

# **ATTACHMENT 4**



# **ATTACHMENT 5**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

FILED       LODGED  
 RECEIVED     COPY  
  
FEB 03 2000  
  
CLERK U S DISTRICT COURT  
DISTRICT OF ARIZONA  
BY \_\_\_\_\_ DEPUTY

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

**Jeffrey Timothy Landrigan,**  
**Petitioner,**  
  
v.  
**Terry Stewart, et al.,**  
**Respondents.**

**RECEIVED**  
FEB 08 2000  
FEDERAL PUBLIC DEFENDER  
DISTRICT OF ARIZONA  
**CV 96-2367-PHX-ROS**

**Order**

Pending before the Court is Petitioner's Motion to Alter or Amend Judgment. (File doc. 132). Pursuant to Fed.R.Civ.P. 59(e), Petitioner asks the Court to alter or amend the judgment denying Petitioner's First Amended Petition for Writ of Habeas Corpus.

**DISCUSSION**

**I. Standard of Review**

Rule 59(e), Fed.R.Civ.P., provides that a party may file a motion to alter or amend a judgment of the Court no later than ten days after the entry of the judgment. A motion filed under Rule 59(e) "should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." 389 Orange Street Partners v. Arnold, 179 F.3d 656, 665 (9<sup>th</sup> Cir. 1999). "Such a motion, however, may not be used to relitigate old matters or to raise arguments or present evidence that could have been raised prior to entry of judgment." Demasse v. ITT Corp., 915 F.Supp. 1040, 1048 (D. Ariz. 1995). "Whatever may be the purpose of Rule 59(e) it should not be supposed that it is intended to give an unhappy litigant one

135

1 additional chance to sway the judge." Frito-Lay of Puerto Rico, Inc. v. Canas, 92 F.R.D. 384,  
2 390 (D. Puerto Rico 1981). Rather, the purpose of a motion to alter or amend a judgment under  
3 Rule 59(e) "is to correct manifest errors of law or fact or to present newly discovered evidence."  
4 Ruscavage v. Zuratt, 831 F. Supp. 417, 418 (E. D. Pa. 1993). "Motions under Rule 59(e) should  
5 be granted sparingly because of the interests in finality and conservation of scarce judicial  
6 resources." Id.

## 7 **II. Analysis**

### 8 **A. Claim 7**

9 Petitioner argues that the Court erred when it determined that Walton v. Arizona, 497  
10 U.S. 639 (1990), continues to be clearly established Supreme Court law. In support of his  
11 assertion, Petitioner relies on the pronouncement in Jones v. United States, 526 U.S. 227, 119  
12 S.Ct. 1215, 1224 n. 6 (1999) that "under the Due Process Clause of the Fifth Amendment and  
13 the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior  
14 conviction) that increases the maximum penalty for a crime must be charged in an indictment,  
15 submitted to a jury, and proven beyond a reasonable doubt." Petitioner ignores, however, that  
16 the majority expressly declined to overrule Walton, stating:

17 [O]ur decision today does not announce any new principle of  
18 constitutional law, but merely interprets a particular federal statute  
19 in light of a set of constitutional concerns that have emerged  
20 through a series of our decisions over the past quarter century. But  
21 even if we assume that the question we raise will someday be  
22 followed by the answer the dissenters seem to fear, that answer  
23 would in no way hinder the States (or the National Government)  
24 from choosing to pursue policies aimed at rationalizing sentencing  
25 practices. If the constitutional concern we have expressed should  
26 lead to a rule requiring jury determination of facts that raise a  
27 sentencing ceiling, that rule would in no way constrain legislative  
28 authority to identify the facts relevant to punishment or to establish  
fixed penalties. . . . [W]hile we disagree with the dissent's dire  
prediction about the effect of our decision on the States' ability to  
choose certain sentencing policies, it should go without saying that,  
if such policies conflict with safeguards enshrined in the  
Constitution for the protection of the accused, those policies have  
to yield to the constitutional guarantees.

Jones, 526 U.S. at \_\_\_, 119 S.Ct. at 1228 n. 11 (Souter, J., delivered the opinion of the Court, in  
which Stevens, Scalia, Thomas, and Ginsburg, JJ., joined). Rather, the Court in Jones clarified

1 that the rationale in Walton supported judicial determinations of aggravating and mitigating  
2 factors since those determinations did not "rais[e] the ceiling of the sentencing range available."  
3 Id. at 1228.

4 Justice Stevens wrote a concurring opinion wherein he stated that he is "convinced that  
5 it is unconstitutional for a legislature to remove from the jury the assessment of the facts that  
6 increase the prescribed range of penalties to which a criminal defendant is exposed." Id. at  
7 1228. Justice Stevens recommended that the Walton decision be "reconsidered in due course[,]"  
8 although he recognized that the reconsideration of Walton was not necessary to join the opinion  
9 of the Court. Id. at 1229. Justice Scalia likewise wrote a concurring opinion in which he opined  
10 "that it is unconstitutional to remove from the jury the assessment of facts that alter the  
11 congressionally prescribed range of penalties to which a criminal defendant is exposed." Id. at  
12 1229. Justice Kennedy wrote a dissenting opinion criticizing the majority for its "sweeping  
13 constitutional discussion cast[ing] doubt on sentencing practices and assumptions followed not  
14 only in the federal system but also in many States." Id. at 1229 (joined by the Chief Justice,  
15 Justice O'Connor, and Justice Breyer). Specifically, Justice Kennedy found that the majority's  
16 opinion cast needless doubt on cases involving capital sentencing, such as Walton. Id. at 1238.

17 The Court finds that Walton has not been overruled. The Supreme Court in Jones was  
18 exceedingly cautious when it refrained from announcing any new principles of constitutional  
19 law. Although the constitutional ramifications of the Jones decision on capital sentencing  
20 schemes have yet to be clarified by the Supreme Court, this Court declines Petitioner's offer to  
21 reexamine Walton, a matter solely within the province of the Supreme Court. The Court also  
22 finds that Walton is clearly established Supreme Court law.<sup>1</sup>

23 Petitioner asks the Court to hold this case in abeyance pending the Supreme Court's  
24 review of State v. Appendi, 731 A.2d 485 (N.J. 1999), cert. granted, \_\_ U.S. \_\_, 120 S.Ct. 525  
25 (1999). The question presented in Appendi is as follows: "Is New Jersey's hate crime law . . .

26  
27  
28 <sup>1</sup> The Court notes that at least seventy Arizona cases and several hundred cases from other  
jurisdictions have cited Walton favorably.

1 . unconstitutional insofar as it provides for extended term of imprisonment increasing maximum  
2 possible penalty by 10 years, on basis of proof by preponderance of evidence rather than proof  
3 beyond reasonable doubt, and denies defendant rights to notice by indictment and trial by jury?"  
4 68 U.S.L.W. 3345. The Court finds that the question presented in Apprendi is a narrow one, and  
5 the Supreme Court's review of the constitutionality of New Jersey's hate crime law will not  
6 provide any guidance on capital sentencing in Arizona. Accordingly, the Court will not hold  
7 this case in abeyance pending the Supreme Court's resolution of Apprendi.

8 Petitioner also asks the Court to hold this case in abeyance pending the Supreme Court's  
9 review of United States v. Castillo, 179 F.3d 321 (5<sup>th</sup> Cir. 1999), cert. granted, \_\_\_ U.S. \_\_\_, 2000  
10 WL 21143 (Jan. 14, 2000). The questions presented in Castillo are the following: (1) In a  
11 prosecution under Section 924(c)(1), is the type of firearm an element of the offense that must  
12 be alleged in an indictment and found by a jury beyond reasonable doubt, or is it a sentencing  
13 factor to be found by a judge by a preponderance of the evidence? (2) Does equivocal  
14 "legislative history" override the doctrine of constitutional doubt as set forth in Jones v. United  
15 States, under which a statute must be interpreted to avoid possible unconstitutionality under the  
16 Fifth and Sixth Amendments? 68 U.S.L.W. 3449. The Court finds that the questions presented  
17 in Castillo, like the question presented in Apprendi, are narrow, and the Supreme Court's review  
18 of Castillo will not provide any guidance on capital sentencing in Arizona. The Court will  
19 therefore not hold this case in abeyance pending the Supreme Court's resolution of Castillo.

20 **B. Request for Evidentiary Hearing**

21 Petitioner argues that he is entitled to an evidentiary hearing on his claims of ineffective  
22 assistance of counsel. The only claims of ineffective assistance of counsel which Petitioner  
23 fairly presented to the state court and which he also raised in his Amended Petition were:

- 24 (1) Counsel's instruction to probation officer not to interview Petitioner in  
25 preparation for the aggravation/mitigation hearing;
- 26 (2) Counsel's failure to contact Petitioner's biological father and adoptive  
27 sister to aid counsel's investigation concerning evidence of mitigation;
- 28 (3) Counsel's failure to present mitigating evidence that Petitioner's earlier  
conviction for second degree murder was the result of a homicide in which  
Petitioner was acting in self-defense;

1 (4) Counsel's failure to investigate and present other evidence of mitigation,  
2 including the failure to present evidence of the following:

- 3 (a) The alcoholism of Petitioner's adoptive mother;  
4 (b) His adoptive family's dysfunctional nature;  
5 (c) His biological family's violent history; and  
6 (d) His biological mother's use of drugs and alcohol during her  
pregnancy.

