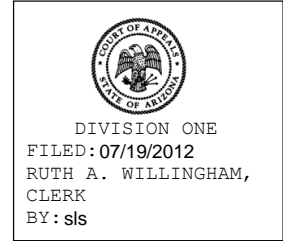


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-SA 12-0134
Petitioner,)
) Department C
)
v.) **MEMORANDUM DECISION**
) Not for Publication -
) (Rule 28, Arizona Rules of
THE HONORABLE DOUGLAS RAYES,) Civil Appellate Procedure)
Judge of the SUPERIOR COURT OF)
THE STATE OF ARIZONA, in and for)
the County of MARICOPA,)
)
Respondent Judge,)
)
JULIUS JARREAU MOORE,)
)
Real Party in Interest.)
_____)

Petition for Special Action
From the Maricopa County Superior Court

Cause No. CR1999-016742

The Honorable Douglas L. Rayes, Judge

JURISDICTION ACCEPTED; RELIEF GRANTED

Thomas C. Horne, Attorney General
By Kent E. Cattani, Chief Counsel
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Tucson

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By Patrick C. Coppen

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T H U M M A, Judge

¶1 Julius Jarreau Moore ("Defendant") was convicted in superior court of three counts of first-degree murder and sentenced to death for two of those counts. Having been found guilty in 2001, a second jury returned aggravation verdicts in 2004 and a third jury imposed the death penalty in 2007. Defendant's convictions were affirmed on appeal. *State v. Moore*, 222 Ariz. 1, 23, ¶ 140, 213 P.3d 150, 172 (2009), *cert. denied*, 130 S. Ct. 747 (2009). After the mandate issued on his direct appeal, Defendant filed a notice of post-conviction relief ("PCR") in superior court pursuant to Rule 32.4 of the Arizona Rules Criminal Procedure ("Rule"). Defendant has not yet filed a Rule 32 PCR petition.

¶2 Defendant is investigating issues to press in a Rule 32 PCR petition and wants to contact trial jurors. The State filed a "Motion for Court Order Prohibiting Defense Team from Contacting Jurors," seeking an order prohibiting defense counsel from having contact with the trial jurors absent "prior authorization from [the superior court] . . . based upon a showing of good cause that such contact is necessary to develop a PCR claim." In response, Defendant filed a "Request to Allow Limited Personal Contact with Jurors Based Upon Responses to

Approved Questionnaire." Defendant sought information from the penalty phase jurors about an alleged "barbecue, get together or party" after their deliberations,¹ seeking court approval for use of a "questionnaire and cover letter" directed to the jurors. Defendant asked the court to "order that interviews of individual jurors may be conducted with both parties' required presence," depending upon the juror's responses to the questionnaires.

¶3 The superior court denied the State's motion and granted Defendant's Request to Allow Limited Personal Contact with Jurors Based Upon Responses to Approved Questionnaire. The State filed a Petition for Special Action ("Petition"), seeking to vacate the order.²

¹ Defendant provided no explanation for how he learned of the alleged gathering and provided no affidavit or declaration supporting the claim. Although the appendices include Defendant's filing stating "it has been reported that the 2007 penalty phase jury held a barbecue-type get together or party following their death penalty verdicts," no support is provided for that unverified statement.

² Following a telephonic hearing, we granted the State's Motion for Stay. We grant Defendant's Motion to Accept Brief as Timely Filed and we deny as moot the State's Motion to Consolidate this matter with 1 CA-SA 12-0132.

DISCUSSION

¶4 The State alleges the superior court abused its discretion or exceeded its legal authority, issues that are properly raised in a special action. Ariz. R.P. Spec. Act. 3(b), (c). We agree that the State has no "equally plain, speedy, and adequate remedy" by appeal to address the superior court's order. Accordingly, we exercise our discretion and accept special action jurisdiction over the Petition. Ariz. R.P. Spec. Act. 1(a); *State ex. Rel. Pennartz v. Olcavage*, 200 Ariz. 582, 585, ¶¶ 8-10, 30 P.2d 649, 652 (App. 2001).

¶5 Turning to the relief requested in the Petition, we first address what we are not deciding. Among other things, we are not deciding: (1) what constitutes jury misconduct or what information may be relevant or admissible for a jury misconduct claim; (2) what claims are cognizable in a Rule 32 PCR proceeding; (3) what information may be discoverable for any claims made after Defendant files a Rule 32 PCR Petition; (4) whether Defendant has a constitutional right to the juror contact he seeks; or (5) when or how jurors may be contacted immediately after they are discharged from their deliberations. See *State v. West*, 176 Ariz. 432, 446-47, 862 P.2d 192, 206-07 (1993) (affirming, on direct appeal, trial court's refusal to release to defendant "names and addresses of the trial jurors"), *overruled in part on other grounds in State v. Rodriguez*, 192

Ariz. 58, 64, ¶ 30, n.7, 961 P.2d 1006, 1012, n.7 (1998). Instead, we address only the proper procedure for discovery requests in a Rule 32 PCR proceeding. As such, our discussion is limited to the propriety of the superior court's order challenged in the Petition.

