

ARIZONA NARRATIVES 1-25-13

9/2/1977

- Joe Clarence Smith (AZ Timeline #43)

- *Categorical reasons for delay*

- Ineffective assistance of counsel

- a. *Smith v. Stewart*, 189 F.3d 1004 (9th Cir. 1999)

- p. 1011: “In all, there is no doubt that Rempe effectively presented no defense on Smith’s behalf, amounting to abandonment of his client to the fate of death.”

- p. 1014: “Smith was denied effective assistance of counsel at resentencing. We reverse the district court’s denial of habeas corpus and remand with directions that it issue a writ releasing Smith from the sentence of death and directing that he be resentenced. We affirm the district court on the remainder of Smith’s claims.”

- b. *Smith v. Arizona*, 128 S.Ct. 466 (2007)

- “Due to ineffective assistance of counsel, the federal courts in 1999 set [Smith’s second death penalty] sentencing aside. Smith was again sentenced in 2004.”

- *Atkins*

- a. *State v. Smith*, 131 Ariz. 29, 34-35 (1981)

- “[Appellant] does not contend that he is suffering from a character

- disorder such as sociopathy or psychopathy, which prior to our decision in *State v. Watson* (120 Ariz. 441) was not recognized as a mitigating factor... Instead, appellant attempts to establish that he was a borderline psychotic and that his capacity to control his conduct was significantly impaired. As such, our finding on appeal is not that appellant’s mental impairment does not constitute a mitigating factor, but that appellant has failed to establish the existence of any mental impairment at all. Since several

- aggravating

- factors have been found to be present and no mitigating circumstances sufficient to overcome the aggravating factors, the imposition of the death penalty is proper.”

- *Date inmate first filed habeas corpus petition*: ~1981

- *Narrative*: Remains on death row as the longest-serving death row inmate in Arizona. In October 15, 2007, the U.S. Supreme Court denied cert, thereby rejecting Smith’s cruel and unusual punishment argument that the most recent affirmation of Smith’s death sentence came more than 30 years after he was first sentenced.

1/2/1980

- Edward Harold Schad (AZ Timeline #40)

- *Categorical reasons for delay*

- AEDPA

- a. *Schad v. Schriro*, 454 F.Supp.2d 897, 956 (2006)

ARIZONA NARRATIVES 1-25-13

- p. 919: "The Court finds that Petitioner has failed to satisfy either *Strickland* or the AEDPA's deferential standard."

- p. 956: "The Court finds that Petitioner has failed to establish entitlement to habeas relief on any of his claims. The Court further finds that an evidentiary hearing in this matter is neither warranted nor required."

- Ineffective assistance of counsel issue

- a. *Smith v. Stewart*

- *Date inmate first filed habeas corpus petition*: December 16, 1997 (filed Preliminary Petition for Writ of Habeas Corpus); August 3, 1998 (filed Amended Petition)

- *Narrative*: Schad was sentenced to death for first-degree murder. On December 14, 1989 (163 Ariz. 411), the Arizona Supreme Court upheld his conviction and sentence. On September 28, 2006, the Arizona District Court denied his petition for habeas corpus (454 F.Supp.2d 897), but this decision was remanded three years later (606 F.3d 1022). Two years later, on November 10, 2011, the Arizona District Court refused Schad's writ of habeas corpus.

1981

Ruben Zaragoza (AZ Timeline #57)

- *Categorical reasons for delay*: N/A

- *Narrative*: remains on death row.

5/27/1982

Joe Lambright (#20)

- *Categorical reasons for delay*:

- *Lambright v. Stewart*, 220 F.3d 1022 (9th Cir. 2000).

- Allege he received ineffective assistance of counsel during trial's sentencing phase. The district court concluded under AEDPA that it was procedurally barred from considering the merits of this claim.

- It is arguable that the state court adjudicated the merits of the claim in this case. Thus, Ct concludes that Lambright has met the procedural test the Court established in *Slack*.

- Grant a COA on this issue.

- Argue that they were entitled to lesser included offense instructions under *Beck v. Alabama*

- Grant a COA on this issue.

- Ct: declined to grant a COA on the issue of whether Arizona's aggravating factor is unconstitutionally vague.

- Ct: granted a COA on the issue of whether the sentencing court failed to apply the limiting construction.

- *Narrative*: Remains on death row. Filed for writ of HC in 2010.

6/4/1982

- Robert Douglas Smith (AZ Timeline #44)

- *Categorical reasons for delay*

- Ineffective assistance of counsel

ARIZONA NARRATIVES 1-25-13

- *Date inmate first filed habeas corpus petition*: N/A

- *Narrative*: Remains on death row. The most recent activity occurred on February 11, 2011, when the Arizona district court granted his motion to amend petition for writ of habeas corpus.

11/3/1982

Lawrence Libberton (#23)

- *Categorical reasons for delay*

- *Libberton v. Schriro*, 2007 WL 3101841 (D. Ariz. 2007).
 - He asks Ct to reconsider its determination to apply the provisions of the AEDPA
 - Court declines to “rethink what it has already thought through.”
 - Request denied.

- *Narrative*: Remains on death row. Certiorari denied in June 2010.

12/3/1982

Steven James (#15)

- *Categorical reasons for delay*:

- *James v. Shriro*, 659 F.3d 855 (9th Cir. 2011).
 - Under AEDPA the *Libberton's Napue* argument does not succeed. James has not identified any distinction between his case and *Libberton's*, nor do we see one. Consequently, we reach the same conclusion as the *Libberton* panel. The third PCR court did not unreasonably apply *Brady*, *Giglio*, or *Napue* by determining that, even if a secret agreement existed, neither the state's failure to disclose the agreement nor its failure to correct Norton's false testimony denying the existence of such an agreement was material.
 - *Ring* claim: Pillinger's ignorance of James's family background, his pretrial treatment history, and his mental illnesses deprived Dr. Potts of the information necessary to present a psychiatric diagnosis of cyclothymia as a mitigating circumstance.
 - James has introduced a plethora of evidence to support the allegations of his petition.
 - Ct: reverse and remand with instructions to grant the writ with respect to the death sentence. We instruct the district court to grant the state a reasonable amount of time in which to resentence James. If the state chooses not to resentence, James's sentence will automatically be converted to life in prison in accordance with Arizona law.

