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## ARIZONA SUPREME COURT

In the Matter of:

Petition to Amend Ariz. R. Crim.  
32.14(a) & 33.14(a)

Supreme Court No. R-24-0009

Joint Comment by the Directors of  
the Maricopa County Indigent  
Defense Agencies

The indigent representation offices of Maricopa County (IR) collectively handle most cases filed in Maricopa County in which there has been a finding of indigency. The Office of Public Defense Services (OPDS) provides administrative and financial oversight to the staffed offices and the Office of

Contract Counsel (OCC). The staffed offices are comprised of the Office of the Public Defender (OPD), the Office of the Legal Advocate (OLA), the Office of the Legal Defender (OLD), and the Office of the Public Advocate (OPA). We jointly submit this comment in support of the proposal to amend Rules 32.14 and 33.14.

Maricopa County is one of the largest and fastest-growing counties in the United States.<sup>1</sup> Nearly 29,000 felony criminal cases were filed in Maricopa County Superior Court last fiscal year.<sup>2</sup> A significant number of those defendants cannot afford counsel, either at trial or on appeal. IR represents most of these individuals, and when these cases proceed to post-conviction relief, the majority are handled by the IR offices.

We support Petition R-24-0009. It clarifies Criminal Rules 32.14(a) and 33.14(a) to ensure defendants have a method for review when the superior court dismisses a notice of post-conviction relief.

### **Discussion**

Petition R-24-0009 appropriately clarifies that a defendant can challenge an order dismissing a notice of post-conviction relief.

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<sup>1</sup> *Maricopa County Quick Facts*, MARICOPA COUNTY, <https://www.maricopa.gov/3598/County-Quick-Facts> (last accessed March 14, 2024).

<sup>2</sup> *Statistics: Felony Filings by Fiscal Year*, ARIZ. SUP. CT., <https://www.azcourts.gov/statistics/Interactive-Data-Dashboards/Felony-Filings> (last accessed March 14, 2024).

The issue addressed in this petition is when the defense can ask for a rehearing when the trial court summarily dismisses a defendant's notice.

As the Petition explains, before Criminal Rule 32 was restyled in 2018, the authority to ask for a rehearing was broader. Rule 32.9(a), as it was written before restyling, allowed a party to move for rehearing when the party was "aggrieved by a final decision of the trial court ...." This was understood to ensure defendants had the right to ask for rehearing when the trial court dismissed a notice of post-conviction relief.

In *State v. Peterson*, for example, our Court of Appeals faced just this scenario. *State v. Peterson*, 2015 WL 4931664 (App. 2015, Memo.). There, the defendant filed a notice of post-conviction relief. *Id.* at ¶ 3. The trial court then summarily dismissed the notice. *Id.* The defendant filed a motion asking the court to "reconsider" its ruling. *Id.* at ¶ 4. The Court of Appeals "construe[d] Peterson's motion for reconsideration as a motion for rehearing filed pursuant to Rule 32.9(a) ...." *Id.* at ¶ 5 n.1. And because he timely filed a motion for rehearing, his petition for review was timely. *Id.*

The Court had reached the same conclusion two years earlier in *State v. Bumpus*, 2013 WL 1760539 (App. 2013, Memo.). There, the Court noted that the trial court had dismissed the defendant's notice of post-conviction relief. *Id.* at ¶ 1. The defendant then filed a "motion for reconsideration." *Id.* The Court recognized that Rule 32 did not have a provision authorizing a "motion

for reconsideration.” *Id.* at ¶ 1 n.1. But they “construe[d] Bumpus’s motion as a motion for rehearing, which is permitted by Rule 32.9(a).” *Id.*

The 2018 restyling, however, errantly limited motions for rehearing to final decisions on a filed petition for post-conviction relief. As the rule-change petition explains, the Restyling Task Force’s objective was not to change a defendant’s right to review or relief. The goal was to simplify the language. The redrafting simply overlooked a situation in which rehearing would be appropriate. And the Petition R-24-0009 provides a simple solution to correct that oversight.

### **Conclusion**

For the reasons stated in the petition and above, the directors of the defense agencies of Maricopa County support the petition to amend Criminal Rules 32.14(a) and 33.14(a).

Respectfully submitted this 29th day of April, 2024.

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