¶6 The propriety of the order turns on two issues: (1) the showing required before the superior court could grant Defendant's request for an order permitting him to contact discharged jurors and obtain information through a written questionnaire and (2) whether Defendant made that showing. We address these issues in turn.

¶7 Defendant seeks to obtain information in this Rule 32 PCR proceeding to use in a Rule 32 PCR petition that has not yet been filed. The State argues Defendant was required to show "good cause" before the court could grant Defendant's request to contact jurors and obtain information from jurors. Defendant argues that no such showing was necessary, and that even if "good cause" was required, he made that showing. We hold that allowing the requested juror contact and obtaining the requested information from jurors is proper only upon a showing of "good cause." *Canion v. Cole*, 210 Ariz. 598, 600, ¶ 10, 115 P.3d 1261, 1263 (2005) ("trial judges have inherent authority to grant

discovery requests in PCR proceedings upon a showing of good cause") (citing cases).³

¶8 We reject Defendant's argument that he is not seeking discovery or disclosure. The order issued at Defendant's request authorizes contact with trial jurors to "investigate colorable issues" that Defendant wants to include in a Rule 32 PCR Petition. Defendant's "Rule 32 defense team" made the request to "allow[] investigation of the issue at hand for PCR purposes." Simply put, Defendant seeks discovery for Rule 32 PCR purposes. Indeed, if Defendant was not seeking information relevant to this Rule 32 PCR proceeding, no authority is cited supporting his request.

¶9 We also find *Canion* applies even though Defendant seeks information from non-parties. Although the *Canion* defendant sought disclosure from the State, the Arizona Supreme Court held "trial judges have inherent authority to grant discovery requests in PCR proceedings upon a showing of good cause." *Id.* at 600, ¶ 10, 115 P.3d at 1263. The reasoning and

³ Although the State mentions other authority for a "good cause" requirement, we hold *Canion* sets forth the applicable standard. See A.R.S. § 21-312(A) (Westlaw 2012) ("The list of juror names or other juror information shall not be released unless specifically required by law or ordered by the court."); Ariz. R. Crim. P. 18.3 (noting "court shall keep all jurors' home and business telephone numbers and addresses confidential unless good cause is shown"). Absent material revisions, we cite the current Westlaw version of applicable statutes.

analysis in *Canion* apply with full force to requests for discovery from non-parties like Defendant seeks here. Accordingly, we hold *Canion's* "good cause" requirement applies to requests for disclosure and discovery from parties as well as non-parties made in Rule 32 PCR proceedings.

¶10 Whether good cause has been shown is contextual. In a Rule 32 PCR proceeding, good cause can only be shown in the context of the claims made in a Rule 32 PCR petition. *Canion* crisply held that pre-petition discovery could not properly be compelled:

This case raises the question whether a convicted defendant who has filed a notice of post-conviction relief ("PCR"), but has not filed a petition seeking relief, has a right to compel discovery for his PCR proceedings. We hold that he does not.

Id. at 598, ¶ 1, 115 P.3d at 1261. Until the Rule 32 PCR petition is filed, "we do not know the basis for [a defendant's] claim for Rule 32 relief and cannot assess whether any violation he might allege would state a colorable claim." *Id.* at 600, ¶ 14, 115 P.3d at 1263. As applied, before Defendant "may be permitted to show good cause" for court involvement seeking discovery about and from the jurors, "he must file a PCR petition to provide context for his request." *Id.* at 600, ¶ 10, 115 P.3d at 1263. Absent the filing of a Rule 32 PCR petition, the court "lack[s] any context in which to assess" his request;

"[o]nly when a petition has been filed can the trial judge - and reviewing courts - properly consider" his request "in light of his asserted grounds for relief." *Id.* at 600-01, ¶ 14, 115 P.3d at 1263-64.

¶11 Citing *Wellons v. Hall*, 130 S. Ct. 727 (2010), Defendant argues "it is far better to allow the investigation of alleged jury misconduct in a *capital* case to take place when raised" than to defer. We do not read *Canion* as inconsistent with such a directive. In the context of a Rule 32 PCR proceeding, however, *Canion* holds any issue of jury misconduct is "raised" when a Defendant files a Rule 32 PCR petition. Until then, "good cause" cannot be assessed. *Id.* at 600-01, ¶ 14, 115 P.3d at 1263-64.

¶12 Because the order exceeded the superior court's authority at this stage of the Rule 32 PCR proceeding, we vacate that order without prejudice to Defendant seeking such relief after filing a Rule 32 PCR petition. In doing so, we note that neither party focused on *Canion* when arguing to the superior court. Accordingly, the superior court did not have the benefit of the parties' views on an opinion we find dispositive.

CONCLUSION

¶13 We accept jurisdiction of this special action and grant relief. We vacate the superior court's order to the extent it grants Defendant's Request to Allow Limited Personal Contact with Jurors Based Upon Responses to Approved Questionnaire or authorizes Defendant to contact jurors, without prejudice to Defendant seeking such an order after filing a Rule 32 PCR petition. We remand this case to the superior court for further proceedings consistent with this memorandum decision.

_ /s/ _____
SAMUEL A THUMMA, Judge

CONCURRING:

_ /s/ _____
PATRICIA K. NORRIS, Presiding Judge

_ /s/ _____
DONN KESSLER, Judge