- *Narrative*: Remains on death row. His petition for rehearing en banc was denied with prejudice in February 2012.

1983

Ramon Martinez-Villareal (AZ Timeline #27)

- *Categorical reasons for delay*

- AEDPA

- *Date inmate first filed habeas corpus petition*: N/A

- *Narrative*: remains on death row.

ARIZONA NARRATIVES 1-25-13

1/24/1983

Scott Drake Clabourne (#3)

- *Categorical reasons for delay:*

- *Clabourne v. Lewis*, 64 F.3d 1373 (9th Cir. 1995).
 - Ct had denied habeas corpus conviction, granted relief with regard to sentence (non-capital sentences to run concurrently).
 - Affirmed
- *Clabourne v. Ryan*, 2009 WL 3188471 (Sept. 29, 2009).
 - Under AEDPA, habeas relief is available only if the state court decision was based upon an unreasonable determination of the facts.
 - Denied here.
 - In interests of scarce resources, a Certificate of Appealability is granted as to whether Claim 2, alleging that the state cts failed to consider evidence of schizophrenia as mitigation, fails on the merits.

- *Narrative:* Still on death row. In 2009, AZ dist ct rejected his habeas corpus petition. Nothing more current.

2/11/1983

Murray Hooper (#13)

- *Categorical reasons for delay:*

- *Hooper v. Shriro*, 2008 WL 4542782 (D. Ariz. Oct. 10, 2008).
 - He contends that his right of confrontation was violated because he was not allowed to cross-examine the person who prepared the exhibits documenting his prior felony convictions in Illinois. Because the *Crawford* decision occurred long after Petitioner's conviction became final, Petitioner cannot obtain habeas relief under the AEDPA based on that case.
 - Because there is no state court disposition, there are no facts or reasoning to defer to under the AEDPA; therefore, this Court reviews de novo the merits of this claim.
 - He is not entitled to habeas relief on any of his claims

- *Narrative:* Remains on death row. In 2008, HC was denied. 2009 sent notice of appeal to 9th Cir, and in 2012 substituted Attorney.

1984

Bernard Smith (AZ Timeline #43)

- *Categorical reasons for delay*

- *Narrative:* released from prison.

4/23/1984

- **Ronald Turney Williams (AZ Timeline #54)**

- *Categorical reasons for delay*

- *Atkins*
 - a. *State v. Williams*, 166 Ariz. 132 (1987)
 - p. 139: "We agree with the trial court's finding that there was

ARIZONA NARRATIVES 1-25-13

insufficient evidence to place either Williams's competency or sanity in doubt. The nature of the crime, Williams's conduct at trial, and prior psychiatric examinations all suggest that Williams was sane at the time of the offense and competent to stand trial."

- *Date inmate first filed habeas corpus petition*: N/A
- *Narrative*: Remains on death row. The most recent activity occurred on January 20, 2011, when Williams filed a petition for habeas corpus.

11/23/1984

- Michael E. Correll (AZ Timeline #4)
- *Categorical reasons for delay*
 - o Ineffective assistance of counsel
 - o *Correll v. Stewart*, 137 F.3d 1404, 1412 (1998)
 - "Correll further argues that the district court erred in denying him an evidentiary hearing on his claim of **ineffective** assistance of counsel at sentencing. We agree."
- *Date inmate first filed habeas corpus motion*: N/A
- *Narrative*: Remains on death row. The most recent activity occurred on December 22, 2011.

5/3/1985

- Ronald Schackart (AZ Timeline #39)
- *Categorical reasons for delay*
 - o *Atkins*
 - a. *State v. Schackart*, 190 Ariz. 238, 947 P.2d 315 (1997)
 - pp. 251-52: defendant deemed mentally competent
 - o *Ring*
 - a. *State v. Schackart*, 190 Ariz. 238, 947 P.2d 315 (1997)
 - pp. 256-57: court rejects claim that trial judge was biased
 - o Ineffective assistance of counsel
 - a. *Schackart v. Ryan*, 2009 WL 692318, at *18 (D. Ariz. March 17, 2009)
 - pp. 5-7: court finds that ineffective assistance claim fails because "there is not a reasonable probability that it would have changed the outcome of the appeal if raised by counsel."
- *Date inmate first filed habeas corpus petition*: ~1997
- *Narrative*: Remains on death row. The most recent activity occurred on November 3, 2009, when Schackart moved to extend the time to file his opening brief.

1986

- John Hinchey (AZ Timeline #13)
- *Categorical reasons for delay*: N/A
- *Date inmate first filed habeas corpus petition*: N/A
- *Narrative*: Remains on death row. The most recent activity occurred on March 2, 1995, when the AZ Supreme Court affirmed the AZ Superior Court's entry of a death sentence.

ARIZONA NARRATIVES 1-25-13

05/11/1987

Frank Jarvis Atwood (#2)

- *Categorical reasons for delay*

- *Atwood v. Shriro*, 489 F.Supp.2d 982 (D. Ariz. May 1, 2007).
 - Filed petition for writ of habeas corpus: These federal proceedings were initiated in 1998, but were delayed by litigation over a change of judge as well as successive significant decisions by the Ninth Circuit Court of Appeals and the United States Supreme Court that effectively stayed the case for several years.
 - Denied: Ct finds no claims are entitled to habeas relief, with exception of Claim 1-B: The Ct find that the his new allegations "relate back" (in light of the AEDPA's one year limitations period) to Claim 1-B.

