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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Scott Alan Lehr,

10 Petitioner,

11 v.

12 Ryan Thornell, et al.,

13 Respondents.
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No. CV-19-01127-PHX-DWL

DEATH PENALTY CASE

ORDER

15 Pending before the Court is Petitioner Scott Alan Lehr's motion to vacate
16 restrictions on victim contact. (Doc. 64.) This motion effectively seeks reconsideration of
17 the portion of the Court's July 31, 2019 order that granted in part Respondents' request for
18 an order limiting Lehr's counsel's contact with victims. (Doc. 20 at 1-3.) Respondents ask
19 the Court to deny Lehr's motion or, in the alternative, to modify the victim-contact order.
20 (Doc. 67 at 7-9.) The motion is now fully briefed. (Doc. 68.)

21 **RELEVANT BACKGROUND**

22 Lehr was convicted of three counts of first-degree murder, three counts of attempted
23 first-degree murder, two counts of aggravated assault, seven counts of kidnapping, thirteen
24 counts of sexual assault, one count of attempted sexual assault, four counts of sexual
25 conduct with a minor, and four counts of sexual assault with a child under the age of
26 fourteen years. He was sentenced to death for two of the first-degree murder counts.

27 On February 19, 2019, after unsuccessful post-conviction proceedings in state court,
28 Lehr filed a notice of intent to file a petition for writ of habeas corpus. (Doc. 1.) In a joint

1 report filed before the case management conference, Respondents asked the Court to issue
2 an order prohibiting contact with the victims by Lehr and his counsel absent a showing of
3 good cause and further requested that if contact is authorized, all contact should be initiated
4 through the Office of the Arizona Attorney General’s Victim Advocate’s Office (“AG-
5 VAO”). (Doc. 17 at 3.) Lehr objected, arguing that Respondents should file a written
6 motion in compliance with the local rules and that the matter was premature. (*Id.* at 4.)

7 At the case management conference, the Court informed the parties that it was
8 inclined to resolve the victim-contact issue at that time but provided either party the
9 opportunity to request further briefing on the issue. Lehr objected to Respondents’
10 proposed good-cause requirement and to channeling requests through the AG-VAO. Lehr
11 also noted a recent case in which another judge concluded that the Arizona Victim’s Bill
12 of Rights (“AVBR”), which Respondents invoked in their request, did not apply in federal
13 habeas proceedings and thus authorized counsel to have direct contact with victims. Lehr
14 asked the Court do the same and also expressed an interest in further briefing the issue.

15 In the July 31, 2019 scheduling order, the Court resolved the parties’ dispute over
16 these issues as follows:

17 The issues raised by Respondents have been fully briefed in numerous cases
18 in the District of Arizona, the Court is well versed in the subject matter and
19 legal argument surrounding the issues, and, due to the late appointment of
20 Petitioner’s counsel, time is of the essence in resolving these issues. Thus,
21 the Court disagrees with Petitioner’s proposal to defer ruling until additional
22 briefing has been submitted.

23 Victim Contact. Regardless of whether the Arizona Victims’ Bill of Rights
24 (“AVBR”) applies in federal habeas proceedings, it is clear that the federal
25 Crime Victims’ Rights Act (“CVRA”) does apply in such proceedings. *See*
26 18 U.S.C. § 3771(b)(2) (“In a Federal habeas corpus proceeding arising out
27 of a State conviction, the court shall ensure that a crime victim is afforded
28 [certain enumerated] rights . . .”). Under the CVRA, one of the rights that
must be safeguarded in a habeas proceeding is the “right to be treated with
fairness and with respect for the victim’s dignity and privacy.” *Id.* §
3771(a)(8). Many other judges of this Court have concluded that one of the
provisions of the AVBR—the requirement that “[t]he defendant, the
defendant’s attorney or an agent of the defendant shall only initiate contact

1 with the victim through the prosecutor’s office,” *see* A.R.S. § 13-4433(B)—
2 provides a reasonable mechanism for furthering this federally-enshrined
3 right to fairness, dignity, and privacy. *See generally Johnson v. Ryan*, 2018
4 WL 6573228, *2-3 (D. Ariz. 2018) (canvassing prior decisions); *but see*
5 *Armstrong v. Ryan*, 2019 WL 1254653 (D. Ariz. 2019). The Court agrees
6 with those prior decisions and will thus adopt the same rule here—Petitioner
7 is prohibited from contacting victims directly and must initiate any such
8 contact through the AG-VAO as contemplated by state law.

