

Arizona Supreme Court No. R-22-0032
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TO:

Rule 28 Distribution
David K Byers

ATTACHMENT¹

RULES OF CRIMINAL PROCEDURE

Rule 26.10. Pronouncement of Judgment and Sentence

(a) [No change]

(b) If the defendant has not previously been convicted of a felony offense, the court's judgment of guilt and sentencing order or minute entry must include an explanation of the civil rights that will be automatically restored on the completion of probation or absolute discharge from imprisonment and payment of all victim restitution. If the defendant is not eligible for automatic restoration, the court's judgment of guilt and sentencing order or minute entry must include an explanation of when the defendant can apply to have civil rights restored.

~~(c)~~ [No change in text]

(de) Fingerprinting. For any felony offense or a violation of A.R.S. §§ 13-1802, 13-1805, ~~28-1381, or 28-1382~~, a domestic violence offense as defined in A.R.S. § 13-3601, a violation of Title 13, chapter 14, or a violation of Title 28, chapter 4, the court must arrange to permanently affix the defendant's right index fingerprint to the judgment of guilt and sentencing ~~document~~ order or minute ~~order~~ entry, or obtain the defendant's two fingerprint biometric-based identifier and record it in the court case file, at sentencing or, unless the court orders otherwise, no later than 30 days after sentencing.

Rule 26.11. A Court's Duty After Pronouncing Sentence

(a) **Disclosures.** After pronouncing judgment and sentence, the court must:

(1) inform the defendant:

(A)-(D) [No change]

(E) on the record of the right to the restoration of civil rights.

(2) advise that:

(A)-(B) [No change]

~~(3C) advise that~~ the defendant may waive the right to appellate counsel by filing a written notice no later than 30 days after filing the notice of appeal.

(b) [No change]

* * *

¹ Additions to the text of a rule are shown by underscoring and deletions are shown by ~~strike through~~.

Rule 27.5. Order and Notice of Discharge

(a) Generally. Upon expiration or if a court orders early termination of probation, the ~~superior~~ court must order the probationer's discharge from probation. Upon expiration ~~or~~ ~~early termination of probation imposed by a limited jurisdiction court~~, the probationer is discharged from probation. Upon the probationer's request for a certified copy of the discharge or early termination order, the ~~court clerk~~ must furnish the probationer with a certified copy of the discharge or early termination order ~~in superior court or of the early termination order in a limited jurisdiction court~~.

(b) Superior Court. Upon discharge from probation in the superior court, the probation department must provide a copy of the court's judgment of guilt and sentencing order or minute entry to the probationer.

* * *

Rule 30.1. ~~Grounds;~~ Automatic Restoration; Exceptions; Notice

(a) Automatic Restoration for First Offense; Eligibility. Except as provided in (c)(1), ~~A~~ if a person ~~who~~ has not previously been convicted of any other felony, ~~must automatically be restored~~ any civil rights that were lost or suspended by the conviction, ~~except the right to possess or carry a gun or firearm~~, are automatically restored if the person:

(1) completes a term of probation or receives an absolute discharge from imprisonment; and

(2) pays ~~any~~ all victim restitution imposed.

(b) Second or Subsequent Offense; Unpaid Restitution; Application Required. A person who has been convicted of two or more felonies or has not paid all victim restitution and whose period of probation has been completed or has received an absolute discharge from imprisonment may have any civil rights that were lost or suspended by the conviction restored by the court. A person whose civil rights were lost or suspended by two or more felony convictions in another state or a United States District Court may apply to the superior court in the county in which the person now resides to have the person's civil rights restored. A person seeking to apply to have civil rights restored under this rule must file an application under Rule 30.2.

(c) Firearm Rights. ~~To restore the right to possess or carry a firearm the person must file an application under Rule 30.2. The following persons may not file to restore the right to possess a firearm:~~

~~(1) a person convicted of a dangerous offense under A.R.S. § 13-704;~~

~~(2) a person convicted of a serious offense as defined in A.R.S. § 13-706 until 10 years from the date of discharge from probation or from the date of absolute discharge from prison; or~~

~~(3) a person convicted of any other felony offense until 2 years from the person's discharge from probation or absolute discharge from prison.~~

(1) Exception to Automatic Restoration. The right to possess a firearm is not automatically restored under (a) if the person is convicted of either:

(A) a dangerous offense under A.R.S. § 13-704 or an offense committed outside the jurisdiction of this state that would be a dangerous offense if committed in this state, or

(B) a serious offense under A.R.S. § 13-706 or an offense committed outside the jurisdiction of this state that would be a serious offense if committed in this state.