- *Narrative*: Still on death row. Earlier in 2012 he amended his reconsideration petition and switched attorneys.

6/25/1987

Samuel Lopez (#25)

- *Categorical reasons for delay*

- *Lopez v. Ryan*, 630 F.3d 1198 (9th Cir. 2011).
 - He challenges the denial of habeas relief from his death sentence.
 - Alleges: in violation of his Eighth and Fourteenth Amendment rights, he was denied an individualized sentencing determination because of then-binding Arizona law requiring that mitigating evidence be causally related to the crime;
 - Lopez also argues that his attorney at his resentencing rendered ineffective assistance of counsel by failing to furnish his psychiatric expert with eyewitness testimony and background information necessary to an assessment of pathological intoxication, "a condition, quite rare, in which an individual exhibits sudden and unpredictable behavior very shortly after ingesting a very small amount of alcohol."
 - Lopez argues that, in violation of the Fourteenth Amendment's Due Process Clause, the government suppressed exculpatory evidence regarding an unrelated sexual assault arrest. See *Brady*.
 - Under the deference owed to the state ct under AEDPA, the ct affirms the decision of the dist. ct.
 - Ct: upholds denial of HC on all claims.

- *Narrative*: Executed June 27, 2012. Prior to that in Nov. 2011 his writ of certiorari denied. DA requested warrant for execution in Dec. 2011. Executed.

10/6/1987

- Milo M. Stanley (AZ Timeline #47)

- *Categorical reasons for delay*

- Ineffective assistance of counsel
 - a. *Stanley v. Schriro*, 2006 WL 2816541 (D. Ariz. 2006)
 - pp. 14-30: court finds that Stanley is not entitled to relief on ineffective assistance of counsel claim

- *Date inmate first filed habeas corpus petition*: March 9, 1998

ARIZONA NARRATIVES 1-25-13

- *Narrative*: Remains on death row. The most recent activity occurred on May 27, 2011, when the Arizona district court authorized Attorney Tim Ford to testify as an expert on behalf of Stanley at an evidentiary hearing.

1/13/1988

- Theodore Washington (AZ Timeline #52)

- *Categorical reasons for delay*

- Inmate's participation in execution protocol litigation and group prisoner's rights litigation against Arizona.

- *Date inmate first filed habeas corpus petition*: ~1999

- *Narrative*: Remains on death row. The most recent activity occurred on January 3, 2012, when the group prisoner's rights case (in which Washington is involved) first opened.

1/13/1988

- Fred Lawrence Robinson (AZ Timeline #35)

- *Categorical reasons for delay*

- Ineffective assistance of counsel

- *Date inmate first filed habeas corpus petition*: ~2004

- *Narrative*: Remains on death row. The most recent activity occurred on November 8, 2010, when the U.S. Supreme Court granted Robinson's motion for leave to proceed *in forma pauperis* and denied the petition for writ of certiorari to the U.S. Court of Appeals for the 9th Circuit.

2/9/1988

- Alfonso Salazar (AZ Timeline #38)

- *Categorical reasons for delay*

- Ineffective assistance of counsel
 - a. *Salazar v. Schriro*, 2008 WL 4277667, 2 (D. Ariz. 2008)
- AEDPA
 - a. *Salazar v. Schriro*, 2008 WL 4277667, 1-2 (D. Ariz. 2008)

- *Date inmate first filed habeas corpus petition*: February 1996

- *Narrative*: Remains on death row. The most recent activity occurred on February 6, 2012, when the U.S. District Court granted a motion to stay proceedings.

8/22/1988

- Angel Mayora Medrano (AZ Timeline #28)

- *Categorical reasons for delay*

- *Ring*
 - a. *Medrano v. Ryan*, (D. Ariz. 2012)
 - p. 2: "In 2002, following the Supreme Court's decision in *Ring v. Arizona*, 536 U.S. 584, this Court stayed Petitioner's sentencing-related claims while Petitioner sought retroactive application of *Ring* in state PCR proceedings."
- *Atkins*
 - a. *Medrano v. Ryan*, (D. Ariz. 2012)
 - p. 2: "That stay was extended in 2003 to allow Petitioner to also seek state PCR relief based on *Atkins v. Virginia*. Although more

ARIZONA NARRATIVES 1-25-13

than eight years have passed, the state superior court has yet to hold an evidentiary hearing on Petitioner's Atkins claim.

According to the most recent status report filed by Petitioner, that hearing is expected to take place in June 2012."

- Ineffective assistance of counsel

a. *Medrano v. Ryan*, (D. Ariz. 2012)

- p. 16-17: court finds that petitioner cannot establish prejudice, and thus, ineffective assistance of counsel

- *Date inmate first filed habeas corpus petition*: 2000

- *Narrative*: Remains on death row. The most recent activity occurred on March 2, 2012, when the Arizona District Court denied Medrano's habeas request and any further evidentiary development of his habeas request.

3/16/1988

Graham Henry (#12)

- *Categorical reasons for delay*

- *Henry v. Ryan*, (D. Ariz. March 17, 2009).

- Under provisions of the AEDPA, the Court cannot find that Petitioner was prejudiced by Gavin's failure to present additional mitigating evidence at resentencing
- He alleges that his execution by lethal injection constitutes cruel and unusual punishment: Ct holds the claim is meritless. See *Rhines*.
- Ct holds he failed to establish entitlement to habeas relief on any of his claims

- *Narrative*: Remains on death row. Last activity was HC relief denied in 2009. Then in 2010, on HC appeal the record was corrected.

8/23/1988

Daniel Wayne Cook (#4)

- *Categorical reasons for delay*

- *Cook v. Shiro*, 2006 WL 842276 (Mar 28, 2006).

- P argued that under AEDPA the state trial ct unreasonably failed to extend *Faretta* to encompass a requirement that the ct inquire into the reasoning behind a D' decision to waive counsel and represent himself.