9 The Court will not, however, grant Respondents’ additional request to
10 require Petitioner to come to the Court and obtain a good-cause finding
11 before even submitting a victim-contact request to the AG-VAO. (Doc. 17
12 at 3.) This request has no basis in state or federal law and would
13 unnecessarily and improperly enmesh the Court in Petitioner’s investigative
14 strategy.

15 Finally, the Court will deny Petitioner’s request, made for the first time
16 during the July 29 hearing, to authorize him to file a motion seeking
17 permission to disregard the A.R.S. § [13-4433(B)] process on a one-off basis
18 if a particular victim declines to give consent after being contacted by the
19 AG-VAO and he believes that victim may be important to his investigation.
20 Arizona law does not provide for such an exception and the Court declines
21 to create it here. The right of all crime victims to fairness, dignity, and
22 privacy under 18 U.S.C. § 3771(a)(8) is not meant to be subjected to a
23 balancing test or disregarded depending on the parties’ litigation and
24 investigative strategy.

25 (Doc. 20 at 1-2.)

26 Over four months later, on December 17, 2019, Lehr filed his initial petition for writ
27 of habeas corpus. (Doc. 22.) About 20 months after that, on April 15, 2021, Lehr filed an
28 amended petition. (Doc. 32.) Lehr is currently preparing his notice of request for
evidentiary development, due December 6, 2023.

In the pending motion, Lehr asks the Court to vacate the victim-contact restrictions
imposed in the scheduling order because Respondents lacked standing to request
enforcement of the federal CVRA and because those restrictions violate the First and Fifth
Amendments. Even though this motion effectively seeks reconsideration of the Court’s
earlier ruling, the Court will consider Lehr’s arguments *de novo* in light of the unusual
procedural posture here, where the Court offered Lehr the opportunity to further brief the

1 issues during the case management conference and Lehr has now (albeit more than four
2 years later) chosen to take advantage of that opportunity.

3 ANALYSIS

4 Lehr's arguments fail on the merits. As for the standing issue, the Court considered
5 and rejected a near-identical argument in *Reeves v. Shinn*, 2021 WL 5771151 (D. Ariz.
6 2021), reasoning as follows:

7 [T]he concept of standing does not serve as an obstacle to the issuance of the
8 requested order. Reeves's standing-related arguments focus on [18 U.S.C.]
9 § 3771(b)(2)(B)(i), which provides that the rights of victims in federal habeas
10 corpus proceedings "may be enforced by the crime victim or the crime
11 victim's representative," but Reeves overlooks § 3771(b)(2)(A), which states
12 that "the court shall ensure that a crime victim is afforded" certain rights,
13 including the right to be treated with dignity and privacy. This provision
14 "makes clear that once a court proceeding has commenced, the district court
15 has an ongoing duty to ensure that crime victims are accorded their rights,
16 independent of whether a victim has filed a motion to enforce those rights."
17 The Court takes this duty seriously. Thus, assuming that crime victims' right
18 to privacy and dignity includes the right to be free from direct contact by
19 defense counsel during a habeas proceeding . . . the Court is unwilling to
20 adopt an approach that would effectively require crime victims to forfeit this
21 right unless they affirmatively file a motion for relief. Such an approach
22 would undermine, rather than promote, the CVRA's goals and purpose.

