

Arizona Supreme Court No. R-23-0038
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TO:

Rule 28 Distribution
David K Byers

ATTACHMENT¹

RULES OF CRIMINAL PROCEDURE

RULE 25. PROCEDURE AFTER A VERDICT OR FINDING OF GUILTY EXCEPT INSANE

After a verdict or finding under A.R.S. § 13-502 of guilty except insane, the court must commit the defendant to a secure mental health facility under the procedures provided in A.R.S. § ~~13-3994~~13-3992.

* * *

Rule 26.11. A Court's Duty After Pronouncing a Sentence

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

(1) inform the defendant:

(A)-(C) [No change]

(D) of the right to apply to have the judgment of conviction set aside, except as provided in A.R.S. § 13-905(~~N-P~~);

(E)-(F) [No change]

(2) [No change]

(b)-(c) [No change]

* * *

Rule 27.4. Early Termination of Probation.

(a) [No change]

(b) Earned Time Credit Probation Termination. The court may reduce the term or duration of supervised probation for earned time credit or work time credit as provided by law.

(c) [No change]

* * *

Rule 29.7. Certificate of Second Chance.

(a) If the court grants an application to set aside the judgment of guilt, the court's order must include a certificate of second chance if the defendant has not previously received a certificate of second chance on the set aside of a felony conviction and

(1)-(3) [No change]

(b) If the court does not issue an order that includes a certificate of second chance when the defendant's conviction is set aside, the defendant may apply to the court for a certificate of second chance after meeting the requirements in A.R.S. § 13-905(K) unless the defendant has previously received a certificate of second chance on the set aside of a felony conviction. Rule 29.2 applies to such an application.

* * *

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

RULE 41. FORMS

Form 23(a). Notice of Rights After Sentencing in the Superior Court

SUPERIOR COURT OF ARIZONA IN _____ COUNTY

STATE OF ARIZONA, Plaintiff

[Case/Complaint No.]

-vs-

**NOTICE OF RIGHTS AFTER
SENTENCING IN THE SUPERIOR
COURT
(Non-Capital)**

Defendant (first, middle, and last name)

RIGHT TO APPEAL.

[No change in text]

EXERCISING YOUR RIGHT TO APPEAL.

[No change in text]

RIGHT TO POST-CONVICTION RELIEF.

[No change]

RIGHT TO APPLY TO HAVE A CONVICTION SET ASIDE.

On fulfillment of the conditions of probation or sentence, and discharge by the court, you may apply to the court where you were sentenced to have the judgment of guilt set aside. Your attorney or probation officer can apply on your behalf. If you were convicted of multiple offenses, the court must act on each individual case and each individual count. If you have more than one case number, you must file a separate application for each case number. The court will not charge a fee for filing an application to set aside a conviction. The Application to Set Aside Conviction (Form 31(a)) is available online from the Arizona Judicial Branch Self-Service Center at <https://www.azcourts.gov/> and from most superior court web sites. Complete the form and file it with, or send it to, the clerk of the superior court of the county where you were sentenced.

Note: A person who was convicted of any of the offenses listed in A.R.S. § 13-905(N-P) cannot apply to have the conviction set aside.

RIGHT TO FILE PETITION TO HAVE CASE RECORDS SEALED.

[No change in text]

RECEIPT BY DEFENDANT.

[No change in text]

Date

Defendant's Signature

* * *

Form 31(a). Application to Set Aside Conviction

COURT OF ARIZONA

IN _____ **COUNTY**

<p>STATE OF ARIZONA</p> <p>-vs-</p> <p>_____ Defendant (FIRST, MI, LAST)</p> <p>Date of Birth: _____</p> <p>Applicant is: <input type="checkbox"/> Defendant <input type="checkbox"/> Attorney for Defendant <input type="checkbox"/> Probation Officer</p>	<p>Case Number: _____</p> <p>APPLICATION TO SET ASIDE CONVICTION (A.R.S. § 13-905)</p> <p>Note: Your application may entitle you to restoration of the right to possess and carry a firearm pursuant to A.R.S. § 13-905(J)</p>
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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. SENTENCE COMPLIANCE

- 1. I have complied with all required terms of the **sentence** (including all probation, employment, classes, community restitution, victim restitution or other monetary obligations, drug/alcohol testing, or other requirements). **Yes** **No**. If no, please explain:

