

The Law Office of Gerald T. Gavin
3880 Stockton Hill Road Suite 103-450
Kingman Arizona 86409
((928)530-0948 480) 233-6038
geraldgavinlaw@email.com

1 **Gerald T. Gavin**
2 State Bar #013842
3 **Ron Gilleo**
4 State Bar # 016928
5 3880 Stockton Hill Road STE 103-450
6 Kingman Arizona 86409
7 Email: geraldgavinlaw@gmail.com
8 (928) 530-0948 / (480) 233 -6038
9 Attorneys for Justin James Rector

FILED
BY: _____

2015 DEC -9 AM 10:48

VIRLYNN TINNELL
SUPERIOR COURT CLERK

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MOHAVE**

10 **STATE OF ARIZONA,**

11 Plaintiff,

12 vs.

13 **JUSTIN JAMES RECTOR**

14 Defendant.

11 NO: CR 2014 - 01193

12 **DEFENDANT'S MOTION IN LIMINE:
13 IMPROPER ARGUMENT MINIMIZING
14 MITIGATION**

15 (ASSIGNED TO THE HON. LEE JANTZEN)

17 Defendant Justin James Rector, by and through undersigned counsel, moves
18 this Court *IN LIMINE* to preclude the state from making any argument that mitigation
19 offered by the Defendant is not relevant, should be discounted or not considered
20 because it is attenuated in time from the charged offenses. Such argument is improper
21 and will violate Justin Rector's constitutional rights to due process, equal protection, the
22 right to counsel, the right to a fair trial and appeal, and freedom from cruel and unusual
23 punishment under the 5th, 6th, 8th, and 14th Amendments to the United States
24 Constitution and corresponding provisions of the Arizona Constitution. Defendant's
25 motion is supported by the reasons and authority contained in the Memorandum of
26 Point and Authorities attached hereto and incorporated herein.
27



1
2 RESPECTFULLY SUBMITTED This ^{9th} day of December, 2015.

3
4 
5 GERALD T. GAVIN
6 Co-Counsel for Mr. Rector

7 
8 RON GILIEO
9 Co-Counsel for Mr. Rector

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
MEMORANDUM OF POINTS AND AUTHORITES

Justin Rector anticipates that the State will urge jurors to consider, among other things, the passage of time since witnesses had seen Justin and what they knew of his life at the time of his arrest on this cause. It is likely the State will argue that testimony about his character, based on interactions not near in time to the alleged offense, is not relevant, or is entitled to little or no weight in the jury's consideration of possible penalties to impose. Mr. Rector asks the Court to preclude any such argument.

The United States Supreme Court has determined that discounting mitigation – failing to give it effect – because of the circumstances constituting the mitigation did not occur close in time to the offense is improper. In Porter v. McCollum, 558 U.S. 30, 130 S.Ct. 447, 451 (2009), a trial judge conducting a post-conviction relief proceeding discounted evidence concerning the defendant's abusive childhood because the defendant was 54 years old at the time of trial, in other words because of the temporal attenuation between the mitigation and the offense. The Florida Supreme Court followed the trial court's decision and discounted the evidence concerning the defendant's childhood. *Id.* The Eleventh Circuit Court of Appeals agreed with both the trial court and the Florida Supreme Court that the mitigation evidence should be discounted. *Id. at 452.* The United States Supreme Court reversed and remanded for

1 resentencing, finding that "it is unreasonable to discount to irrelevance" mitigation
2 evidence which may have an impact on a jury evaluating a defendant's behavior. *Id.* at
3 455.

4 If the factfinder cannot discount mitigation evidence to irrelevance because the
5 mitigating circumstance may have occurred in the more distant past, then any argument
6 that urges the fact finder to do so is necessarily unreasonable and unconstitutional.
7 This concept is not new: the Court has repeatedly held that there must not be any
8 impediment, including through jury instructions or prosecutorial argument, to the
9 sentencer's full consideration of, and ability to give effect to, any and all mitigating
10 evidence. Penny v. Lynaugh, 492 U.S. 302, 326 (1989); Hitchcock v. Dugger, 481 U.S.
11 393 (1987); Lockett v. Ohio, 438 U.S. 586, 604 (1978).

12 Accordingly, Justin Rector requests that the Court, at the proper time and if
13 necessary, preclude the State from making any argument that testimony by witnesses
14 who did not see, talk to or otherwise interact with Justin near the time of the offense is
15 not relevant or should be discounted, ignored, or not considered in any way because it
16 is attenuated in time from the offenses in question from which the Defendant is on trial.
17
18
19
20
21
22
23
24
25
26
27
28

1 ORIGINAL of the foregoing filed
this 9th day of December, 2015 with:

2
3 Clerk of Court
4 401 E Spring Street
5 Kingman Arizona 86401

6 COPY of the forgoing
7 Delivered this 9th day
8 Of December, 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
15 Assigned Deputy County Attorney
16 PO Box 7000
17 Kingman Arizona 86401

18 Ron Gilleo
19 Mohave County Legal Defender
20 Co-Counsel for Justin James Rector
21 313 Pine Street
22 PO Box 7000
23 Kingman Arizona 86401

24 Client Justin James Rector
25 Mohave County Jail

26 File

27 BY: 