

AFFIDAVIT OF ROBERT W. DOYLE

1. My name is Robert W. Doyle. I was admitted to practice in the State Bar of Arizona on October 23, 1982. I am currently a Judge in the Phoenix Municipal Court. I was appointed to the bench in 2006. Prior to that time I was an attorney in private practice. In 1994, I was appointed to represent Samuel Villegas Lopez in his first state post-conviction proceeding challenging his conviction for capital murder and death sentence. I was the only lawyer appointed to the case and I represented Mr. Lopez from the fall of 1994 through the winter of 1997.
2. At the time I accepted the appointment in Mr. Lopez's case, I was one of seven lawyers who shared a contract to accept criminal post-conviction cases in Maricopa County. The contract provided that the lawyers would split the post-conviction cases equally and take one capital case per year. At the time of my appointment, there were no standards for training or experience in order to be qualified to accept capital appointments. Mr. Lopez's case was my first capital case, though I had handled other post-conviction cases.
3. During the course of my representation of Mr. Lopez, I met with him in person at the prison on a couple of occasions. I found Mr. Lopez to be a very nice guy and I liked him. He was not an angry person. I was concerned that the years of incarceration had affected him.
4. At the time I represented Mr. Lopez, I was a sole practitioner and did not have a staff investigator or other resources available to me to conduct a social history investigation. I remember talking to Joel Brown about Mr. Lopez's case because I would see him around the courthouse. I do not remember talking to attorney George Sterling. I do not recall speaking to Jim Rummage, but I may have because I would often see him around the courthouse.
5. I do remember that the big question among the attorneys familiar with the case was what happened with the Lopez brothers. The story that went around the courthouse was that the older half of the brothers were successful and the younger half were all in prison. There was some talk that the father was not present for the younger boys.
6. I never personally spoke to any member of Mr. Lopez's family.
7. Shortly after I began representing Mr. Lopez, an attorney with the Arizona Capital Representation Project volunteered to help out with the investigation in the case. I initially accepted their help. I do not remember the name of the attorney, but it was a man.
8. Ultimately, the lawyers at the ACRP were no help to me. They wanted me to ask for more time and more money. I did not feel that those requests would be granted by Judge D'Angelo. I was seriously concerned that we would run out of time. The lawyers with the ACRP went directly to Mr. Lopez and got him to write me a letter asking me to agree to their requests. I felt that I could no longer work with investigators who were undermining my relationship with my client. I told Mr. Lopez that I was finished working with the ACRP. He was free to talk to whoever he

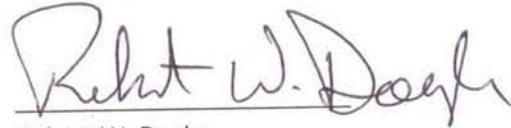
AFFIDAVIT OF ROBERT W. DOYLE

wanted, but I explained to Mr. Lopez that I was his appointed attorney and I would no longer work with the ACRP. To my recollection, the investigators never sent me any results.

9. I did not intentionally or strategically withhold any evidence from the court. Current counsel for Mr. Lopez has provided me with a number of declarations from family members and an expert witness detailing Mr. Lopez's upbringing and resulting mental difficulties. If I had been provided with such statements at the time of Mr. Lopez's post-conviction proceedings, I would have filed them in support of his petition. I did not intentionally waive any claim on Mr. Lopez's behalf.
10. This affidavit is based upon my personal recollection. It relates to my previous private law practice and is not made in my current capacity as a judge. It is not an expression of any opinion on behalf of my current employers, the City of Phoenix or the Phoenix Municipal Court.

Further affiant sayeth not.

Dated this 13th day of February, 2012 in Phoenix, Arizona.

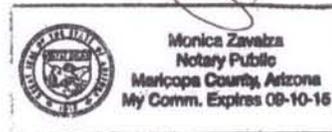


Robert W. Doyle

Subscribed and sworn to before me this \_\_\_\_ day of February, 2012, in Phoenix, Maricopa County, Arizona.



