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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

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James Lynn Styers,

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No. CV-98-2244-PHX-JAT

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Petitioner,

)

DEATH PENALTY CASE

11

vs.

)

**ORDER DENYING MOTION  
TO ENTER JUDGMENT**

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Charles L. Ryan, et al.,

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Respondents.

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Before the Court is Petitioner’s Motion to Enter Judgment Granting Writ of Habeas Corpus. (Doc. 160.) Respondents oppose the motion. (Doc. 166.) For the reasons that follow, the motion is denied.

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**BACKGROUND**

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In 1989, Petitioner shot and killed the four-year-old son of a woman with whom he shared an apartment. A jury convicted him of first degree murder, conspiracy to commit first degree murder, child abuse, and kidnapping. With respect to the murder count, the trial court found three statutory aggravating factors: that Petitioner was an adult and the victim was under age fifteen, pursuant to A.R.S. § 13-703(F)(9); that the murder was committed in the expectation of pecuniary gain, under § 13-703(F)(5); and that the murder was committed in an especially heinous and depraved manner, under § 13-703(F)(6).<sup>1</sup> Finding no statutory

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<sup>1</sup> Arizona’s capital sentencing statute has been renumbered as A.R.S. § 13-751 but remains substantially the same. See 2008 Ariz. Sess. Laws, ch. 301, §§ 26, 38-41 (2d

1 mitigating factors and no non-statutory mitigating factors sufficiently substantial to call for  
2 leniency, the court imposed the death penalty.

3 On direct appeal, the Arizona Supreme Court reversed Petitioner’s conviction for child  
4 abuse but affirmed the remaining convictions. *State v. Styers*, 177 Ariz. 104, 865 P.2d 765  
5 (1993), *cert denied*, 513 U.S. 855 (1994) (“*Styers I*”). The court also concluded that the  
6 State had failed to establish the pecuniary gain aggravating factor beyond a reasonable doubt.  
7 *Id.* at 115, 865 P.2d at 776. However, after excluding this factor from its independent  
8 reweighing of aggravation and mitigation, the court nonetheless concluded that the mitigation  
9 was not sufficiently substantial to warrant leniency and upheld the death sentence. *Id.*

10 Following unsuccessful state post-conviction-relief proceedings, Petitioner sought  
11 habeas corpus relief in federal court. Among his claims, Petitioner alleged that after striking  
12 the pecuniary gain aggravating factor, the Arizona Supreme Court had failed to properly  
13 reweigh the aggravating and mitigating circumstances as required by *Clemons v. Mississippi*,  
14 494 U.S. 738, 748-49 (1990). United States District Court Judge Earl H. Carroll concluded  
15 that this claim was procedurally barred from federal review. On appeal, however, the Ninth  
16 Circuit found the claim properly exhausted and determined that the Arizona Supreme Court  
17 had improperly refused to consider all of Petitioner’s proffered mitigation in its reweighing,  
18 thereby failing to fulfill its constitutional obligations under *Clemons* and *Eddings v.*  
19 *Oklahoma*, 455 U.S. 104, 115 (1982). *Styers v. Schriro*, 547 F.3d 1026, 1034-35 (9th Cir.  
20 2008), *cert. denied*, 130 S. Ct. 379 (2009) (“*Styers II*”). Pursuant to the Ninth Circuit’s  
21 mandate, the district court entered judgment granting the writ of habeas corpus unless the  
22 State of Arizona, within 120 days of the judgment, “initiates proceedings either to correct the  
23 constitutional error in Petitioner’s death sentence or to vacate the sentence and impose a  
24 lesser sentence consistent with the law.” (Doc. 148 at 2.)

25 At the request of the State and over Petitioner’s objection, the Arizona Supreme Court

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27 Reg. Sess.).

1 ordered briefing and argument and then conducted a new independent review of Petitioner’s  
2 capital sentence, again finding that the proffered mitigation was not sufficient to warrant  
3 leniency. *See State v. Styers*, 227 Ariz. 186, 254 P.3d 1132 (2011) (“*Styers III*”). The court  
4 also addressed Petitioner’s argument that he was entitled to a new sentencing proceeding  
5 before a jury under *Ring v. Arizona*, 536 U.S. 584 (2002), which requires jury findings as to  
6 aggravating factors that render a defendant eligible for the death penalty. Petitioner had  
7 argued that although *Ring* was found not to apply retroactively to convictions that were  
8 already final when *Ring* was decided, *see Schriro v. Summerlin*, 542 U.S. 348 (2004), his  
9 case was no longer final once the federal court issued the conditional writ. The Arizona  
10 Supreme Court disagreed, concluding that a second independent review did not “re-open”  
11 direct review such that *Ring* had to be applied retroactively to Petitioner’s case. *Styers III*,  
12 227 Ariz. at 188, 254 P.3d at 1134. The United States Supreme Court denied a petition for  
13 certiorari, *Styers v. Arizona*, 132 S. Ct. 540 (2011), and the instant motion followed.