7 Petitioner abandoned the first of his four claims of ineffective assistance of counsel by failing  
8 to argue the merits of that claim. See United States v. Vought, 69 F.3d 1498, 1501 (9<sup>th</sup> Cir.  
9 1995) (failure to address claim in appellate brief is abandonment of claim). Furthermore,  
10 Petitioner admitted that the third claim of ineffective assistance of counsel lacked merit when  
11 he stated that he had been the initial aggressor and was not acting in self-defense. (R.T. of  
12 10/25/90 at 11-12). Thus, only two claims of ineffective assistance of counsel remained for the  
13 Court to determine on the merits.

14 **1. Second Allegation of Ineffective Assistance of Counsel**

15 Petitioner claimed that his trial counsel was ineffective for failing to contact Petitioner's  
16 biological father and adoptive sister to aid counsel's investigation concerning mitigation. In his  
17 Amended Memorandum, Petitioner argued that if his trial counsel had contacted Petitioner's  
18 biological father and adoptive sister, they would have provided mitigating evidence concerning  
19 Petitioner's biological family, including the family's mental and physical disorders, the family's  
20 dysfunctional lifestyles, Petitioner's birth mother's use of drugs and alcohol during her  
21 pregnancy, Petitioner's behavior as an infant and child, and Petitioner's drug use.

22 Petitioner submitted a declaration from his biological father, Darrell Hill, in which Mr.  
23 Hill stated that Petitioner's birth mother used drugs before, during, and after her pregnancy.  
24 (File doc. 119, Exh. 11). Mr. Hill did not know if Petitioner's birth mother drank alcohol during  
25 her pregnancy. Id. Mr. Hill also discussed his own drug use. Id. He further discussed the  
26 history of criminal conduct in the Hill family. Id.

27 Petitioner also submitted two declarations from his adoptive sister, Shannon Sumter. In  
28 her first declaration, Ms. Sumter, discussed Petitioner's adoption by the Landrigan family, his

1 behavior as a child, his adoptive mother's alcoholism, Petitioner's drug and alcohol use, and  
2 Petitioner's trouble with the law. (File doc. 119, Exh. 17). She stated that when Petitioner was  
3 a baby, he had trouble sleeping through the night and would often sleep under his parents' bed.  
4 Id. She further stated that Petitioner threw temper tantrums as a child. Id. She often wondered  
5 if Petitioner suffered from fetal alcohol syndrome. Id. She stated that Petitioner skipped school  
6 and started taking drugs when he was young. Id. She also mentioned that Petitioner's adoptive  
7 mother was an alcoholic. Id. She recalled an incident in which Petitioner and his adoptive  
8 mother engaged in a physical fight. Id. She stated that she didn't know if Petitioner's behavior  
9 exacerbated his adoptive mother's drinking problem or if her drinking problem exacerbated  
10 Petitioner's behavior. Id. She stated that Petitioner began to get into trouble with the law when  
11 he was about twelve years old. Id. She discussed Petitioner's abuse of drugs and alcohol during  
12 his teenage years and beyond. Id. She discussed the fact that her parents had sent Petitioner to  
13 a camp for troubled boys. Id. In her second declaration, Ms. Sumter repeated a few of the  
14 assertions contained in her first declaration and did not discuss any additional information  
15 concerning Petitioner's troubled background. (File doc. 90, Exh. 18).

16 The Court expanded the record to include the declaration from Petitioner's birth father  
17 and the first declaration from his adoptive sister. The Court expanded the record to include both  
18 of these declarations in order to enable the Court "to dispose of [Petitioner's habeas petition] .  
19 . . without the time and expense required for an evidentiary hearing." Rule 7, Rules Governing  
20 Section 2254 Cases in the United States District Courts, Advisory Committee Notes. Petitioner  
21 has not pointed to any additional facts in addition to those contained in Mr. Hill's and Ms.  
22 Sumter's declarations which he believes will come to light if he is given an evidentiary hearing,  
23 and he has not explained how an evidentiary hearing will assist him with his ineffective  
24 assistance of counsel claim. See Cardwell v. Greene, 152 F.3d 331, 338-339 (4<sup>th</sup> Cir.), cert.  
25 denied, \_\_\_ U.S. \_\_\_, 119 S.Ct. 587 (1998); see also McDonald v. Johnson, 139 F.3d 1056, 1060  
26 (5<sup>th</sup> Cir. 1998) (district court had sufficient facts before it to make an informed decision on the  
27 merits without holding evidentiary hearing because affidavits had been submitted). Since the  
28 Court expanded the record to include the declarations from Mr. Hill and Ms. Sumter, an

1 evidentiary hearing would be superfluous.

2       Based upon the declarations of Mr. Hill and Ms. Sumter, the Court was able to determine  
3 the merits of Petitioner's second claim of ineffective assistance of trial counsel. See  
4 Memorandum of Decision and Order at 16-17. The Court found that Petitioner failed to  
5 demonstrate that he was prejudiced by his trial counsel's alleged failure to present testimony  
6 from Mr. Hill and Ms. Sumter on Petitioner's behalf at sentencing. Id. Thus, since Petitioner's  
7 second allegation of ineffective assistance of counsel, even if proven, does not establish  
8 prejudice, Petitioner has not set forth a colorable claim of ineffective assistance of counsel and  
9 he is not entitled to an evidentiary hearing. Correll v. Stewart, 137 F.3d 1404, 1411 (9<sup>th</sup> Cir.),  
10 cert. denied, \_\_ U.S. \_\_, 119 S.Ct. 450 (1998).

## 11                   2.       **Fourth Allegation of Ineffective Assistance of Counsel**

12       Petitioner claimed that his trial counsel was ineffective for failing to investigate and  
13 present the following evidence of mitigation:

- 14                   (a)     The alcoholism of Petitioner's adoptive mother;
- 15                   (b)     His adoptive family's dysfunctional nature;
- 16                   (c)     His biological family's violent history; and
- 17                   (d)     His biological mother's use of drugs and alcohol during her  
18 pregnancy.

19 In support of this claim, Petitioner moved to expand the record to include numerous declarations  
20 and documents. The Court reviewed those declarations and documents and determined that the  
21 record should be expanded to include many of them, including the following:

- 22                   (1)     A declaration by Thomas C. Thompson, a psychologist, opining that  
23 Petitioner was genetically predisposed to committing the offense and  
24 stating that although Petitioner does not manifest the obvious external  
25 features of fetal alcohol syndrome (FAS), an understanding of FAS is  
26 relevant to understanding Petitioner's condition;
- 27                   (2)     Documentation supporting Dr. Thompson's declaration, including Dr.  
28 Thompson's curriculum vitae, a bibliography of his readings, a summary  
of tests he performed on Petitioner, a report by Dr. McMahon upon which  
Dr. Thompson relied, a genogram of the Hill family, a genogram of the  
Landrigan family, a legend for reading the genograms, and a list of  
disordered behaviors;
- (3)     A declaration by investigator Lisa Eager summarizing her investigation of

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

the Hill family;

- (4) Darrel Hill's inmate file, criminal records, and hospital records chronicling the history of violent crimes committed by members of the Hill family;
- (5) A declaration by Petitioner's uncle, Philip Hill, discussing the Hill family's history of violence;
- (6) Declarations by Darrel Hill and Shannon Sumter (discussed supra);
- (7) Declarations by Robert Forrest and Donna Clark, who discussed the alcoholism of Petitioner's adoptive mother; and
- (8) Declarations by Sandra Martinez and Robert Martinez discussing the alcoholism of Petitioner's adoptive mother and the dysfunctional nature of the Landrigan family.

Petitioner has not pointed to any additional facts in addition to those contained in the expanded record which he believes will come to light if he is given an evidentiary hearing, and he has not explained how an evidentiary hearing will assist him with this claim of ineffective assistance of counsel. See Cardwell and McDonald, supra. The Court finds that the expanded record is sufficient to dispose of Petitioner's habeas petition without an evidentiary hearing, which would be superfluous.

In addition, based on a review of the expanded record, the Court was able to determine the merits of Petitioner's fourth claim of ineffective assistance of counsel. See Memorandum of Decision and Order at 16-17. The Court found that Petitioner failed to demonstrate that he was prejudiced by his trial counsel's failure to present the following mitigation evidence: (1) the alcoholism of Petitioner's adoptive mother; (2) the dysfunctional nature of Petitioner's adoptive family; (3) his biological family's history of violence; and (4) his biological mother's use of drugs and/or alcohol during her pregnancy. Id. Thus, because Petitioner's fourth allegation of ineffective assistance of counsel, even if proven, does not establish prejudice, Petitioner has not set forth a colorable claim of ineffective assistance of counsel and he is not entitled to an evidentiary hearing. Correll, 137 F.3d at 1411.

