

IN THE ARIZONA SUPREME COURT

JODI ANN ARIAS,

Defendant-Petitioner,

vs.

HON. SHERRY STEPHENS, JUDGE OF
THE SUPERIOR COURT OF THE
STATE OF ARIZONA, IN AND FOR
THE COUNTY OF MARICOPA,

Respondent,

and

STATE OF ARIZONA, ex rel., WILLIAM
G. MONTGOMERY, MARICOPA
COUNTY ATTORNEY,

Real Party In Interest.

Arizona Supreme Court No.

Arizona Court of Appeals
No. 1 CA-SA 13-0026

Maricopa County Superior Court
No. CR 2008-031021

APPLICATION FOR INTERLOCUTORY STAY OF AGGRAVATION TRIAL

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Attorneys for Defendant/Petitioner

Petitioner, Jodi Ann Arias, by and through undersigned counsel, respectfully requests this Court enter an interlocutory stay of only the aggravation trial in the above-captioned matter. This application is before the Court for the reasons stated more fully in the incorporated Petition for Review, and more particularly:

I.

This Court has jurisdiction to entertain this Petition and to grant the relief requested by virtue of Article 6, Section 9 of the Constitution of the State of Arizona and Rules 7 and 8 of the Procedure for Special Actions.

II.

Petitioner Jodi Ann Arias is the Defendant in Maricopa County Superior Court Case No. CR2008-031021-001 DT. The trial began on December 10, 2012.

III.

The Honorable Sherry Stephens is now, and was at all times material to this matter, a duly qualified and acting Judge for Maricopa County Superior Court of the State of Arizona.

IV.

Petitioner is charged with First Degree Murder. The State seeks the death penalty. The trial court has denied Petitioner's request to stay the trial. The case has not yet been sent to the jury for their determination on whether Petitioner is not guilty or guilty of first degree murder, however, the State has completed presentation of its

case-in-chief. Should the jury convict Petitioner of First Degree Murder, then the Aggravation Trial will start immediately. Petitioner is requesting that this Court stay the aggravation trial on the sole capital aggravator until the legal issues raised in the Petition are resolved.¹

V.

This is an issue involving perjury to support a probable cause determination on the single capital aggravator. There is no other appropriate time and opportunity to properly and lawfully determine the correctness of Judge Stephens' denial of Petitioner's motion. The trial court's denial of Petitioner's motion to dismiss causes overwhelming prejudice to Petitioner as she is forced to suffer the jeopardy of a potential death sentence in a case where a death sentence should not be available. Such actions violate Petitioner's right to Due Process and a fair trial under the Fifth Amendment to the United States Constitution, under Article 2, Section 4 of the Arizona Constitution, and under the caselaw cited in the Petition. This matter requires immediate action to prevent a complete abrogation of her constitutional rights. Ms. Arias has no equally plain, speedy and adequate remedy by appeal. Rule 1(a), Arizona Rules of Procedure for Special Actions.

¹ The Trial Court denied Petitioner's Request for Stay on January 14, 2013. See Exhibit 1 Transcript of Hearing.

VI.

The legal issues in the Petition cast genuine doubt on the constitutionality of Judge Stephens' ruling and its compliance with federal and state law. The Arizona Supreme Court has held that special action jurisdiction is appropriate when there is no other means of obtaining justice on the issue raised. *King v. Superior Court*, 138 Ariz. 147, 149, 673 P.2d 787, 789 (Ariz. 1983) (citing *Nataros v. Superior Court of Maricopa County*, 113 Ariz. 498, 557 P2d 1055 (Ariz. 1976)).

RESPECTFULLY SUBMITTED this 29th day of February, 2013.

LAW OFFICES OF L. KIRK NURMI

/S/ L. Kirk Nurmi
L. Kirk Nurmi
2314 E. Osborn
Phoenix, Arizona 85016
Attorney for Petitioner

Exhibit 1

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,)	
)	
Plaintiff,)	
)	
vs)	CR2008-031021-001
)	
JODI A. ARIAS,)	
)	
Defendant.)	
_____)	

BEFORE THE HONORABLE SHERRY K. STEPHENS

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Phoenix, Arizona
January 14, 2013

(Original)

By: Lori Fraley
Certified Reporter
AZ CR No: 50331

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APPEARANCES:

For the Plaintiff

MR. JUAN MARTINEZ
Attorney at Law

For the Defendant

MR. KIRK NURMI
Attorney at Law

MS. JENNIFER WILLMOTT
Attorney at Law

BEFORE THE HONORABLE SHERRY K. STEPHENS

Phoenix, Arizona

January 14, 2013

THE COURT: The record will show the presence of the defendant and all counsel. The jury is not present.

Counsel, you wanted to speak before we brought the jury in?

MR. NURMI: Judge, we're requesting a stay. We had -- a stay of requested proceedings.

If I may approach?

THE COURT: You may.

MR. NURMI: This was e-filed this morning. This relates to any potential aggravation phase that may be forthcoming in this trial.

THE COURT: Mr. Martinez.

1 MR. MARTINEZ: The State would object to
2 the request for the stay. There really is no good
3 reason -- people can give any reason they want, but
4 there is no good reason to grant the stay.

5 Additionally, the State -- and I was just
6 handed this right now, but the State disputes the
7 factual allegations in the defendant's request for
8 the stay. He's, I believe, mischaracterizing
9 Detective Flores's statement and testimony and so I
10 do not see a reason for the stay.

11 THE COURT: Mr. Nurmi, anything else?

12 MR. NURMI: No, Your Honor. We will stand
13 on the written pleading.

14 THE COURT: All right. The request for a
15 stay of proceedings is denied at this time. I
16 believe that there is adequate time for you to pursue
17 your remedy before we get to that point in the
18 proceedings, if we get to that point in the
19 proceedings.

20 Anything else?

21 MR. MARTINEZ: Judge, there was some
22 coverage, including some printed coverage of this
23 case over the weekend, and so I would ask that you
24 inquire of the jurors whether or not they saw
25 anything and then of course to continue to advise

1 them of the admonition.

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3 STATE OF ARIZONA)
4) ss.
5 COUNTY OF MARICOPA)
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8 I, LORI FRALEY, having been first duly
9 sworn and appointed as Official Court Reporter
10 herein, do hereby certify that the foregoing pages
11 constitute a full, true, and accurate transcript of
12 all proceedings had in the above-entitled matter, all
13 done to the best of my skill and ability.
14

15 I FURTHER CERTIFY that I am in no way
16 related to any of the parties hereto, nor am I in any
17 way interested in the outcome hereof.
18

19 DATED at Phoenix, Arizona, this 16th day of
20 January, 2013.
21

22
23 /S/ Lori Fraley

24 CERTIFIED REPORTER

25 AZ CR No. 50331