq. (AZ Bar No. 14560)
Julie A Done, Esq. (AZ Bar No. 24370)
Jessi C Wade, Esq. (AZ Bar No. 21375)

Side 2. THE HONORABLE KATHERINE COOPER, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA, Respondent Judge

(Litigant Group) THE HONORABLE KATHERINE COOPER, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA

- Hon. Katherine Cooper

Side 3. LONNIE ALLEN BASSETT, Real Party in Interest

(Litigant Group) LONNIE ALLEN BASSETT

- Lonnie Allen Bassett

Attorneys for: Real Party in Interest

Amy E Bain, Esq. (AZ Bar No. 15092)

Side 4. ARIZONA ATTORNEY GENERAL, Amicus Curiae

(Litigant Group) ARIZONA ATTORNEY GENERAL

- Arizona Attorney General's Office

Attorneys for: Amicus Curiae

Mark Brnovich, Esq. (AZ Bar No. 14134)
Linley Wilson, Esq. (AZ Bar No. 27040)
Eliza Ybarra, Esq. (AZ Bar No. 22395)

Side 5. ARIZONA JUSTICE PROJECT, Amicus Curiae

(Litigant Group) ARIZONA JUSTICE PROJECT

- Arizona Justice Project

Attorneys for: Amicus Curiae

Karen Smith, Esq. (AZ Bar No. 33494)
Randal Boyd McDonald, Esq. (AZ Bar No. 32008)

Side 6. MARICOPA COUNTY PUBLIC DEFENDERS, Amicus Curiae

(Litigant Group) MARICOPA COUNTY PUBLIC DEFENDER'S OFFICE

- Maricopa County Public Defender's Office

Attorneys for: Amicus Curiae

Gary M Kula, Esq. (AZ Bar No. 12507)
Kevin D Heade, Esq. (AZ Bar No. 29909)

Side 7. JUVENILE LAW CENTER, CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH, AND HUMAN RIGHTS FOR KIDS, Amicus Curiae

(Litigant Group) JUVENILE LAW CENTER, CAMPAIGN FOR THE FAIR SENTENCING OF YOUTH, AND HUMAN RIGHTS FOR KIDS

- Juvenile Law Center
- Campaign for the Fair Sentencing of Youth
- Human Rights for Kids

Attorneys for: Amicus Curiae

Andrew Fox, Esq. (AZ Bar No. 34581)
Marsha Levick, Esq. (AZ Bar No. marshalevick)

Side 8. KALEEM NAZEEM, LOUIS GIBSON, SHAKUR ABDULLAH, AND GREG GREENWOOD, Amicus Curiae

(Litigant Group) KALEEM NAZEEM, LOUIS GIBSON, SHAKUR ABDULLAH, AND GREG GREENWOOD

- Kaleem Nazeem
- Louis Gibson
- Shakur Abdullah
- Greg Greenwood

Attorneys for: Amicus Curiae

Craig M Waugh, Esq. (AZ Bar No. 26524)
Laura E Sixkiller, Esq. (AZ Bar No. 22014)

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CASE STATUS

Sep 18, 2023.....Decision Rendered	Jan 10, 2023.....Submitted
Nov 1, 2022.....At Issue	Nov 1, 2022.....Oral Argument Granted
Sep 9, 2022.....Pending	

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
1 CA	1 CA-SA 22-0152				
↪ MAR	CR2004-005097		Katherine Cooper, Authoring Judge of Order Comments: (none)		

CASE DECISION

18-Sep-2023 OPINION

* Because there has not been a significant change in the law that, if applied to Bassett's case, would probably overturn his sentence, we reverse the trial court's order finding that Bassett presented a colorable claim for relief under Rule 32.1(g). We va

Filed: **18-Sep-2023** Mandate:

Decision Disposition
Reversed Vacated

Kathryn King.....Author
Robert Brutinel.....Concur
Ann Timmer.....Concur
Clint Bolick.....Concur
John Lopez.....Concur
James Beene.....Concur
Rebecca Berch.....Concur

CITE Pacific Reporter: 535 P.3d 3

54 PROCEEDING ENTRIES

- 9-Sep-2022 FILED: State's Petition for Review; Certificate of Service; Certificate of Compliance; Order Declining Special Action Jurisdiction; Ruling (MCSC) 5/2/2022 (Petitioner State)
- 9-Sep-2022 FILED: Motion for Procedural Order: Unopposed Motion to Exceed Word Limit for Petition for Review (6,279 Word PR Filed); Certificate of Service (Petitioner State)
- 9-Sep-2022 FILED: State's Motion to Stay Postconviction Proceedings; Certificate of Service (Petitioner State)
- 13-Sep-2022 FILED: Record from CofA: Electronic Record
- 14-Sep-2022 On September 9, 2022, Petitioner State of Arizona filed a "Motion for Procedural Order: Unopposed Motion to Exceed Word Limit for Petition for Review" with a 6,279-word count Petition for Review and "State's Motion to Stay Postconviction Proceedings."