■ In *Faretta*, the clearly established federal law governing this claim, the Supreme Ct recognized a right of self-representation.

- Thus, he is not entitled to habeas relief on Claim 4.
- His Amended Petition for Writ of Habeas Corpus is Denied with Prejudice.

- *Cook v. Schiro*, 516 F.3d 802 (9th Cir. 2008).

- Under AEDPA, the ct deferred to the state ct's finding that Cook's waiver of the right to counsel was knowing, intelligent, and voluntary as required by *Faretta*.
- Affirmed the denied petition.

- ○ *Cook v. Ryan*, 2012 WL 2798789 (July 9, 2012).

- Argues that *Martinez* provides a proper ground for this ct to reopen his federal habeas proceeding and to find cause for the procedural default of a claim alleging a Sixth Amendment violation based on counsel's failure to undertake a timely mitigation investigation.

■ P has not demonstrated cause under *Martinez* to excuse the default.

■ Ct Denies motion for Relief from Judgment

ARIZONA NARRATIVES 1-25-13

- *Narrative*: Still on death row. Execution date was set for April 2011 and he was granted a stay by US Supreme Ct. In 2012 he filed his intent to appeal a prison civil rights matter he is 1 of 4 inmates bringing.

2/3/1989

- Sean Bernard Running Eagle (AZ Timeline #37)

- *Categorical reasons for delay*

- *Ring*

- a. *Runingeagle v. Schriro*, (D. Ariz. 2007)

- p. 3: "Petitioner moved this Court for a stay of these habeas proceedings so that he could return to state court and pursue post-conviction relief based upon *Ring*. The Court granted the stay with respect to Petitioner's sentencing claims but denied Petitioner's request to stay his conviction-related claims."

- Ineffective assistance of counsel

- a. *Runingeagle v. Schriro* (D. Ariz. 2007)

- p. 6-12: court rejected petitioner's ineffective assistance claims

- *Date inmate first filed habeas corpus petition*: ~1994

- *Narrative*: Remains on death row. The most recent activity occurred on November 27, 2007, when the U.S. District Court denied Runingeagle's petition for habeas corpus.

6/15/1989

Richard H. Greenway (#8)

- *Categorical reasons for delay*

- 1998: habeas petition in federal court

- 2007: after a number of interim ruling, the dist ct heard the petition. During the interim period, proceedings were stayed while the district ct awaited exhaustion of claims relating to the constitutionality of his death sentence. See *Ring*. See *Atkins*.

- Greenway filed a successive post-conviction petition in state ct alleging that he was entitled to a new sentencing under *Ring* and that he was mentally retarded.

- *Ring* did not apply retroactively. And Greenway did not meet criteria for mental retardation.

- Claimed that he received ineffective assistance of counsel during trial and on direct appeal, and claimed judicial bias.

- *Greenway v. Shriro*, 653 F.3d 790 (9th Cir. 2011).

- Claims of ineffectiveness are vacated and the claims are remanded because the ct holds they are not procedurally barred.

- The dismissing the petition is affirmed in all respects.

- *Narrative*: Still on death row. Briefs for his remand of habeas corpus due May 2012. Nothing more up-to-date.

1990

Clinton Spencer (AZ Timeline #48)

- *Categorical reasons for delay*

- *Narrative*: remains on death row

3/28/1990

ARIZONA NARRATIVES 1-25-13

Alvie C. Kiles (#19)

- *Categorical reasons for delay*

- *State v. Kiles*, 213 P.3d 174 (Aug. 10, 2009).
 - After a second jury trial in 2000, Kiles was again convicted of three counts of first degree murder and two counts of child abuse. The parties later stipulated to transfer the case to Maricopa County. Because of *Ring*, in 2006, a jury found three aggravating factors for each murder
 - Cannot find a HC petition

- *Narrative*: Remains on death row. His petition for writ of certiorari denied in 2010.

5/23/1990

George Lopez (#24)

- *Categorical reasons for delay*

- *Lopez v. Schriro*, 491 F.3d 1029 (9th Cir. 2007).
 - In this AEDPA habeas proceeding, he presents one certified issue: whether the state trial court denied Lopez his rights under the Eighth Amendment by failing to consider mitigation evidence presented at trial.
 - Ct: agreed with the district court that the Arizona Supreme Court was not objectively unreasonable in determining that the sentencing court had considered all of Lopez's proffered mitigating evidence, including the evidence presented at trial.
 - Denied on all claims.

- *Narrative*: Remains on death row. His petition for writ of certiorari was denied in 2008.

9/10/1990

Michael Apelt (#1)

- *Categorical reasons for delay*

- *Apelt v. Ryan* 2011 WL 1377015 (D. Ariz. April 12, 2011).
 - Filed an initial habeas petition and an amended petition
 - Moved and this Court stayed his sentencing-related claims due to intervening U.S. Supreme Court decisions in *Ring*, and in *Atkins*
 - Sought to add two *Atkins* related claims
 - 1) Cannot be executed b/c he is mentally retarded
 - 2) Sought to amend his factual background section, procedural history section, and additional facts
 - Respondents argue it is tenuous and futile under AEDPA
 - Ct grants claim to add the *Atkins* claims, #26 & 27
- *Apelt v. Ryan* 2011 WL 1771119 (D. Ariz. May 10, 2011).
 - Motion for reconsideration and stay of its order determining the procedural status of his sentencing claims is denied.
 - He argued that at his initial state post-conviction relief ("PCR") proceeding his counsel operated under such a conflict of interest that the conflict excused counsel's failure to raise all ineffective assistance of counsel ("IAC") claims at sentencing, as was required.
 - He challenged the state court's application of Ariz. R.Crim. P. 32.2(a)(3) precluding his IAC sentencing claims, contending that the court's application frustrated his ability to exercise his federal rights, thus rendering the rule inadequate to establish procedural default.
 - Denied

ARIZONA NARRATIVES 1-25-13

- *Narrative*: Still on death row. May 2011 his motion for reconsideration and a stay of execution denied.