**3. Organic Brain Dysfunction and Mental Impairment**

Petitioner argues that the Court erroneously refused to consider Petitioner's evidence that

1 he suffered from organic brain dysfunction and was mentally impaired.<sup>2</sup> The Court disagrees.  
2 Petitioner did not fairly present a claim of ineffective assistance of counsel to the state court  
3 relating to his counsel's alleged failure to discover and present evidence of Petitioner's organic  
4 brain dysfunction and mental impairment as mitigating evidence, see Carriger v. Lewis, 971  
5 F.2d 329, 333-334 (9<sup>th</sup> Cir. 1992), cert. denied, 507 U.S. 992 (1993) (to avoid procedural default  
6 on a claim of ineffective assistance of counsel, a defendant must fairly present all alleged  
7 attorney defects to the state court), nor did he include such a claim in his Amended Petition.  
8 The Court thus finds that Petitioner's allegations that he suffered from organic brain damage and  
9 other mental impairments fundamentally alter the legal claim he presented to the state court.

10 Petitioner asserts that his claim that he suffered from organic brain dysfunction and was  
11 mentally impaired was salvaged by the Court's determination that for purposes of 28 U.S.C. §  
12 2254(e), any failure to develop the material facts of Petitioner's claim of ineffective assistance  
13 of counsel is not attributable to Petitioner. Petitioner's assertion is mistaken. Petitioner's failure  
14 to develop the material facts of the claim he actually alleged in state court will not be held  
15 against him for purposes of determining whether he is entitled to an evidentiary hearing on that  
16 claim. However, Petitioner's failure to develop the material facts of claims which Petitioner did  
17 not allege in state court does not constitute cause entitling him to raise those allegations for the  
18 first time on habeas review.

19  
20  
21  
22  
23  
24  
25 ///

---

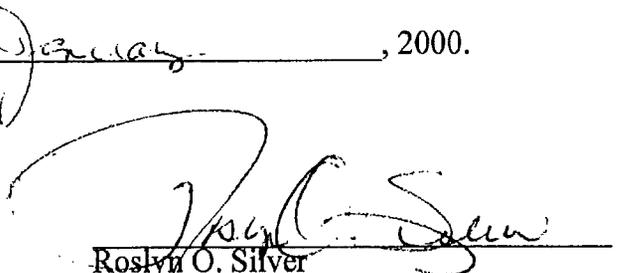
26  
27 <sup>2</sup> In this regard, Petitioner appears to reargue his two motions to expand the record, the first  
28 of which the Court granted in part and the second of which the Court denied. The Court declines  
Petitioner's invitation to again consider the merits of his motions to expand the record.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Accordingly,

**IT IS THEREFORE ORDERED** that Petitioner's Motion to Alter or Amend Judgment (File doc. 132) is **DENIED**.

DATED this 31 day of January, 2000.



Roslyn O. Silver  
United States District Judge

YOU COULD HAVE RECEIVED THIS NOTICE YESTERDAY BY FAX.

Just complete and return the authorization below and you will receive notice of orders and judgments within hours of their entry. It's FREE and it's FAST!

*Habeas*

Fredric F Kay  
Federal Public Defender's Office  
222 N Central Ave  
Ste 810  
Phoenix, AZ 85004

RECEIVED  
FEB 08 2000  
FEDERAL PUBLIC DEFENDER  
DISTRICT OF ARIZONA

-----  
2:96-cv-02367 #135  
10 page(s).  
02/04/00  
-----

AUTHORIZATION TO SEND ORDERS AND  
JUDGMENTS BY FACSIMILE TRANSMISSION

The Clerk of Court for the District of Arizona is authorized to transmit judgment, orders or notices under Fed.R.Civ.P. 77 and Fed.R.Crim.P. 49 by facsimile transmission in any case in which this capability exists and the undersigned appears as lead attorney. I understand that this electronic notice will be in lieu of notice by mail. I also understand that if I am a lead attorney for a party in a case, and I authorize the clerk to fax notices to me, I am responsible for distributing them to my co-counsel.

FAX Phone # \_\_\_\_\_ Firm Name \_\_\_\_\_  
Phone # \_\_\_\_\_ Attorney Name \_\_\_\_\_  
State Bar # \_\_\_\_\_ Street Address \_\_\_\_\_  
Signature \_\_\_\_\_ City, State, Zip \_\_\_\_\_

Mail to: Clerk, District of Arizona  
230 N 1st Avenue Room 1400  
Phoenix, AZ 85025

Registration will enable FAX Noticing of judgement, orders and notices for both Civil and Criminal casetypes.

\*\*\* Visit our website: <http://www.azd.uscourts.gov> \*\*\*

# **ATTACHMENT 6**

176 Ariz. 1

STATE of Arizona, Appellee,

v.

Jeffrey Timothy LANDRIGAN aka  
Jeffrey Dale Page, Appellant.

No. CR-90-0323-AP.

Supreme Court of Arizona.

Feb. 25, 1993.

Reconsideration Denied April 13, 1993.

Defendant was convicted of theft, second-degree burglary, and felony-murder. The Superior Court, Maricopa County, No. CR-90-00066, Cheryl K. Hendrix, J., imposed death penalty. Automatic appeal was taken. The Supreme Court, Zlaket, J., held that: (1) evidence supported conviction; (2) evidence supported finding of aggravating factors; and (3) defendant had not received ineffective assistance of counsel.

Affirmed.

**1. Criminal Law**  $\S$ 753.2(1)

If reasonable minds can differ on inferences to be drawn from evidence, case must be submitted to jury and judgment of acquittal cannot be entered. 17 A.R.S. Rules Crim.Proc., Rule 20.

**2. Criminal Law**  $\S$ 911, 1156(1)

Whether to grant or deny new trial is within sound discretion of trial court, and will not be disturbed on appeal absent abuse of discretion. 17 A.R.S. Rules Crim.Proc., Rule 24.

**3. Burglary**  $\S$ 45

Defendant was not entitled to judgment of acquittal on burglary charge, as reasonable minds could differ as to inferences to be drawn from evidence; ransacked condition of room, coupled with presence of half-eaten sandwich, supported inference that defendant had remained on premises for some time with intent to steal items. 17 A.R.S. Rules Crim.Proc., Rule 20.

**4. Burglary**  $\S$ 41(1)

Guilty verdict on burglary count was not contrary to weight of evidence, so as to entitle defendant to new trial; ransacked condition of room, coupled with presence of half eaten sandwich, provided inference that defendant had remained on premises for some time with intent to steal items. 17 A.R.S. Rules Crim.Proc., Rule 24.

**5. Homicide**  $\S$ 269

Felony-murder defendant was not entitled to judgment of acquittal, as reasonable minds could differ as to whether evidence indicated he had killed victim in connection with burglary; there were phone calls from victim to friend saying that he was with "Jeff," victim was subsequently found dead from strangulation with his apartment ransacked, defendant fitted description of "Jeff" given by victim to friend, defendant was found wearing shirt belonging to victim, and defendant's fingerprints had been found at scene. A.R.S.  $\S$  13-1105, subd. A, par. 2; 17 A.R.S. Rules Crim.Proc., Rule 20.

**6. Criminal Law**  $\S$ 935(1)

Felony-murder defendant was not entitled to new trial on grounds that conviction was against weight of evidence; there were phone calls from victim to friend saying that he was with "Jeff," victim was subsequently found dead from strangulation with his apartment ransacked, defendant fitted description of "Jeff" given by victim to friend, defendant was found wearing shirt belonging to victim, and defendant's fingerprints had been found at scene. A.R.S.  $\S$  13-1105, subd. A, par. 2; 17 A.R.S. Rules Crim.Proc., Rule 24.

**7. Indictment and Information**  $\S$ 189(8)

There is no lesser included homicide offense to crime of felony-murder, as necessary mens rea is supplied by intent required for underlying felony. A.R.S.  $\S$  13-1105, subd. A, par. 2.

**8. Homicide**  $\S$ 307(3)

Defendant charged with felony-murder in connection with killing of victim while perpetrating burglary was not entitled to instruction on lesser included offense of

second-degree murder, on grounds that murder had been committed as response to abusive sex or in heat of passion; only evidence on point was mother's testimony that defendant had called her to complain of bleeding from ears, nose and rectum, and this evidence was too equivocal.

**9. Constitutional Law** ⇨250.3(1)

Imposition of death penalty, without first requiring jury to make findings of aggravating and mitigating circumstances, does not violate equal protection rights of defendants. U.S.C.A. Const.Amend. 6, 14.

**10. Criminal Law** ⇨749

Sentencing factors, as opposed to elements of an offense, may be found by court at sentencing hearing. U.S.C.A. Const.Amend. 6, 14.

**11. Homicide** ⇨357(9)

Evidence supported finding of death penalty aggravating circumstance, in connection with felony-murder with underlying burglary, that murder was committed with expectation of receipt of something of pecuniary value; defendant had admitted to girlfriend he was getting money by robbing, victim pursuing defendant as sexual partner was obvious target, and apartment had been ransacked with killing not appearing to have been unexpected or accidental. A.R.S. § 13-703, subd. F, par. 5.

**12. Homicide** ⇨357(5)

Evidence supported finding of death penalty aggravating circumstance involving prior conviction for felony involving use or threat of violence on another person; certified copy of conviction in Oklahoma, for assault and battery with dangerous weapon, was submitted. A.R.S. § 13-703, subd. F, par. 2.

