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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

FEB 13 2017

IN AND FOR THE COUNTY OF MOHAVE

VIRLYNN TINNELL
CLERK SUPERIOR COURT

BY: psg DEPUTY *DL

HONORABLE LEE F. JANTZEN
DIVISION 4
DATE: FEBRUARY 13, 2017

COURT ORDER/NOTICE/RULING

STATE OF ARIZONA,
Plaintiff,

NO. CR-2014-01193

vs.

JUSTIN JAMES RECTOR,
Defendant.

As a follow-up to the Order issued January 27, 2017 regarding Defendant's submission of an *ex parte* memorandum updating the Court with how mitigation has proceeded to date, the Court supplements this Order with the following findings and rulings:

On November 5, 2014, the State filed its Notice of Intent to Seek the Death Penalty. Trial was scheduled for October 17, 2016. Due to withdrawal of lead defense counsel, Gerald Gavin became lead counsel on March 9, 2015. A mitigation specialist also was appointed at that time. Subsequently, second chair counsel also was allowed to withdraw, and Julia Cassels became second chair on July 8, 2016. Sometime before this appointment, Mr. Gavin requested a continuance of the October 2016 Trial date, asking that Trial be set six months after second chair counsel was appointed to allow enough time for the defense to be ready. The Court granted a continuance of the Trial to May 1, 2017.

At the January 27, 2017 Status Conference, Mr. Gavin noted that numerous witnesses have yet to be interviewed and mental health experts have not yet been consulted and identified. The Court noted its concern as to the timeline of how the case is proceeding and its intention to address this concern.

On December 10, 2014, the Court issued its Capital Case Assignment and Scheduling Order. This Order stated in relevant part:

Failure to timely disclose information required to be disclosed pursuant to Rules 15.1 and 15.2, Arizona Rules of Criminal Procedure, may result in sanctions being imposed. Counsel should assure that their



respective disclosure statements and supplements are complete and comprehensive.

IT IS FURTHER ORDERED that the following disclosure schedule shall apply:

1. The State shall abide by the time limits set forth in Rule 15.1, and in particular, Rule 15.1(i), Arizona Rules of Criminal Procedure.

2. The Defendant shall abide by the time limits set forth in Rule 15.2, and in particular, Rule 15.2(h), Arizona Rules of Criminal Procedure. All mitigation evidence shall be disclosed in accordance with the requirements of Rule 15.2(h).

The schedule established by the Arizona Rules of Criminal Procedure or adopted by the Court may be deviated from by written agreement between counsel and approval of the assigned judge, but any deviation from the time limits prescribed by the Arizona Rules of Criminal Procedure or the adopted case management plan shall not affect the last day or Trial date.

Evidence, material facts or exhibits not fairly disclosed may be precluded from use at any phase of the Trial.

Pursuant to this Order and Rule 15.2(h)(1), Defendant's list of mitigating factors and witnesses was originally due June 5, 2015. He did not file it then, did not request an extension of that deadline, and did not propose an alternative schedule. At each subsequent Status Conference, defense counsel noted that mitigation investigation was ongoing, but it is clear from the January 27, 2017 conference that work has not progressed in a diligent fashion. Until the defense discloses its mitigation, the State cannot make its additional disclosure required by Rule 15.1(i)(5) (State has 60 days after Defendant's disclosure to disclose rebuttal witnesses). Defendant also cannot make his additional rebuttal disclosure as required by Rule 15.2(h)(3) (due 60 days after the State's rebuttal disclosure). Clearly, these deadlines cannot be met before the Trial date of May 1, 2017.

Arizona's discovery rules are intended to provide each party with an opportunity for notice of the nature and content of the exhibits and testimony that their opponent intends to present at trial. In conjunction with Rule 611, Rules of Evidence, Arizona's discovery rules, seek to facilitate a Trial of prepared counsel able to assist a jury in their truth-seeking function. Arizona Rules provide, therefore, that each side have an opportunity, before Trial, to interview witnesses their opponent reports they are likely to call or quote.

In this case, the Court has given the defense team wide latitude in pursuing its mitigation investigation and has in essence extended the disclosure deadlines without a request to do so. This probably should not have been done in this manner. However, this courtesy was extended based on the changes to the defense team, the extensive

discovery provided by the State, and the importance of mitigation in a capital case. However, lead defense counsel and the mitigation specialist have been members of the defense team for nearly two years, and second chair counsel has had six months to become familiar with the case. The Court believes this is sufficient time to investigate mitigation, decide on theories, and comply with disclosure deadlines.

Pursuant to Rule 15.7(a)(4), when a party violates a discovery rule, even with the tacit approval of the Court, the Trial Court may impose "any sanction which it finds just under the circumstances, including but not limited to... precluding a party from calling a witness, offering evidence, or raising a defense not disclosed." Any sanction should have a minimal impact on the merits of the case. *State v. Towery*, 186 Ariz. 168, 920 p.2d 290 (1996). The Court notes Rule 15.7 and its sanctions at this point to further emphasize its expectation that Defendant's case investigation will proceed diligently.

Therefore, in addition to the detailed *ex parte* memorandum to be submitted by Defendant no later than February 24, 2017,

IT IS ORDERED that Defendant provide the State with his list of specific mitigating circumstances and list of mitigation witnesses, including experts, together with reports and written or recorded statements, on or before April 30, 2017. If an extension of this deadline is needed, Defendant must make his request in writing and set forth specific, detailed reasons explaining the delay.

IT IS FURTHER ORDERED that at each Status Conference, counsel shall submit a jointly agreed upon written case status report showing the progress made on the case. At a minimum, the report shall set forth the status of all forensic testing and the number of interviews completed. Failure to submit a written report may result in the imposition of sanctions.

IT IS FURTHER ORDERED that both defense counsel shall appear at the Status Conference on March 24, 2017. The Court expects to hear from both counsel regarding work he/she has completed to date in this case.

cc:
Mohave County Attorney*

Gerald Gavin*
and
Julia Cassels
Attorneys for Defendant

Mohave County Jail*

Honorable Lee F Jantzen
Division 4