2. I received a certificate of absolute discharge from the Arizona Department of Corrections.
 Yes **No.**

3. Victim restitution **has** **has not** been paid in full or **was not ordered.**

If victim restitution has not been paid in full, please explain:

4. All other court-ordered 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.

SECTION III. PRIOR SET ASIDE(S)

1. Have you previously applied to set aside any conviction? **Yes** **No.** If so, what was the date of your last application? _____

2. Have you previously been granted a set aside? **Yes** **No.** If so, was the set aside on a felony conviction? **Yes** **No.**

3. If you have previously been granted a set aside on a felony conviction, did you receive a certificate of second chance? **Yes** **No** **N/A.**

4. Have you previously been denied a set aside? **Yes** **No.**

SECTION IV. PENDING CASES

1. Are there any open criminal cases against you? **Yes** **No.** If yes, please explain:

SECTION V. OTHER INFORMATION FOR THE COURT

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

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

3. The defendant, prosecutor, or the victim may request a hearing, but the court is not required to set a hearing. Do you request a hearing? Yes No.

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, to the best of my knowledge, the information provided in this application and any attachments 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 31(b). Order Regarding Application to Set Aside Conviction and Restore Firearm Rights

COURT OF ARIZONA
IN _____ **COUNTY**

STATE OF ARIZONA, Plaintiff -vs- _____ Defendant (FIRST, MI, LAST) Date of Birth: _____	Case Number: _____ ORDER REGARDING APPLICATION TO SET ASIDE CONVICTION AND RESTORATION OF FIREARM RIGHTS A.R.S. §§ 13-905 & 13-910
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Based upon the information presented to the Court, **THE COURT FINDS THAT:** (only those items marked)

The prosecutor has received a copy of the Application to Set Aside Conviction.

- The defendant **has met** all statutory requirements for setting aside the conviction; AND
- The defendant **has met** all statutory requirements for a Certificate of Second Chance.
- The defendant **has not met** all statutory requirements for a Certificate of Second Chance.

OR

- The defendant **has not met** all the statutory requirements for setting aside the conviction.

- The defendant was convicted of a criminal offense not eligible to be set aside due to:
 - a dangerous offense.
 - an offense for which the person is required or ordered by the court to register pursuant to A.R.S. § 13-3821.
 - an offense for which there has been a finding of sexual motivation pursuant to A.R.S. § 13-118.
 - a felony offense in which the victim is a minor under fifteen years of age.

IT IS ORDERED:

- DENYING** the application to set aside conviction for the following reasons:
 - The defendant **has not met** all statutory requirements for the application.
 - The defendant was convicted of a criminal offense **not eligible** for a conviction to be set aside.
 - Other reasons:
_____.

- GRANTING** the application setting aside the judgment of guilt, dismissing the complaint, information, or indictment, and that the applicant be released from all penalties and disabilities resulting from the conviction **except those imposed by:**
 - a. The **Department of Transportation** pursuant to A.R.S. §§ 28-3304, 28-3305, 28-3306, 28-3307, 28-3308, 28-3312, and 28-3319.
 - b. The **Game and Fish Commission** pursuant to A.R.S. §§ 17-314 or 17-340.
 - c. A lifetime injunction issued pursuant to A.R.S. § 13-719.

- The applicant's right to possess a firearm is also **restored**.
- OR**
- The applicant's right to possess a firearm is **DENIED** due to the applicant's conviction for a serious offense as defined in section 13-706.

CERTIFICATE OF SECOND CHANCE

IT IS FURTHER ORDERED:

- DENYING** a certificate of second chance.
OR
- GRANTING** a certificate of second chance, and accordingly, pursuant to A.R.S. § 13-905(~~K~~-M):

1. Unless specifically excluded by A.R.S. § 13-905(~~K-M~~), the defendant is released from all barriers and disabilities in obtaining an occupational license issued under title 32 that resulted from the conviction if the defendant is otherwise qualified;
2. An employer of the defendant is provided with all of the protections that are provided pursuant to section A.R.S. § 12-558.03;
3. Another person or an entity that provides housing to the defendant is provided with all of the protections limiting the introduction of evidence that are provided to an employer pursuant to A.R.S. § 12-558.03(B), ~~subsection b~~; and
4. This certificate of second chance is not a recommendation or sponsorship for or a promotion of the defendant when applying for an occupational license, employment or housing.

DATED this _____ day of _____, _____.

Judicial Officer