**13. Homicide** ⇨357(4)

Record did not present mitigating evidence sufficiently substantial to call for leniency, in death penalty phase of felony-murder case involving underlying burglary, even though defendant claimed he was intoxicated; only evidence on subject was testimony of friend who said victim called and told them that he and person later

identified as defendant were drinking beer, and there was no evidence defendant was impaired. A.R.S. § 13-703, subd. G, par. 1.

**14. Homicide** ⇨356

Death sentence in case of felony-murder involving underlying burglary offense was not unwarranted, even though judge had stated that circumstances of case were "not out of the ordinary when considering first-degree murders"; judge had characterized defendant as being amoral and with lack of remorse that unfavorably distinguished him from other defendants.

**15. Criminal Law** ⇨1166.10(1)

On direct appeal appellate court will not reverse conviction on ineffective assistance grounds, absent evidentiary hearing below. U.S.C.A. Const.Amend. 6.

**16. Criminal Law** ⇨641.13(1)

Question whether counsel's actions are reasonable, and thus constitute effective assistance of counsel, may be determined or substantially influenced by defendant's own statements or actions. U.S.C.A. Const.Amend. 6.

**17. Criminal Law** ⇨641.13(7)

Capital murder defendant did not receive ineffective assistance of counsel during sentencing phase by virtue of his attorney not providing mitigating evidence; defendant had prohibited ex-wife and mother from testifying in his behalf, and defendant had rebutted in open court attorney's claim that prior murder conviction involved elements of self-defense. U.S.C.A. Const. Amend. 6.

**18. Criminal Law** ⇨641.13(7)

Capital murder defendant did not receive ineffective counsel during sentencing phase by virtue of his attorney not having probation officer speak to him; defendant had stated desire not to have mitigating evidence presented in his behalf, and displayed tendency to volunteer damaging statements. U.S.C.A. Const.Amend. 6.

---

Grant Woods, Atty. Gen. by Paul J. McMurdie, Chief Counsel, Criminal Appeals

Section, Joseph T. Maziarz, Asst. Atty. Gen., Crane McClennen, Asst. Atty. Gen., Phoenix, for appellee.

Dean W. Trebesch, Maricopa County Public Defender by Carol A. Carrigan, Deputy Public Defender, James L. Edgar, Deputy Public Defender, John W. Rood, III, Phoenix, for appellant.

### OPINION

ZLAKET, Justice.

This is an automatic appeal from a death sentence following defendant's conviction of first degree murder. We have jurisdiction pursuant to Ariz. Const. art. 6, § 5(3) and A.R.S. §§ 13-4033 and -4035.

### FACTUAL AND PROCEDURAL BACKGROUND

Evidence at trial established that the victim's body was found in his residence on December 15, 1989. According to the testimony of a friend ("Michael"), the victim had been a promiscuous homosexual who frequently tried to "pick up" men by flashing a wad of money. This would invariably occur after he got paid. The victim told Michael that he had recently met a person named "Jeff," with whom he wanted to have sex. The victim's physical description of Jeff was later found to closely approximate defendant.

Michael received three phone calls from the victim on Wednesday, December 13, 1989. During the first, the victim said he had picked up Jeff, that they were at the apartment drinking beer, and he wanted to know whether Michael was coming over to "party." Approximately 15 minutes later, the victim called a second time and said that he was in the middle of sexual intercourse with Jeff. Shortly thereafter, the victim called to ask whether Michael could get Jeff a job. Jeff spoke with Michael about employment, and asked if he was going to come over. Michael said no. During one of these conversations, the victim indicated that he had picked up his paycheck that day.

The victim failed to show up for work the following day, and calls to him went unanswered. On Friday, a co-worker and two others went to the victim's apartment and found him dead. He was fully clothed, face down on his bed, with a pool of blood at his head. An electrical cord hung around his neck. There were facial lacerations and puncture wounds on the body. A half-eaten sandwich and a small screwdriver lay beside it. Blood smears were found in the kitchen and bathroom. Partial bloody shoeprints were on the tile floor.

Cause of death was ligature strangulation. Medical testimony at the presentence hearing indicated that the victim probably was strangled after being rendered unconscious from blows to the head with a blunt instrument.

Acquaintances testified that the apartment usually was neat. When the body was found, however, the apartment was in disarray. Drawers and closets were open; clothes and newspapers were strewn on the floor. The remnants of a Christmas present lay open and empty at the foot of the bed. In the kitchen area were two plates, two forks, a bread wrapper, luncheon meat, cheese wrappers, and an open jar of spiced mayonnaise. A five-pound bag of sugar was spilled on the floor. A clear impression of the sole of a sneaker appeared in the sugar. Neither the paycheck nor its proceeds were located. Although the apartment had been ransacked, nothing else seemed to be missing.

When defendant first was questioned, he denied knowing the victim or ever having been to his apartment. When arrested, however, he was wearing a shirt that belonged to the victim. Seven fingerprints taken from the scene matched defendant's. The impression in the sugar matched his sneaker, down to a small cut on the sole. Tests also revealed that a small amount of blood had seeped into the sneaker. The blood matched that found on the shirt worn by the victim.

Defendant's ex-girlfriend testified that she had three telephone conversations with him in December of 1989. During one of those, defendant told her that he was "get-

ting along" in Phoenix by "robbing." Defendant placed the last call to her from jail sometime around Christmas. He said that he had "killed a guy . . . with his hands" about a week before.

The jury found defendant guilty of theft, second degree burglary, and felony murder for having caused the victim's death "in the course of and in furtherance of" the burglary. The jury also determined that defendant previously had been convicted in Oklahoma of assault and battery with a deadly weapon, second degree murder, and possession of marijuana. At the time of the Arizona incident, defendant was an escapee from an Oklahoma prison.

At the sentencing hearing, the trial judge found two statutory aggravating circumstances under A.R.S. § 13-703(F): that defendant was previously convicted of a felony involving the use or threat of violence on another person; and, that defendant committed the offense in expectation of the receipt of anything of pecuniary value. In making the latter finding, the trial judge noted that the victim's apartment had been ransacked, and it appeared the culprit was looking for something.

The trial judge found no statutory mitigating circumstances sufficient to call for leniency. As for non-statutory mitigating circumstances, she identified family love and absence of premeditation. She stated, however, that the mitigating factors did not outweigh the aggravating circumstances. Defendant was sentenced to an aggravated term of 20 years on the burglary count, to six months in the county jail for theft, and to death for murder.

#### MOTIONS FOR ACQUITTAL AND NEW TRIAL

Defendant argues that the trial judge erred in denying his motions for acquittal and for new trial under Rules 20 and 24, Ariz.R.Crim.P., 17 A.R.S. He claims that the evidence was insufficient to find him guilty of burglary and felony murder. We disagree.

[1] A judgment of acquittal under Rule 20 is appropriate only where there is "no

substantial evidence to warrant a conviction." *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990). "Substantial evidence is more than a mere scintilla and is such proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt.'" *Id.* (quoting *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980)). Evidence may be direct or circumstantial, *State v. Blevins*, 128 Ariz. 64, 67, 623 P.2d 853, 856 (App.1981), but if reasonable minds can differ on inferences to be drawn therefrom, the case must be submitted to the jury. *State v. Hickie*, 129 Ariz. 330, 331, 631 P.2d 112, 113 (1981). A trial judge has no discretion to enter a judgment of acquittal in such a situation.

[2] Under Rule 24, a new trial is required only if the evidence was insufficient to support a finding beyond a reasonable doubt that the defendant committed the crime. *State v. Neal*, 143 Ariz. 93, 97, 692 P.2d 272, 276 (1984). Whether to grant or deny a new trial is, however, within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion. *State v. Hickie*, 133 Ariz. 234, 238, 650 P.2d 1216, 1220 (1982).

#### A. Burglary

[3,4] The evidence here, although circumstantial, is sufficient to uphold the burglary conviction. It supports the conclusion that defendant entered or remained in the apartment with the intent to commit a theft. A.R.S. § 13-1507(A). The fact that the victim was found on his bed fully clothed, next to a half-eaten sandwich, suggests he was killed before the apartment was ransacked. Any other conclusion would require an inference that the victim entered his apartment, found it trashed, then calmly made himself a sandwich and sat down on his bed to eat it. As the trial judge noted, the ransacked apartment indicates that the culprit was probably looking for things of value. The evidence clearly placed defendant, who admitted getting along by "robbing," and who was wearing one of the victim's shirts when arrested, in the ransacked apartment.

This case is not, as defendant argues, similar to *State v. Hill*, 12 Ariz.App. 196, 469 P.2d 88 (1970), in which the evidence showed only that the accused was present at the scene of a burglary. In *Hill*, unlike here, no evidence linked defendant to the crime itself. *Id.* at 197, 469 P.2d at 89.

Since reasonable minds could differ on the inferences to be drawn, the trial judge properly denied the Rule 20 motion. Additionally, because the verdict on the burglary count was not contrary to the weight of the evidence, the trial judge did not abuse her discretion in denying the Rule 24 motion.

