

**ARIZONA SUPREME COURT**

STATE OF ARIZONA,

Appellee,

v.

FRANK JARVIS ATWOOD,

Appellant.

DEBBIE CARLSON,

Crime Victim.

Arizona Supreme Court  
No. 87-0135-AP

Pima County Superior Court  
Nos. CR14065 and 15397

U.S. District Court No. CV-98-116-  
TUC-JCC

**CRIME VICTIM'S RESPONSE  
TO INMATE ATWOOD'S  
MOTION FOR STAY OF  
EXECUTION DUE TO PENDING  
SUCCESSIVE PETITION FOR  
POST-CONVICTION**

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Crime Victim and mother of Vicki Lynne Hoskinson, Debbie Carlson, by and through undersigned counsel, respectfully submits this *Response* to Inmate Atwood’s *Motion for Stay of Execution Due to Pending Successive Petition for Post-Conviction*.

Ms. Carlson urges this Court to deny Inmate Atwood’s motion so that punishment may be imposed as scheduled on June 8, 2022. Nearly 38 years have passed since Ms. Carlson’s 8-year-old daughter, Vicki, was kidnapped, molested, and murdered by Atwood. Further, 35 years have passed since Atwood was sentenced to death.<sup>1</sup> Despite the constitutional right to a “prompt and final conclusion of the case after the conviction and sentence[,]” under Ariz. Const. art. II, § 2.1(A)(10), Ms. Carlson and her family have endured significant delays throughout the criminal justice process; they want an end to the criminal proceedings as well as the myriad appeals and civil lawsuits filed by Atwood and his supporters.<sup>2</sup>

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<sup>1</sup> Atwood was sentenced to death on May 8, 1987.

<sup>2</sup> The ACLU is seeking to invalidate the May 24, 2022, clemency hearing. It alleges that Arizona’s Board of Executive Clemency violated Arizona’s Open Meetings Law. Ms. Carlson attempted to file a Notice of Appearance under A.R.S. § 13-4437(A), when the ACLU attempted to prevent the clemency hearing from happening in the first place, to ensure that the court considering the matter would be advised of the impact on Ms. Carlson’s constitutional rights if the hearing was delayed. The Clerk of the Superior Court directed Ms. Carlson to file a Motion to Intervene. Because the hearing went forward as planned and Ms. Carlson believed the issue to be moot, she did not file a Motion to Intervene. On May 31, 2022, Ms. Carlson learned that the ACLU had filed an amended complaint seeking to invalidate the clemency hearing. Ms. Carlson, wanting the court to be apprised of her constitutional rights, filed a Motion to Intervene. Ms. Carlson’s Motion to Intervene

A true end will only be achieved once Atwood's punishment is imposed.

Ms. Carlson asks this Court to uphold her constitutional right to a "prompt and final conclusion of the case after the conviction and sentence" by denying Atwood's request to delay his execution. Ariz. Const. art. II, § 2.1(A)(10).

## **I. Facts**

Vicki Lynne Hoskinson can best be described by her mother, Debbie Carlson. At Atwood's May 24, 2022, clemency hearing, Ms. Carlson told the Board of Executive Clemency ("the Board") about Vicki's short life.<sup>3</sup> To hear Ms. Carlson's comments, click [here](#). Summarizing Ms. Carlson's comments: Vicki was born on Groundhog Day in 1976. From the moment of Vicki's birth, Ms. Carlson knew that she was special. Vicki was a vibrant, beautiful, blue-eyed girl with a smile that could

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was denied, but she was granted permission to file an amicus brief. An evidentiary hearing has been set for the afternoon of June 6, 2022.

<sup>3</sup> The above facts about Vicki's life and her murder are summarized from Ms. Carlson's statement to Arizona's Board of Executive Clemency on May 24, 2022. Atwood confessed that he kidnapped, molested, and murdered Vicki to other jail inmates. The confession Ms. Carlson references in her statements was suppressed. One particular inmate kept notes of Atwood's comments about Vicki. Based on Atwood's comments, the inmate drew a map of where Vicki's remains could be located months before Vicki had been found. This inmate was deposed in a civil matter where he provided harrowing details about Vicki's abduction, molestation, and murder. His handwritten notes and map were attached to the deposition. At the start of the clemency hearing, Atwood's counsel advised the Board that they would hear things that were not able to be presented at trial, but now anything and everything can be presented. Later in the hearing, however, they took issue with Ms. Carlson referencing the suppressed confession.

light up a room. Vicki was a feisty girl and a fierce competitor who loved softball, Barbie dolls, Sunday School, watching her grandfather and uncle race cars, and helping others. Vicki's favorite foods included tacos, french fries, and Spaghetti-O's. Vicki loved her family. Vicki was, and still is, loved by her family.