#### 14 **DISCUSSION**

15 Petitioner asserts that the Arizona Supreme Court neither corrected the constitutional  
16 error in his sentence nor imposed a lesser sentence, the two conditions set forth in the order  
17 granting conditional habeas relief. Therefore, according to Petitioner, this Court must grant  
18 an unconditional writ releasing him from his death sentence. Petitioner’s motion rests on  
19 three grounds: (1) the constitutional error could not be corrected without resentencing by a  
20 jury; (2) the Arizona Supreme Court employed an unconstitutional process in its attempt to  
21 cure the constitutional error; and (3) the Arizona Supreme Court failed to correct the  
22 constitutional error because it did not properly consider his mitigation evidence during its  
23 independent sentencing review.

24 Once a judgment order granting conditional habeas relief issues, a federal district court  
25 retains authority to review compliance with that order. *Leonardo v. Crawford*, 646 F.3d  
26 1157, 1161 (9th Cir. 2011) (citing *Gentry v. Deuth*, 456 F.3d 687, 692 (6th Cir. 2006)). A  
27 State’s failure to comply with a conditional writ requires the petitioner’s release. *Harvest*

1 *v. Castro*, 531 F.3d 737, 750 (9th Cir. 2008). When a petitioner alleges noncompliance with  
2 a conditional writ, “the district court must make a finding concerning the sufficiency of the  
3 action that the state took pursuant to its mandate.” *Phifer v. Warden, United States*  
4 *Penitentiary*, 53 F.3d 859, 865 (7th Cir. 1995). In making this determination, the district  
5 court may consider whether the state’s actions ran afoul of the “letter or spirit” of the  
6 conditional writ. *Patterson v. Haskins*, 470 F.3d 645, 668 (6th Cir. 2006).

7 **Scope of Remedy**

8 Petitioner argues that the conditional writ granted in this case “vacated” his death  
9 sentence and therefore he was entitled to a new sentencing proceeding in state court. (Doc.  
10 160 at 16.) In his view, the Arizona Supreme Court’s failure to remand his case for  
11 resentencing constitutes a failure to comply with the order granting a conditional writ. In  
12 making these arguments, Petitioner misapprehends the nature of the relief provided by the  
13 district court’s order.

14 It is well established that federal district courts have broad discretion in conditioning  
15 a judgment granting habeas relief. *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987). Pursuant  
16 to 28 U.S.C. § 2243, federal courts are authorized to dispose of habeas corpus matters “as  
17 law and justice require.” The Supreme Court has repeatedly held that federal courts may  
18 delay the release of a successful habeas petitioner in order to provide the State an opportunity  
19 to correct the constitutional violation found by the court. *Hilton*, 481 U.S. at 775. So-called  
20 “conditional release” orders require release from custody (or a given type of sentence) only  
21 in the event a retrial, resentencing, or some other action sufficient to cure the violation does  
22 not occur within a period of time specified in the order granting the writ. 2 R. Hertz & J.  
23 Liebman, *Federal Habeas Corpus Practice and Procedure* § 33.1, pp. 1899-1900 (6th ed.  
24 2011).

25 “Conceptually, any habeas remedy ‘should put the defendant back in the position he  
26 would have been in if the [constitutional] violation never occurred.’” *Nunes v. Mueller*, 350  
27 F.3d 1045, 1056-57 (2003) (quoting *United States v. Blaylock*, 20 F.3d 1458, 1468 (9th Cir.  
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1 1994.); *see also Johnson v. Uribe*, 682 F.3d 1238, 1244 (9th Cir. 2012); *Chioino v. Kernan*,  
2 581 F.3d 1182, 1184 (9th Cir. 2009). An adequate remedy “must ‘neutralize the taint’ of a  
3 constitutional violation, while at the same time not grant a windfall to the defendant or  
4 needlessly squander the considerable resources the State properly invested in the criminal  
5 prosecution.” *Lafler v. Cooper*, 132 S. Ct. 1376, 1388-89 (2012) (quoting *United States v.*  
6 *Morrison*, 409 U.S. 361, 365 (1981)). Accordingly, a habeas remedy should be tailored to  
7 the injury suffered from the constitutional violation, after considering the unique facts and  
8 circumstances of a particular case.

