

No. 09-99004  
**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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RICHARD DALE STOKLEY, Petitioner-Appellant,

vs.

CHARLES L. RYAN, et al., Respondent-Appellee.

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Appeal from the United States District Court for the District of Arizona  
Hon. Frank R. Zapata, Senior District Judge, Presiding  
D.C. No. 4:98-cv-332-TUC-FRZ

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**Appendix in Support of the Petition for  
Panel Rehearing and for Rehearing En Banc**

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Jon M. Sands  
Federal Public Defender  
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*Counsel for Petitioner-Appellant*

Vice-  
To: The President of the State Bar of Arizona-Tucson  
Michael L. Piccarreta

February 24, 1997

Sir:

I am writing to make you aware of my present situation, and the steps I am taking to correct the problem. I'm enclosing a copy of the letter w/attachments which I have written to the judge in my case. Also enclosed is a copy of the initial death penalty Rule 32 Petition that is the subject of my letter and problem. This Rule 32 is a joke (6 actual pages of appeal and a stack of case law for filler), and I am totally dissatisfied with it. But the letter is self-explanatory, as you can see for yourself.

I don't know why my court-appointed attorney decided to handle this crucial appeal in such a manner, but she did. There are important issues which should be raised and/or preserved for the record, but Ms. Levitt did not even try. This is not fair, to me or the criminal justice system, which I believe is set up the way it is for a reason.

I am indigent and have no choice but to rely on a court-appointed attorney to handle my appeals. I would like to think that I will be afforded the effective assistance of counsel that the law prescribes, yet that is hardly the case in this instance.

I don't know what other options I have besides writing to the judge as I have, but I must do something to see that my rights under the Constitution are observed. I only hope that the judge will grant my request and allow for a proper appeal to be done on my behalf.

Thank you for your attention.

Sincerely,

*Richard Stokley*  
Richard Stokley  
ADC#92408 Unit CB6  
Arizona State Prison  
P.O. Box 8600  
Florence, AZ 85232



Office of the President

Michael L. Piccarreta  
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February 28, 1997

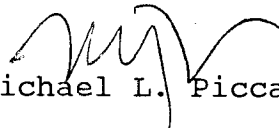
Richard Stokley  
ADC #92408 Unit CB6  
P. O. Box 8600  
Florence, AZ 85232

Dear Mr. Stokley:

Thank you for your letter and enclosures. I am interpreting your letter as a Bar complaint and I have referred your letter and enclosures to the appropriate section within the State Bar responsible for the review of such complaints.

The Bar president does not review individual Bar complaints. We do have an office staffed by competent lawyers who will review your complaint.

Sincerely,

  
Michael L. Piccarreta

MLP/ts

cc: Margaret Downie, State Bar of Arizona



Direct Line (602) 340-7244

March 6, 1997

Richard Stokley  
No. 92408, Unit CB6  
Arizona State Prison  
P.O. Box 8600  
Florence, AZ 85232

Re: No. 97-0438

Dear Mr. Stokley:

This will acknowledge receipt of your correspondence dated February 24, 1997.

Complaints such as yours can best be dealt with in post-trial proceedings. If there is a judicial determination that the lawyer acted inappropriately, please advise and we will review the matter at that time.

Sincerely,

Yigael M. Cohen  
Senior Bar Counsel

YMC:lmo

From: Richard Dale Stokley  
ADC#92408 Unit CB6  
Arizona State Prison  
P.O. Box 8600  
Florence, AZ 85232

CASE NO.  
CR91-00284A  
(death Penalty)

To: The Honorable Judge Matthew Borowiec  
Cochise County Superior Court

February 15, 1997

Your Honor:

In the matter of the Rule 32 Petition which has been prepared and submitted on my behalf, I am writing to express my extreme dissatisfaction and alarm at the cursory and careless manner in which it has been handled. I also implore the Court to take steps to remedy the matter as the present Petition is sorely lacking and wholly inadequate.

I feel that my attorney has handled this initial Rule 32 in a negligent manner as evident through events and the end result. The "events" which I cite are as follows:

1. On April 19, 1996 Ms. Harriette P. Levitt was appointed to handle my appeals. She wrote me on April 19, and a few days later we spoke by phone. I told her that I do not know much about legal matters, nor do I have much memory of details of my trial after all this time. But I did discuss some possible issues for my Rule 32 with her. I asked her to keep me informed, and that was the last I heard of her until September 27.
2. About September 27 I received a copy of her MOTION for a 60-day EXTENSION (not timely filed), which I realized was (I believe) 43 days late.
3. I immediately wrote her expressing my alarm at the obvious lack of attention she was giving to my case, and asked her to please not cause me to lose the opportunity to file my Rule 32.
4. On October 4, 1996 she wrote back claiming that she'd been "spending quite a bit of time working on my case, but was forced to put it down in favor of another case with a non-extendable deadline". At this point she did not even have my case file or transcripts, which, according to her MOTION for the second 60-day EXTENSION, she did not receive until October 31, 1996. Things don't add up, do they?
5. She then filed for that second 60-day extension, which I think started on December 2, 1996, which would mean that the deadline was January 31, 1997, yet she filed on January 10, thereby wasting another 21 days. Out of 240 days, it appears that she only had my files for about 71 days prior to filing.

6. On January 31, 1997 I spoke with Ms. Levitt by phone, and I let her know that I am concerned and dissatisfied with her work and the brevity of this 6-page, 2 issue Rule 32. And I found what she had to say inappropriate and disturbing, to say the least. I made notes, and will relate some of it here:

I asked Ms. Levitt why the Rule 32 was so brief, and she replied that "Some are even briefer than that". She also told me that "My trial attorneys didn't make any mistakes", and that "There are no more issues that can be raised in my case". She said that "This Rule 32 won't take long in the courts, and that then my case will go into federal court where I will lose". She said that I will probably be executed in 2 or 3 years.

Given what is outlined above, I believe it evident that my present appeal has been handled with a lick and a promise, rather than being given the conscientious analysis and preparation which should be applied. As a recent article published by the Arizona State Bar in the February 1997 issue of its magazine, ARIZONA ATTORNEY, titled "New Rules on Indigent Representation" by Larry Hammond and John Stookey notes:

For counsel to represent adequately a defendant sentenced to death in a first post-conviction proceeding, counsel must review every document, item of evidence, transcript and order in the case, beginning with the earliest police report and ending with the last order entered by the Arizona Supreme Court. Counsel must carefully investigate every possible issue, including the possibility of ineffective assistance of counsel at both guilt and penalty phases of the trial, as well as on direct appeal.

Id at p. 30.

The Rule 32 prepared by Ms. Levitt is a disgrace, and a good example of the very "ineffective assistance of counsel" which it is meant to relieve. I must ask the Court to stop this Rule 32 petition and appoint an attorney who will apply his or her self and try to do a competent job in this matter. I feel very strongly that my constitutional rights have been violated and I humbly request that the Court do what is necessary to correct this problem.

I am enclosing copies of the documents mentioned herein for the convenience of the Court. PLEASE RESPOND TO THIS LETTER AS SOON AS POSSIBLE.

Very Humbly, Yours,

*Richard Dale Stokley*  
Richard Dale Stokley

cc/file