Notary Public



## AFFIDAVIT OF STATIA PEAKHEART

1. My name is Statia Peakheart. I am a Deputy Federal Public Defender with the Office of the Federal Public Defender for the Central District of California. Before my current employment, I was a staff attorney at the Arizona Capital Representation Project (ACRP) in Tempe, Arizona.

2. The ACRP was a nonprofit law office funded in large part by a grant from the Administrative Office of the United States Courts. The purpose of the ACRP was to provide assistance and resources for counsel appointed to represent indigent defendants whom the State of Arizona charged with or convicted of capital crimes. I worked with the ACRP from 1992 to 1995, when the ACRP lost its federal funding.

3. As a staff attorney for ACRP, I, along with attorney Michael O'Connor, was responsible for monitoring the state capital case of Samuel V. Lopez. Our role as resource counsel in the Lopez case was to assist his counsel with investigation, research, and drafting pleadings. Mr. Lopez had already been sentenced to death, and his direct appeal was concluded, so his case was at the state post-conviction level, awaiting his filing of a Rule 32 petition.

4. With the approval of Robert Doyle, Mr. Lopez's post-conviction attorney, I began meeting with Sam Lopez in the winter of 1994-1995. I explained

to Mr. Lopez the role of the ACRP and that we would offer our services, including some investigation and record gathering to Mr. Doyle. Mr. Lopez and Mr. Doyle accepted the Project's offer of assistance.

5. I met with Mr. Lopez often, both to develop his trust and to obtain information that would help Mr. Doyle in litigating his case. In every meeting, I found Mr. Lopez to be cooperative and helpful. Mr. Lopez did not understand the legal process and seemed to be totally dependent on his lawyer. Mr. Lopez seemed to be naïve in his dealing with his lawyer. He did not know what questions he should ask or even what direction to give his lawyer. For example, initially, Mr. Lopez did not understand the relationship between his crimes and death sentence and what I later learned was his horrific childhood. He did not know that information about his childhood or the period before the crimes was relevant to judge's sentencing decision. It appeared to me that I was the first lawyer to explain clearly to Mr. Lopez what a life history or a mitigation investigation is and how it related to the sentencing process in a death penalty case. I am not sure that I was ever able to get Mr. Lopez to understand completely, but he did sign authorizations for release of information forms so that ACRP could get life history and other records and he allowed ACRP to investigate his childhood and life history. At no time, did Mr. Lopez say "don't do

this” or “stay away from that”; so long as I kept him informed about what we were doing and why, Mr. Lopez agreed to the life history investigation.

6. Because I was able to develop his trust and confidence that ACRP was helping his attorney, Mr. Lopez was very open with me about the physical and mental abuse his whole family suffered at the hands of his violent, alcoholic father. He was also open about his family’s poverty. He talked about when he started using drugs and alcohol and paint sniffing, and I think he came to realize it was to escape his life.

7. One thing I remember about Mr. Lopez is how betrayed he felt by his mother. It was clear to me that Mr. Lopez loved his family very much, yet none of his family visited him at the prison. Mr. Lopez felt like his mother and brothers had abandoned him. (I learned that his father had died; Mr. Lopez had not seen his father for many years, after he abandoned Mr. Lopez and his family and I was the one who told him about his father’s death.) Another thing I remember about Mr. Lopez is that he comes from a family of eight brothers; the oldest was doing well in his life – in terms of stability, family life, and work history – the next brother was doing less well, until ultimately the youngest four, including Mr. Lopez, were in prison for very serious offenses. The picture was beginning to develop that the brothers’ eventual circumstances evinced their family’s situation

when they were children, including Mr. Lopez's – as the father became more violent, alcoholic and abusive, the family's poverty and turmoil increased. Even then, as capital defense attorneys, we knew that there would be a wealth of mitigation evidence available to any lawyer who merely bothered to look for it, and there was.