9 In this case, the Ninth Circuit directed the district court to grant a conditional writ on  
10 the ground that the Arizona Supreme Court had failed to consider all of Petitioner’s proffered  
11 mitigation evidence when it conducted its independent review of Petitioner’s death sentence.  
12 *Styers II*, 547 F.3d at 1035. Specifically, the Circuit court found that the Arizona appellate  
13 court had applied an improper “nexus test” in concluding that evidence of post-traumatic  
14 stress disorder (“PTSD”) resulting from Petitioner’s combat in Vietnam did not qualify as  
15 mitigating evidence in the absence of a connection between the PTSD and Petitioner’s  
16 behavior at the time of the offense. *Id.* Consequently, the Arizona Supreme Court failed to  
17 consider all relevant mitigating evidence when it reweighed the aggravating and mitigating  
18 circumstances after striking the pecuniary gain aggravating factor. *Id.* In doing so, the Ninth  
19 Circuit “neither express[ed] nor impl[ied] any opinion as to the appropriate sentence in this  
20 case. This is a matter for the state courts, so long as the constitutional obligations under  
21 *Eddings* and *Clemons* are honored.” *Id.* at 1036.

22 On remand, the district court did not vacate Petitioner’s sentence. Rather, the court  
23 indicated that a writ of habeas corpus (releasing Petitioner from his sentence) would be  
24 granted “unless the State of Arizona, within 120 days from the entry of this Judgment,  
25 initiates proceedings either to correct the constitutional error in Petitioner’s death sentence  
26 or to vacate the sentence and impose a lesser sentence consistent with the law.” (Doc. 148  
27 at 1.) The court did not order that Petitioner be released from his death sentence or direct that  
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1 Petitioner receive a new sentencing hearing, neither of which would have been appropriate  
2 remedies in the face of the constitutional error that occurred here.

3 This is not a case where relevant mitigating evidence was excluded from consideration  
4 by the sentencer. *See, e.g., Hitchcock v. Dugger*, 481 U.S. 393, 399 (1987) (finding  
5 constitutional error where sentencing judge refused to consider nonstatutory mitigating  
6 circumstances and directing grant of writ unless the petitioner was resentenced in a  
7 constitutionally proper proceeding or his death sentence vacated). In such circumstances, a  
8 new sentencing hearing may be necessary to fully correct the error. *See, e.g., Paxton v.*  
9 *Ward*, 199 F.3d 1197, 1220 (10th Cir. 1999) (finding reweighing by state appellate court  
10 insufficient remedy where jury was denied consideration of relevant mitigating evidence).  
11 Here, the constitutional error occurred during the appellate process, not the sentencing  
12 proceeding, and Petitioner was not precluded during sentencing from presenting evidence in  
13 support of mitigation. Accordingly, a new sentencing hearing was unnecessary to correct the  
14 appellate court error, and the Arizona Supreme Court’s refusal to remand the case for  
15 resentencing by a jury does not represent a failure to comply with the district court’s order  
16 conditionally granting the writ.

17 The United States Supreme Court’s decision in *Cabana v. Bullock* is instructive. There,  
18 the Court determined that neither the jury nor the state appellate court had found the requisite  
19 degree of culpability required by the Eighth Amendment and *Enmund v. Florida*, 458 U.S.  
20 782 (1982), for imposition of the death penalty. *Cabana v. Bullock*, 474 U.S. 376, 383-90  
21 (1986) (noting that Eighth Amendment prohibits imposition of death penalty on one who did  
22 not himself kill, attempt to kill, or intend that a killing take place), *abrogated on other*  
23 *grounds by Pope v. Illinois*, 481 U.S. 497, 503 n.7 (1987). In determining the appropriate  
24 remedy for this error, the Court declined to order a new sentencing hearing. Rather, the  
25 Court held that “the sentence currently in force *may stand* provided only that the requisite  
26 findings are made in an adequate proceeding before some appropriate tribunal—be it an  
27 appellate court, a trial judge, or a jury.” *Id.* at 392 (emphasis added).