10/5/1990

- Eldon Schurz (AZ Timeline #41)

- *Categorical reasons for delay*

- Ineffective assistance of counsel
 - a. *Schurz v. Schriro*, 2005 BL 38102 (D. Ariz. Sept. 29, 2005)
 - pp. 6-19: court denied Schurz's ineffective assistance claim
- *Ring*
 - a. *Schurz v. Schriro*, 2006 WL 89933 (D. Ariz., Jan. 11, 2006)
 - p. 1: "The Court stayed Petitioner's sentencing-related claims to allow him to seek post-conviction relief in state court based on *Ring v. Arizona*, 536 U.S. 584... Petitioner returned to state court and initiated successive PCR proceedings to determine whether *Ring* applied retroactively. However, Petitioner did not limit his PCR petition to the filing of a claim based on *Ring*, but also presented all of the claims this Court had earlier found procedurally barred as well as 13 additional claims never before raised in collateral proceedings."
- Ineffective assistance of counsel
 - a. *Schurz v. Schriro*, 2006 WL 89933 (D. Ariz., Jan. 11, 2006)
 - pp. 16-17: court allowed Schurz's ineffective assistance claims to be reamended into a separate petition

- *Date inmate first filed habeas corpus petition*: ~1994

- *Narrative*: Remains on death row. The most recent activity occurred on July 18, 2011, when Schurz was named as a party in *Thomas Paul West v. Arizona*, in which the petitioners claimed that Arizona Department of Corrections' protocol is so devoid of standards that it lacks basic procedural safeguards to support judicial review. The court ultimately granted the defendant's motion to dismiss.

12/14/1990

- James Lynn Styers (AZ Timeline #49)

- *Categorical reasons for delay*

- Ineffective assistance of counsel
 - a. *Styers v. Schriro* (D. Ariz., Jan. 10, 2007)
 - pp. 9-10: court rejected Styers' ineffective assistance claim

- *Date inmate first filed habeas corpus petition*: 12/16/1998

- *Narrative*: Styers was sentenced to death for killing his roommate's 4-year-old son to recover from a \$5,000 life insurance policy. On December 21, 1993, the Arizona Supreme Court confirmed his conviction and sentence (177 Ariz. 104). In February of 2008, he began habeas corpus relief that was eventually granted by the 9th Circuit Court of Appeals on October 23, 2008 (547 F.3d 1026). However, on July 1, 2011, the Arizona Supreme Court once again upheld his conviction (227 Ariz. 186). Most recently, on October 31, 2011, the U.S. Supreme Court denied his writ of certiorari (132 S.Ct. 540).

ARIZONA NARRATIVES 1-25-13

12/18/1990

- David Martinez Ramirez (AZ Timeline #34)

- *Categorical reasons for delay*

- *Atkins*

- a. *Ramirez v. Schriro*, (Dec. 12, 2008)

- p. 3: “[This] Court... granted a stay of the sentencing claims, to allow Petitioner to seek relief from his death sentence in state court based on a claim of mental retardation pursuant to Atkins... During the stay, the Court issued a ruling denying evidentiary development and dismissing Petitioner’s conviction claims.

- p. 6: “Petitioner’s Atkins claim is not premised on attorney error or court error, but rather a constitutional prohibition on executing mentally retarded individuals. While proof that Petitioner is mentally retarded could have been offered as mitigation at sentencing and, therefore, is reasonably part of his IAC-at-sentencing claim, the Atkins claim is not based on attorney error.”

- AEDPA

- a. *Ramirez v. Schriro*, (Dec. 12, 2008)

- p. 4: “Petitioner argues that he satisfies the one-year limitations period measured from ‘the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.’”

- p. 5: “Petitioner was not diligent in discovering the factual predicate for the Atkins claim; therefore, it falls outside the statute of limitations.”

- p. 5: “Petitioner contends he is entitled to equitable tolling of the statute of limitations... The Court finds that Petitioner is not entitled to equitable tolling of the statute of limitations. First... Petitioner did not act diligently in investigating whether he had a claim based on mental retardation. Second, Petitioner has not established that an extraordinary circumstance prevented him from timely filing these claims. Petitioner initiated this action within the limitations period and has been represented by counsel for the entirety of his federal habeas proceeding, including a change of counsel to ensure adequate representation.”

- Ineffective assistance of counsel

- a. *Ramirez v. Schriro* (D. Ariz., Dec. 12, 2008)

- p. 24: court rejects Schriro’s ineffective assistance of counsel

- *Atkins*

- a. *Ramirez v. Ryan* (D. Ariz., Sept. 28, 2010)

- *Date inmate first filed habeas corpus petition*: N/A

- *Narrative*: Remains on death row. The most recent activity occurred on November 4, 2012, when the Arizona district court denied Ramirez’s habeas corpus petition.

1/18/1991

ARIZONA NARRATIVES 1-25-13

- Debra Jean Milke (AZ Timeline #30)

- *Categorical reasons for delay*

- *Ring*

- a. *Milke v. Schriro* (D. Ariz., Nov. 27, 2006)

- p. 33: court rejects petitioner's claim that her right to equal protection was violated when she was denied a jury trial on aggravating factors in a capital case

- Ineffective assistance of counsel

- a. *Milke v. Schriro* (D. Ariz., Nov. 27, 2006)

- p. 34: court found that appellate counsel's failure to raise the issue of the voluntariness of petitioner's statement was not constitutionally ineffective assistance of counsel

- *Date inmate first filed habeas corpus petition*: ~1999

- *Narrative*: Remains on death row. The most recent activity occurred on February 15, 2007, when the Arizona district court denied Milke's Certificate of Appealability.