8. Once assigned to the case and with Mr. Doyle's knowledge and approval, I immediately began the time-consuming process of gathering records and interviewing the Lopez family. During just three months, we had gathered over 1500 pages of social history records in the case. It appears no attorney before ACRP had ever gathered those records, including trial counsel. We turned those records over to Mr. Doyle for his use in Mr. Lopez's Rule 32 petition. See Exhibit A, Receipt of Documents. That batch of documents was just the start, I knew that there was much more to be done.

9. When my requests failed, my associate, Michael O'Connor, tried to convince Mr. Doyle to seek more time and funding from the judge to complete the investigation and to identify appropriate witnesses and expert assistance to support relief. We even drafted motions for Doyle to file that included requests for a continuance, request for funds for an investigator, and request for the appointment of experts. These motions said what had been done so far, where the investigation

was headed, and how relevant the information was to the request for relief. I attach those motions to this affidavit as Attachments B-D.

10. Mr. Doyle refused to file these motions because, he said, he did not want to anger the judge. I remember this explanation clearly, even to this day. While this was a problem we encountered with the contract PCR counsel at the time – they were afraid that if they made the judge angry, the judge would not appoint them to any more cases – we told them their duty was to the client, not the judge, but this was often to no avail.

11. Michael O'Connor and I decided to ask another lawyer in our office, Oliver Loewy, to appeal to Mr. Doyle and convince him that the additional time and resources needed to be requested to present the information and experts to the state court, thus preserving the issue for federal review. I attach a memorandum regarding that meeting and its lack of success as Attachment E.

12. I have recently been shown the continuance motion that Doyle ultimately filed which alleged that the family had refused to sign affidavits and had been previously uncooperative. I never told Robert Doyle that the family was unwilling to sign affidavits. I would not have told him that because that was completely untrue. I found the Lopez family to be cooperative and willing to help Mr. Lopez. Also, I have no idea where he got this information from since Mr.

Doyle had no contact with the family – ACRP did all the investigation and interviews for him. I know from my conversations with this family that I was the first person whoever interviewed them about their background and history as it related to Mr. Lopez’s capital case (my memory is that not even Mr. Lopez’ trial attorney had met with them). It was my professional experience and opinion that we had only begun to scratch the surface of the trauma and mental illness that pervaded the Lopez family, and we needed time and funding to complete the effort.

13. In the summer of 1995, the ACRP lost its federal funding and began the process of shutting down. I took a position with the Capital Habeas Unit of the Federal Public Defender’s Office in Los Angeles and had no further contact with the case.

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14. In the seventeen years since I left Arizona, Mr. Lopez's case has continued to bother me. Mr. Doyle's representation stands out as one of the worst cases of ineffective lawyering I have ever seen – particularly since we had already done so much of the issue-spotting, mitigation/life history investigation and record-gathering for him.

Further affiant sayeth not.

Dated this 14<sup>th</sup> day of February 2012.



\_\_\_\_\_  
Statia Peakheart

Subscribed and sworn to before me on this \_\_\_\_\_ day of February 2012 in Los Angeles, Los Angeles County, California.

See Attached

\_\_\_\_\_  
Notary Public

# CALIFORNIA JURAT WITH AFFIANT STATEMENT

- See Attached Document (Notary to cross out lines 1-6 below)  
 See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

\_\_\_\_\_  
Signature of Document Signer No. 1

\_\_\_\_\_  
Signature of Document Signer No. 2 (if any)

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this

14<sup>th</sup> day of February, 2012, by  
Date Month Year

(1) Stacia Peakheart  
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)

(and

(2) \_\_\_\_\_  
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature [Signature]  
Signature of Notary Public



Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Further Description of Any Attached Document

Title or Type of Document: Affidavit

Document Date: 02/14/2012 Number of Pages: 7

Signer(s) Other Than Named Above: None

<b>RIGHT THUMBPRINT OF SIGNER #1</b>
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<b>RIGHT THUMBPRINT OF SIGNER #2</b>
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ATTACHMENT A

MEMORANDUM

Privileged and Confidential  
Attorney Work Product

TO: *Lopez file*  
FROM: Statia  
RE: Transmittal of file documents  
DATE: May 1, 1995

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On May 2, 1995, I, *Robert W. Dahl* received the following files from the Arizona Capital Representation Project:

1. Documents pertaining to Samuel Lopez;
2. Documents pertaining to Samuel Lopez's trial;
3. Documents pertaining to Concha Villegas Lopez;
4. Documents pertaining to Arcadio Lopez, Jr.;
5. Documents pertaining to Eddie Lopez;
6. Documents pertaining to Frank Lopez;
7. Documents pertaining to Steve Lopez;
8. Documents pertaining to José Lopez;
9. Documents pertaining to George Lopez; and,
10. Documents pertaining to Gloria Lopez.

