

WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY

Juan M. Martinez
Deputy County Attorney
Bar ID #: 009510
301 West Jefferson, 4th Floor
Phoenix, AZ 85003
Telephone: (602) 506-5780
mcaomod@mcao.maricopa.gov
MCAO Firm #: 00032000
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

JODI ANN ARIAS,

Defendant.

CR 2008-031021-001

**OBJECTION TO DEFENDANT'S
MOTION FOR RECONSIDERATION:
MOTION TO DISMISS STATE'S
NOTICE OF INTENT TO SEEK THE
DEATH PENALTY DUE TO
DEFENDANT'S INABILITY TO
PRESENT A COMPLETE CASE FOR
LIFE**

(Assigned to the Honorable
Sherry K. Stephens)

The State of Arizona, by and the undersigned Deputy County Attorney, objects to defendant's request that the court reconsider its order denying dismissal of the State's notice seeking imposition of the death penalty. This response is supported by the attached Memorandum of Points and Authorities.

Submitted December 1, 2014.

WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY

BY: /s/ 
/s/ Juan M. Martinez
Deputy County Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

On July 9, 2008, Jodi Arias was indicted on one count of first degree premeditated murder, and notice of intent to seek the death penalty was filed. The victim was Travis Alexander, with whom defendant had a relationship.

On May 8, 2013, a jury convicted defendant of first degree murder. On May 15, the jury found that the aggravating factor of "especially cruel" had been proven. On May 23, the jury returned with "no unanimous agreement" on the sentence to be imposed, and the court declared a mistrial as to the penalty phase. Jury selection has begun in the retrial of the penalty phase.

By order filed November 26, 2014, the Arizona Court of Appeals vacated the superior court's order of October 30, 2014 closing the courtroom to the public and press during any testimony by Jodi Arias.

Defendant again asks this court to dismiss the notice of intent to seek the death penalty on the grounds that certain persons are unwilling to testify unless court proceedings are sealed from the public during their testimony. No law specifies the number and type of mitigation witnesses, nor is the death notice contingent upon a defendant's refusal to use the court's subpoena power to command witnesses to appear for trial.

II. LAW AND ARGUMENT

A defendant is "entitled to identify and compel the attendance of witnesses in his defense," and "this right extends to defendant's sentencing hearing." *State v. Ramirez*, 178 Ariz. 116, 128, 871 P.2d 237, 249 (1994); accord, *A.H. by Weiss v.*

Superior Court, 184 Ariz. 627, 629, 911 P.2d 633, 635 (App. 1996).

Pursuant to A.R.S. § 13-4071(A), "The process by which attendance of a witness before a court or magistrate is required is a subpoena." Subsection (D) further provides, "The clerk, at any time, on application of the defendant, and without charge, shall issue as many blank subpoenas, subscribed by the clerk as clerk, for witnesses as the defendant requires."

Defendant thus has a legal process to compel witnesses to appear who allegedly are unwilling to testify. She fails to explain why she does not simply serve subpoenas on those witnesses who refuse to testify unless court proceedings are sealed during their testimony.

Defendant argues that uncooperative witnesses are the equivalent of "preclusion of mitigation evidence." She provides no law supporting that theory. The cases she cites address situations where the trial court in some way hindered consideration of mitigating evidence, e.g., *Skipper v. South Carolina*, 476 U.S. 1, 3 (1986) (trial court precluded testimony from jailers and a jail visitor regarding defendant's good behavior); *Smith v. Texas*, 543 U.S. 37, 48 (2004) (trial court did not properly instruct jury regarding mitigation evidence); *Tennard v. Dretke*, 542 U.S. 274, 287 (2004) (defendant's low intelligence should have been considered relevant mitigating evidence); *Lockett v. Ohio*, 438 U.S. 586, 606 (statute did not allow sentencer to give individualized consideration of mitigating factors); *Eddings v. Oklahoma*, 455 U.S. 104, 113

(1982) (trial court did not consider evidence of defendant's turbulent family history).

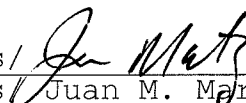
The trial court here has not precluded defendant from presenting mitigating evidence or calling her witnesses. Jurors will be instructed to consider any relevant mitigating circumstances. The jury, however, cannot be faulted for failing to consider mitigation that defendant does not present. Contrary to defendant's argument, the constitutionality of a death sentence is not determined by defendant's failure to avail herself of the court's subpoena power.

III. CONCLUSION

Defendant has failed to provide any valid argument for the court to reconsider its order denying dismissal of the death penalty on the grounds that "she will be unable to present a complete defense of her life." Therefore, defendant's motion should be denied.

Submitted December 1, 2014.

WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY

BY: /s/ 
/s/ Juan M. Martinez
Deputy County Attorney

Copy mailed\delivered
December / , 2014,
to:

The Honorable Sherry K. Stephens
Judge of the Superior Court

Laurence K. Nurmi
2314 East Osborn Road
Phoenix, AZ 85016

BY: /s/ *Juan M Martinez*
/s/ Juan M Martinez
Deputy County Attorney

JM:ar

Court Chatter