

Arizona Supreme Court
Criminal Petition for Review-Post Conviction (ASC)

CR-23-0008-PR

STATE OF ARIZONA v LARRY DEAN ANDERSON

Appellate Case Information

Case Filed: 9-Jan-2023

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. William G Montgomery
Hon. Kathryn H. King

Side 1. STATE OF ARIZONA, Respondent

(Litigant Group) STATE OF ARIZONA

- State of Arizona

Attorneys for: Respondent

Laura Winsky Conover, Esq. (AZ Bar No. 24080)

Bradley K Roach, Esq. (AZ Bar No. 17456)

Side 2. LARRY DEAN ANDERSON, Petitioner

(Litigant Group) LARRY DEAN ANDERSON

- Larry Dean Anderson

Attorneys for: Petitioner

Robert J McWhirter, Esq. (AZ Bar No. 12283)

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

Side 3. ARIZONA JUSTICE PROJECT, Amicus Curiae

(Litigant Group) ARIZONA JUSTICE PROJECT

- Arizona Justice Project

Attorneys for: Amicus Curiae

Karen Smith, Esq. (AZ Bar No. 33494)

Side 4. FEDERAL PUBLIC DEFENDER'S OFFICE, Amicus Curiae

(Litigant Group) FEDERAL PUBLIC DEFENDER'S OFFICE

- Federal Public Defender's Office

Attorneys for: Amicus Curiae

Jon M Sands, Esq. (AZ Bar No. 10441)

Keith James Hilzendeger, Esq. (AZ Bar No. 23685)

Side 5. MARICOPA COUNTY ATTORNEY'S OFFICE, Amicus Curiae

(Litigant Group) MARICOPA COUNTY ATTORNEY'S OFFICE

- Maricopa County Attorney's Office

Attorneys for: Amicus Curiae

Rachel H Mitchell, Esq. (AZ Bar No. 14560)

Philip D Garrow, Esq. (AZ Bar No. 22458)

Johnny Jacquez, Esq. (AZ Bar No. 37963)

Philip Casey Grove, Esq. (AZ Bar No. 35775)

CASE STATUS

May 2, 2024.....Decision Rendered

Aug 22, 2023.....Oral Argument Granted

Jun 30, 2023.....Continued

Jan 9, 2023.....Pending

PREDECESSOR CASE(S)

2 CA 2 CA-CR 22-0121

↳ PIM CR062244001

Cause/Charge/Class

Judgment/Sentence

Judge, Role <Comments>

Trial

Dispo

James E Marner, Trial

Comments: (none)

JURY

Arizona Supreme Court
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CASE DECISION

02-May-2024 OPINION

Anderson's IAC claim is neither precluded nor untimely. We vacate the court of appeals' decision, vacate the trial court's order, and remand the case to the trial court for an evidentiary hearing.

Filed: **02-May-2024**

Mandate:

Decision Disposition

Vacated
Remanded

Robert Brutinel.....Author
Ann Timmer.....Concur
Clint Bolick.....Concur
John Lopez.....Concur
Kathryn King.....Concur
James Beene.....Dissent
William Montgomery.....Dissent

23 PROCEEDING ENTRIES

1. 9-Jan-2023 FILED: Petition for Review of Third Petition for Post-Conviction Relief Under Arizona Rules of Criminal Procedure 32.1(g); Certificate of Service; Certificate of Compliance; Attachment 1 (Petitioner Anderson)
2. 9-Jan-2023 FILED: Certificate of Compliance; Certificate of Service; Memorandum Decision (Petitioner Anderson)
3. 11-Jan-2023 FILED: Record from CofA: Link to Electronic Record
4. 6-Mar-2023 The Clerk of the Supreme Court having been authorized by the Supreme Court to order any party to file a response to a petition for review at the direction of a Supreme Court staff attorney,

IT IS ORDERED that Respondent State shall file a response to the petition for review on or before April 5, 2023.