23 *Id.* at *5 (citations omitted). The Court continues to agree with that analysis and sees no
24 reason to revisit it here. Although Lehr correctly notes that there is a lack of consensus
25 among Arizona district judges on this issue, conflicting decisions by other district judges
26 are not binding on this Court, which has given considerable thought to these issues.
27 *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) ("A decision of a federal district court
28 judge is not binding precedent in either a different judicial district, the same judicial
29 district, or even upon the same judge in a different case.") (citation and internal quotation
30 marks omitted); *Starbuck v. City and County of San Francisco*, 556 F.2d 450, 457 n.13
31 (9th Cir. 1977) ("The doctrine of stare decisis does not compel one district court judge to
32 follow the decision of another.").

33 For similar reasons, Lehr's First and Fifth Amendment-based arguments are

1 unavailing. The Court has rejected such arguments in earlier decisions and stands by the
2 reasoning of those decisions. In *Reeves*, the Court noted that “§ 3771(a)(8) specifically
3 confers upon victims the right to be ‘treated with fairness and with respect for the victim’s
4 dignity and privacy,’” that “[a]lthough [such] concepts are admittedly difficult to define
5 with precision, they must mean *something*,” that “[i]t would be anomalous . . . if the right
6 of a crime victim to be free from potentially intrusive dignity and privacy violations (such
7 as when a defense investigator unexpectedly shows up at a victim’s door, years or decades
8 after the victim’s loss of a loved one, and asks questions about this traumatic loss), which
9 remains intact throughout the defendant’s trial, direct appeal, and PCR proceeding,
10 somehow evaporates as soon as the case reaches the federal habeas corpus stage, even
11 though review during that stage (unlike during some of the earlier stages) is generally
12 ‘limited to the record that was before the state court that adjudicated the claim on the
13 merits,’” and that a victim-contact restriction would not “amount to an unconstitutional
14 prior restraint on habeas counsel’s First Amendment rights . . . [because] ‘attorneys are
15 properly subject to an array of different restrictions and regulations that can have the effect
16 of limiting their ability to obtain information—even potentially exculpatory information—
17 from prospective witnesses.’” 2021 WL 5771151 at *6-7 (citations omitted). Similarly,
18 in *Johnson v. Ryan*, 2018 WL 6573228 (D. Ariz. 2018), the Court noted the petitioner’s
19 “Fourteenth Amendment theories are difficult to reconcile with the Supreme Court’s
20 holding that ‘[a] habeas petitioner, unlike the usual civil litigant in federal court, is not
21 entitled to discovery as a matter of ordinary course’” and that the petitioner’s “First
22 Amendment theories overlook that attorneys are properly subject to an array of different
23 restrictions and regulations that can have the effect of limiting their ability to obtain
24 information—even potentially exculpatory information—from prospective witnesses.” *Id.*
25 at *6 (citations omitted). As with the standing issue, the Court acknowledges that some of
26 its esteemed colleagues have reached contrary conclusions, including in *Arizona Attorneys*
27 *for Crim. Justice (“AACJ”) v. Ducey*, 638 F. Supp. 3d 1038 (D. Ariz. Nov. 2, 2022), *appeal*
28 *docketed*, No. 22-16729 (9th Cir. Nov. 7, 2022), but those decisions are again not binding

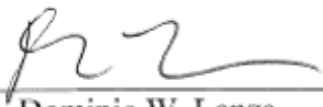
1 here.¹ Lehr acknowledges this point. (Doc. 68 at 4 [“[I]n a very technical sense, the
2 district court *AACJ* decision is not binding upon a coordinate district judge.”]).

3 Accordingly,

4 **IT IS HEREBY ORDERED denying** Lehr’s Motion to Vacate Restrictions on
5 Victim Contact (Doc. 64).

6 **IT IS FURTHER ORDERED denying as moot** Respondents’ request for
7 alternative relief (Doc. 67).

8 Dated this 25th day of September, 2023.

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13 Dominic W. Lanza
14 United States District Judge
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28 ¹ The Court also notes that the issues presented in *AACJ* are not identical to the issues presented here, as *AACJ* concerned the ability of defense attorneys “in ongoing state-court cases in which they represent the criminal defendant” to initiate contact with crime victims. 638 F. Supp. 3d at 1060. This is a federal habeas corpus proceeding.