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Attorney for Petitioner

IN THE SUPERIOR COURT OF ARIZONA  
IN AND FOR THE COUNTY OF PIMA

|                   |   |                           |
|-------------------|---|---------------------------|
| State of Arizona, | ) |                           |
|                   | ) |                           |
| Plaintiff,        | ) | No. CR-28449              |
|                   | ) |                           |
| v.                | ) |                           |
|                   | ) | Notice of Petition        |
| Joseph R. Wood,   | ) | for Postconviction Relief |
|                   | ) |                           |
| Defendant.        | ) |                           |
| _____             | ) |                           |

Defendant Joseph R. Wood, No. 86279, is a prisoner in state custody under sentence of death in Arizona. He is presently incarcerated in the Arizona State Prison's Eyman Complex--Browning Unit in Florence, at P.O. Box 3400, Florence, AZ 85132.

Mr. Wood was convicted of first degree murder after a jury trial. He was sentenced to death with Judge Thomas Meehan presiding. He was represented at trial and sentencing by Lamar Couser, address not available. Mr. Wood was represented on direct appeal by Barry Baker Sipe, 32 N Stone, 8<sup>th</sup> Floor, Tucson, AZ 85701. His convictions

and sentences were affirmed by the Arizona Supreme Court on October 11, 1994. *State v. Wood*, 180 Ariz. 53, 881 P.2d 1158 (1994). A petition for a writ of certiorari in the United States Supreme Court was filed on his behalf and denied. *Wood v. Arizona*, 515 U.S. 1147, 115 S.Ct. 2588 (1995).

His state court petition for post-conviction relief was denied by this Court, Hon. Howard Hantman presiding, and the Supreme Court denied a petition for review on November 14, 1997. *State v. Wood*, No. CR-97-0377-PC Order (Ariz.Sup.Ct. Nov. 14, 1997). The attorney appointed to represent him in those proceedings was Harriette Levitt, 1147 N Howard Blvd, Tucson, AZ 85716.

Mr. Wood subsequently petitioned for a writ of habeas corpus in the United States District Court for the District of Arizona and was denied. The Ninth Circuit Court of Appeals affirmed the district court's decision. *Wood v. Ryan*, 693 F.3d 1104 (9<sup>th</sup> Cir. 2012). The United States Supreme Court declined to review the decision on cert. *Wood v. Ryan*, No. 13-5150 (U.S.). Mr. Wood was initially represented in those proceedings by Kevin C. Lerch and Peter J. Eckerstrom. Undersigned counsel, Julie S. Hall, was substituted for Mr. Eckerstrom in June, 2003.

During the pendency of the federal proceedings, Mr. Wood filed a second petition for postconviction relief, in which he was represented by Mr. Lerch and Mr. Eckerstrom, with Ms. Hall again substituted for Mr. Eckerstrom in 2003. *State v. Wood*, No. CR-28449 (Pima Cty.Super.Ct.). That petition, and the subsequent petition for review to the

Arizona Supreme Court, were denied. *Id.*, Minute Entry (Nov. 7, 2002); *State v. Wood*, No. CR-03-0311-PC (Ariz.Sup.Ct. May 26, 2004).

Subsequently, Mr. Wood filed a third petition for postconviction relief before this Court, in which he was represented by undersigned counsel. That petition, and the subsequent petition for review to the Arizona Supreme Court, were denied. Minute Entry (July 9, 2014); *State v. Wood*, No. CR-14-0223-PC (Ariz.Sup.Ct. July 17, 2014).

The Arizona Supreme Court has appointed Ms. Hall to represent him in pending proceedings now before that Court in which the State has requested a warrant of execution. He is indigent and because of his poverty is financially unable to pay for the cost of a lawyer without incurring substantial hardship. Mr. Wood has been found indigent and had counsel appointed to represent him previously by this Court, the Arizona Supreme Court, the United States District Court for the District of Arizona, and the United States Supreme Court. This Court appointed undersigned to represent him in successor postconviction proceedings. Order (June 5, 2014).

In the petition accompanying this notice, Mr. Wood raises claims which are not precluded by Rule 32.2(a). The first claim is raised pursuant to Rules 32.1(e) and (h), and meets the exception to preclusion set forth in Rule 32.2(b), as explained further in the contemporaneously-filed petition and that discussion is incorporated here by reference. This claim arises from newly discovered evidence of Mr. Wood's innocence of premeditated murder and the death penalty that would probably overturn his conviction or

sentence. Meritorious reasons exist for not raising these claims in the prior petition for postconviction relief. Specifically, the state courts in postconviction and federal courts in habeas corpus proceedings denied all of Mr. Wood's prior requests for investigation and expert funding, *Ake v. Oklahoma*, 470 U.S. 68 (1985), *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973), and he did not have the resources to develop the new evidence until the Federal Public Defender, which has an internal budget, was appointed to represent him after his appeals were exhausted.

The second claim is raised pursuant to Rule 32.1(a), but is not precluded by Rule 32.2 because it only recently became ripe when the Arizona Attorney General 1) notified Mr. Wood of the means it intended to use to execute him, and 2) fought back all of his attempts to obtain the information to determine the factual basis for his claim. Only days ago, the State publically avowed, after being ordered by the Ninth Circuit Court of Appeals to turn over its execution protocol pursuant to the First Amendment, that "turning over the drug protocol is not an option." Maya Srikrishnan, Los Angeles Times, "Federal appeals court grants stay to Arizona death row inmate" (7/19/14)(quoting Stephanie Grisham, spokesperson for the Arizona Attorney General's Office), available at <http://www.latimes.com/nation/nationnow/la-na-nn-arizona-execution-stay-granted-2014-0719-story.html> (last visited 7/22/14). Prior to this statement, the Arizona Attorney General had indicated it would provide drug protocol to Mr. Wood pursuant to the First Amendment if it were ordered to do so.

Therefore, Mr. Wood respectfully requests the following relief:

1. A determination that the claims in the contemporaneously-filed petition are not precluded and a stay of the warrant of execution is therefore requested from the Arizona Supreme Court; and
2. An evidentiary hearing to resolve the disputed facts supporting the petition claims, and
3. Such other and further relief as the Court deems just and proper.

Respectfully submitted this 22<sup>nd</sup> day of July, 2014.

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Attorney for Petitioner

Copy of the foregoing  
e-mailed this 22<sup>nd</sup> day of July, 2014, to:

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s/Julie Hall