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

8 STATE OF ARIZONA,
9 Respondent,

10 vs.

11 SAMUEL LOPEZ,
12 Petitioner,

)
) NO. CR-163419
)
)

) MOTION FOR AN EXTENSION OF TIME
) PURSUANT TO ARIZ. R. CRIM.
) 32.4(c) AND 32.6(d)
)

13) Assigned to:
14) Hon. Peter D'Angelo
)

15 Petitioner, a capital defendant, through counsel and pursuant to ARIZ. R. CRIM. P. 32.6,
16 ARIZ. CONST., art. II, secs. 4 & 24, and the Fifth, Sixth, Eighth and Fourteenth Amendments
17 to the UNITED STATES CONSTITUTION, and ARIZ.R.CRIM.P. 32.4(c) & 32.6(d), hereby moves
18 this Court for an extension of time within which to file Petitioner's amended petition for post-
19 conviction relief. In support of this motion, Petitioner states as follows:

20 1. Petitioner has exercised due diligence in investing this case and has uncovered many
21 new issues which must be presented to this Court. The investigation of these issues continues,
22 however, and more time is necessary to properly document these claims and present them to the
23 Court as is required by ARIZ.R.CRIM.P. 32.5.

24 2. Issues uncovered by undersigned counsel's investigation and which require further
25 investigation to provide the necessary documentary support for these claims include, but are not
26 limited to the following:

- 27 a. Juror Mark Wigley said during voir dire that he never served on a jury
28 before. An interview conducted with Juror McCrory revealed that Mr.

1 Wigley informed the jury that he had previously served on a jury and this
2 served as a basis for electing him foreperson of the jury. More time is
3 needed to obtain the affidavits supporting this claim. Moreover, many
4 jurors remain to be interviewed and more time is needed to complete this
5 investigation.

6 b. Juror McCrory also stated during voir dire that she had never served on
7 a jury before. A recent interview with her revealed the fact that she
8 actually had served on a jury prior to sitting on the Lopez case. More
9 time is needed to obtain the affidavits supporting this claim.

10 c. Alfred Welker needs to be interviewed to determine whether he and the
11 victim were involved in a romantic way and whether they had consensual
12 intercourse earlier in the evening before she was killed. Trial counsel's
13 failure to do this investigation was deficient and potentially prejudicial.
14 More investigation needs to be done to determine whether prejudice exists.

15 d. Trial counsel failed to challenge the state's theory concerning time of
16 death. The forensic pathologist testified that he had no way of
17 determining the time of death from his tests. He also said that he
18 presumed the victim died shortly before her body was discovered. There
19 was no cross-examination concerning the onset of rigor mortis or relating
20 to the victim's core body temperature at the time of the autopsy. These
21 issues are critical to understanding when she died. If the victim died
22 shortly before being discovered by the police, Mr. Lopez may be
23 exonerated of this crime. A forensic pathologist must be hired to examine
24 this evidence and the testimony given at trial.

25 e. Trial counsel was ineffective for failing to challenge the forensic serology
26 evidence. Much of this evidence presented by the state was, at least,
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1 misleading. For example, Cipriano Chayrez (Chapo) can not be excluded
2 as a donor of semen found in the victim. His antigens would be masked
3 by the victim's antigens. The tests done by the state show, at most, that
4 an additional person deposited B antigens, not that Chapo's semen was not
5 present. The conclusion that he may have been present is strengthened by
6 the serologist's testimony concerning the amount of acid phosphatase
7 found in the victim. (Also, acid phosphatase is a presumptive test for
8 seminal fluid; it is not dispositive as it was portrayed. Acid phosphatase
9 can last considerably longer than 13 hours, contrary to the State's
10 testimony.) If Chapo was present we have no way of knowing who killed
11 the victim. Even if Mr. Lopez was involved in a rape of the victim, the
12 court's findings on heinous, cruel or depraved are unreliable since we
13 have no way of knowing who did what to the victim. A forensic
14 serologist must be hired to examine the test results in this case to properly
15 rebut the serology evidence. This evidence is also cognizable as newly
16 discovered evidence under ARIZ.R.CRIM.P. 32.1(e) & 32.2(b).

17 f. Trial counsel was ineffective for failing to investigate and present evidence
18 of Mr. Lopez's deprived childhood, including but not limited to: a)
19 possible malnutrition; b) overcrowded conditions, *i.e.*, the Lopez family
20 living with over fifteen children and three adults in the two-bedroom
21 house of Mr. Lopez's aunt; c) loss of Mr. Lopez's father at an early age
22 and the lack of a strong male role model in the home; d) physical and
23 mental abuse suffered by Mr. Lopez as a child; and e) Mr. Lopez's
24 exposure to pesticides while working as a field worker, along with other
25 members of his family. Significant investigation remains to be done in
26 documenting these factors. Moreover, a cultural expert should be
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1 appointed to examine the effects of Hispanic culture on the Lopez
2 children.

- 3 g. Trial counsel was ineffective for failing to present evidence of organic
4 brain dysfunction in Mr. Lopez. Investigation has uncovered evidence of
5 prolonged paint sniffing and alcohol abuse by Mr. Lopez. Interviews with
6 Mr. Lopez's siblings have revealed evidence of *petit mal* seizures that may
7 have resulted from paint sniffing. In addition, Mr. Lopez has been
8 characterized as having a severe alcohol problem in the months prior to
9 the offense for which he was arrested. And, there is testimony at trial
10 that Mr. Lopez was using other drugs. A neuropsychological examination
11 of Mr. Lopez should be done to see if there are any verifiable organic
12 effects of this serious abuse of inhalants and alcohol. Under *State v.*
13 *Christensen*, these facts would have permitted a previously uninvestigated
14 impulsivity defense. More investigation remains to document these facts.
- 15 h. Trial counsel was ineffective for failing to investigate and present evidence
16 of the rape of Mr. Lopez's mother in the years immediately preceding the
17 offense for which he stands convicted. This offense was reported to the
18 police but the perpetrator was never caught. More time is needed to
19 obtain the affidavits and documents supporting these facts.
- 20 i. Investigation has revealed that a Michael Carillo was arrested for armed
21 robbery shortly before the trial in this case. Investigation remains to be
22 done so that it may be determined whether this was one of the Michael
23 Carillos who testified at Mr. Lopez's trial. If they are the same person,
24 investigation must be conducted to see what, if any, agreement may have
25 been reached between the prosecution and Mr. Carillo in exchange for his
26 testimony.

1 j. Trial counsel was ineffective for failing to determine the identity of the
2 person identified by witnesses as "Angel," and what role, if any, he may
3 have played in this offense.

4 k. Trial counsel was ineffective for failing to investigate, uncover and
5 present the fact that Pauline Rodriguez was the sister of a woman who
6 Mr. Lopez was accused of assaulting immediately prior to his arrest.

7 3. A proper investigation of these issues is necessary at this time so that this Court may
8 be fully apprised of all issues relevant to a fair proceeding. Moreover, a full investigation at
9 this stage is in the interests of judicial economy, finality and preservation of the state's
10 resources.

11 WHEREFORE, petitioner hereby requests that this court grant an additional thirty days
12 within which to complete the necessary investigation and file a supplemental petition.

13 Respectfully submitted this ____ day of May, 1995.

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16 By _____
Robert Doyle
Counsel for Petitioner

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18 Copies of the foregoing mailed
19 this ____ day of May 1995,
to:

20 Paul McMurdie
21 Chief Counsel - Criminal Appeals Section
1275 West Washington
Phoenix, AZ 85003

22 by: _____
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