(2) When an Application Must Be Filed. If the right to possess or carry a firearm was not automatically restored under (a), a person seeking to restore the right to possess a firearm must file an application under Rule 30.2. The following persons may not file to restore the right to possess a firearm:

(A) a person convicted of a dangerous offense under A.R.S. § 13-704 or an offense committed outside the jurisdiction of this state that would be a dangerous offense if committed in this state; or

(B) a person convicted of a serious offense as defined in A.R.S. § 13-706 or an offense committed outside the jurisdiction of this state that would be a serious offense if committed in this state until 10 years after the date of discharge from probation or from the date of absolute discharge from prison.

(d) Other Circumstances When an Application Must Be Filed. If the offense was committed outside the jurisdiction of this state or absolute discharge was from a prison in another state or the federal bureau of prisons, an eligible person seeking automatic restoration of civil rights must file an application under Rule 30.2. If the court finds the person is eligible for automatic restoration, it must grant the application without receiving a response from the State or holding a hearing. An order granting the application must specify whether the person's right to possess a firearm is restored and must be transmitted as provided in Rule 30.6(g).

(e) Application for Certification of Automatic Restoration. A person who is entitled to automatic restoration of civil rights may file an application under Rule 30.2 to obtain an order certifying that the person's rights have been automatically restored. If the court finds the person is entitled to automatic restoration, the court must grant the application without receiving a response from the State or holding a hearing. An order granting the application must specify whether the person's right to possess a firearm is restored and must be transmitted as provided in Rule 30.6(g).

(f) Supporting Documentation. Nothing in this rule precludes the court from requesting supporting documentation from an eligible applicant for purposes of verifying that the applicant is entitled to automatic restoration.

Rule 30.2. Application

~~(a) Persons Entitled to Automatic Restoration.~~ A person who is entitled to automatic restoration of civil rights under Rule 30.1(a) is not required to file an application.

(ab) [No change in text]

(be) Place of Filing and Filing Fee. The applicant must file an application with the court that sentenced the applicant. An applicant who was convicted in another state or a United States District Court may apply for restoration of rights in the superior court in the county where the person now resides. The clerk may not charge a fee for filing an application.

(cd) Processing of Application. The court must send a copy of the application to the applicable prosecuting agency or attorney general no later than 10 days ~~of~~ after filing.

(de) Victim Notification. The victim has the right to be present and be heard at any proceeding in which the restoration of an applicant's civil rights is discretionary with the judicial officer and the defendant has filed an application to have civil rights restored. If the victim in a state court matter has requested post-conviction notice, the prosecuting agency must provide the victim with notice of the defendant's application and the rights provided to the victim. The prosecuting agency must provide notice to the victim of the opportunity to be heard if the victim requested post-conviction notification.

Rule 30.3. State's Response

~~Within~~ Except as provided in Rule 30.1, no later than 60 days after ~~the an~~ application is filed under Rule 30.2, the State and victim may file a written response stating their reasons for opposing the application, if any. The State must send a copy of the response to the applicant's attorney or the applicant, if unrepresented.

* * *

Rule 30.5. Hearing

Except as provided in Rule 30.1, o~~n~~ either party's request or on its own, the court may set a hearing. A hearing must be held no later than 120 days after the application's filing, unless the court finds good cause for an extension. The prosecuting agency must provide post-conviction victim notice of the hearing date and the right to be present and heard if the victim requested post-conviction notification.

Rule 30.6. Disposition

(a) Considerations. Whether to restore civil rights ~~shall be~~ is in the discretion of the ~~superior court judge~~ judicial officer.

(b)-(g) [No change]

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Rule 41. Forms

Form 32(a). Application to Restore Civil Rights and Firearm Rights

_____ **COURT OF ARIZONA**
IN _____ **COUNTY**

STATE OF ARIZONA

-vs-

Case Number: _____

Defendant (FIRST, MI, LAST)

Date of Birth: _____

Applicant is:

- Defendant
- Attorney for Defendant
- Probation Officer

APPLICATION TO:

(check all that apply)

- RESTORE CIVIL RIGHTS**
(A.R.S. §§ 13-906, 13-907 and 13-908)
- RESTORE FIREARM RIGHTS**
(A.R.S. § 13-910)
- CERTIFY AUTOMATIC RESTORATION OF CIVIL RIGHTS**
- REQUEST FOR RECONSIDERATION**
(for applications previously denied)
 Civil Rights Firearm Rights

SECTION I. CONVICTION(S)

A Judgment of Guilt was entered in the _____ Court against the defendant on the

_____ day of _____, _____, on the conviction of:

- 1. Count I: _____
- 2. Count II: _____
- 3. Count III: _____
- 4. Count IV: _____

Additional counts continue on a separate page.