#### B. Murder

[5, 6] On the charge of felony murder, it was for the jury to decide whether defendant committed or attempted to commit burglary in the second degree and, in the course of and in furtherance of that crime, caused the victim's death. A.R.S. § 13-1105(A)(2); *State v. Hallman*, 137 Ariz. 31, 38, 668 P.2d 874, 881 (1983). As noted above, the record contains substantial evidence to support the burglary conviction. Additionally, defendant admitted to his ex-girlfriend that he killed a man about a week before December 23rd, and the blood on his shoe matched that on the victim's shirt.

Defendant's reliance on *State v. Lopez*, 158 Ariz. 258, 762 P.2d 545 (1988), is misplaced. In *Lopez*, this court concluded that a felony murder conviction could not stand because the evidence did not support the elements of the underlying armed robbery (the coexistence of intent to commit robbery with the use of force). The evidence showed only that defendant and his brother took the victim's car and wallet to leave the scene and delay detection of the victim's identity. *Id.* at 264, 762 P.2d at 551.

The record here contains much more. The trial judge could not properly have granted defendant's motion for acquittal, nor did she abuse her discretion in denying the motion for new trial.

#### INSTRUCTION ON LESSER DEGREES OF HOMICIDE

[7] Defendant next argues, citing *Beck v. Alabama*, 447 U.S. 625, 100 S.Ct. 2332, 65 L.Ed.2d 392 (1980), that the trial judge's failure to *sua sponte* instruct the jury on lesser degrees of homicide—second degree murder or manslaughter—deprived him of a fair trial by forcing the jury to convict him of first degree murder or “set . . . him free.” Defendant failed to request any lesser homicide instruction at trial, but contends that the failure to instruct was fundamental error.

We find no error here, fundamental or otherwise. In *Beck*, the United States Supreme Court invalidated an Alabama statute prohibiting the judge in a capital case from instructing the jury on lesser included offenses, even though the evidence supported such instruction. The Court reasoned:

[W]hen the evidence unquestionably establishes that the defendant is guilty of a serious, violent offense—but leaves some doubt with respect to an element that would justify conviction of a capital offense—the failure to give the jury the “third option” of convicting on a lesser included offense would seem inevitably to enhance the risk of an unwarranted conviction.

447 U.S. at 637, 100 S.Ct. at 2389, 65 L.Ed.2d at 402-03. Thus, the fundamental concern in *Beck* was that a jury—convinced that the defendant had committed some violent crime, but unsure that he was guilty of a capital crime—might nonetheless vote for a capital conviction if the only alternative was to set the defendant free with no punishment at all. *Schad v. Arizona*, — U.S. —, —, 111 S.Ct. 2491, 2504, 115 L.Ed.2d 555, 574 (1991). In Arizona, however, there is no lesser included homicide offense to the crime of felony murder, because the necessary *mens rea* is supplied by the intent required for the underlying felony. *State v. Arias*, 131 Ariz. 441, 641 P.2d 1285 (1982); *Schad*, — U.S. at — n. 5, 111 S.Ct. at 2512 n. 5, 115 L.Ed.2d at 584 n. 5 (1991) (White, J., dissenting).

[8] Defendant argues that the evidence warranted a manslaughter or second degree murder instruction. He claims to have placed a telephone call to his mother around December 12th or 13th in which he told her he was bleeding from his ears, nose, and rectum. He asserts the jury could have concluded from this evidence that he was injured during sex and killed the victim in response "upon a sudden quarrel or heat of passion."

Even if we construe his mother's highly equivocal testimony on this point in a light most favorable to defendant, the evidence is insufficient to support a finding that he killed the victim during a sudden quarrel or the heat of passion, or in response to injuries inflicted on him during sex. *Beck* does not require a trial court to instruct on a lesser offense that is unsupported by the evidence. Therefore, the failure to have done so in this case was not error. See *State v. LaGrand*, 153 Ariz. 21, 30, 734 P.2d 563, 572 (1987). See also *State v. Arias*, 131 Ariz. at 443-44, 641 P.2d at 1287-88 (1982) (*Beck* does not apply because Arizona law differs significantly from Alabama law).

#### EQUAL PROTECTION

[9, 10] Defendant's next argument, that the failure to have a jury decide the existence of aggravating circumstances violated his equal protection rights, also lacks merit. The Sixth Amendment does not require that a jury make findings of aggravating and mitigating circumstances before the death penalty is imposed. *Walton v. Arizona*, 497 U.S. 639, 648, 110 S.Ct. 3047, 3054, 111 L.Ed.2d 511, 524 (1990). Sentencing factors—as opposed to the elements of an offense—may be found by the court at the sentencing hearing. *State v. Hurley*, 154 Ariz. 124, 130, 741 P.2d 257, 263 (1987). We find no constitutional violation. See *Clark v. Ricketts*, 958 F.2d 851, 859 (9th Cir.1992) (federal equal protection clause does not require that a jury find the aggravating circumstances supporting a death sentence).

#### EIGHTH AMENDMENT

Defendant argues that Arizona's death penalty scheme, taken as a whole, violates the Eighth Amendment by failing to "sufficiently channel the sentencer's discretion." We recently rejected this argument in *State v. Greenway*, 170 Ariz. 155, 164, 823 P.2d 22, 31 (1991) (Arizona's death penalty statute narrowly defines the class of death-eligible defendants). Likewise, defendant's suggestion that Arizona's aggravating circumstances are too broad to be meaningful is without substance.

#### AGGRAVATING AND MITIGATING CIRCUMSTANCES

[11] We have independently reviewed the record to determine the presence or absence of aggravating and mitigating circumstances, and the propriety of the death penalty. *State v. Richmond*, 114 Ariz. 186, 196, 560 P.2d 41, 51 (1976). Defendant claims the record does not support a finding that the murder was committed with the expectation of the receipt of anything of pecuniary value, pursuant to A.R.S. § 13-703(F)(5).

We disagree. Not only is the actual receipt of money or valuables not required to find the expectation of pecuniary gain, *State v. LaGrand*, 153 Ariz. 21, 36, 734 P.2d 563, 578 (1987), but here defendant was convicted of theft and burglary on evidence we have deemed sufficient. Defendant admitted he was getting money by robbing. The victim, who was pursuing defendant as a sexual partner, was an obvious target. The apartment was ransacked. The killing hardly appears to have been unexpected or accidental. See *State v. Nash*, 143 Ariz. 392, 405, 694 P.2d 222, 235 (1985) (unexpected or accidental death during course of or flight from robbery will not support aggravating circumstance of pecuniary gain). Physical and testimonial evidence supports the finding that pecuniary consideration was a cause, not merely a result, of the murder. *LaGrand*, 153 Ariz. at 35, 734 P.2d at 577 ("When the defendant comes to rob, the defendant expects pecuniary gain and this desire infects all other conduct of the defendant").

[12] The record also supports the finding of a second aggravating circumstance, that defendant previously was convicted of a felony involving the use or threat of violence on another person under A.R.S. § 13-703(F)(2). See Okla.Stat. tit. 21, §§ 641, 642, 645 (1971) (assault and battery with a dangerous weapon). Defendant on appeal does not contest this finding. The state produced certified public records from Oklahoma, and its expert matched defendant's fingerprints with those on the records.

[13] We also agree that the record does not present mitigating evidence sufficiently substantial to call for leniency. The trial judge properly rejected defendant's suggestion that intoxication was a mitigating circumstance under A.R.S. § 13-703(G)(1). The only evidence on this subject was testimony from the friend who said the victim called and told him that he and Jeff were drinking beer. There was no evidence that defendant was impaired, that he did not have the capacity to appreciate the wrongfulness of his conduct, or that he could not conform his conduct to the requirements of the law.

#### THE DEATH SENTENCE

[14] Defendant argues that imposing the death sentence was unwarranted because the trial judge found the crime "not out of the ordinary when considering first degree murders." The judge determined, however, that while the crime was not out of the ordinary, defendant clearly was. She said:

... Mr. Landrigan appears to be somewhat of an exceptional human being. It appears that Mr. Landrigan is a person who has no scruples and no regard for human life and human beings and the right to live and enjoy life to the best of their ability, whatever their chosen lifestyle might be. Mr. Landrigan appears to be an amoral person.

Defendant's comments in the courtroom support these conclusions. At the sentencing hearing, he offered the following soliloquy:

Yeah. I'd like to point out a few things about how I feel about the way this [expletive], this whole scenario went down. I think that it's pretty [expletive] ridiculous to let a fagot (sic) be the one to determine my fate, about how they come across in his defense, about I was supposedly [expletive]ing this dude. This never happened. I think the whole thing stinks. I think if you want to give me the death penalty, just bring it right on. I'm ready for it.

Defendant made additional statements during the hearing. When his counsel attempted to characterize the prior second degree murder as self-defense, defendant interjected:

THE DEFENDANT: See, also, Your Honor, there's a few things he got wrong here again. I'd like to clear them up.

THE COURT: Please do, Mr. Landrigan.

THE DEFENDANT: When we left the trailer, [the victim] went out of the trailer first. My wife was between us. I pulled my knife out, then I was the one who pushed her aside and jumped him and stabbed him. He didn't grab me. I stabbed him.

