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

Michael Isidoro Sanchez,
Petitioner,

v.
Attorney General of the State of Arizona, et
al.,

Respondents.

No. CV-17-00224-TUC-RM

ORDER

Pending before the Court is Respondents’ Motion to Stay Judgment. (Doc. 92.)
Petitioner filed a response (Doc. 93) and Respondents replied (Doc. 98). The Motion to
Stay will be denied.

I. Background

On March 30, 2021, the Court issued an Order partially sustaining and partially
overruling Petitioner’s Objection to Magistrate Judge D. Thomas Ferraro’s Report and
Recommendation (“R&R”), which the Court partially rejected and partially accepted.
(Doc. 86.) The Court conditionally granted Petitioner’s Amended Petition for Writ of
Habeas Corpus (Doc. 41) as to the *Anders* claim in Ground One, and otherwise denied
the Petition. (*Id.*) The Court then ordered Petitioner released from custody unless, within
ninety (90) days, Petitioner was permitted to file a new of-right Rule 33 Post-Conviction
Relief (“PCR”) proceeding, including the filing of either a merits brief by counsel or a

1 substantive brief consistent with *Anders v. California*, 386 U.S. 738 (1967), and an
2 independent review of the record by the court. (*Id.*) On April 9, 2021, Respondents filed a
3 notice of appeal to the Ninth Circuit Court of Appeals. (Doc. 89.)

4 **II. Motion to Stay**

5 Respondents seek a stay of the Court’s March 30, 2021 Order pending resolution
6 of their appeal of the Order to the Ninth Circuit Court of Appeals and, if necessary, the
7 Supreme Court of the United States, pursuant to Federal Rule of Appellate Procedure
8 8(a)(1)(A). (Doc. 92.) Respondents argue that (1) they are likely to succeed on the merits
9 of their appeal; (2) the balance of hardships tips in their favor; (3) the State will suffer
10 irreparable injury if a stay is not granted; and (4) the public interest favors a stay. (*Id.*) In
11 response, Petitioner argues that Respondents are not likely to succeed on the merits of
12 their appeal and the request for a stay should therefore be denied. (Doc. 93; *see also* Doc.
13 99.)¹

14 **III. Applicable Law**

15 Federal Rule of Appellate Procedure 8(a)(1)(A) provides that a party must first
16 move in the district court for a stay of a judgment or order of a district court pending
17 appeal.

18 “A stay is not a matter of right, even if irreparable injury might otherwise result.”
19 *Nken v. Holder*, 556 U.S. 418, 433–34 (2009) (internal citation omitted). “It is instead an
20 exercise of judicial discretion, and the propriety of its issue is dependent upon the
21 circumstances of the particular case.” *Id.* “The party requesting a stay bears the burden of
22 showing that the circumstances justify an exercise of that discretion.” *Id.*

23 The test for whether a stay should be granted pending appeal of an order requires
24 the Court to consider four factors: “(1) whether the stay applicant has made a strong
25 showing that he is likely to succeed on the merits; (2) whether the applicant will be
26 irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure
27 the other parties interested in the proceeding; and (4) where the public interest lies.” *Id.*;

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¹ The Court will grant Petitioner’s Motion to Supplement Response. (Doc. 99.)

1 *see also Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). The balance among the factors
2 “may depend to a large extent upon determination of the State’s prospects of success in
3 its appeal. Where the State establishes that it has a strong likelihood of success on appeal,
4 or where, failing that, it can nonetheless demonstrate a substantial case on the merits,
5 continued custody is permissible if the second and fourth factors in the traditional stay
6 analysis militate against release.” *Hilton*, 481 U.S. at 778 (discussing stay of release
7 pending appeal in habeas corpus context).

8 In ruling on a motion for stay pending an appeal, courts employ “‘two interrelated
9 legal tests’ that ‘represent the outer reaches of a single continuum.’” *Golden Gate Rest.*
10 *Ass’n v. City and Cty. of San Francisco*, 512 F.3d 1112, 1115 (9th Cir. 2008) (quoting
11 *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983)). “At one end of the continuum,
12 the moving party is required to show both a probability of success on the merits and the
13 possibility of irreparable injury” if a stay is not granted. *Id.* (internal citation and
14 quotation omitted). “At the other end of the continuum, the moving party must
15 demonstrate that serious legal questions are raised and that the balance of hardships tips
16 sharply in its favor.” *Id.* “These two formulations represent two points on a sliding scale
17 in which the required degree of irreparable harm increases as the probability of success
18 decreases.” *Id.* (citing *Natural Res. Def. Council, Inc. v. Winter*, 502 F.3d 859, 862 (9th
19 Cir. 2007)). Further, courts “consider where the public interest lies separately from and in
20 addition to” whether irreparable injury will result absent a stay. *Id.*