1           If further review by an appellate court was sufficient to correct the error in *Bullock*, it  
2 was sufficient here where the error itself stemmed from the Arizona Supreme Court’s  
3 application of *Clemons v. Mississippi*, which permits appellate courts to cure constitutional  
4 deficiencies arising from improper applications or limitations of aggravating or mitigating  
5 circumstances. *See Anderson v. Hopkins*, 113 F.3d 825, 831 (8th Cir. 1997) (citing *Clemons*  
6 in upholding district court’s order conditionally granting writ as to capital sentence unless  
7 state supreme court either reweighed aggravating and mitigating circumstances, conducted  
8 harmless error review, or remanded to trial court for resentencing); *see also Chioino*, 581  
9 F.3d at 1186 (observing that “it is the state court’s responsibility to determine the procedure”  
10 to correct constitutional error). Moreover, resentencing would not have put Petitioner “back  
11 in the position he would have been in” if the Arizona Supreme Court had not committed the  
12 *Eddings* error when on direct appeal it reweighed the sentencing factors pursuant to *Clemons*.  
13 *Nunes*, 350 F.3d at 1057. Rather, such a remedy would have resulted in an inappropriate  
14 “windfall.” *Lafler*, 132 S. Ct. at 1388.

15           Petitioner also argues that the Arizona Supreme Court inappropriately created a “new  
16 doctrine,” which he characterizes as a “bizarre invention,” by independently reviewing his  
17 case in response to the district court’s order granting the conditional writ. (Doc. 160 at 16-  
18 17.) Petitioner asserts that the state court justified this review using a “unique interpretation  
19 of the statute governing independent review, A.R.S. § 13-755.” (*Id.* at 24.) In *Styers III*, the  
20 Arizona Supreme Court noted that, although independent review is normally conducted in  
21 an appeal from a death sentence, “nothing in § 13-755 limits our review to direct appeals.”  
22 227 Ariz. at 188 n.1, 254 P.3d at 1134 n.1. This Court is bound to follow the decisions of  
23 a state supreme court on state law matters. *See Johnson v. Fankell*, 520 U.S. 911, 916 (1997)  
24 (“Neither this Court nor any other federal tribunal has any authority to place a construction  
25 on a state statute different from the one rendered by the highest court of the State.”). In light  
26 of the court’s pronouncement in *Styers III* that a new independent review was authorized  
27 under state law, this Court concludes that such review constituted “an adequate proceeding  
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1 before [an] appropriate tribunal.”<sup>2</sup> *Bullock*, 474 U.S. at 392.

2 In sum, neither the lack of a resentencing proceeding nor the Arizona Supreme Court’s  
3 decision to undertake a new independent sentencing review constitutes noncompliance with  
4 the district court’s order granting a conditional writ of habeas corpus in this case.

5 **Independent Review**

6 Petitioner also contends that the Arizona Supreme Court’s independent review failed  
7 to correct the error upon which the conditional writ was granted. He asserts that the court  
8 improperly applied “a causal nexus requirement to eviscerate relevant mitigation to the point  
9 of non-consideration,” thus failing to conduct a review compliant with the Eighth  
10 Amendment. (Doc. 160 at 11.) The Court disagrees.

11 In directing entry of a conditional writ in this case, the Ninth Circuit observed that the  
12 appropriate sentence for Petitioner “is a matter for the state courts, so long as the  
13 constitutional obligations under *Eddings* and *Clemons* are honored.” *Styers II*, 547 F.3d at  
14 1036. “Under *Clemons*, an appellate court in a ‘weighing state,’ such as Arizona, can affirm  
15 a death sentence based on an invalid aggravating factor only after conducting either a  
16 harmless error review or re-weighing the mitigating evidence against the remaining valid  
17 aggravating factors.” *Id.* at 1034. In conducting this review, the court must consider, and  
18 may not refuse to consider, any constitutionally relevant mitigating evidence. *See Eddings*,  
19 455 U.S. at 115; *Lockett v. Ohio*, 438 U.S. 586, 604 (1978). Constitutionally relevant

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21 <sup>2</sup> The Court notes that the type of appellate court error that occurred here is  
22 uncommon and thus it is not surprising that the Arizona Supreme Court has had few  
23 occasions to correct such an error as part of a conditional habeas grant. However, the state  
24 court did undertake a new independent reweighing in at least one case, following a directive  
25 from the United States Supreme Court—similar to that of the Ninth Circuit here—that the  
26 State either correct the constitutional error in the petitioner’s death sentence or vacate the  
27 sentence and impose a lesser sentence consistent with the law. *See Richmond v. Lewis*, 506  
28 U.S. 40, 52 (1992) (finding Eighth Amendment violation where sentencing judge gave  
weight to unconstitutionally vague aggravating factor and state appellate court failed to cure  
error during independent review); *State v. Richmond*, 180 Ariz. 573, 886 P.2d 1329 (1994)  
(reweighing sentencing factors following grant of conditional habeas writ by federal court).



