

ARIZONA SUPREME COURT

KAREN PRICE,

Petitioner,

v.

HONORABLE KATIE HOBBS IN
HER CAPACITY AS THE
GOVERNOR OF THE STATE OF
ARIZONA, AND DIRECTOR RYAN
THORNELL IN HIS CAPACITY AS
THE DIRECTOR OF THE
ARIZONA DEPARTMENT OF
CORRECTIONS, REHABILITATION,
AND REENTRY (ADCRR),
DEFENDANTS/RESPONDENTS,

Respondents.

AARON BRIAN GUNCHES,

Real Party in Interest.

Arizona Supreme Court

No. CR-13-0282-AP

Maricopa County Superior Court

No. CR-2003-038541-001

**CRIME VICTIM'S PETITION
FOR SPECIAL ACTION**

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QUESTION PRESENTED

Whether Defendants Hobbs and Thornell are threatening to proceed without legal authority and to fail to perform a duty—the lawful execution of Aaron Brian Gunches on April 6, 2023—as required by law? Ariz. R. P. Spec. Act. 3 (a)-(b).

INTRODUCTION

This Special Action alleges a mandamus action—an action that seeks to compel a public official to perform a non-discretionary duty imposed by law. *See Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*, 249 Ariz. 396, ¶ 16, 404 (Ariz. 2020). This Court has original jurisdiction to issue writs of mandamus and “exercise this jurisdiction through the special action procedure.” Ariz. Const. art 6, § 5(1). Additionally, Arizona’s Chief Executive Officer’s defiance of a lawful order of this Court is a legal matter of statewide importance, whether the action is willful or made out of ignorance, for such conduct directly undermines the rule of law and is contrary to Governor Hobbs’ solemn duty to support the laws of Arizona and faithfully and impartially discharge her duties. *Hobbs*, 249 Ariz. at ¶ 20, 404-405. (recognizing special action jurisdiction is appropriate to address legal questions of statewide importance requiring constitutional interpretation).

This petition presents a legal question. The standard of review is *de novo*. *Fann v. State*, 251 Ariz. 425, ¶ 17, 433 (Ariz. 2021) (noting legal and constitutional

questions are reviewed de novo) citing *State v. Harrod*, 218 Ariz. 268, 279 (Ariz. 2008).

Karen Price is the sister of murder victim, Ted Price. Thus, Ms. Price is a victim as defined by Arizona law. Ariz. Const. art. II, § 2.1(D) (“The legislature, or the people by initiative or referendum, have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.”); A.R.S. 13-4401(19) (“‘Victim’ means a person against whom the criminal offense has been committed, including a minor, or if the person is killed or incapacitated, the person's spouse, parent, child, grandparent or *sibling*, any other person related to the person by consanguinity or affinity to the second degree or any other lawful representative of the person, except if the person or the person's spouse, parent, child, grandparent, sibling, other person related to the person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused.”) (emphasis added).

A victim has standing to bring a special action seeking to enforce any right or to challenge an order denying any right guaranteed under Arizona’s Victims’ Bill of Rights (VBR), Ariz. Const. art. II, § 2.1. A.R.S. § 13-4437(A); Ariz. R. P. Spec. Act. 2 (a)(2). Here, without authority, the Governor is threatening to deny the victim her state constitutional rights to justice and finality.

COMPLAINT

¶ 1 On March 2, 2023, this Court filed a Warrant of Execution “fixing Thursday, the 6th day of April, 2023, as the date” for Aaron Brian Gunches’ execution and ordered that the judgment and sentence of death “*shall*, pursuant to A.R.S. § 13-757(A), *be executed* by administering to Aaron Brian Gunches by intravenous injection a substance or substances in a quantity sufficient to cause death.” *Warrant* at 2 (March 2, 2023) (emphasis added).

¶ 2 This Court further ordered that a certified copy of the Warrant be delivered to the Director and Superintendent or Warden of the State Prison as sufficient authority “for the execution of Aaron Brian Gunches.” *Id.*

¶ 3 The following day, Governor Katie Hobbs was reported by the media vowing that her administration would *not* carry out the execution ordered by this Court. According to the news reports she “promised not to execute Aaron Gunches on April 6 for his murder conviction for his 2002 killing.” *See* <https://www.12news.com/video/news/local/arizona/gov-hobbs-wont-proceed-with-aaron-gunches-execution/75-6fe2dc39-24dc-4c46-8f5b-00640583af5d> (Phoenix, Arizona, March 3, 2023) (last accessed March 10, 2023).