IT IS FURTHER ORDERED no extensions of time shall be granted absent extraordinary circumstances. (Tracie K. Lindeman, Clerk)
5. 5-Apr-2023 FILED: Response to Petition for Review; Certificate of Service (Respondent State)
6. 5-Apr-2023 FILED: Certificate of Compliance; (Copy of) Certificate of Service (Respondent State)
7. 30-Jun-2023 ORDERED: Petition for Review of Third Petition for Post-Conviction Relief Under Arizona Rules of Criminal Procedure 32.1(g) = CONTINUED.
8. 22-Aug-2023 ORDERED: Petition for Review of Third Petition for Post-Conviction Relief Under Arizona Rules of Criminal Procedure 32.1(g) = GRANTED as to these rephrased issues:

1. Is Anderson's ineffective assistance of counsel claim based on erroneous advice regarding the availability of parole precluded and untimely considering the extent of confusion in Arizona about the availability of parole after it was abolished?

2. If not, is erroneous advice about the availability of parole objectively unreasonable in light of the extent of confusion in Arizona surrounding the availability of parole?

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 September 26, 2023 and any responses to amicus briefs are due on or before October 16, 2023. Any amicus briefs or responses may not exceed 20 pages in length.
9. 29-Aug-2023 NOTICE OF ORAL ARGUMENT: Set for Tuesday, November 21, 2023 at 10:15 A.M. [twenty (20) minutes per side]
10. 31-Aug-2023 FILED: Notice of Acknowledgment of Oral Argument [Robert McWhirter will Argue] (Petitioner Anderson)
11. 1-Sep-2023 FILED: Notice of Acknowledgment of Oral Argument (Brad Roach will argue) (Respondent State)

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23 PROCEEDING ENTRIES

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| 12. | 12-Sep-2023 | FILED: Notice of Appearance; Certificate of Service (Petitioner Anderson) |
| 13. | 12-Sep-2023 | FILED: Larry Anderson's Supplemental Brief; Certificate of Service; Certificate of Compliance (Petitioner Anderson) |
| 14. | 12-Sep-2023 | FILED: Appendix to Larry Anderson's Supplemental Brief; Certificate of Service (Petitioner Anderson) |
| 15. | 12-Sep-2023 | FILED: Supplemental Brief; Certificate of Service; Certificate of Compliance (Respondent State) |
| 16. | 26-Sep-2023 | FILED: Brief of Amicus Curiae Arizona Justice Project; Certificate of Service; Certificate of Compliance (Amicus Curiae AJP) |
| 17. | 26-Sep-2023 | FILED: Motion for Leave to File Brief as Amicus Curiae (Amicus Curiae AJP) |
| 18. | 27-Sep-2023 | A "Motion for Leave to File Brief as Amicus Curiae" (Amicus Curiae Arizona Justice Project) and the brief of amicus curiae were filed on September 26, 2023. After consideration,

IT IS ORDERED the "Motion for Leave to File Brief as Amicus Curiae" is granted. The brief shall be filed as of September 26, 2023. (Hon. Robert Brutinel) |
| 19. | 26-Sep-2023 | FILED: Brief of Amicus Curiae Federal Public Defender for the District of Arizona; Certificate of Service; Certificate of Compliance (Amicus Curiae Federal Public Defender's Office) |
| 20. | 26-Sep-2023 | FILED: Statement of Permission to File (Amicus Curiae Federal Public Defender's Office) |
| 21. | 26-Sep-2023 | FILED: Amicus Curiae Brief of the Maricopa County Attorney's Office; Certificate of Service; Certificate of Compliance (Amicus Curiae Maricopa County Attorney's Office) |
| 22. | 21-Nov-2023 | ORAL ARGUMENT - Submitted for decision en banc (Attorneys who argued: Robert J. McWhirter, Bradley K. Roach) |
| 23. | 2-May-2024 | OPINION - Anderson's IAC claim is neither precluded nor untimely. We vacate the court of appeals' decision, vacate the trial court's order, and remand the case to the trial court for an evidentiary hearing. (Hon. Robert Brutinel - Author; Hon. Ann A. Scott Timmer - Concur; Hon. Clint Bolick - Concur; Hon. John R Lopez IV - Concur; Hon. Kathryn H. King - Concur; Hon James P Beene - Dissent; Hon William G Montgomery - Dissent) |