SECTION II. STATE CONVICTION (For federal convictions, see SECTION III.)

NOTE: If this is your first felony conviction in this or any other state, any civil rights lost or suspended by the conviction are automatically restored if you completed a term of probation or received an absolute discharge from imprisonment and paid ~~any~~all victim restitution imposed; however, your right to possess and carry a firearm requires an application ~~under this rule~~ if it was not automatically restored. Refer to the **Note in Section VII** of this application.

1. The above stated judgment of guilt and conviction for a felony is my first felony conviction in this or any other state and this application is for restoration of right to possess and carry a firearm only.

Yes **No.**

2. I received a certificate of absolute discharge from the **Arizona Department of Corrections** AND have attached a copy of that certificate to this petition, if available.

OR

3. I was discharged from **probation** and I have complied with all required terms of my **probation** (including all employment, classes, community restitution, drug/alcohol testing, or other requirements other than court-ordered monetary obligations).

OR

I was discharged from **probation** and I have not complied with all terms of my **probation**.

Explain:

SECTION III. FEDERAL CONVICTION (For state convictions, see SECTION II.)

4. A Judgment of Guilt was entered against the defendant in United States District Court for the District of _____ on the ____ day of _____, _____.

NOTE: If this is your first felony conviction in this or any other state, any civil rights lost or suspended by the conviction are automatically restored if you completed a term

of probation or received an absolute discharge from imprisonment and paid ~~any fine or all~~ restitution imposed; however, your right to possess and carry a firearm requires an application ~~under this rule~~ if it was not automatically restored. Refer to the **Note in Section VII** of this application. This applies to federal first convictions as well.

5. The above stated judgment of guilt and conviction for a felony is **my first felony conviction** in this or any other state and this application is for restoration of right to possess and carry a firearm only. **Yes** **No**.
6. I was sentenced to a term of **federal probation**, received an Affidavit of Discharge from the judge who discharged me from probation or other official documentation that indicates successful discharge from probation, **AND** have attached a copy to this petition.

OR

I was sentenced to and successfully **served a federal prison term** and received a Certificate of Absolute Discharge, or other official documentation that indicates successful discharge from imprisonment from the Federal Bureau of Prisons ~~on a date two (2) or more years before today's date~~, **AND** I have attached a copy of the certificate. If it is impossible to obtain the Certificate of Absolute Discharge from the Federal Bureau of Prisons, please explain:

7. I have complied with all required terms of **probation** (including all employment, classes, community restitution, victim restitution or other monetary obligations, drug/alcohol testing, or other requirements.)

OR

I have **not complied** with all terms of probation. Explain:

SECTION IV. VICTIM RESTITUTION AND PRIOR COURT ORDERED MONETARY OBLIGATIONS

8. Victim restitution [] **has** [] **has not** been paid in full or [] **was not ordered**. If victim restitution as not been paid in full, please explain:

9. All other monetary obligations [] **have** [] **have not been** paid in full or [] **were not ordered**. If all other monetary obligations have not been paid in full, please explain:

In some circumstances you may be eligible to apply to the court to modify the amount owed or convert monies owed to community restitution (State offenses only, not for Federal convictions).

SECTION V. PRIOR RESTORATION OF RIGHTS

10. Have you previously applied to have your rights restored? [] **Yes** [] **No**. If so, what was the date of your last application? _____

11. Have you been granted the restoration of your rights previously? [] **Yes** [] **No**.

12. Have you been denied the restoration of your rights previously? [] **Yes** [] **No**.

SECTION VI. PENDING CASES

13. Are there any open criminal cases against you? [] **Yes** [] **No**.

If yes, please explain:

SECTION VII. RESTORATION OF FIREARM RIGHTS

NOTE: Arizona Revised Statutes require:

A person who is convicted of a dangerous offense under A.R.S. § 13-704 or an offense committed in another state that would be a dangerous offense under A.R.S. § 13-704 if committed in this state may not file for the restoration of the right to possess and carry a firearm. A “dangerous offense” is defined under A.R.S. § 13-105(13), as “an offense involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another person.”