Ms. Carlson also advised the Board of the facts surrounding Vicki's murder that she learned because of the suppressed confession. On September 17, 1984, Vicki's life was taken because of Inmate Atwood's pedophilic desires. Atwood, a known and convicted pedophile, wanted to engage in sex acts with a child, but did not want to leave a witness. Atwood preyed on Vicki from the moment he spotted her on her bicycle. It is likely that Vicki knew her fate because she fought. Atwood told her that if she didn't shut up, he would kill her. He put her in his car, drove her to a somewhat remote part of the desert, committed sexual offenses, and cut Vicki's throat before walking back to his car. Realizing he had forgotten his car keys, Atwood went back to where he had left Vicki to look for them. When he found that Vicki was still alive and had gotten on her hands and knees, Atwood knocked her down and stabbed her in the heart. Atwood left Vicki, exposed to the elements and animals, for 6 months, 3 weeks, and 2 days.

When Vicki was found in April 1985, all that was left of her were partial skeletal remains. Ms. Carlson asked permission to see Vicki's remains. When she did, she was presented with approximately one third of her daughter's skeletal

remains in a cardboard tray. To this day, approximately two thirds of Vicki's remains have not been recovered and likely never will be.

The case took approximately two and a half years to get to trial, Atwood was convicted of kidnapping and murder in 1987. He was sentenced accordingly under Arizona law. This Court upheld Atwood's sentence. *State v. Atwood*, 171 Ariz. 576 (Ariz. 1992). Afterward, Atwood managed to manipulate the criminal justice system for decades. *Atwood v. Ryan*, 870 F.3d 1033, 1044 (9th Cir. 2017). His federal habeas proceeding spanned more than 20 years. *Id.* Atwood has continuously delayed the imposition of punishment in violation of Ms. Carlson's constitutional right to a "prompt and final conclusion of the case after the conviction and sentence." Ariz. Const. art. II, § 2.1(A)(10). Atwood's efforts to evade punishment continue to this day and include attempts to relitigate issues that have been previously resolved.

## **II. Argument**

Arizona's Victims' Bill of Rights (VBR) is intended to preserve and protect victims' rights to justice and due process. Ariz. Const. art. II, § 2.1(A). For these fundamental rights to be protected, a victim has a constitutional right to a "...prompt and final conclusion of the case after the conviction and sentence." Ariz. Const. art. II, § 2.1(A)(10). This express language of our VBR recognizes the harm to victims caused by undue delay. Arizona's courts are required to consider not only the speedy trial rights of the accused, but also to account for the crime victim's right to finality.

This Court has been clear that a victim's constitutional right to finality warrants protection. *Fitzgerald v. Myers*, 243 Ariz. 84, 92 (Ariz. 2017) (noting any stay ordered in a PCR matter in a capital case should be limited in duration and scope to protect victims' constitutional right to finality); *State v. Gates*, 243 Ariz. 451 (Ariz. 2018) (noting when making a post-waiver ID determination in a capital case, the trial court must consider whether ordering the evaluation would prejudice the victims by implicating their constitutional right to a speedy trial and a prompt and final conclusion of the case). Arizona's VBR gives crime victims a constitutional right not to be continuously victimized by an unending criminal justice process.

Until recently, the process has failed Ms. Carlson and her family. Atwood has done everything in his power to avoid the imposition of punishment by dragging the proceedings on for decades. After this Court upheld his 1987 convictions and sentences in 1992, Atwood's first Rule 32 proceeding lasted over 4 years, from March of 1993 to May 1997. His federal habeas proceeding then spanned more than 20 years, from March 1998 to October of 2018. In recent weeks, Atwood has filed numerous petitions, complaints, and motions in the hopes of causing additional delay and avoiding the imposition of punishment.

The underlying petition to this *Motion for Stay of Execution Due to Pending Successive Petition for Post-Conviction* is based on the same information Atwood recently presented to the Ninth Circuit Court of Appeals. *Atwood v. Shinn*, No. 22-

70084 (9th Cir., May 27, 2022). Atwood sought to file a second federal habeas petition to present three claims. *Id.* First, he argued that his 1975 California conviction could not be used as an aggravating factor. *Id.* at 2. This Court previously rejected that claim. *Id.* Next, Atwood asserted a *Brady* claim that is the subject of his recent Petition for Post-Conviction Relief. *Id.* Atwood contends that the state failed to disclose information about an anonymous phone call. *Id.* at 8-10. Last, Atwood asserts actual innocence. *Id.* at 2. The Ninth Circuit denied relief. Specific to the *Brady* claim, the Ninth Circuit stated that Atwood has not made a prima facie showing that disclosure of the unreported phone call would have changed the outcome of his guilty verdict. *Id.* at 9.