The Clerk of the Supreme Court having been authorized by the Supreme Court to order any party to file a response to a motion to stay at the direction of a Supreme Court staff attorney,

IT IS ORDERED that Real Party in Interest Bassett shall file a response to the motion for stay on or before September 26, 2022.

IT IS FURTHER ORDERED no extensions of time for the filing of the response shall be granted absent extraordinary circumstances.

IT IS FURTHER ORDERED granting Petitioner's request to exceed the thirty-five-hundred-word count stated in Rules 1.6(b)(1)(E) and 31.21(g)(2), Arizona Rules of Criminal Procedure by 2,779 words. The petition for review is filed as of September 9, 2022. (Tracie K. Lindeman Clerk)
- 26-Sep-2022 FILED: Response in Opposition to the State's Motion to Stay Post-Conviction Proceedings; Certificate of Service; Attachment A - Minute Entry Dated 06/15/2009; Attachment C - Court of Appeals Order Dated 09/13/2022 (Real Party Bassett)
- 26-Sep-2022 FILED: Attachment D - Minute Entry Dated 05/09/2014; Attachment B - Minute Entry Dated 07/22/2019 (Real Party Bassett)

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8. 27-Sep-2022 FILED: Reply to Response to Motion for Procedural Order: Reply to Bassett's Response to State's Motion to Stay Postconviction Proceedings; Certificate of Service (Petitioner State)
9. 30-Sep-2022 On September 9, 2022, the Petitioner State of Arizona (the "State") filed a Petition for Review that the Court, in its discretion, has elected to treat as a Petition for Review of a Special Action Decision of the Court of Appeals. In conjunction with its petition, the State filed State's Motion to Stay Postconviction Proceedings.
- On September 14, 2022, the Court ordered that the Real Party in Interest Lonnie Allen Bassett ("Defendant") file a response to the motion for stay. On September 26, 2022, Bassett filed a Response in Opposition to the State's Motion to Stay Post-Conviction Proceedings.
- On review of the superior court docket staff advises the Court that currently there is no date pending for the hearing ordered by the superior court on April 28, 2022. Therefore, upon consideration, and GOOD CAUSE APPEARING,
- IT IS ORDERED denying without prejudice the State's Motion to Stay Postconviction Proceedings. In the event an evidentiary hearing date is set, the State may refile its motion.
- On the Court's own motion,
- IT IS FURTHER ORDERED setting an expedited briefing schedule on the State's Petition for Review of a Special Action Decision of the Court of Appeals.
- IT IS FURTHER ORDERED that Defendant's response, if any, to the Petition for Review, shall be filed on or before October 11, 2022, at 3:00 p.m., not to exceed 4,850 words.
- IT IS FURTHER ORDERED that Petitioner may file a reply to Defendant's response on or before October 14, 2022, at 3:00 p.m., not to exceed 2,400 words.
- IT IS FURTHER ORDERED that any amicus briefs to the Petition for Review pursuant to ARCAP 16(b)(2) and 16(d)(1) shall be filed on or before October 18, 2022, at 2:00 p.m., and must comply with ARCAP 23(g).
- IT IS FURTHER ORDERED that any responses to amicus briefs may be filed on or before October 24, 2022, at 12:00 p.m., and must comply with ARCAP 23(g). Each party may file a single response to amicus briefs.
- IT IS FURTHER ORDERED that in addition to filing with the Clerk of the Supreme Court (with filing and service through AZTurboCourt) all filings are also to be sent by email to all the parties and court staff when filed. Court staff will advise the parties how to submit copies by email.
- The Court anticipates conferencing the Petition for Review of a Special Action Decision of the Court of Appeals in this case (and separately conferencing CR-22-0156-PR (see separate order in that case) and CR-22-0185-PR) on November 1, 2022.(Hon. Clint Bolick)
10. 7-Oct-2022 FILED: Response to Petition for Review; Certificate of Service; Certificate of Compliance (Real Party Bassett)
11. 14-Oct-2022 FILED: State 's Petition for Review Reply; Certificate of Service; Certificate of Compliance (Petitioner State)
12. 17-Oct-2022 FILED: Brief of Amicus Curiae Arizona Attorney General in Support of the State of Arizona; Certificate of Service; Certificate of Compliance (Amicus Arizona Attorney General)
13. 18-Oct-2022 FILED: Brief of Amicus Curiae Arizona Justice Project in Support of Real Party in Interest Lonnie Bassett; Certificate of Service; Certificate of Compliance (Amicus AJP)
14. 18-Oct-2022 FILED: Motion for Leave to File Amicus Curiae Brief of the Arizona Justice Project in Support of Real Party in Interest Lonnie Bassett (Amicus AJP)
15. 19-Oct-2022 A "Motion for Leave to File Amicus Curiae Brief of the Arizona Justice Project in Support of Real Party in Interest Lonnie Bassett" (Amicus AJP) and the brief of amicus curiae were filed on (mm dd, year). After consideration,
- IT IS ORDERED the "Motion for Leave to File Amicus Curiae Brief of the Arizona Justice Project in Support of Real Party in Interest Lonnie Bassett" is granted. The brief shall be filed as of October 18, 2022. (Tracie K. Lindeman Clerk)
16. 24-Oct-2022 FILED: State's Response to Brief of Amicus Curiae Arizona Justice Project; Certificate of Service; Certificate of Compliance (Petitioner State)

