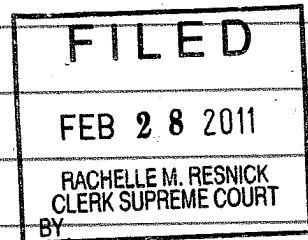


Eric Sutherland #81505
Robert Ritchie #107421
ASPC Yuma - SA2
P.O. Box 8049
San Luis, AZ 85349

①
adc

R. 11-0076

IN THE
SUPREME COURT
STATE OF ARIZONA



Eric m. Sutherland
Robert Ritchie, et al

) NO.

(To Be supplied by clerk)

- VS -

STATE OF ARIZONA'S
COURT RULE(S)

) Petition for adoption,
Amendment or Repeal of
Rule

Comes now Eric Sutherland and Robert Ritchie
IN Pro Per pursuant to Rule 28(A) ARIZONA Rules
OF the SUPREME COURT; Hereby move this court to
Amend and/or Repeal; Rule 32.2 (a) and (b) ARIZONA
Rules of Criminal Procedure.

Rule 32.2(A) and (B) ~~Violate~~ Constitutional due
Process and Equal Protection clauses and should
therefore be repealed or amended to conform with
the proposed Rule Amendment Attached AS Exhibit
(a) for the REASONS set forth in the accompanying
Memorandum and Points of Authority.

Respectfully Submitted This 2^{4th} day of
February, 2011.

By: Eric Sutherland

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS: Rule 32.1 (b) ARIZONA RULES OF CRIMINAL PROCEDURE recognizes AS A GROUND FOR RELIEF A COURT'S LACK OF JURISDICTION See Rule 32.1 (b) "The Court was without jurisdiction to render judgement or to impose sentence."

Rule 32.2 (b) EXCEPTIONS. does not include Rule 32.1 (b) This is in complete conflict with existing precedents and is being used to force waiver in violation of due process of law.

The following shows the avenues a criminal defendant could seek relief prior to the (1975 Amendment):

General. Under previous ARIZONA procedure, there were seven avenues for post-conviction relief; Appeal, federal habeas corpus, ARIZONA habeas corpus, writ of coram nobis, motion for new trial or newly discovered evidence, motion to modify or vacate judgement (under Civil Rule 60 (c)), and delayed appeal. Each had different mechanics, requirements and time limits.

The intentions of those who drafted the (1975 Amendment is clear; "It is intended that this rule encompass all the grounds presently available in

ARIZONA Under a writ of habeas corpus, Ariz. Const. ART. 2 § 14; Ariz. Rev. Stat. Ann. §§ 13-2001 to 2027 (1956); a writ of Coram Nobis, Ariz. Const. ART. 6 § 5 (Cum. Supp. 1972), e.g., State v. Kruchten, 101 Ariz. 186, 417 P.2d 510 (1966), cert. denied, 385 U.S. 1043 (1967); a motion for a new trial on newly discovered evidence, 1956 ARIZONA Rules of Criminal Procedure Rule 310 (3); a motion filed under Ariz. R. Civ. P. 60 (C); a motion for delayed appeal, Ariz. Sup. Ct. R. 16(a); plus those available under federal habeas corpus procedures, 28 U.S.C. § 2241(c) (1970). The available grounds are detailed in order to notify prisoners, and the federal courts, of the availability of relief, see Case v. Nebraska, 381 U.S. 336 (1965), to encourage the consolidation of all grounds for relief in a single petition and to justify the preclusion of claims not so raised.

"LAW"

There can be no waiver or justification of applying preclusion when a court or judge acts or acted without legal authority or jurisdiction. See N. 11 Rule 60 ARIZONA Civil Rules Handbook, ARIZONA Rules of Civil Procedure Id At Note 11. Relief from Void or Satisfied Judgement. "A party seeking relief from a judgement claimed to be void must (and

'Should) proceed under Rule 60(C) (4) rather than under Rule 60(C) (6)." Brooks v. Consolidated Freightways Corp. of Delaware, 173 Ariz. 66, 839 P.2d 1111 (App. 1992). A Judgement or order is "void" if the Court entering it lacked jurisdiction over the subject matter, over the party against whom it was entered, or to render the particular judgement or order entered. Martin v. Martin, 182 Ariz. 11, 893 P.2d 11 (App. 1994). If a judgement or order is void, the trial Court has NO discretion and must vacate it, Preston v. Denkins, 94 Ariz. 214, 382 P.2d 686 (1963); Martin v. Martin, Supra.

