

SUPREME COURT OF ARIZONA

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-90-0247-AP
 Appellee,)
) Maricopa County
 v.) Superior Court
) Nos. CR-163419;
SAMUEL VILLEGAS LOPEZ,) LC2012-000264-001
)
 Appellant.) ORDER GRANTING STAY
) AND RESETTING DATE
) OF EXECUTION
)
 _____)
 FILED 5/15/2012

Samuel Villegas Lopez raised several claims in a superior court special action relating to his application to the Board of Executive Clemency for commutation and reprieve. The superior court found two of those claims colorable and set an evidentiary hearing for July 16, 2012. One of these claims is that three newly appointed members of the Board of Executive Clemency have not received all training specified by A.R.S. § 31-401(C). The State does not contest that these members have not yet completed that training.

The superior court's minute entry clearly implies that, were it within that court's power, it would have stayed Lopez's execution. See Ariz. R. Crim. P. 32.4 (providing that "no stay of execution shall be granted upon the filing of a successive petition except upon separate application for a stay to the Supreme Court"). That minute entry reaches us on the very eve of Lopez's scheduled execution. Without a stay, the case would be rendered moot. Without addressing the merits of the § 31-401(C) issue, we conclude that the interests of justice are best served by staying the pending execution and forthwith issuing under separate cover a new warrant of execution for June 27,

2012. The period between now and the new execution date will allow training of new Board members and a clemency hearing to be subsequently held by the Board, if the Board should elect such a course of action. That procedure would moot Lopez's claim under § 31-401(C).

Unlike the superior court, we do not find colorable Lopez's claim that appointment of the new Board members violates § 31-401(B), which requires that members "shall have demonstrated an interest in the state's correctional program." Like the superior court, we do not find colorable other claims raised by Lopez in the special action.

We therefore grant the application for stay of execution of the sentence of death and will reschedule the execution for June 27, 2012.

DATED this _____ day of May, 2012.

For the Court:

Rebecca White Berch
Chief Justice

TO:

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