In attempting to explain the aggravated assault committed by defendant while in prison on this prior murder charge, defense counsel claimed that his client had been threatened by the person he assaulted, allegedly a friend of the murder victim's father. Defendant once more took issue with his lawyer:

THE DEFENDANT: Yeah, something else that was just said about the guy that was in prison. That wasn't [the murder victim's] dad's friend or nothing like that. It was a guy I got in an argument with. I stabbed him 14 times. It was lucky he lived. But two weeks later they found him hung in his cell. He was dead. It wasn't nothing like it was presented.

The best we can say for this defendant is that he was forthright. His comments demonstrate a lack of remorse that unfavorably distinguishes him from other defendants and supports imposition of this

severe penalty. See *State v. Fierro*, 166 Ariz. 539, 548, 804 P.2d 72, 81 (1990) ("We will not uphold imposition of the death penalty unless either the murder or the defendant differs from the norm of first degree murders or defendants").

#### ASSISTANCE OF COUNSEL

[15] Finally, defendant argues that his trial counsel deprived him of effective assistance by instructing the probation officer not to interview defendant in preparation for the aggravation/mitigation hearing. On direct appeal, we will not reverse a conviction on ineffective assistance grounds absent an evidentiary hearing below. *State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989). Here, no hearing occurred because defendant moved to dismiss his petition for post-conviction relief. The trial judge granted that motion. We address the issue now only because "we may clearly determine from the record that the ineffective assistance claim is meritless." *Id.*

[16] To establish ineffective assistance of counsel, defendant must prove that (1) counsel lacked minimal competence as determined by prevailing professional norms, and (2) counsel's deficient performance prejudiced the defense. *Carver*, 160 Ariz. at 174, 771 P.2d at 1389. Whether counsel's actions are reasonable may be determined or substantially influenced by the defendant's own statements or actions. *Strickland v. Washington*, 466 U.S. 668, 691, 104 S.Ct. 2052, 2066, 80 L.Ed.2d 674, 695 (1984).

[17] At the sentencing hearing, defendant instructed his lawyer not to present any mitigating evidence. He prohibited his ex-wife and mother from testifying in his behalf, and they honored his wishes. Over defendant's objections, his attorney stated on the record what he thought those witnesses would say, specifically that defendant had a past history of substance abuse, that his mother had abused drugs when pregnant with him, that he was supporting a family, and that his prior murder conviction involved elements of self-defense. As

previously indicated, defendant interjected with a more inculpatory version of that prior killing.

[18] Counsel's instruction to the probation officer was clearly within the wide range of professionally competent assistance, given defendant's stated desire not to have mitigating evidence presented in his behalf, and his tendency to volunteer damaging statements like those made to the trial judge at the hearing. Contrary to defendant's argument, this case is not like *State v. Smith*, 136 Ariz. 273, 665 P.2d 995 (1983). The defendant in *Smith* would have testified in mitigation that he did not intentionally shoot the victim, but for erroneous legal advice from his counsel as to the admissibility of such statements in any subsequent legal proceeding. We held that "advising a client incorrectly about the black letter Rules of Criminal Procedure, especially in a matter of life and death," was not "minimally competent representation." *Id.* at 279, 665 P.2d at 1001.

This case does not present such a situation. In his comments, defendant not only failed to show remorse or offer mitigating evidence, but he flaunted his menacing behavior. On this record it is reasonable to assume that had defendant been interviewed, it would not have been to his benefit. There is no showing of incompetence or prejudice.

In view of the majority holding in *State v. Salazar*, 173 Ariz. 399, 416-417, 844 P.2d 566, 583-584 (1992), we have not conducted a proportionality review. We have, however, reviewed the record for fundamental error pursuant to A.R.S. § 13-4035, and found none. Defendant's convictions and sentences are affirmed.

FELDMAN, C.J., MOELLER, V.C.J., and CORCORAN and MARTONE, JJ., concur.



# **ATTACHMENT 7**

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR 1990-000066

09/15/2006

HONORABLE RAYMOND P. LEE

CLERK OF THE COURT  
S. Yoder  
Deputy

STATE OF ARIZONA

KENT E CATTANI

v.

JEFFREY TIMOTHY PAGE LANDRIGAN (A)

SYLVIA J LETT  
JON M SANDS

COURT ADMIN-CRIMINAL-PCR  
VICTIM WITNESS DIV-AG-CCC

MINUTE ENTRY

8:48 a.m. This is the time set for oral argument on Defendant's Motion for DNA Testing.

State's Attorney:	Kent Cattani (telephonic)
Defendant's Attorney:	Sylvia Lett (telephonic)
Defendant:	Not Present
Court Reporter:	Jovanna Roman

Argument is presented on the Motion.

For the reasons stated on the record,

IT IS ORDERED granting the Motion for DNA testing.

8:53 a.m. Matter concludes.

# **ATTACHMENT 8**

CERTIFIED COPY

ORIGINAL

1 Jon M. Sands  
2 Federal Public Defender  
3 Sylvia J. Lett (Arizona Bar No. 017326)  
4 850 West Adams Street, Suite 201  
5 Phoenix, Arizona 85007  
6 602.382.2816

FILED  
SEP 13 2007  
MICHAEL R. JEANES, CLERK  
BY Wendroff  
K. WENDROFF, DEPUTY

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
8 IN AND FOR THE COUNTY OF MARICOPA

9 STATE of ARIZONA,  
10  
11 Respondent,  
12 vs.  
13 JEFFREY TIMOTHY  
14 LANDRIGAN,  
15 Petitioner.

No. CR 90-00066  
PROPOSED AMENDED ORDER FOR  
DNA TESTING  
(CAPITAL CASE)

15 IT IS ORDERED granting the Motion for DNA testing. In order to comply  
16 with the requirements of the Maricopa County Superior Court Exhibits Department,  
17 the court includes the following information in this order: the case number is CR90-  
18 00066; the items to be DNA tested are Plaintiff's Exhibit #22 blue jeans (Levis™)  
19 and Plaintiff's Exhibit # 23 blanket; said exhibits are to be released to Lisa Eager,  
20 Investigator for undersigned counsel, the Arizona Federal Public Defender; the reason  
21 to release said exhibits is for DNA testing.  
22  
23  
24

25 DATED this \_\_\_ day of 9/11, 2007.

26 The foregoing instrument is a full, true and  
27 correct copy of the original document.

28 Attest SEP 13 2007 20  
MICHAEL K. JEANES, Clerk of the Superior  
Court of the State of Arizona, in and for the  
County of Maricopa.

[Signature]  
Honorable Raymond P. Lee  
Judge, Maricopa County Superior Court

By Wendroff Deputy

Name: Jon M. Sands  
Address: 850 W. Adams Street, Suite 201  
Phoenix, AZ 85007  
Phone: 602-382-2816  
AZ Bar No: 17326  
Attorney For: PLAINTIFF

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

STATE OF ARIZONA ) Case Number: CR90-00066  
)  
vs ) RELEASE RECEIPT FOR OFFICIAL  
) COURT FILES, TRANSCRIPTS OR  
JEFFREY TIMOTHY LANDRIGEN ) EXHIBITS  
)

RELEASE RECEIPT

On this 19th day of September, 2007, the undersigned acknowledges receipt of the following item(s) pursuant to the order of the court signed on the 11th day of September, 2007.

Temporary Release to be returned on 10/11/07

EX. 22, 23

Signature: X Jim M Eager Lisa Eager  
Address: Federal Public Defender 850 W. Adams #201  
Telephone: 602-382-2853 Phx 85007  
Identification: Staff Badge  
Releasing Clerk Signature: J Barnett

RRF

# **ATTACHMENT 9**

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR 1990-000066

08/07/2009

HONORABLE RAYMOND P. LEE

CLERK OF THE COURT  
B. Kredit  
Deputy

STATE OF ARIZONA

KENT E. CATTANI

v.

JEFFREY TIMOTHY PAGE LANDRIGAN (A)

SYLVIA J LETT

CAPITAL CASE MANAGER  
VICTIM SERVICES DIV-CA-CCC

RULING

The Court has reviewed the following pleadings:

1. the defendant's Second Amended Petition for Post-Conviction Relief, filed July 28, 2008;
2. the State's Motion to Dismiss Second Amended Petition for Post-Conviction Relief, filed February 2, 2009;
3. the defendant's Response to the State's Motion to Dismiss Second Amended Petition for Post-Conviction Relief, filed May 13, 2009;
4. the State's Reply to Response to the State's Motion to Dismiss Second Amended Petition for Post-Conviction Relief, filed July 6, 2009;
5. the defendant's Motion to Strike State's Reply to Response to the State's Motion to Dismiss Second Amended Petition for Post-Conviction Relief, filed July 9, 2009; and
6. the State's Response to Motion to Strike/Motion to Permit Supplemental Briefing in Light of *Dickens v. Brewer*, filed July 24, 2009.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR 1990-000066

08/07/2009

The defendant raises two claims in his petition: (1) Arizona's lethal injection protocol is unconstitutional, and (2) favorable results of DNA testing entitle him to an evidentiary hearing. The State has moved to dismiss, contending that the defendant has failed to establish a colorable claim for relief. For the reasons that follow, the Court has determined that under Rule 32.8, an evidentiary hearing is not required to determine issues of material fact regarding either claim. However, the Court will allow the parties to present oral argument as previously scheduled on September 4, 2009.