ATTACHMENT B

1 Robert Doyle  
Attorney-at-Law  
2 1010 E. Jefferson  
Phoenix, AZ 85034-2222  
3 (602) 253-1010  
State Bar No. 007380  
4

5

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

7 STATE OF ARIZONA, )  
8 Respondent, ) NO. CR-163419  
9 vs. )  
10 SAMUEL VILLEGAS LOPEZ, ) MOTION FOR EXTENSION OF TIME  
11 Petitioner, ) PURSUANT TO ARIZONA RULE OF  
12 ) CRIMINAL PROCEDURE 32.4(C)  
13 ) Assigned to:  
Hon. Peter T. D'Angelo

14 Petitioner moves that this Court grant him a thirty-day  
15 extension of time, until May 3, 1995, in which to file his  
16 petition for post-conviction relief, pursuant to ARIZONA RULE OF  
17 CRIMINAL PROCEDURE 32.4(c), the Fifth, Sixth, Eighth and  
18 Fourteenth Amendments, to the UNITED STATES CONSTITUTIONS and  
19 related provisions of the ARIZONA CONSTITUTION and laws. The  
20 most factually compelling reason to provide additional time is  
21 that counsel and his staff have uncovered approximately 1,500  
22 pages of documents to be examined and considered before filing.

23

24 MEMORANDUM OF POINTS AND AUTHORITIES

25

26 BACKGROUND

27 Undersigned counsel was appointed by this Court to represent  
28 Petitioner in his post-conviction proceedings. ARIZ. R. CRIM. P.

1 32.4(c). A preliminary petition for post-conviction relief was  
2 timely filed.

3 Subsequently, the parties agreed to file a stipulated  
4 request to permit Petitioner to file a supplemental petition by  
5 April 3, 1995, and to extend the State's deadline for filing its  
6 response to forty-five days after April 3, 1995. While the  
7 parties did file a stipulated request, that request contained a  
8 typographical error. Thus, while the parties did agree in the  
9 stipulated request that Petitioner should have until April 3,  
10 1995, to file a supplemental petition, the parties also and  
11 mistakenly asked that the State be granted until April 3, 1995,  
12 to file its response.

13 On February 8, 1995, this Court entered an order granting  
14 the requested extensions in time. Unfortunately, the order  
15 reflects the filed stipulation's typographical error, for it  
16 grants Petitioner no additional time in which to file a  
17 supplemental petition but does grant the State until April 3,  
18 1995, to file its response.

19 Having believed that he had been granted until April 3,  
20 1995, to file a supplemental petition, undersigned counsel and  
21 staff have been diligently conducting further investigation. A  
22 substantial amount of evidence relevant to Petitioner's post-  
23 conviction proceedings has been uncovered, but the investigation  
24 is not complete. For this reason, and for the additional reasons  
25 set out below, Petitioner respectfully requests that this Court  
26 grant him leave to file a supplemental post-conviction petition  
27 by or on May 3, 1995.

1 I. GOOD CAUSE EXISTS TO GRANT PETITIONER AN ADDITIONAL  
2 THIRTY DAYS IN WHICH TO FILE A SUPPLEMENTAL PETITION  
FOR POST-CONVICTION RELIEF.