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17. 1-Nov-2022 ORDERED: State's Petition for Review = GRANTED.
- FURTHER ORDERED: The case shall be set for oral argument.
- FURTHER ORDERED: The parties may file simultaneous supplemental briefs, not to exceed 20 pages in length, no later than 20 days from the date of this Court's Minute Letter. Any amicus briefs are due on or before December 9, 2022 and any responses to amicus briefs are due on or before December 30, 2022. Any amicus briefs or responses may not exceed 20 pages in length.
- Justice Montgomery did not participate in the determination of this matter.
18. 2-Nov-2022 FILED: Record from CofA: Remaining Record
19. 18-Nov-2022 FILED: Real Party in Interest Supplemental Briefing; Certificate of Service; Certificate of Compliance (Real Party Bassett)
20. 21-Nov-2022 FILED: State's Supplemental Brief; Certificate of Service; Certificate of Compliance (Petitioner State)
21. 23-Nov-2022 NOTICE OF ORAL ARGUMENT: Set for Tuesday, January 10, 2023 at 10:15 A.M. [twenty (20) minutes per side]
22. 23-Nov-2022 FILED: Notice of Acknowledgment of Oral Argument (Amy E. Bain to Argue) (Real Party Bassett) (Real Party in Interest)
23. 23-Nov-2022 FILED: Notice of Acknowledgment of Oral Argument (Julie A. Doane to Argue) (Petitioner State) (Petitioner)
24. 5-Dec-2022 Justice Montgomery is recused and will not participate in the above captioned matter. Therefore, pursuant to Article 6, Section 3 of the Arizona Constitution,
- IT IS ORDERED that the Honorable Rebecca White Berch, Justice (Retired) of the Arizona Supreme Court is designated to sit on the case until it is finally determined. (Hon. Robert Brutinel)
25. 9-Dec-2022 FILED: Maricopa County Public Defender's Amicus Curiae Brief; Certificate of Service; Certificate of Service (Amicus Curiae Maricopa County Public Defender's)
26. 9-Dec-2022 FILED: Motion for Leave to File an Amicus Curiae Brief in Support of Real Party in Interest; Certificate of Service (Amicus Curiae Maricopa County Public Defender's)
27. 9-Dec-2022 FILED: (Copy of) Order Regarding Counsel dated 6/18/2004 (Amicus Curiae Maricopa County Public Defender's)
28. 9-Dec-2022 FILED: Brief of Amici Curiae Juvenile Law Center, Campaign for the Fair Sentencing of Youth and Human Rights for Kids in Support of Real Party in Interest Lonnie Allen Bassett; Certificate of Service; Certificate of Compliance (Amicus Curiae Juvenile Law Center et al)
29. 9-Dec-2022 FILED: Consent of Parties (Amicus Curiae Juvenile Law Center et al)
30. 9-Dec-2022 FILED: Brief of Amicus Curiae Kaleem Nazeem, Louis Gibson, Shakur Abdullah, and Greg Greenwood Support of Real Party in Interest/Defendant Lonnie Bassett; Certificate of Service; Certificate of Compliance (Amicus Curiae Kaleem Nazeem et al)
31. 9-Dec-2022 FILED: Motion for Leave to File Amicus Curiae Kaleem Nazeem, Louis Gibson, Shakur Abdullah, and Greg Greenwood Brief in Support of Real Party in Interest Lonnie Bassett (Amicus Curiae Kaleem Nazeem et al)
32. 9-Dec-2022 FILED: Motion to Associate Counsel Pro Hac Vice; Certificate of Service (Amicus Curiae Juvenile Law Center et al)
33. 15-Dec-2022 A "Motion for Leave to File Amicus Curiae Kaleem Nazeem, Louis Gibson, Shakur Abdullah, and Greg Greenwood Brief in Support of Real Party in Interest Lonnie Bassett" (Amicus Curiae Kaleem Nazeem et al) and the brief of amicus curiae were filed on December 9, 2022. After consideration,
- IT IS ORDERED the "Motion for Leave to File Amicus Curiae Kaleem Nazeem, Louis Gibson, Shakur Abdullah, and Greg Greenwood Brief in Support of Real Party in Interest Lonnie Bassett" is granted. The brief shall be filed as of December 9, 2022. (Hon. Robert Brutinel)
34. 15-Dec-2022 Andrew T. Fox, having filed a "Motion to Associate Counsel Pro Hac Vice" asking that Marsha L. Levick be allowed to appear and participate in the above-referenced matter and the appropriate application and related materials having been submitted and found to be in compliance with Rule 39(a), Rules of the Supreme Court,
- IT IS ORDERED granting the Motion and authorizing Marsha L. Levick to appear Pro Hac Vice before this Court in this matter for a period not to exceed one year from the date of this Order. (Hon. Robert Brutinel)