There is no time limit within which a motion for relief under Rule 60(C) (4) must be brought, and the Court must grant relief from a judgement or order that is void even if the party seeking relief delayed unreasonably in doing so. Martin v. Martin, Supra; Brooks v. Consolidated Freightways Corp. of Delaware, Supra. (Emphasis Added) IN Rajas v. Kimble, 89, Ariz. 276-279, 361 P.2d 403 (1961) The Court Held " Jurisdiction cannot be waived and may be raised at any stage of the proceedings! See ALSO Rule 16.1(b) ARIZONA Rules of Criminal Procedure; Burce v. State, 126 Ariz. 271, 614 P.2d 813 (1986); State v. Buckley, 153 Ariz. 91, 734

P. 2d 1047 (1987); State v. Municipal Court of The City of Phoenix, 124 Ariz. 543, 606 P.2d 33 App. (1979).

The U.S. Supreme Court has consistently held that Judge's who act without jurisdiction are engaged in Treason to the Constitution, They have also stated it's a Judge's Duty to validate jurisdiction see Freytag et al. v. C.I.R. 501 U.S. 868 (1991) "A Reviewing Court must first actively review the entire chain of legal actions that brings an action before the reviewing court by judges, for the judges to determine whether actual jurisdiction was conferred upon the court, and may not blindly assume it has jurisdiction, a reviewing court judge may not assume that the judges of the lower courts had jurisdiction."

"Where a judge has a duty, he has no discretion," Littleton v. Berbling, 468 F.2d 389, 412 (7th Cir. 1972) citing Osborn v. Bank of The United States, 9 Wheat (22 U.S.) 738, 866, 6 L Ed 204 (1824); U.S. v. Simpson, 927 F.2d 1088, 1090 (9th Cir. 1991).

Conclusion

Wherefore Rule 32.2 (b) can be simply and easily amended to ensure safeguards to due process and equal protection of

law by simply amending the Rule change proposed by petitioner's IN ATTACHED EXHIBIT (A) OR, Rule 32.2 (A) AND (B) SHOULD be repealed completely AND rewritten to comply with judicial, AND Attorney(s) duties AS well as the intentions OF the 1975 Amendment.

NO procedural Bar CAN or SHOULD exist which condones or protects A Judicial Order or Judgement obtained without Jurisdiction AND that's what the Rule AS NOW written does Both, Eric Sutherland's AND Robert Ritchie's CASE'S prove this.

For these reasons petitioner's Respectfully request AN immediate Amendment or repeal OF Rule 32.2 ARIZONA Rule OF Criminal Procedure.

Respectfully Submitted This 24th day OF February, 2011.

By Eric Sutherland

FOR: Eric Sutherland
Eric Sutherland
petitioner

Robert Ritchie
Petitioner

Exhibit (A)

Proposed Rule Amendment.

Rule 32.2. Preclusion of Remedy.

(b) **Exceptions.** Rule 32.2 (a) shall not apply to claims for relief based on Rules 32.1 (b), (d), (e), (f), (g) and (h). When a claim under Rule 32.1 (b) is raised, Petitioner must prove the court acted without jurisdiction and that its judgments or orders are void as a matter of law. When a claim under Rules 32.1 (d), (e), (f), (g) and (h) is to be raised in a successive or untimely post-conviction relief proceeding, the notice of PCR must set forth the substance of the specific exception and the reasons for not raising the claim in the previous petition or in a timely manner. If the specific exception and meritorious reasons do not appear substantiating the claim and indicating why the claim was not stated in the previous petition or in a timely manner, the notice shall be summarily dismissed.

Dear Clerk:

Z-24-11

Please find Enclosed the Original Plus (6)
Copies of A: Petition For Adoption Amend-
ment or Repeal of Rule to be filed on
our Behalf.

Sincerely: Eric Sutherland
Robert Ritchie

Please verify Receipt to:

Eric Sutherland #81505
ASPC Yuma / Dakota SAZ
P.O. Box 8940
San Luis, AZ. 85349

Robert Ritchie #107421
ASPC Yuma / Dakota SAZ
P.O. Box 8940
San Luis, AZ. 85349