3  
4 RULE 32.4(c) of the ARIZONA RULES OF CRIMINAL PROCEDURE  
5 provides that post-conviction petitions may be amended upon a  
6 showing of good cause. ARIZ. R. CRIM. P. 32.4(c). In this case,  
7 good cause exists for additional time to complete the  
8 investigation necessary to fully presenting the claims of relief  
9 contained in his post-conviction petition and necessary to fully  
10 identifying and raising additional claims for post-conviction  
11 relief. Undersigned counsel has never before represented a  
12 capital defendant in post-conviction proceedings. Since filing  
13 the preliminary petition in this case, counsel has learned that  
14 much work remains to be done to adequately present Petitioner's  
15 case. While this necessary investigation is ongoing, much  
16 remains to be done. This postconviction case seeking relief from  
17 Petitioner's capital convictions and sentences is factually and  
18 legally extremely complex, and there are numerous potential guilt  
19 and penalty phase witnesses, and other technical issues.

20 A significant part of what might appear to be delay in this  
21 case can be attributed to inaccurate information received early  
22 in the investigation. In fact, then, undersigned counsel has not  
23 engaged in delay, and filed the preliminary petition in the  
24 initial time allotted. Before filing the preliminary petition,  
25 undersigned counsel interviewed two previous attorneys for  
26 Petitioner who said that their investigations found little or no  
27 documents concerning Petitioner. In just 60 days, current

1 counsel's investigatory staff has found an immense amount of  
2 material. This material must be reviewed and carefully  
3 considered before filing a supplemental petition.

4 Although a substantial amount of investigation has been  
5 accomplished since this Court's February 2 order, the  
6 investigation necessary to effectively representing Petitioner in  
7 these capital proceedings is far from complete. For example,  
8 while many records critical to Petitioner's post-conviction  
9 petition have been obtained and reviewed, additional records have  
10 been requested but not yet received. It often takes several  
11 weeks or months to get responses on record requests. In  
12 addition, Petitioner comes from a very large family; while  
13 diligent efforts have been made and are ongoing, to date only a  
14 few family members have been contacted --though the vast majority  
15 have been located. Many others are out-of-state. Interviewing  
16 and obtaining affidavits from Petitioner's family is an essential  
17 part of presenting potential guilt and penalty phase claims for  
18 post-conviction relief, including the issue of Petitioner's  
19 pathological intoxication. As the Court is aware, Petitioner's  
20 family did not significantly participate at either the first or  
21 second sentencing.

22 Significant progress has been made in the past 60 days.  
23 Records that previous lawyers for Petitioner did not locate have  
24 been found. These documents include over 1,500 pages, which  
25 counsel needs to review in greater detail. Undersigned counsel  
26 continues to receive additional relevant documents. Family  
27 members have been located and are being interviewed. Much work  
28

1 that previous counsel failed to do is now being accomplished.

2 Finally, counsel has time-consuming responsibilities in  
3 numerous other cases in which he is counsel of record. These  
4 include two cases in which undersigned counsel was recently  
5 appointed, one a capital case on direct appeal, and the other a  
6 capital case in post-conviction proceedings.

7  
8 II. THE FEDERAL AND STATE CONSTITUTIONS AS WELL AS THE VERY  
9 PURPOSE OF ARIZONA'S RULE 32 POST-CONVICTION  
10 PROCEEDINGS REQUIRE COUNSEL TO CONDUCT AN OUTSIDE-THE-  
RECORD INVESTIGATION INTO POTENTIAL GUILT AND  
SENTENCING PHASE CLAIMS FOR POST-CONVICTION RELIEF.

11 There are at least two reasons why undersigned counsel  
12 should be permitted additional time to complete his thorough  
13 investigation and amend his petition in this case. First, since  
14 Petitioner is entitled to effective assistance of post-conviction  
15 counsel as a matter of state and federal law, he is entitled to  
16 undersigned counsel's conducting a thorough investigation.  
17 Second, since Arizona's Rule 32 post-conviction proceedings are  
18 designed to permit petitioners to litigate, among other things,  
19 claims that they were denied effective assistance of counsel at  
20 trial, denying additional time to complete the investigation and  
21 amend the petition would be contrary to the very purpose of these  
22 proceedings.