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35. 15-Dec-2022 A "Motion for Leave to File an Amicus Curiae Brief in Support of Real Party in Interest" (Amicus Curiae Maricopa County Public Defender's Office) and the brief of amicus curiae were filed on December 9, 2022. After consideration,

IT IS ORDERED the "Motion for Leave to File an Amicus Curiae Brief in Support of Real Party in Interest" is granted. The brief shall be filed as of December 9, 2022. (Hon. Robert Brutinel)
36. 20-Dec-2022 FILED: Motion for Leave to Participate in Oral Argument; Certificate of Service (Amicus Curiae Maricopa County Public Defender)
37. 20-Dec-2022 FILED: (Copy of) MCSC Order filed 6/18/2004 (Amicus Curiae Maricopa County Public Defender)
38. 21-Dec-2022 On December 20, 2022, Amicus Curiae Maricopa County Public Defender's Office filed a "Motion for Leave to Participate in Oral Argument." After consideration,

IT IS ORDERED granting the motion. Counsel for Real Party Bassett may cede part of the twenty (20) minutes allotted for real party's oral argument to counsel for Maricopa County Public Defender's Office to argue as amicus curiae. (Hon. Robert Brutinel)
39. 30-Dec-2022 FILED: State's Response to Brief of Amicus Curiae Nazeem, Gibosn, Abdullah, and Greenwood; Certificate of Service; Certificate of Compliance (Petitioner)
40. 30-Dec-2022 FILED: State's Response to Brief of Amicus Curiae Maricopa County Public Defender; Certificate of Service; Certificate of Compliance (Petitioner)
41. 30-Dec-2022 FILED: State's Response to Brief of Amici Curiae Juvenile Law Center, Campaign for the Fair Sentencing of Youth and Human Rights for Kids; Certificate of Service; Certificate of Compliance (Petitioner)
42. 10-Jan-2023 ORAL ARGUMENT - Submitted for decision en banc (Attorneys who argued: (Julie A Done, Amy E Bain, Kevid D Heade)
43. 17-Apr-2023 FILED: State's Notice of Denial of Certiorari by the United States Supreme Court in Jessup v. Thronell, et al.; Certificate of Service (Petitioner State)
44. 18-Sep-2023 OPINION - Because there has not been a significant change in the law that, if applied to Bassett's case, would probably overturn his sentence, we reverse the trial court's order finding that Bassett presented a colorable claim for relief under Rule 32.1(g). We vacate the trial court's ruling granting a Valencia evidentiary hearing and dismiss Bassett's PCR petition. See A.R.S. § 13-4236(C) (stating "the court shall order the petition dismissed" where "no material issue of fact or law exists which would entitle the defendant to relief"). (Hon. Kathryn H. King - Author; Hon. Robert Brutinel - Concur; Hon. Ann A. Scott Timmer - Concur; Hon. Clint Bolick - Concur; Hon. John R Lopez IV - Concur; Hon James P Beene - Concur; Hon. Rebecca White Berch - Concur)
45. 3-Oct-2023 FILED: Motion to Stay the Mandate Pending Application to the US Supreme Court for Writ of Certiorari; Certificate of Service; Attachments: Motion to Stay the Mandate Pending Application to the US Supreme Court for a Writ of Certiorari (Real Party Bassett)
46. 4-Oct-2023 On October 3, 2023, Real Party in Interest Bassett filed a timely Motion to Stay the Mandate Pending Application to the United States Supreme Court for a Writ of Certiorari.