¶ 4 Governor Hobbs was quoted as stating “[u]nder my administration, an execution will not occur until the people of Arizona can have confidence that the state is not violating the law in carrying out the gravest of penalties.” *See*

<https://apnews.com/article/execution-arizona-katie-hobbs-f0c799c2a269994474119bd38d5996a1> (Associated Press, March 4, 2023) (last accessed March 10, 2023).

¶ 5 Governor Hobbs reportedly further stated that this Court’s warrant is procedural—authorizing the execution, but not requiring it. *Id.* She is quoted as saying “[t]his is consistent with the law and separation of powers between the judicial and executive branches on this most serious exercise of the power of the State.” See <https://www.usatoday.com/story/news/nation/2023/03/04/arizona-executionwont-proceed-governor/11398129002> (USA Today, March 4, 2023) (last accessed March 10, 2023).

¶ 6 In her comments, Governor Hobbs cited no authority that empowers her not to enforce a Warrant of Execution.

¶ 7 Nevertheless, her novel challenge to this Court’s Warrant of Execution was broadcast from Los Angeles to Washington, D.C. See <https://www.latimes.com/world-nation/story/2023-03-04/arizona-governor-wont-proceed-with-execution-set-by-court> (LA Times, March 4, 2023) (last accessed March 10, 2023);

See also <https://www.washingtontimes.com/news/2023/mar/3/katie-hobbs-vows-not-to-carry-out-execution-schedu/>

¶ 8 The actions of the Governor and the Director, if he were to follow the Governor, violate the victim’s constitutional rights to justice and finality under Arizona’s VBR. Ariz. Const. art. II, § 2.1(A) and (A)(10). See ¶ 14 below.

ANANLYSIS

¶ 9 Governor Hobbs misread the Warrant of Execution if she believes it simply authorizes an execution and does not require it. A.R.S. § 13-759 (A) provides for this Court to issue a warrant of execution “that *authorizes* the director of the state department of corrections to carry out the execution thirty-five days after the supreme court’s [] order...” *Order*, March 2, 2023; A.R.S. § 13-759(A) (emphasis added). This Court authorizes—empowers—the Director to carry out the execution. It does not give the Director or the Governor the power to refuse to perform their lawful duty and abide by the oath of office. The Warrant itself makes that clear.

¶ 10 The Director of ADCRR is selected by the Governor and serves at the pleasure of the Governor. A.R.S. § 41-1603(A). The Governor supervises his official conduct. A.R.S. § 41-101(A)(1). The Director is a member of the Governor’s cabinet. <https://azgovernor.gov/office-arizona-governor/news/2023/01/governor-hobbs-announces-cabinet-members-focused-improving> (Governor Hobbs’ Press Release, January 17, 2023) (last accessed March 10, 2023). The Director has not stated

publicly whether he will or will not follow the Governor's wishes, but the indication to the victim from ADCRR is that ADCRR is not preparing for an execution.¹

¶ 11 However, the Director of ADCRR has no discretion concerning a prisoner's sentence. "The director shall hold in custody all persons who are sentenced to the department under the law and shall hold such persons *for the term directed by the court*, subject to law." A.R.S. § 31.201.01(A) (emphasis added); The Director's responsibility "is a ministerial duty concerning which he has no discretion." *Maricopa Cnty. v. State*, 126 Ariz. 362, 364 (Ariz. 1980).

¶ 12 Likewise, neither the Arizona Constitution nor the Arizona Legislature has empowered the Governor to disregard a lawfully issued Warrant of Execution. *See* Ariz. Const. art. 5, § 5 (recognizing that the Governor's power to grant reprieves, commutations, and pardons can be limited by law); A.R.S. § 31-402(A) and (C) (Board of Executive Clemency has "*exclusive* power to pass on and recommend reprieves, commutations, paroles and pardons.") (emphasis added).

