

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. RENEE L.K. HAMPSON

CASE NO. CR20031740-001

DATE: November 30, 2023

STATE OF ARIZONA
Plaintiff,

vs.

JOHN MONTENEGRO CRUZ
Defendant.

R U L I N G

IN CHAMBERS RE: PETITION FOR POST CONVICTION RELIEF PURSUANT TO RULE 32

Pending before the Court is the defendant John Montenegro Cruz's Successive Petition for Post Conviction Relief. The State has responded and agrees that the Petition should be granted. Further, the parties have filed a Joint Status Report stipulating that the defendant is entitled to resentencing. The Court incorporates the Joint Status Report by reference as reflecting the factual record and the intent of the parties.

POST CONVICTION RELIEF

The defendant asserts in his Successive Petition pursuant to Rule 32.1(g) that *Lynch v. Arizona*, 578 U.S. 613 (2016) is a significant change in the law that is applicable to his case and would have probably overturned his sentence of death. In *Lynch*, the United States Supreme Court held that *Simmons v. South Carolina*, 512 U.S. 154 (1994) applies in Arizona. In *Simmons*, the United States Supreme Court held that when a capital defendant's future dangerousness is at issue, and the only sentencing alternative to death available to the jury is life imprisonment without the possibility of parole, due process entitles the defendant to inform the jury of his parole ineligibility. At the time of the defendant's capital trial, parole was not a sentencing option in Arizona.

The defendant's successive Petition was initially denied by the Honorable Joan Wagner. On review, both the Appeals Court and the Arizona Supreme Court denied relief, holding that *Lynch* was not a significant change in the law in Arizona. The United States Supreme Court, on certiorari in *Cruz v. Arizona*, 143 S.Ct. 650 (2023), reversed and remanded the case, holding that *Lynch* was a significant change in the law for purposes of Rule 32.1(g).

On remand, the Arizona Supreme Court ordered, "Upon the Court's review of the Supreme Court's ruling and consideration of the supplemental briefs filed by Cruz and the State, the Court vacates the under advisement ruling entered on August 24, 2017, and remands to the superior court to consider whether application of *Simmons* would have probably changed Cruz's death sentence pursuant to Arizona Rule of Criminal Procedure 32.1(g)."

Aliyah Lewis
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FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court makes the following findings of fact and conclusions of law based on the parties Joint Status Report:

The State has conceded that the defendant's constitutional rights were violated and that he is entitled to resentencing, citing *State v. Valencia*, 241 Ariz. 206 (2016), *overruled on other grounds*, *Mitchell v. Cooper*, 256 Ariz. 1 (2023) ("If the State does not contest on remand that the defendant's constitutional rights were violated, then it should stipulate to the defendant's resentencing.").

The State's admitted errors undermine the grounds on which this Court has previously denied the defendant relief under Rule 32.1(g).

The State's previous arguments that application of *Simmons* and *Lynch* would not have probably overturned the defendant's death sentence are untenable given the United States Supreme Court decision in *Cruz*.

The defendant's future dangerousness was at issue sufficient to trigger the application of *Simmons*.

The defendant preserved his *Simmons* claim.

The trial record reflects that the defendant sought to argue parole ineligibility as a weighing factor and the trial court prevented him from informing the jury of his parole ineligibility.

The defendant's jury found a single aggravating factor and then heard from 16 defense witnesses who testified to the defendant's good behavior in prison, his abuse and neglect as a child, his posttraumatic stress disorder, and his history of drug use, including around the time of the offense.

The jury initially deadlocked and then deliberated for three days before returning a death sentence.

The Arizona Supreme Court has found prejudice in similar circumstances where only one aggravator was found, and a great deal of mitigating evidence was introduced. *State v. Escalante-Orozco*, 241 Ariz. 254 (2017).

The Arizona Supreme Court has identified even shorter jury deliberations as evidence of prejudice because it shows the jury gave careful consideration to the sentencing options. *Id.* at 286.

The defendant was prejudiced under any standard.

The defendant is entitled to relief under *Simmons* and the Court should expeditiously order resentencing.

In addition to the stipulated factual findings set forth above, the Court notes that three jurors issued a press release after the trial, stating that they would rather have voted for life without the possibility of parole, but they were not given that option. A fourth juror later wrote a declaration, stating, "If I could have voted for a life sentence without parole, I would have voted for that option." *Cruz* at 657.¹

¹ The record in this case reveals that the jury was instructed that the defendant was eligible for parole after 25 years. This was an incorrect statement of the law, as parole was eliminated in Arizona for persons convicted of offenses occurring on or after January 1, 1994.

RULING

The Court therefore finds that the defendant is entitled to relief pursuant to Rule 32.1(g). The Court further finds pursuant to Rule 32.13(a) and (d)(2) that no evidentiary hearing is necessary as there are no issues of material fact in dispute and that resentencing is the appropriate remedy.

IT IS THEREFORE ORDERED that the defendant's Petition is **GRANTED**, and his sentence of death is hereby **VACATED**.

IT IS FURTHER ORDERED that the defendant shall be resentenced at a date to be determined by the Court.

IT IS FURTHER ORDERED that the State shall submit in writing no later than two weeks from the date of this Ruling whether it intends to seek the death penalty in this case.


HON. RENEE L. K. HAMPSON
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