

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2003-024938-001 DT

05/18/2007

HONORABLE WARREN J. GRANVILLE

CLERK OF THE COURT
C. Hernden
Deputy

STATE OF ARIZONA

SAM J MYERS

v.

PATRICK WADE BEARUP (001)
DOB: 04/02/1977

APO-SENTENCE IMPRISON-CCC
APPEALS-CCC
AZ DEPT OF CORRECTIONS-PHOENIX
AZ DOC
DISPOSITION CLERK-CSC
PUBLIC DEFENDER-APPOINT
COUNSEL-CCC
VICTIM SERVICES DIV-CA-CCC

SENTENCE OF IMPRISONMENT

1:43 a.m.

State's Attorney: Paul Ahler
Defendant's Attorney:
Defendant: Present
Court Reporter: Elva Cruz-Lauer

LET THE RECORD RERLECT defendant was sentenced to death in Count 1 in this matter by separate minute entry.

Count(s) 2: The Defendant was found guilty after a trial by jury.

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IT IS THE JUDGMENT of the Court Defendant is guilty of the following:

OFFENSE: Count 2: Kidnapping

Class 2 Dangerous Felony

A.R.S. § 13-1304, -1301, -301, -302, -303, -304, -701, -702, -702.01, -801 and -604(P)

Date of Offense: February 26, 2002

Dangerous pursuant to A.R.S. § 13-604 - Non Repetitive

AS PUNISHMENT, IT IS ORDERED Defendant is sentenced to a term of imprisonment and is committed to the Arizona Department of Corrections as follows:

Count 2: 12 year(s) from May 18, 2007

Presentence Incarceration Credit: 1,345 day(s)

Aggravated

Sentence is concurrent with Count 1 of this cause.

This Court must determine whether the sentence for Count 2 shall run concurrent or consecutive to the sentence imposed by the jury for Count 1. Because of that fact, and because the Supreme Court has independent jurisdiction to reconsider a death penalty sentence, this Court will make some findings that may assist the Supreme Court.

When this case was originally filed, there were four defendants. When this case was originally filed, the State filed a notice of death penalty against each of the four defendants alleging cruelty, heinous and depravity. That decision, as the law mandates, was a decision unilaterally made by the County Attorney.

As the law allows, the County Attorney made unilateral decisions to plead out Mr. Johnson, the man who, under the State's theory of the case, batted the victim to death or to near death. In doing so, the County Attorney, as he is authorized to do, unilaterally withdrew the notice of death penalty as to Mr. Johnson.

As the law allows, the County Attorney made a unilateral decision to plead out Ms. Nelson, the co-defendant who procured the murder. But for her conduct, even under the State's theory of the case, there would be no murder. In doing so, the County Attorney, as he is authorized to do, unilaterally withdrew the notice of death penalty as to Ms. Nelson.

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The County Attorney, as the law allows, made a unilateral decision not to withdraw the death notice for Mr. Bearup, a defendant who, even under the State's theory of the case, did not cause the physical death of Mr. Mathis. Under the State's theory of the case, Mr. Bearup acted only as support for Mr. Johnson as he baseball batted Mr. Mathis to death or to near death, and helped drag Mr. Mathis to a car trunk and the desert. Under the State's theory, Mr. Bearup's act of cutting off Mr. Mathis' ring finger while cruel and heinous, was not a cause of the death.

The County Attorney may argue that the decision for the death penalty was the jury's decision, but in this instance, that was not true. Mr. Bearup made a decision not to present any mitigation. So this jury, like this Court, was bound to follow the law, which in effect was a directed verdict for a death penalty sentence.

The Court believes that Mr. Bearup was correctly prosecuted and convicted for the felony murder.

The Court believes that the jurors' verdict for Count 1 was based upon the facts presented and the law given to them.

This Court, nonetheless, finds that Mr. Bearup's death penalty sentence for Count 1 was not justified in the context of the relative responsibility of the co-defendants whom the County Attorney chose to withdraw the notices of death and reduce their sentencing range.

It is the County Attorney's motto that "let justice be done." This, of course, coincides with a prosecutor's unique ethical responsibility. This Court finds that justice was not done for Mr. Bearup in Count 1.

This Court leaves to the Supreme Court the ramifications of these findings.

IT IS ORDERED authorizing the Sheriff of Maricopa County to deliver the Defendant to the Arizona Department of Corrections to carry out the term of imprisonment set forth herein.

IT IS ORDERED the Clerk of the Superior Court remit to the Arizona Department of Corrections a copy of this Order or the Order of Confinement together with all presentence reports, probation violation reports, and medical and psychological reports that are not sealed in this cause relating to the Defendant.

Mr. Delozier having previously been withdrawn as counsel of record for this defendant in this matter,

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IT IS ORDERED appointing The Public Defender's Office to appoint counsel to represent the defendant for appeal purposes in this matter.

3:00 a.m. Matter concludes.

ISSUED: Order of Confinement - Certified Copy to DOC via MCSO

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Defendant's thumbprint is permanently affixed to this sentencing order in open court.

/s/ HONORABLE WARREN J. GRANVILLE
JUDGE OF THE SUPERIOR COURT

(thumbprint)