21 **IV. Analysis**

22 First, Respondents argue that they are likely to succeed on the merits of their
23 appeal. (Doc. 92 at 2-6.) Respondents argue that the Court erred by rejecting the R&R’s
24 conclusion that Petitioner’s *Anders* claim was procedurally defaulted because the Arizona
25 Court of Appeals found all of Petitioner’s claims, including his *Anders* claim,
26 procedurally barred from review. (*Id.* at 2-3.) Respondents then argue that the Court also
27 erred in determining that the Arizona Court of Appeals’ reliance on *State v. Chavez*, 407
28 P.3d 85 (Ariz. App. 2017), was an unreasonable application of clearly established federal

1 law because, according to Respondents, the Court of Appeals properly concluded that an
2 independent, fundamental-error review by the trial court is not required in of-right post-
3 conviction proceedings in order to meet the constitutional requirements of *Anders*. (*Id.* at
4 3.) Respondents contend that the Court’s conclusion that the State’s procedures were not
5 equivalent to *Anders* procedures and were therefore constitutionally deficient was in error
6 because it failed to defer to the Arizona Court of Appeals’ reasonable application of
7 federal law as required by the Anti-Terrorism and Effective Death Penalty Act
8 (“AEDPA”). (*Id.* at 4-5.) Respondents argue that because the Supreme Court has not held
9 that an independent, fundamental error review is constitutionally required when
10 reviewing a pleading defendant’s of-right appeal, the Arizona Court of Appeals’ *Chavez*
11 decision cannot be found to be contrary to or an unreasonable application of clearly
12 established federal law. (*Id.* at 5-6.) Respondents maintain that there is no requirement
13 that procedures for a pleading defendant like Sanchez be the same as those for a non-
14 pleading defendant like the defendant in *Anders*. (*Id.* at 6.)

15 Next, Respondents argue that their interests in (1) the finality of convictions that
16 have survived direct review in the state court system; (2) crime victims’ entitlement to
17 resolution of criminal cases without unreasonable delay; and (3) the resolution of a
18 serious legal question with significant consequence would all be irreparably harmed by
19 Petitioner’s return to state court absent a stay pending resolution of Respondents’ appeal.
20 (Doc. 92 at 6-7.) Respondents further contend that the temporary postponement of
21 Petitioner’s filing of a new of-right post-conviction proceeding will not cause Petitioner
22 significant hardship because his conviction and sentence remain undisturbed and he will
23 therefore remain incarcerated until 2038 regardless. (*Id.*; Doc. 98.) Thus, Respondents
24 contend that the balance of hardships tips in their favor. (*Id.*)

25 Lastly, Respondents argue that the public interest favors a stay. (*Id.* at 7.)
26 Respondents contend that enforcing the Order during the pendency of appeal proceedings
27 would harm the public interest, including the victim’ interest, in the finality of criminal
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1 convictions. (*Id.*) Respondents further contend that the principles of comity and
2 federalism that underlie AEDPA would be served by a stay. (*Id.* at 7-8.)

3 Respondents have not satisfied their burden of showing that the circumstances
4 present here justify an exercise of the Court’s discretion to grant the requested stay. The
5 Court’s Order permits Petitioner to file a new of-right Rule 33 PCR proceeding consistent
6 with *Anders* and to have that brief and the record independently reviewed by the state
7 court. (Doc. 41.) If the stay is granted, then Petitioner will remain incarcerated until both
8 the appellate process and the state court review conclude. If, as Respondents contend,
9 there is no appealable issue in Petitioner’s criminal proceedings, then no harm will accrue
10 to Respondents by permitting Petitioner to file a new *Anders* brief during the pendency of
11 the appeal. If, however, Petitioner prevails on appeal and on review of his *Anders* brief,
12 then he will have been harmed by his unlawfully prolonged incarceration. The Court
13 finds that the hardship posed by the possibility of Petitioner’s unlawfully prolonged
14 incarceration outweighs any hardship Respondents may sustain by allowing Petitioner to
15 file his *Anders* brief and have it reviewed by the state court while the appeal is ongoing.
16 Accordingly, the Court finds that the balance of hardships tips in Petitioner’s favor.

17 The remaining factors do not shift the balance in favor of a stay. While
18 Respondents have demonstrated “a substantial case on the merits” on appeal, *Hilton*, 481
19 U.S. at 778, they have not made a “strong showing” that they are likely to succeed on the
20 merits. *Holder*, 556 U.S. at 433–34. Nor does the public interest justify granting a stay, as
21 Petitioner will remain incarcerated unless and until the state court finds that his new
22 *Anders* brief has merit. Considering the four factors for issuance of a stay, the Court finds
23 that a stay is not warranted.

24 Accordingly,

25 **IT IS ORDERED** that Petitioner’s Motion to Supplement Response (Doc. 99) is
26 **granted.**


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IT IS FURTHER ORDERED that the Motion to Stay Judgment (Doc. 92) is **denied.**

Dated this 25th day of May, 2021.



Honorable Rosemary Marquez
United States District Judge