Accordingly, pursuant to Rule 31.22(e) of the Rules of Criminal Procedure,

IT IS ORDERED granting the motion. The issuance of the mandate shall be stayed 90 days, until January 2, 2024. (Hon. Clint Bolick)
47. 4-Dec-2023 FILED: Notice From USSC - Extension to File Petition for Writ of Certiorari Filed, Extended to January 31, 2024 (No. 23A475)(Harris Clerk)(Rec'd From USSC on 12/4/2023)
48. 20-Dec-2023 FILED: Motion to Extend Stay of the Mandate Pending Application to the United States Supreme Court for a Writ of Certiorari; Certificate of Service; Attachments (Real Party in Interest Bassett)
49. 22-Dec-2023 FILED: State's Response to Bassett's Motion to Extend the Stay of the Mandate Pending a Petition for Writ of Certiorari; Certificate of Service (Petitioner State)

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50. 26-Dec-2023 On October 4, 2023, the Court granted Real Party in Interest Lonnie Bassett's ("Bassett") Motion to Stay the Mandate Pending Application to the United States Supreme Court for a Writ of Certiorari and stayed issuance of the mandate ninety days, until January 2, 2024. See Ariz. R. Crim. P. 31.22(e)(2).
- On November 29, 2023, the United States Supreme Court granted Bassett's request for an extension of time within which to file a petition for writ of certiorari, extending the time from December 17, 2023, to and including January 31, 2024.
- On December 20, 2023, Bassett filed a Motion to Extend Stay of the Mandate Pending Application to the United States Supreme Court for a Writ of Certiorari, requesting that "this Court continue to stay [issuance of] the Mandate until the disposition of [] Bassett's Writ of Certiorari to the United States Supreme Court." Motion at 9.
- On December 22, 2023, the Petitioner State of Arizona ("State") filed State's Response to Bassett's Motion to Extend Stay of the Mandate Pending Petition to the United States Supreme Court for a Writ of Certiorari, arguing that the Court "should deny Bassett's request to extend the stay of the mandate because he has not established good cause." Response at 2.
- Upon consideration of Bassett's Motion and the State's Response, and good cause appearing, pursuant to Rule 31.22(e)(2) of the Rules of Criminal Procedure,
- IT IS ORDERED that the stay of the Mandate in this case is continued from January 2, 2024, to and including February 1, 2024. No further requests to extend stay of the Mandate in this case will be granted absent a showing of good cause. (Hon. Kathryn H. King)
51. 5-Feb-2024 FILED: Motion to Extend Stay of the Mandate Pending Application to the United States Supreme Court for a Writ of Certiorari (Treated as Notice of Filing Writ of Certiorari); Certificate of Service; Attachments (Real Party in Interest Bassett)
52. 5-Feb-2024 FILED: Motion for Leave Requesting Permission to File Delayed Motion to Extend Stay; Certificate of Service (Real Party in Interest Bassett)
53. 5-Feb-2024 On February 5, 2024, Real Party in Interest Bassett filed a "Motion for Leave Requesting Permission to File Delayed Motion to Extend Stay." Bassett contemporaneously filed a "Motion to Extend Stay of the Mandate Pending Application to the United States Supreme Court for a Writ of Certiorari," in which Bassett informs this Court that a petition for a writ of certiorari was filed with the United States Supreme Court on January 31, 2024. After consideration,
- IT IS ORDERED granting the "Motion for Leave Requesting Permission to File Delayed Motion to Extend Stay."
- IT IS FURTHER ORDERED the stay of the Mandate in this case shall continue, pursuant to Ariz. R. Crim. P., Rule 31.22 (e)(2), until the clerk is notified by the United States Supreme Court that the writ has been denied or that a mandate has been issued by the United States Supreme Court. (Tracie K. Lindeman Clerk)
54. 5-Feb-2024 FILED: Notice From USSC - Petition for Writ of Certiorari Filed January 31, 2024 (No. 23-830)(Harris Clerk)(Rec'd From USSC on 2/5/2024)