Lethal Injection Issue

The Court agrees with the State that in prior status conferences and hearings, both parties agreed that this Court could rely on the evidence developed in *Dickens v. Brewer*, No. CV07-1770-PHX-NVW, the federal action brought by several Arizona death row inmates challenging the constitutionality of Arizona's lethal injection protocol under 42 U.S.C. §1983. On July 1, 2009, U.S. District Judge Wake issued an order granting the State's Motion for Summary Judgment in that litigation. His order recited 21 pages of undisputed facts. Based on this Court's review of those facts and the pleadings in this Rule 32 proceeding, there is no difference between the facts the parties rely upon in making their arguments and the facts established in *Dickens*. The defendant has not shown what, if any, additional facts would be presented at an evidentiary hearing. Moreover, the *Dickens* plaintiffs were represented by the same office (the Federal Public Defender) as the defendant, and the defendant's attorneys have reviewed the discovery developed in that case.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR 1990-000066

08/07/2009

Therefore, the Court finds that it can accept the facts as stated in the *Dickens* order and an additional evidentiary hearing is not required under Rule 32.8 to determine issues of material fact regarding the defendant's lethal injection claim.

DNA Issue

As with the lethal injection issue, the parties do not dispute the facts established by the DNA testing of the victim's pants, blanket and curtains; they contend that the Court should draw different conclusions based on these facts. Therefore, there are no issues of material fact left to be determined by an evidentiary hearing.

IT IS THEREFORE ORDERED as follows:

1. Denying the defendant's Motion to Strike State's Reply to Response to the State's Motion to Dismiss Second Amended Petition for Post-Conviction Relief.
2. Denying the defendant's request for an evidentiary hearing as set forth in his Second Amended Petition for Post-Conviction Relief and subsequent pleadings.
3. Setting this matter for oral argument on **September 4, 2009 at 11:00 a.m.** before Judge Raymond Lee, Southeast Facility, 1810 S. Lewis, Mesa, AZ, courtroom 6. The purpose of this oral argument is to allow counsel the opportunity to address whether the conclusions expressed by Judge Wake's July 1, 2009 Order in *Dickens* should or should not be accepted and incorporated by this Court. Defense counsel shall inform the Court 14 days before this hearing whether or not the defendant waives his presence.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>

# **ATTACHMENT 10**

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR 1990-000066

10/05/2009

HONORABLE RAYMOND P. LEE

CLERK OF THE COURT  
B. Kredit  
Deputy

STATE OF ARIZONA

KENT E. CATTANI

v.

JEFFREY TIMOTHY PAGE LANDRIGAN (A)

SYLVIA J LETT

COURT ADMIN-CRIMINAL-PCR  
VICTIM SERVICES DIV-CA-CCC

RULING

The Court has reviewed all the pleadings regarding the defendant's Amended Petition for Post-Conviction Relief. The defendant raises two claims in his petition: (1) Arizona's lethal injection protocol is unconstitutional, and (2) favorable results of DNA testing entitle him to a new trial. For the reasons that follow, the Court finds that neither claim warrants relief.

Lethal Injection Claim

The defendant first challenges the constitutionality of Arizona's lethal injection protocol. This Court previously ruled that it accepts the findings of fact as stated in *Dickens v. Brewer*, No. CV07-1770-PHX-NVW, the federal action brought by several Arizona death row inmates challenging the constitutionality of Arizona's lethal injection protocol under 42 U.S.C. §1983. It now also accepts Judge Wake's conclusion that Arizona's lethal injection protocol does not violate the Eighth Amendment.

There is no clearly established federal law holding that lethal injection in general or Arizona's protocol in particular constitutes cruel and unusual punishment. See *Baze v. Rees*, \_\_\_ U.S. \_\_\_, 128 S.Ct. 1520, 1530 (2008) ("This Court has never invalidated a State's chosen procedure for carrying out a sentence of death as the infliction of cruel and unusual punishment."); *State v. Andriano*, 215 Ariz. 497, ¶61-62 (2007) ("the United States Supreme

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR 1990-000066

10/05/2009

Court has never held that death by lethal injection is cruel and unusual absent specific procedures for implementation, nor does Andriano cite any cases to that effect"). To the contrary, *Baze* upheld the constitutional validity of Kentucky's three-drug lethal injection protocol. *Id.* at 1537-38.

As Judge Wake and other jurists have noted, the *Baze* decision did not provide a majority opinion or decision. In such a circumstance, the United States Supreme Court has instructed that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.'" *Marks v. United States*, 430 U.S. 188, 193 (1977)(quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n.15 (1976)(plurality opinion)). However, there are no reliable means of determining the "narrowest grounds" presented in *Baze* because three blocks of Justices provided three separate standards for determining the constitutionality of a mode of execution. As a consequence, the *Baze* plurality further instructed that "[a] State with a lethal injection protocol similar to the protocol we uphold today" would not violate the Eighth Amendment. 128 S.Ct. at 1537 (Roberts, C.J., joined by Kennedy and Alito, JJ.). This Court believes that it is this basis upon which the Arizona Supreme Court will analyze Arizona's lethal injection protocol: the protocol does not violate the Eighth Amendment if it is similar to Kentucky's or provides greater protection against the risk of severe pain than Kentucky's.<sup>1</sup>

After *Baze*, and during the *Dickens* litigation, the Arizona Department of Corrections (ADOC) revised its lethal injection protocol to add additional safeguards to ensure that there is no substantial risk of severe pain to the inmate. *See*, ADOC Department Order 710, Execution Procedures.<sup>2</sup> This Court agrees with Judge Wake's finding that this amended protocol provides more safeguards than does Kentucky's protocol against the risk that the sodium thiopental will be improperly administered and the pancuronium bromide and potassium chloride will be administered to a conscious inmate. Although the defendant contends that using only a fatally-sufficient dose of sodium thiopental would avoid any possibility of severe pain from the pancuronium bromide and potassium chloride, the Eighth Amendment "does not demand the avoidance of all risk of pain in carrying out executions;" it protects only against a substantial risk of serious harm. *Baze*, 128 S.Ct. at 1529.

---

<sup>1</sup> The Court notes that although the defendant also claims that lethal injection violates the Arizona Constitution, he makes no separate argument and cites no authority supporting the proposition that the Arizona Constitution provides greater protection than the Eighth Amendment. Therefore, the Court confines its analysis to whether Arizona's protocol violates the Eighth Amendment.

<sup>2</sup> ADOC Department Order 710 is published in its entirety on its website:

[http://www.azcorrections.gov/Zoya\\_DO710.aspx](http://www.azcorrections.gov/Zoya_DO710.aspx)

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR 1990-000066

10/05/2009

The defendant also states that his challenge is not simply to the drugs themselves, but the selection of the people in charge of administering the drugs, and the safety measures in place to prevent potential suffering. These contentions are identical to those raised by the plaintiff inmates in *Dickens*, and are also resolved by ADOC's amended protocol.

This Court finds that it agrees with Judge Wake's findings and conclusions regarding the constitutionality of Arizona's lethal injection protocol, and incorporates in its entirety the *Dickens* order. Based upon these findings and conclusions, Arizona's three-drug protocol is "substantially similar" to the protocol approved by the United States Supreme Court in *Baze* and does not violate the Eighth Amendment. *Dickens v. Brewer*, at 38 (concluding that the Arizona Protocol is substantially similar to Kentucky's, does not subject inmates to a substantial risk of serious harm, and "the record does not demonstrate a substantial risk that [ADOC] will violate the Arizona Protocol in the future in a manner that is sure or very likely to cause needless suffering").

The Court finds that the defendant has failed to state a colorable claim for relief regarding his lethal injection claim.

DNA Claim

The Court also previously ruled that the facts were not in dispute regarding the results of the DNA testing, and therefore an evidentiary hearing was not required under either A.R.S. §13-4240 or Rule 32.8.

Semen and blood present on the victim's pants, blanket and curtains were tested and no DNA matched the defendant's. The Court finds that this fact would not have affected the jury's verdict of guilt or the trial court's sentence of death. The Arizona Supreme Court stated that the facts as follows:

"Evidence at trial established that the victim's body was found in his residence on December 15, 1989. According to the testimony of a friend ('Michael'), the victim had been a promiscuous homosexual who frequently tried to 'pick up' men by flashing a wad of money. This would invariably occur after he got paid. The victim told Michael that he had recently met a person named 'Jeff,' with whom he wanted to have sex. The victim's physical description of Jeff was later found to closely approximate defendant.

"Michael received three phone calls from the victim on Wednesday, December 13, 1989. During the first, the victim said he had picked up Jeff, that

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR 1990-000066

10/05/2009

they were at the apartment drinking beer, and he wanted to know whether Michael was coming over to 'party.' Approximately 15 minutes later, the victim called a second time and said that he was in the middle of sexual intercourse with Jeff. Shortly thereafter, the victim called to ask whether Michael could get Jeff a job. Jeff spoke with Michael about employment, and asked if he was going to come over. Michael said no. During one of these conversations, the victim indicated that he had picked up his paycheck that day.