1 mitigating evidence is “any aspect of a defendant’s character or record and any of the  
2 circumstances of the offense that the defendant proffers as a basis for a sentence less than  
3 death.” *Lockett*, 438 U.S. at 604; *see Skipper v. South Carolina*, 476 U.S. 1, 5 (1986).  
4 However, while the court may not refuse to consider relevant mitigation, “it is free to assess  
5 how much weight to assign such evidence.” *Ortiz v. Stewart*, 149 F.3d 923, 943 (9th Cir.  
6 1998); *see Eddings*, 455 U.S. at 114-15 (“The sentencer, and the [appellate court] on review,  
7 may determine the weight to be given the relevant mitigating evidence.”).

8 In conducting its new independent review of Petitioner’s sentence, the Arizona Supreme  
9 Court found as established that Petitioner suffered from PTSD at or near the time of the  
10 offense. *Styers III*, 227 Ariz. at 189, 254 P.3d at 1136. The court then considered the weight  
11 to assign this factor, noting:

12 Although we do not require establishment of a nexus between the mitigating  
13 factors and the crime before we consider the mitigation evidence, we may consider  
14 the failure to show such a connection as we assess “the quality and strength of the  
15 mitigation evidence,” and may attribute less weight to the mitigating effect of a  
16 disorder if the defendant fails to establish a relationship between the disorder and  
17 the criminal conduct . . . .

18 *Id.* (quoting *State v. Newell*, 212 Ariz. 389, 405, 254 P.3d 833, 849 (2006)). After finding  
19 no evidence that Petitioner’s PTSD affected his criminal conduct, which it described as  
20 “planned and deliberate, not impulsive,” the court gave little weight to the disorder as a  
21 mitigating factor. *Id.* at 190, 254 P.3d at 1136 (citing *State v. Styers*, 184 Ariz. 277, 294, 908  
22 P.2d 1062, 1079 (1996)). The court ultimately determined that the proven mitigation was not  
23 sufficient to warrant leniency in light of the aggravation and reaffirmed Petitioner’s sentence  
24 of death.

25 Petitioner argues that the Arizona Supreme Court failed to grasp that his prior physical  
26 and psychological trauma was “pervasive on that tragic day” and that relegating mitigation  
27 to the category of “not causally connected” “is the equivalent of barring mitigation or  
28 assigning it no weight.” (Doc. 160 at 11.) Petitioner’s arguments notwithstanding, federal  
caselaw is clear that a causal nexus may be used “as a factor in determining the weight or

1 significance of mitigating evidence.” *Lopez v. Ryan*, 630 F.3d 1198, 1204 (9th Cir.), *cert.*  
2 *denied*, 132 S. Ct. 577 (2011). Moreover, it is beyond the purview of this Court to review  
3 a state court’s factual finding as to the existence of a causal connection; federal law requires  
4 only that mitigation evidence be considered, not that it be found weighty. *Eddings*, 455 U.S.  
5 at 114-15. On this record, it is clear the Arizona Supreme Court considered all of Petitioner’s  
6 mitigating evidence in conducting its reweighing. Thus, the state court satisfied its  
7 “constitutional obligations under *Eddings* and *Clemons*.” *Styers II*, 547 F.3d at 1036.

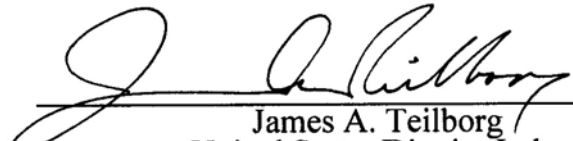
8 **CONCLUSION**

9 The conditional writ of habeas corpus entered in this case gave the State the opportunity  
10 to cure the constitutional defect found by the Ninth Circuit. At the request of the State, the  
11 Arizona Supreme Court undertook a new independent review of Petitioner’s capital sentence,  
12 reweighing the proven aggravating and mitigating circumstances. This remedied the  
13 constitutional infirmity found in *Styers II* and satisfied the condition precedent contained in  
14 the conditional writ. Accordingly, Petitioner is not entitled to an unconditional writ releasing  
15 him from his capital sentence.

16 Based on the foregoing,

17 **IT IS ORDERED** that Petitioner’s Motion to Enter Judgment Granting Writ of Habeas  
18 Corpus (Doc. 160) is **DENIED**.

19 DATED this 26<sup>th</sup> day of July, 2012.

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23 James A. Teilborg  
24 United States District Judge  
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