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10 **IN THE SUPREME COURT**
11 **STATE OF ARIZONA**
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**PETITION FOR ADOPTION,
AMENDMENT OR REPEAL OF
RULES 32.2(a) AND (b), ARIZONA
RULES OF CRIMINAL
PROCEDURE**

Supreme Court No. R-11-0016
**Comment of the State Bar of
Arizona on Petition for Adoption,
Amendment or Repeal of
Rules 32.2(a) and (b), Arizona
Rules of Criminal Procedure**

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The State Bar of Arizona supports the petition to amend Rule 32.2(b) of the Arizona Rules of Criminal Procedure, which sets forth certain exceptions to the preclusion-of-claims rule set forth in subsection (a) of that rule. Essentially, as written, subsection (b) fails to except a claim that “the court was without jurisdiction to render judgment or to impose sentence,” which means that such a claim is waived and therefore precluded in post-conviction proceedings if not raised at trial and/or on direct appeal.

Rule 32.1(b) allows a criminal defendant to raise a claim that “the court was without jurisdiction to render judgment or to impose sentence” as an express ground for post-conviction relief.

Rule 32.2(a) states that a defendant “shall be precluded from relief under this rule based on any ground” raisable on appeal or on post-trial motion, finally

1 adjudicated on the merits on appeal or in any previous collateral proceeding, or
2 that has been waived at trial, on appeal, or in any previous collateral proceeding.

3 Rule 32.2(b) asserts that the preclusion of claims set forth in Rule 32.2(a)
4 does not apply to certain specifically identified claims – none of which include the
5 claim of lack of jurisdiction.

6 The superior court is a court of general jurisdiction and may exercise “the
7 powers conferred by constitution, rule or statute, [as well as] the common law.”
8 *State v. Payne*, 223 Ariz. 555, ¶ 8, 225 P.3d 1131, 1135 (App. 2009), quoting
9 A.R.S. §12-122. The Arizona Constitution grants the superior court original
10 jurisdiction over all felony cases. ARIZ. CONST. art. VI, § 14(4); *see also* A.R.S.
11 § 12-123. The superior court and lower courts have jurisdiction over criminal
12 misdemeanors.

13 Whether a court has jurisdiction is a question of law reviewed *de novo* on
14 appeal. *Duwyenie v. Moran*, 220 Ariz. 501, ¶ 7, 207 P.3d 754 (App. 2009).
15 When a trial court lacks jurisdiction, its orders are null and void; and appellate
16 courts have no choice but to vacate them. *Id.* n.9.

17 Subject matter jurisdiction is never waived. *State v. Silva*, 222 Ariz. 457,
18 ¶ 9, 216 P.3d 1203, 1205 (App. 2009); *Thomas v. Thomas*, 220 Ariz. 290, ¶ 6, 205
19 P.3d 1137, 1138 (App. 2009). However, criminal defendants who fail to raise a
20 claim of lack of personal jurisdiction at the trial court level forfeit the right to seek
21 relief on the claim for all but fundamental, prejudicial error. *State v. Henderson*,
22 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005); *State v. Marks*, 186 Ariz. 139,
23 141, 920 P.2d 19, 21 (App. 1996) (“Personal jurisdiction may be waived . . .”).

24 As written, Rule 32.2(b) has the practical effect of precluding post-
25 conviction relief (“PCR”) claims surrounding personal jurisdiction *and* subject
26 matter jurisdiction when not raised in prior proceedings. Petitioners seek to

1 modify the rule to allow *any* claim of lack of jurisdiction to be raised on PCR.
2 However, as noted, personal jurisdiction is waived if not presented to the trial
3 court or on direct appeal, so the current rule properly precludes such claims on
4 PCR. On the other hand, since subject matter jurisdiction is never waived, the
5 first sentence of Rule 32.2(b) should be modified as follows:

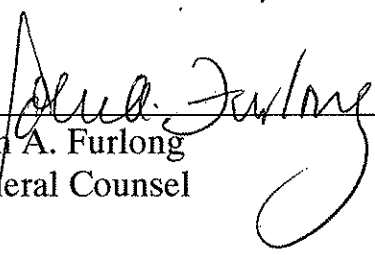
6 CURRENT VERSION: "b. Exceptions. Rule 32.2(a) shall not apply to
7 claims for relief based on Rules 32.1(d), (e), (f), (g) and (h)."

8 MODIFIED VERSION: "b. Exceptions. Rule 32.2(a) shall not apply to
9 claims for relief based on Rules 32.1(b) involving subject matter jurisdiction, (d),
10 (e), (f), (g) and (h)."

11 **CONCLUSION**

12 The State Bar of Arizona respectfully requests that the Court modify
13 Rule 32.1(b) as set forth above.

14 RESPECTFULLY SUBMITTED this 2nd day of April, 2012.

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18 John A. Furlong
General Counsel

19 Electronic copy filed with the Clerk
20 of the Supreme Court of Arizona this
21 3rd day of April, 2012,

22 by: Kathleen A. Lundgren
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