2/7/1991

David Detrich (#5)

- *Categorical reasons for delay*

- *Detrich v. Ryan*, 677 F.3d 958 (9th Cir. 2012)

- Ct reversed the district court's denial of habeas relief on Detrich's penalty phase ineffective assistance of counsel claim. The case is remanded for the district court to issue a writ of habeas corpus vacating Detrich's death sentence unless the state re-sentences Detrich within a reasonable time set by the district court. If the state chooses not to re-sentence, Detrich's sentence will automatically be converted to life in prison in accordance with Arizona law.

□- *Narrative*: Remains on death row. In May 2012, the US Supreme Ct reversed the denial of Habeas Corpus and remanded.

4/30/1991

- Roger M. Scott (AZ Timeline #42)

- *Categorical reasons for delay*

- Ineffective assistance of counsel

- a. *Scott v. Ryan*, (D. Ariz., Jan. 24, 2011)

- pp. 7-8: court rejects Scott's ineffective assistance of counsel claim

- *Date inmate first filed habeas corpus petition*: N/A

- *Narrative*: Remains on death row. The most recent activity occurred on January 24, 2011, when the Arizona district court denied Scott's motion for an evidentiary hearing on his ineffective assistance of counsel claim.

5/24/1991

Michael S. Gallegos (#7)

- *Categorical reasons for delay*:

- Dist ct denied petition for writ of habeas corpus
- *Gallegos v. Shriro*, 583 F. Supp. 2d 1041 (D. Ariz. 2008).

ARIZONA NARRATIVES 1-25-13

- Argued that he was entitled to be sentenced by a jury under *Ring*.
 - B/C direct review of his case was final prior to *Ring*, he is not entitled to FH relief on that ruling. Claim 1 is without merit and will be denied.
 - Claimed, too, insufficient evidence to support a conviction- AEDPA deference may well be at its highest when a habeas petitioner challenges a state court's determination that the record evidence was sufficient to satisfy the state's own definition of a state law crime.
 - Writ of HC denied.

- *Narrative*: Still on death row. In 2010, HC motion filed. January 2012 his Attorney was removed from the case.

7/2/1991

- Joseph Rudolph Wood III (AZ Timeline #55)

- *Categorical reasons for delay*:

- Ineffective assistance of counsel
 - a. *Wood v. Schriro* (D. Ariz., Jan. 30, 2008)
 - p. 3: petitioner asked court to alter its ruling on the merits of his ineffective assistance claims but sought the issuance of a Certificate of Appealability; the court denied the COA

- *Date inmate first filed habeas corpus petition*: N/A

- *Narrative*: Remains on death row. The most recent activity occurred on January 30, 2008, when the Arizona district court denied Wood's habeas corpus petition and certification of appealability.

1992

- Roger Lynn Smith (AZ Timeline #46)

- *Categorical reasons for delay*: N/A

- *Date inmate first filed habeas corpus motion*: N/A

- *Narrative*: remains on death row. The most recent activity occurred on September 13, 1984, when the Arizona Supreme Court affirmed the Arizona Superior Court's imposition of a death sentence.

1992

- Jake Hughes (AZ Timeline #15)

- *Categorical reasons for delay*: N/A

- *Date inmate first filed habeas corpus motion*: N/A

- *Narrative*: remains on death row.

4/27/1992

- Ernest Gonzales (#9)

- *Categorical reasons for delay*

- Denied his motion for competency hearing and to stay proceedings (617 F. Supp.2d 849)
- Denied his motion for permission to file interlocutory appeal and for stay pending appeal (2008 WL 2387330).
- Petition for a writ of mandamus is granted (623 F.3d 1242)

ARIZONA NARRATIVES 1-25-13

- Held that prisoner was entitled to stay pending a competency determination, and mandamus relief was warranted.
- *Narrative*: Remains on death row. March 2012, his petition for writ of certiorari to the US Ct of Appeals was granted.

7/14/1992

- Richard D. Stokley (AZ Timeline #48)
- *Categorical reasons for delay*
 - Ineffective assistance of counsel
 - a. *Stokley v. Ryan*, 659 F.3d 802, 807 (9th Cir. 2011).
- *Date inmate first filed habeas corpus petition*: July 14, 1998
- *Narrative*: Stockley was sentenced to death for two counts of first-degree murder, two counts of kidnapping, and one count of sexual conduct with a minor under the age of 15. On June 27, 1995, the Arizona Supreme Court upheld his conviction and sentence (182 Ariz. 505). I could not find additional activity until May 17, 2009, when the Arizona District Court denied his writ of habeas corpus (2009 WL 728492). On September 26, 2011, the 9th Circuit Court of Appeals upheld the district court's denial of his habeas corpus petition.

10/26/1992

- Robert Wayne Murray (AZ Timeline #32)
- *Categorical reasons for delay*
- *Date inmate first filed habeas corpus petition*: N/A
- *Narrative*: Remains on death row. The most recent activity occurred on January 20, 2012, when petitioner substituted his attorney for his appeal of the AZ district court's 2008 decision to deny his habeas corpus petition.

10/26/1992

- Roger Wayne Murray (AZ Timeline #33)
- *Categorical reasons for delay*
 - Ineffective assistance of counsel
 - a. *Murray v. Schriro*, (D. Ariz., May 30, 2008)
 - p. 37: petitioner alleged he received ineffective assistance because lead counsel fell asleep on several occasions during the trial; court denied petitioner's claim
- *Date inmate first filed habeas corpus petition*: N/A
- *Narrative*: Remains on death row. The most recent activity occurred on June 23, 2008, when the AZ district court denied his motion to vacate the death penalty judgment.

12/9/1992

- Robert Lee Walden, Jr. (AZ Timeline #51)
- *Categorical reasons for delay*
- *Date inmate first filed habeas corpus petition*: N/A
- *Narrative*: Remains on death row. The most recent activity occurred on December 20, 2011, when the prisons rights petition in which Walden participated was closed.