23

24

25 A. Petitioner Is Entitled To Effective Assistance Of  
26 Post-conviction Counsel As A Matter Of State And  
27 Federal Law And, Therefore, Post-conviction  
Counsel Must Conduct A Thorough Investigation Into  
Guilt And Penalty Phase Issues.

28

1 Arizona law guarantees effective assistance of counsel to  
2 post-conviction petitioners. The Arizona Court of Appeals holds  
3 that, "for the right to counsel [under Arizona law] to be  
4 meaningful, it must encompass effective assistance of counsel" in  
5 state post-conviction proceedings. State v. Krum, 184 Ariz. Adv.  
6 Rep. 3 (Div. One, Feb. 14, 1995) (citing Strickland v.  
7 Washington, 466 U.S. 668, 685-86 (1984)). See also, ARIZ. R.  
8 CRIM. P. 32.2 (amended) (comment) (postconviction petitioner's  
9 failure to raise issue may be challenged as constituting  
10 ineffective assistance). Furthermore, ARIZ. R. CRIM. PRO., RULE  
11 32 plainly contemplates investigation of issues outside the  
12 record. See, e.g., State v. Wood, 180 Ariz. 53, 61, 881 P.2d  
13 1158, 1166 (1994) (declining to address on direct appeal  
14 ineffective assistance of counsel claims because they are fact  
15 intensive and, therefore, trial courts are far better situated to  
16 address them). Thus, effective representation of Petitioner  
17 requires that investigation outside the record be completed. Cf.  
18 Strickland v. Washington, 466 U.S. 668, 690-91 (1984) (counsel's  
19 duty to make reasonable investigations or to make reasonable  
20 decision not to make particular investigations); Evans v. Lewis,  
21 855 F.2d 631, 637 (9th Cir. 1988) (counsel's failure to  
22 investigate mental condition cannot be construed as trial  
23 tactic); Blanco v. Singletary, 943 F.2d 1477, 1502 (11th Cir.  
24 1991) (defense counsel is obligated to conduct mitigation  
25 investigation even where defendant instructs counsel not to  
26 present mitigation evidence); Liebman, J. FEDERAL HABEAS CORPUS

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1 PRACTICE AND PROCEDURE, 7.1, p. 66 (1988) (proper  
2 representation on post-conviction requires a thorough factual  
3 investigation of all aspects of the trial and appeal).

4 The Sixth Amendment to the UNITED STATES CONSTITUTION also  
5 guarantees effective assistance of counsel to post-conviction  
6 petitioners in the same procedural posture as Petitioner.  
7 Specifically, where state post-conviction review serves as the  
8 only appeal on certain issues, those state post-conviction  
9 procedures must meet the same constitutional standards as must be  
10 met by the procedures for the first direct appeal of right. See  
11 Coleman v. Thompson, 111 S. Ct. 2546 (1991).

12 In Evitts v. Lucey, 469 U.S. 387 (1985), the United States  
13 Supreme Court held that Fourteenth Amendment's equal protection  
14 guarantee requires that the constitutional right to counsel on  
15 the first direct appeal of right in state court encompasses the  
16 right to effective assistance of counsel on that appeal. The  
17 Court went on to hold that "where the merits of the one and only  
18 appeal an indigent has as of right are decided without benefit of  
19 counsel, we think an unconstitutional line has been drawn between  
20 rich and poor." Id. at 357 (emphasis in original).

21 In Arizona, criminal defendants are entitled to appeal from  
22 their convictions and sentences. However, Arizona provides that  
23 the first place criminal defendants may raise certain claims is  
24 in Rule 32 post-conviction proceedings, most notably ineffective  
25 assistance of trial counsel claims. State v. Wood, 180 Ariz. 53,  
26 61, 881 P.2d 1158, 1166 (1994). In Arizona, then, the Rule 32  
27 post-conviction proceeding is the one and only appeal of those  
28

1 claims which criminal defendants have in Arizona. Under Evitts,  
2 then, if the merits of these claims by post-conviction  
3 petitioners in Arizona "are decided without benefit of counsel,  
4 ... an unconstitutional line has been drawn between rich and  
5 poor." Id. at 357. For these reasons, post-petitioners in  
6 Arizona are entitled as a matter of federal law to the effective  
7 assistance of counsel, at least with regard to those claims which  
8 can be raised for the first time only in post-conviction  
9 proceedings such as ineffective assistance of trial counsel.

