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VIRLYNN TINNELL
SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

STATE OF ARIZONA,

Plaintiff,

vs.

JUSTIN JAMES RECTOR

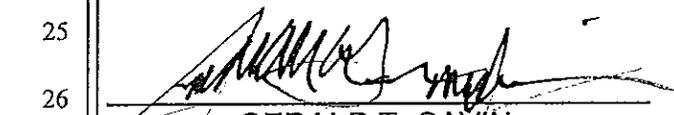
Defendant.

) NO: CR 2014 - 01193
)
) DEFENDANT'S MOTION TO EXCLUDE
) VENIREPERSONS WHO CANNOT
) FAIRLY CONSIDER MITIGATING
) EVIDENCE AND/OR WHO WOULD
) AUTOMATICALLY VOTE FOR DEATH
) UPON A FINDING OF GUILT IN THE
) TRIAL'S CULPABILITY PHASE

(ASSIGNED TO THE HON. LEE JANTZEN)

Defendant Justin James Rector, by and through undersigned counsel, moves this court to excuse for cause all venirepersons who cannot fairly consider mitigation evidence and/or who would automatically sign a death verdict after a mitigation hearing based upon a guilty finding in the trial's culpability phase . This is requested for the reasons and authority contained in the Memorandum of Point and Authorities attached hereto and incorporated herein.

RESPECTFULLY SUBMITTED This 24th day of October, 2015.


GERALD T. GAVIN
Co-Counsel for Mr. Rector


RON GILLES
Co-Counsel for Mr. Rector



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3 **MEMORANDUM OF POINTS AND AUTHORITES**

4 The Sixth and Fourteenth Amendments to the United States Constitution
5 guarantee an individual charged with a felony the right to a jury trial, as does the
6 analogous rights in Article II, §§ 4 and 24 of the Constitution of Arizona. This right
7 encompasses a fair, neutral, impartial and informed jury. Sinclair v. United States, 279
8 U.S. 749 (1929); Irvin v. Dowd, 366 U.S. 717 (1961).

9 Venirepersons who cannot fairly consider mitigating evidence which may be
10 presented by Mr. Rector, if necessary, are not qualified to be jurors. Similarly,
11 venirepersons who would automatically vote for the death sentence upon a showing of
12 Defendant's guilt at the culpability phase are not fit to be capital jurors.

13
14 In Woodson v. North Carolina, 428 U.S. 280, (1976), the United States Supreme
15 Court ruled that a statute that imposed a mandatory death penalty was unconstitutional
16 because the fundamental respect for humanity underlying the Eighth Amendment
17 required consideration of the character and record of the particular offender and the
18 circumstances of the particular offense as a constitutionally indispensable part of the
19 process of inflicting the death penalty. In Lockett v. Ohio, 438 U.S. 586 (1978), the
20 Court ruled that for a capital sentencing procedure to pass constitutional muster, the
21 death penalty statute must not preclude consideration of relevant mitigating
22 circumstances. In Eddings v. Oklahoma, 455 U.S. 104, 114 (1982), the Court stated
23 that "just as the state may not preclude the sentence from considering any mitigating
24 factor, neither may the sentence refuse to consider, as a matter of law, any mitigating
25 evidence."
26

27 In Morgan v. Illinois, 504 U.S. 719, 729 (1992), the Court held that a juror who
28 will fail to in good faith consider mitigating evidence must be excluded for cause. The

1 Supreme Court reasoned that such a juror has already formed an opinion on the merits
2 so mitigating evidence would be irrelevant to that juror. *Id.* The Supreme Court also
3 held that if even one such juror sits in a capital case and a death sentence is imposed,
4 the State "is disentitled to execute the sentence." *Id.* In plain English, the State
5 therefore cannot execute the Defendant. The presence of even one biased juror is not
6 permitted under the Sixth Amendment. United States v. Aguon, 813 F.2d 1413 (9th Cir.
7 1987).

8 In addition to infringing on Justin Rector's right to fair trial and impartial jury,
9 failure to exclude venirepersons who cannot fairly consider mitigating evidence will
10 result in a violation of Justin Rector's rights to effective assistance of counsel as
11 guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution
12 and Article II, §§4 and 24 of the Constitution of Arizona.¹⁰

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14 Therefore, this Court must remove for cause all venirepersons who cannot fairly
15 consider mitigating evidence.
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1 ORIGINAL of the foregoing filed
2 this 14th day of October, 2015 with:

3 Clerk of Court
4 401 E Spring Street
5 Kingman Arizona 86401

6 COPY of the forgoing
7 Delivered this 14th day
8 Of October, 2015, to:

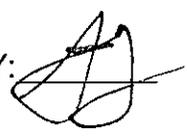
9 Honorable Lee Jantzen
10 Judge of the Superior Court
11 Mohave County Courthouse
12 2nd floor
13 Kingman Arizona 86401

14 Greg McPhillips
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24 Client Justin James Rector
25 Mohave County Jail

26 File

27 BY: 

28

MOHAVE COUNTY