A person who is convicted of a serious offense as defined in A.R.S. § 13-706 or an offense committed in another state that would be a serious offense as defined in A.R.S. § 13-706 if committed in this state may not file for the restoration of the right to possess and carry a firearm for **ten (10) years** from the date of the person’s absolute discharge. For the purpose of this section, a “serious offense” is defined in A.R.S. § 13-706(F)(1) as any one of the following offenses:

First degree murder	Sexual assault	Burglary in the first degree
Second degree murder	Any dangerous crime against children	Kidnapping
Manslaughter	Arson of an occupied structure	Sexual conduct with a minor under fifteen years of age
Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.	Armed robbery	Child sex trafficking

~~A person who is convicted of any other felony offense may not file for the restoration of the right to possess a firearm for two (2) years from the date of the person’s absolute discharge from imprisonment or discharge from probation.~~

Your application to restore firearm rights may be denied if you were convicted of one of the excluded offenses or the time since your discharge from probation or imprisonment does not meet the statutory requirements.

14. If you are requesting that your civil right to possess and carry a firearm be restored, please explain your reasons for the request below:

SECTION VIII. OTHER INFORMATION FOR THE COURT

15. Is there anything you would like the court to take into consideration?

16. Attached is other pertinent documentation. List attached documents:

I understand that even if I am granted the right to possess and carry a firearm pursuant to this application I may still be prohibited from possessing and carrying a firearm under other state or federal laws.

I understand that this application may be denied if information in this application is found to be inaccurate.

I declare under penalty of perjury that the information provided in this application is true and correct.

Print Defendant's Name

Defendant's Signature

Address

OR

AUTHORIZATION TO PROCEED ON BEHALF OF DEFENDANT

I authorize _____ [] attorney or [] probation officer to
petition the _____ Court in _____ County, to
take the above-indicated action.

Date

Defendant's Signature

**To the best of my knowledge, the information provided in this application is true
and correct.**

Print Attorney/Probation Officer Name

Attorney/Probation Officer Signature

Attorney/Probation Officer Address

Form 32(b). Order Regarding Application to Restore Civil Rights and Firearm Rights

Person Filing: _____

Address (if not protected): _____

City, State, Zip Code: _____

Telephone: _____

Email Address: _____

Representing Self or Lawyer for _____

Lawyer's Bar Number: _____

_____ COURT OF ARIZONA

IN _____ COUNTY

STATE OF ARIZONA

Case Number: _____

-vs-

Defendant (FIRST, MI, LAST)

**ORDER REGARDING
APPLICATION TO RESTORE OR
TO CERTIFY AUTOMATIC
RESTORATION OF
CIVIL RIGHTS AND FIREARM
RIGHTS**

Date of Birth:

(A.R.S. §§ 13-906, 13-907, 13-908
and 13-910)

Based on the information presented to the Court, **THE COURT FINDS:** (only those items marked)

The defendant is entitled to automatic restoration of rights,

including the right to possess and carry a firearm.

excluding the right to possess and carry a firearm.

The defendant is not entitled to automatic restoration of rights.

The prosecutor has received a copy of the Application to Restore Civil Rights and Right to Possess and Carry a Firearm.

The defendant **has met** the statutory requirements for the application to restore civil rights.

- The defendant **has met** the statutory requirements for the application to restore civil rights and to possess and carry a firearm.
- The defendant **has not met** the statutory requirements for the application to possess and carry a firearm for the following reasons:
 - The defendant was convicted of a **dangerous** offense as defined in A.R.S. § 13-704.
 - The defendant was convicted of a **serious** offense as defined in A.R.S. § 13-706 and **less than ten years** have passed from the date of discharge from probation or prison.
 - ~~The defendant was convicted of any other felony offense and less than two years have passed from the date of discharge from probation or prison.~~

IT IS ORDERED:

- CERTIFYING that the defendant's rights have been automatically restored,
 - including the right to possess and carry a firearm.
 - excluding the right to possess and carry a firearm.
- DENYING the application to certify automatic restoration of civil rights,
including the right to possess and carry a firearm.
- GRANTING the application to restore civil rights **and** right to possess and carry a firearm.
- GRANTING the application to restore civil rights **excluding** the right to possess and carry a firearm.
- GRANTING the application to restore the right to possess and carry a firearm.
- DENYING the application to restore civil rights and right to possess and carry a firearm for the following reasons:
 - The applicant **has not met** the statutory requirements for the application (as noted above):
 - Other reasons: _____.

Even if you are granted the right to possess and carry a firearm pursuant to this order you may still be prohibited from possessing and carrying a firearm under other state or federal laws.

DATED this _____ day of _____, _____.

Judicial Officer