10 Petitioner, then, is entitled to effective assistance of  
11 post-conviction counsel as a matter of state and federal law.  
12 Since trial counsel "must at a minimum, conduct a reasonable  
13 investigation enabling him to make informed decisions about how  
14 best to represent his client," Sanders v. Ratelle, 21 F.2d 1446,  
15 1456 (9th Cir. 1994), post-conviction counsel must determine  
16 whether trial counsel conducted a reasonable investigation.  
17 Similarly, under Arizona state law, "effective counsel must  
18 carefully investigate all available defenses[.]" State v. Ring,  
19 131 Ariz. 374, 641 P.2d 862 (1982) (citing to State v. Lopez, 3  
20 Ariz. App. 200, 412 P.2d 882 (1966)). In the instant case, then,  
21 undersigned counsel must make an informed decision whether trial  
22 counsel rendered effective assistance by, among other things,  
23 conducting a reasonable investigation.

24

25 B. Independent Of Petitioner's Right To Effective  
26 Assistance Of Post-conviction Counsel, State And  
27 Federal Due Process And Equal Protection  
28 Guarantees --As Well As Common Sense-- Requires  
That A Thorough Investigation Be Conducted In

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1                   Order To Permit Post-conviction Claims To Be Fully  
2                   Presented In These Proceedings.

3                   Arizona Rule 32 post-conviction proceedings are  
4 designed to permit petitioners to litigate, among other things,  
5 claims that they were denied effective assistance of counsel at  
6 trial. In State v. Wood, 180 Ariz. 53, 61, 881 P.2d 1158, 1166  
7 (1994), the Arizona Supreme Court very recently reaffirmed that  
8 claims that trial counsel was ineffective should be raised in  
9 post-conviction proceedings and not on direct appeal.  
10 Ineffectiveness claims should be brought in RULE 32 proceedings,  
11 the Court explained, because they are fact intensive and,  
12 therefore, trial courts are far better situated to address them.

13                  As noted above, trial counsel "must at a minimum, conduct a  
14 reasonable investigation enabling him to make informed decisions  
15 about how best to represent his client," Sanders v. Ratelle, 21  
16 F.2d 1446, 1456 (9th Cir. 1994). As noted above as well, under  
17 Arizona state law, "effective counsel must carefully investigate  
18 all available defenses[.]" State v. Ring, 131 Ariz. 374, 641  
19 P.2d 862 (1982) (citing to State v. Lopez, 3 Ariz. App. 200, 412  
20 P.2d 882 (1966)). In order for post-conviction counsel to  
21 determine whether trial counsel conducted the required  
22 investigation, post-conviction counsel must be afforded a  
23 reasonable opportunity to conduct an independent investigation.

24

25

26                  IIII.           CONCLUSION.

27                  For all these reasons, good cause exists to grant this

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1 motion for an extension of time in which to complete the  
2 investigation and file a supplemental petition for post-  
3 conviction relief. Petitioner respectfully requests that the  
4 Court grant a thirty-day extension of time provided for in ARIZ.  
5 R. CRIM. PRO. 32.4(c), setting the due date for the petition at  
6 May 3, 1995.

7

8 Respectfully submitted this \_\_\_\_\_ day of April, 1995.

9

10

11

By \_\_\_\_\_

12

Robert Doyle  
Counsel for Petitioner

13

14 Copies of the foregoing mailed  
15 this \_\_\_\_\_ day of January 1995,  
16 to:

17

Hon. Peter T. D'Angelo  
18 Judge, Maricopa County Superior Court

19

Dawn Northrup  
Assistant Attorney General  
1275 West Washington  
Phoenix, AZ 85003

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by: \_\_\_\_\_

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