¶ 13 Moreover, even if Governor Hobbs had legal authority to halt or delay an execution following this Court filing a Warrant of Execution, her policy reasons for studying the execution procedures conflicts with the successful executions carried out by ADCRR in the past 10 months:

¹ At this Court's request, undersigned will provide copy of the communication with ADCRR.

Clarence W. Dixon, ADCRR #038977, executed May 11, 2022;

Frank J. Atwood, ADCRR #062887, executed June 8, 2022;

Murray Hooper, ADCRR #047621, executed November 16, 2022.

¶ 14 Arizona's VBR by its terms preserves and protects victims' rights to justice and finality. Ariz. Const. art. II, § 2.1(A) and (A)(10).

The right to justice is not merely symbolic, it is enforceable as are all rights. The plain meaning of the word justice, when added into the VBR was "the administration of what is just (*as by assigning merited rewards or punishments*).” Merriam-Webster Dictionary (1990) (emphasis added). The plain language of Arizona's constitution cannot be ignored. *Deer Valley Unified School Dist. No. 97 of Maricopa County v. Superior Court*, 157 Ariz. 537, 540 (Ariz. 1988). *See also, Meyer v. State*, 246 Ariz. 188 (Ariz. Ct. App. 2019). Crime victims have the right to have lawful punishments carried out. In *Knapp v. Martone*, 170 Ariz. 237 (Ariz. 1992) (holding a mother not charged with the offense met the constitutional definition of a victim affording her the right to refuse a defense interview), this Court wrote: "It is important to emphasize that Arizona courts must follow and apply the plain language of this new amendment to our constitution." *Id.* at 239. "When interpreting the Arizona Constitution, 'we seek to give terms the original public meaning understood by those who used and approved them.'" *Matthews v. Indus. Comm'n of Ariz.*, ___ Ariz. ___, ¶ 29, 520 P.3d 168, 174 (Ariz. 2022). This may

include looking to “dictionary definitions from the time the provision was adopted.”

Id. at ¶ 33.

The VBR also expressly protects the victim’s constitutional right to finality. Ariz. Const. art. II, § 2.1(A)(10). A victim’s constitutional right to finality warrants protection. *State v. Gates*, 243 Ariz. 451, 454 (Ariz. 2018) (In making a post-waiver determination of whether an intellectual disability evaluation is appropriate in a capital case, trial courts must consider whether an evaluation would prejudice the state or the victims by delaying the trial date.); *Fitzgerald v. Myers*, 243 Ariz. 84, 92 (Ariz. 2017) (affirming order denying stay of capital PCR proceedings); *State v. Towery*, 204 Ariz. 386, 391 (Ariz. 2003) (noting the importance of victims’ constitutional right to finality). This Court implicitly recognized the rights that victims have to justice and finality when it permitted three executions to be carried out last year and was explicit in the order here. *Order* (March 2, 2023) (“Gunches murdered Ted Price more than twenty years ago, and this Court upheld his convictions and death sentence years ago... In ruling on the pending motions, we are cognizant of the Victim’s constitutional right to a prompt conclusion of this case.”).

The very purpose of enshrining rights to justice and finality into Arizona’s Constitution was to give victims basic rights of “respect, protection, participation and healing of their ordeals.” *Champlin v. Sargeant*, 192 Ariz. 371, 375 (Ariz. Ct.

App. 1998) (noting purpose of VBR and its implementing legislation) citing 1991 Ariz. Sess. Laws ch. 229, § 2. Ms. Price and her family have a compelling interest in ensuring their rights to justice and finality are upheld; it is essential to “the healing of their ordeals.” Arizona’s VBR 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). Yet, this very purpose of our VBR will be frustrated if Governor Hobbs and ADCRR are permitted to ignore the Decision Order and Warrant of Execution.

CONCLUSION—AND RELIEF SOUGHT

Without any basis in law, Governor Hobbs has vowed that she will not permit Aaron Brian Gunches to be executed on April 6, 2023, as this Court has lawfully ordered. This total disregard for the law cannot stand and must be remedied. This Court should direct Governor Hobbs to execute Gunches in accordance with the Warrant of Execution.

RESPECTFULLY SUBMITTED this 10th day of March 2023.

By: _____/s/_____
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Attorney for Victim, Karen Price