ARIZONA NARRATIVES 1-25-13

2/19/1993

David Gulbrandson (#10)

- *Categorical reasons for delay*

- *Gulbrandson v. Shriro*, 2007 WL 1146417 (D. Ariz. April 18, 2007)
 - After Ct denied his amended habeas corpus petition and denied certificate of appealability, he brings this challenge of the denial on the merits and as procedurally barred.
 - Claims he was not competent to stand trial-->ct found the claim was procedurally barred b/c he failed to exhaust the claim in state court and failed to excuse the default by establishing cause and prejudice or a fundamental miscarriage of justice.
 - No evidence he was *M'Naghten* insane
 - Claimed he was denied his right to effective assistance of counsel-->ct found this conclusion was not an unreasonable application of *Strickland*.
 - Denied motion to amend.

- *Narrative*: Remains on death row. Filed a motion to appeal HC in 2009. Last activity was switching attorneys in 2010.

3/15/1993

Darrell Lee (#22)

- *Categorical reasons for delay*

- *Lee v. Ryan*, 2010 WL 3923091 (Sept. 30, 2010).
 - Court concludes that counsel's representation at sentencing was neither deficient nor prejudicial as those terms are defined in *Strickland*. Applying the “doubly deferential” standard required by the AEDPA, the Court readily concludes that the state court's denial of relief was not based on an unreasonable application of law or determination of fact.

- *Narrative*: Remains on death row. September 2010 his HC was denied.

4/15/1993

- Anthony M. Spears (AZ Timeline #45)

- *Categorical reasons for delay*

- *Ring*
 - a. *Spears v. Ryan* (D. Ariz., Sept. 14, 2009)
 - p. 25: “Because direct review of Petitioner’s case was final prior to *Ring*, he is not entitled to federal habeas relief premised on that ruling.”

- *Date inmate first filed habeas corpus petition*: N/A

- *Narrative*: Remains on death row. The most recent activity occurred on August 14, 2009, when the AZ District court denied Spears’ petition for writ of habeas corpus.

7/6/1993

- Kevin Artice Miles (AZ Timeline #29)

- *Categorical reasons for delay*

- *Date inmate first filed habeas corpus petition*: N/A

- *Narrative*: Remains on death row. The most recent activity occurred on August 10, 2010, when Miles appealed to the 9th Circuit.

ARIZONA NARRATIVES 1-25-13

7/9/1993

Thomas Kemp (#18)

- *Categorical reasons for delay*

- *Kemp v. Ryan*, 638 F.3d 1245 (9th Cir. 2011).
 - Because his petition was filed after the effective date of the AEDPA, relief can only be granted if the state court unreasonably applied clearly established federal law or unreasonably determined the facts. Kemp has failed to show that the Arizona Supreme Court acted unreasonably under either of these criteria in rejecting his arguments that admission of his incriminating statements to correctional officers violated his rights under *Miranda* and *Massiah*.

■ The district court's denial of Kemp's habeas petition is Affirmed

- *Narrative*: Executed April, 25, 2012. In November 2011 his writ of certiorari denied. Then in December 2011, AZ requested execution date for Kemp. Executed.

7/30/1993

James Erin McKinney (#27)

- *Categorical reasons for delay*

- *McKinney v. Ryan*, 2009 WL 2432738 (D. Ariz. 2009).
 - He contends that he was entitled to be sentenced by a jury under *Ring*
 - Because direct review of Petitioner's case was final prior to *Ring*, he is not entitled to federal habeas relief.
 - He contends that Arizona's death penalty statute does not sufficiently channel the sentencer's discretion.
 - All claims are governed by AEDPA: Denied motion for evidentiary development, dismissed based on procedural bar, dismissed the Fifth Amendment aspect of Claim 11 as not cognizable, and denied Claims 10 and 12 on the merits.

- *Narrative*: Remains on death row. On Sept. 2009, he sent his notice of appeal after his petition to amend was denied.

7/30/1993

Charles Michael Hedlund (#11)

- *Categorical reasons for delay*

- *Hedlund v. Ryan*, 2009 WL 2432739 (D. Ariz. Aug. 10, 2009).
 - Petition for HC: Applying the standard of deference mandated by *Strickland* and the AEDPA, Petitioner has not shown that counsel was ineffective in his handling of Morris's testimony on cross-examination.
 - Contends that he was entitled to be sentenced by a jury under *Ring*
 - *Ring* does not apply retroactively to cases already final on direct review
 - He alleges that Arizona's protocol for execution by lethal injection involves the unnecessary and wanton infliction of pain and suffering in violation of the Eighth Amendment.
 - Ct holds he failed to establish entitlement to habeas relief on any of his claims.

- *Narrative*: Remains on death row. Last activity was 9th Cir. Appeal granted extension in 2010.

12/13/1993

Danny Lee Jones (#17)

- *Categorical reasons for delay*

- *Jones v. Schriro*, 450 F.Supp.2d 1047 (D. Ariz. Sept. 1, 2006).
 - Under the governing AEDPA, Respondents contend that Claim 11 was procedurally defaulted by Petitioner's failure to present an argument in state court that his federal

ARIZONA NARRATIVES 1-25-13

constitutional rights were violated, and that the remaining claims are precluded by the trial court's denial of Petitioner's PCR petition.

■ Ct: he failed to establish entitlement to habeas relief on any of his claims.

- *Narrative*: Remains on death row. April 2011 Petition for writ of certiorari granted

12/16/1993

Gregory Dickens (#6)

- *Categorical reasons for delay*

- *Dickens v. Brewer*, 631 F.3d 1139 (9th Cir. 2011).
 - Death row inmates brought action challenging constitutionality of Arizona's three-drug lethal injection protocol. Previously, granted summary judgment in favor of Arizona, and inmates appealed.
 - AZ's protocol did not create an unconstitutional risk that an inmate would be improperly anesthetized and thus experience extreme pain and suffering while dying, and AZ could not be required to adopt a one-drug execution protocol.
 - Affirmed.