While those sentenced to death are afforded numerous appellate remedies, the right to seek appellate review should not be used as a tool by inmates and their attorneys to extended proceedings for decades hoping that the inmate will die of natural causes before punishment can be imposed. Atwood has shown nothing short of contempt for Arizona's laws, the criminal justice process, and for Ms. Carlson<sup>4</sup> and her family who have a constitutional right to have this process end.

Ms. Carlson and her family have a compelling interest in finality as it is essential to their emotional healing and recovery. The murder of a loved one causes

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<sup>4</sup> During one of the breaks the day of the clemency hearing, Atwood very slyly extended his middle finger to Ms. Carlson when she looked his way. ADCRR is aware of this incident.

significant psychological implications conceptualized within a post-traumatic stress disorder (“PTSD”) framework, the most consistently documented consequence of violent crime. Heidi M. Zinzow, et al., *Examining Posttraumatic Stress Symptoms in a National Sample of Homicide Survivors: Prevalence and Comparison to Other Violence Victims*, 24 J. Traum. Stress 743 (December 2011); Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice Involvement on Victims’ Mental Health*, 23 J. Traum. Stress 182 (2010); Dean G. Kilpatrick & Ron Acierno, *Mental Health Needs of Crime Victims: Epidemiology and Outcomes*, 16 J. Traum. Stress 119 (2003); Patricia A. Resick, *The Psychological Impact of Rape*, 8 J. Interpersonal Violence 223, 225 (1993). Victims of all types of violent crime can experience PTSD or various symptom clusters, but homicide survivors are twice as likely to meet the criteria for PTSD and report more symptoms of PTSD than victims of other types of trauma. Zinzow at 744. The high prevalence of PTSD in homicide survivors may be partially due to the fact that survivors are forced to cope not only with the loss of a loved one, but also the sudden and violent nature of their death. Zinzow at 744, citing Angelynne Amick-McMullan, et al., *Family Survivors of Homicide Victims: Theoretical Perspectives and an Exploratory Study*, 2 J. Traum. Stress 21, 35 (1989). Studies also suggest a connection between initial victimization and later depression, substance abuse, panic disorder, agoraphobia, social phobia, obsessive-compulsive disorder, and even suicide. Parsons & Bergin at 182.

The criminal justice system often overlooks the effects that delayed judicial proceedings, as well as delays in the imposition of punishment, have on victims. A prolonged experience in the criminal justice system adds to the intense and painful consequences of initial victimization. *Id.* at 182-183; see also Judith Lewis Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 *J. Traum. Stress* 159, 159 (2003). Secondary victimization often causes more harm than the initial criminal act. Uli Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, 15 *Soc. Just. Res.* 313, 321 (2002). A victim's experience with the justice system often "means the difference between a healing experience and one that exacerbates the initial trauma." Parsons & Bergin at 182. For example, one study examining the effect of offender punishment on crime victim recovery found that most victims experienced improved recovery when there was an increased perceived punishment of the offender. Dr. Joel H. Hammer, *The Effect of Offender Punishment on Crime Victim's Recovery and Perceived Fairness (Equity) and Process Control*, University Microfilms International 87, Ann Arbor, MI (1989).

Timely resolution is essential to victim recovery. *Id.* The emotional harm caused by a prolonged process is severe in murder cases, such as this, where the delay between the offense in 1984 and the imposition of punishment has spanned nearly thirty-eight years. Arizona, however, through the VBR and implementing statutes, seeks to minimize the traumatic impact of murder on victims by

enumerating rights intended to preserve and protect victims’ rights to justice and due process. Ariz. Const. Art. II, § 2.1; Gessner H. Harrison, *The Good, The Bad, and The Ugly: Arizona’s Courts and the Crime Victims’ Bill of Rights*, 34 Ariz. St. L.J. 531, 531–32 (2002). Most relevant here is that the VBR gives victims an express right “[t]o a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.” Ariz. Const. Art. II, § 2.1(A)(10).

### **III. Conclusion**

For the reasons set forth above, Ms. Carlson respectfully requests this Court uphold her rights to justice and due process as well as her constitutional right to a “prompt and final conclusion of the case after the conviction and sentence” and deny Atwood’s request to continue to delay the imposition of punishment. Ariz. Const. art. II, § 2.1(A)(10).

Respectfully Submitted June 5, 2022

By: /s/ Colleen Clase  
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