"The victim failed to show up for work the following day, and calls to him went unanswered. On Friday, a co-worker and two others went to the victim's apartment and found him dead. He was fully clothed, face down on his bed, with a pool of blood at his head. An electrical cord hung around his neck. There were facial lacerations and puncture wounds on the body. A half-eaten sandwich and a small screwdriver lay beside it. Blood smears were found in the kitchen and bathroom. Partial bloody shoeprints were on the tile floor.

"Cause of death was ligature strangulation. Medical testimony at the presentence hearing indicated that the victim probably was strangled after being rendered unconscious from blows to the head with a blunt instrument.

"Acquaintances testified that the apartment usually was neat. When the body was found, however, the apartment was in disarray. Drawers and closets were open; clothes and newspapers were strewn on the floor. The remnants of a Christmas present lay open and empty at the foot of the bed. In the kitchen area were two plates, two forks, a bread wrapper, luncheon meat, cheese wrappers, and an open jar of spoiled mayonnaise. A five-pound bag of sugar was spilled on the floor. A clear impression of the sole of a sneaker appeared in the sugar. Neither the paycheck nor its proceeds were located. Although the apartment had been ransacked, nothing else seemed to be missing.

"When defendant first was questioned, he denied knowing the victim or ever having been to his apartment. When arrested, however, he was wearing a shirt that belonged to the victim. Seven fingerprints taken from the scene matched defendant's. The impression in the sugar matched his sneaker, down to a small cut on the sole. Tests also revealed that a small amount of blood had seeped into the sneaker. The blood matched that found on the shirt worn by the victim.

"Defendant's ex-girlfriend testified that she had three telephone conversations with him in December of 1989. During one of those, defendant told her that he was 'getting along' in Phoenix by 'robbing.' Defendant placed the last

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR 1990-000066

10/05/2009

call to her from jail sometime around Christmas. He said that he had 'killed a guy ... with his hands' about a week before." *State v. Landrigan*, 176 Ariz. 1, 3-4, 859 P.2d 111, 113-14 (1993).

In reviewing the sufficiency of the evidence of the defendant's guilt, the Supreme Court found that "[t]he evidence clearly placed defendant, who admitted getting along by 'robbing,' and who was wearing one of the victim's shirts when arrested, in the ransacked apartment" and defendant admitted to his ex-girlfriend that he killed a man about a week before December 23rd, and the blood on his shoe matched that on the victim's shirt." *Id.* at 4-5.

The new DNA evidence does not undermine the defendant's guilt; it shows only that someone else may have been involved in the crimes. In fact, the defendant admitted to his psychological expert that he went to the victim's apartment intending to rob the victim, and assisted an accomplice in murdering the victim. He told the expert that he put the victim in a headlock while his accomplice hit the victim. As shown by the Supreme Court's statement of facts, the new DNA evidence is not the only physical evidence linking the defendant to the crimes. Based on the evidence admitted at trial and the defendant's admissions, the DNA evidence would not have changed the jury's verdict of guilt.

The DNA evidence also would not have changed the trial judge's death verdict. Both the trial judge and the Supreme Court, independently reviewing the propriety of the death sentence, determined that the record did not present mitigating evidence sufficiently substantial to call for leniency. *Id.* at 7. If an accomplice was involved in the murder and the defendant believed he was less culpable, he could have presented this fact as mitigation at his sentencing hearing. He chose not to present mitigation and that choice was upheld by the United States Supreme Court. *Schriro v. Landrigan*, 550 U.S. 465 (2007). The Arizona Supreme Court agreed with the trial judge that the defendant's comments at the sentencing hearing "demonstrate a lack of remorse that unfavorably distinguishes him from other defendants and supports imposition of this severe penalty." *State v. Landrigan*, 176 Ariz. at 7-8.

The Court finds that the defendant has failed to state a colorable claim for relief regarding the DNA evidence claim.

IT IS THEREFORE ORDERED dismissing defendant's Amended Petition Post-Conviction Relief.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>

# **ATTACHMENT 11**

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR 1990-000066

11/19/2009

HONORABLE RAYMOND P. LEE

CLERK OF THE COURT  
B. Kredit  
Deputy

STATE OF ARIZONA

KENT E. CATTANI

v.

JEFFREY TIMOTHY PAGE LANDRIGAN (A)

SYLVIA J LETT

APPEALS-PCR  
CAPITAL CASE MANAGER  
COURT ADMIN-CRIMINAL-PCR  
VICTIM SERVICES DIV-CA-CCC

RULING

The Court has reviewed the defendant's Motion for Rehearing. The defendant reiterates arguments he made in prior pleadings, particularly regarding the necessity for an evidentiary hearing. The Court addressed that issue in a prior ruling. As the Court stated in its ruling dismissing the Second Amended Petition for Post-Conviction Relief, the Court reviewed all the pleadings regarding that petition. The Court's dismissal of the petition encompassed a denial of the defendant's 8/10/09 request to amend the petition, and considered all of the defendant's

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR 1990-000066

11/19/2009

arguments, including his state constitutional arguments. For all of these reasons, and no good cause appearing,

IT IS ORDERED denying the defendant's Motion for Rehearing.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>

# **ATTACHMENT 12**



## Supreme Court

RACHELLE M. RESNICK  
CLERK OF THE COURT

STATE OF ARIZONA  
402 ARIZONA STATE COURTS BUILDING  
1501 WEST WASHINGTON STREET  
PHOENIX, ARIZONA 85007-3231

TELEPHONE: (602) 452-3396

SUZANNE D. BUNNIN  
CHIEF DEPUTY CLERK

April 7, 2010

**RE: STATE OF ARIZONA v JEFFREY TIMOTHY LANDRIGAN**  
**Arizona Supreme Court No. CR-10-0011-PC**  
**Maricopa County Superior Court No. CR1990-000066**

**GREETINGS:**

The following action was taken by the Supreme Court of the State of Arizona on April 6, 2010, in regard to the above-referenced cause:

**ORDERED: Petition for Review [of Denial of Post-Conviction Relief] = DENIED.**

Rachelle M. Resnick, Clerk

TO:

Kent E Cattani

Sylvia J Lett

Jeffrey Timothy Landrigan, ADOC #82157, Arizona State Prison

Diane Alessi

Amy Sara Armstrong

Dale A Baich

Michael K Jeanes

cf

# **ATTACHMENT 13**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JEFFREY TIMOTHY LANDRIGAN, )  
 )  
Defendant. )

No. CR 90-00066  
No. CR 90-0323-AP

FILED  
OCT 26 1990  
CLERK OF COURT

*PL*

Phoenix, Arizona  
October 25, 1990

BEFORE: The Honorable CHERYL K. HENDRIX

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Copy  
Prepared for Appeal

By: Pauline Wood  
Official Court Reporter

1 murder was premeditated or not, but the Court will  
2 at least concede for the purpose of this hearing  
3 that there was no evidence of premeditation and will  
4 find that to be a mitigating circumstance.

5           Because the only theory of culpability the  
6 jury was instructed on in this case was felony  
7 murder or accomplice culpability, the Court must  
8 determine whether the defendant was the actual killer  
9 or only an accomplice. If the defendant was not the  
10 actual killer but only an accomplice to the felony  
11 that led to the killing or an accomplice to the  
12 act of killing, the Court may impose death only if  
13 it finds that the defendant attempted to kill -- or  
14 intended to kill or that the defendant was a major  
15 participant in the act which led to the killing and  
16 the defendant exhibited a reckless indifference to  
17 human life. The Court finds from the evidence introduced  
18 at trial, the evidence at the sentencing hearing  
19 and the entire case, and with particular regard the  
20 Court would point to the testimony of Cheryl Smith  
21 that she had a conversation with the defendant when  
22 he indicated that he murdered someone, the Court finds  
23 that the defendant was the actual killer, that he  
24 intended to kill the victim and was a major participant  
25 in the act. Although the evidence shows that another

1 person may have been present, the Court finds that  
2 the blood spatters on the tennis shoes of the defendant  
3 demonstrate that he was the killer in this case.

4           After weighing and considering the aggravating  
5 circumstances that the defendant had two prior  
6 felony convictions involving the use of violence on  
7 another person and committed the offense with the  
8 expectation of pecuniary gain, and considering the  
9 mitigating circumstances of love of family, love of  
10 his family for him -- I believe I found one other  
11 mitigating circumstance.

12           Mr. Farrell, could you refresh my recollection?

13           MR. FARRELL: I believe the Court has advised that  
14 since there was no premeditation --

15           THE COURT: -- and no premeditation -- thank you  
16 very much -- existed.

17           After weighing and considering these, I  
18 find that the mitigating circumstances do not outweigh  
19 the aggravating circumstances.

20           I'm also required to consider the nature  
21 of the person and the nature of the offense involved.  
22 I find the nature of the murder in this case is really  
23 not out of the ordinary when one considers first degree  
24 murder, but I do find that Mr. Landrigan appears to be  
25 somewhat of an exceptional human being. It appears that