- *Narrative*: Still on death row. In January 2012, he entered appearances of counsel for civil rights case.

11/21/1994

Richard D. Hurles (#14)

- *Categorical reasons for delay*

- *Hurles v. Schriro*, 2008 WL 4446691 (D. Ariz. Sept. 30, 2008).
 - After investigation but prior to the beginning of the hearing, he withdrew his *Atkins* claim, and the Court denied the *Apprendi* claim based on the Supreme Court's determination in *Schriro v. Summerlin* that *Ring* does not apply retroactively.
 - He neither alleges nor cites to any part of the trial or sentencing record evidencing actual bias by Judge Hilliard; rather, his claim is limited to the appearance of bias stemming from Judge Hilliard's role as a responsive party in the special action.
 - When the allegations of bias do not relate to pecuniary interests or procedural infirmities, but rather, relate to alleged personal animosity and instances of stern courtroom administration, the AEDPA, necessarily leaves state courts considerable latitude to pronounce rulings that do not contradict,
 - He is not entitled to habeas relief on any claims.

- *Narrative*: Remains on death row. October 2011 his denied HC petition was reversed and remanded.

12/21/1994

- Christopher J. Spreitz (AZ Timeline #46)

- *Categorical reasons for delay*

- Ineffective assistance of counsel
 - a. *Spreitz v. Ryan*, 617 F.Supp.2d 887 (2009)
 - court rejected petitioner's ineffective assistance of counsel claim

- *Date inmate first filed habeas corpus petition*: N/A

- *Narrative*: The most recent activity occurred on May 12, 2009, when the AZ District court denied inmate's petition for habeas corpus and vacated his stay of execution.

2/1/1995

ARIZONA NARRATIVES 1-25-13

Eric Owen Mann (#26)

- *Categorical reasons for delay*

- *Mann v. Ryan*, (D. Ariz. 2009).
 - He alleges that counsel performed at a constitutionally ineffective level by failing to present Petitioner's testimony at trial. He contends that counsel's decision was not based on reasonable trial strategy given that Petitioner's testimony was necessary to support the theory that he shot the victims in self defense.
 - He also alleges that his rights under the Eighth and Fourteenth Amendments were violated when the state courts found that the Bazurto murder satisfied the pecuniary gain aggravating factor.
 - Failed to establish entitlement to habeas relief on any of his claims

- *Narrative*: Remains on death row. In Oct. 1011 his HC relief was denied.

2/2/1995

Chad Alan Lee (#21)

- *Categorical reasons for delay*

- *Lee v. Schriro*, 2009 WL 32743 (Jan. 6, 2009).
 - Ct: his Amended Petition for Writ of HC is not entitled to habeas relief.
 - Governed by AEDPA: Claim that his rights were violated by the cumulative effect of his trial counsel's performance was procedurally barred. He did not present a claim of ineffective assistance of counsel in state court and implicitly acknowledged that fact when he asserted the futility doctrine. However, apparent futility of presenting habeas claims to state courts does not constitute cause to overcome a procedural default.
 - Ct: granted a Certificate of Appealability as to the following issues: Whether Petitioner's constitutional rights were violated when the trial court failed to remove for a cause a juror who did not understand English (Claim 4); and Whether Petitioner was denied due process of law when the trial judge failed to suppress inculpatory statements made to police (Claim 8).

- *Narrative*: Remains on death row. In 2009, his petition for motion to amend HC was denied.

6/9/1995

- Pete Carl Rogovich (AZ Timeline #36)

- *Categorical reasons for delay*

- Ineffective assistance of counsel
 - a. *Rogovich v. Schriro* (July 14, 2008)
 - pp. 12-19: AZ District court denied petitioner's ineffective assistant claims.

- *Date inmate first filed habeas corpus petition*: N/A

- *Narrative*: Remains on death row. The most recent activity occurred on November 25, 2009, when Rogovich filed for a third extension on his habeas corpus brief.

7/21/1995

Barry Jones (#16)

- *Categorical reasons for delay*

- *Jones v. Shriro*, 2008 WL 4446619 (D. Ariz. Sept. 29, 2008).
 - He alleges ineffective assistance of counsel (IAC) at trial and sentencing

ARIZONA NARRATIVES 1-25-13

- Claim 1D: Jones alleges his right to effective assistance of counsel was violated by trial counsel's failure to conduct an adequate investigation, which derived from counsel's failure to consult sufficiently with Petitioner regarding trial strategy.
- The Court finds that its procedural ruling finding Claim 1D procedurally defaulted in part, as discussed in this Order, is adequate to proceed on appeal. The Court finds that reasonable jurists, applying the deferential standard of review set forth in the AEDPA, which requires this Court to evaluate state court decisions in light of clearly established federal law as determined by the United States Supreme Court, could not debate its resolution of the merits of Petitioner's remaining claims.
 - Amended Petition for Writ of Habeas Corpus is denied.
 - Grants a Certificate of Appealability as to whether CLaim 1D of the Amended Petition-alleging ineffective assistance of counsel for failure to conduct an adequate investigation for trial and sentencing-is, in part, procedurally barred.

- *Narrative*: Remains on death row. Entry of appearance to US Court of Appeals 9th in 2008 and motion to stay proceedings granted in 2009.

12/9/1996

- Michael Ray White (AZ Timeline #53)

- *Categorical reasons for delay*

- Ineffective assistance of counsel
 - a. *White v. Ryan* (D. Ariz., Jan. 31, 2012)

- *Date inmate first filed habeas corpus petition*:

- *Narrative*: Remains on death row. The most recent activity occurred on January 31, 2012, when the AZ district court denied the respondents' motion to lift the stay and vacate order for competency restoration in light of *Cullen v. Pinholster*.