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(STATE BAR NUMBER 011474)

8 IN THE SUPREME COURT OF THE STATE OF ARIZONA

9 IN THE MATTER OF:

R-13-0003

10 PETITION TO AMEND RULE 32.2(b),
ARIZONA RULES OF CRIMINAL
PROCEDURE.

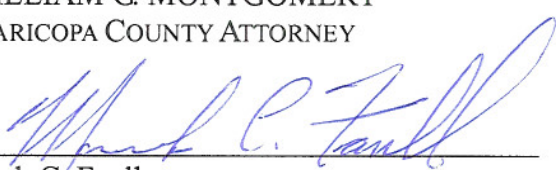
MARICOPA COUNTY ATTORNEY'S
OFFICE COMMENT ON PETITION TO
AMEND RULE 32.2(b), ARIZONA RULES
OF CRIMINAL PROCEDURE.

11 The Maricopa County Attorney respectfully petitions this Court to reject the proposed
12 amendment to Rule 32.2(b), Arizona Rules of Criminal Procedure.

13 Respectfully submitted this 16th day of May, 2013.

14 WILLIAM G. MONTGOMERY
15 MARICOPA COUNTY ATTORNEY

16 BY:


17 Mark C. Faull
18 Chief Deputy
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1 **I. Background.**

2 Rule 32.2(a) is a rule of preclusion that is “designed to limit review and prevent endless or
3 nearly endless reviews of the same case in the same trial court.” *Steward v. Smith*, 202 Ariz. 446,
4 450, ¶ 10, 46 P.3d 1067, 1071 (2002). Under Rule 32.2(a)(3), a convicted defendant is precluded
5 from post-conviction relief based upon any ground “[t]hat has been *waived* at trial, on appeal, or in
6 any previous collateral proceeding.” (Emphasis added.)

7 Under Rule 32.2(b), only certain claims are subject to preclusion; namely, constitutional
8 claims, jurisdictional claims, and sentencing claims that a defendant failed to raise at trial, on
9 appeal, or in any previous collateral proceeding.

10 **II. Proposed Amendment.**

11 Petitioner seeks to amend Rule 32.2(b) so that claims involving subject matter jurisdiction
12 arising under Rule 32.1(b) are not subject to preclusion.

13 **III. Arguments Against Amendment.**

14 The proposed amendment is unnecessary, will cause confusion, and waste judicial
15 resources.

16 “[S]ubject matter jurisdiction’ refers to a court’s statutory or constitutional power to hear
17 and determine a particular type of case.” *State v. Maldonado*, 223 Ariz. 309, ¶¶ 14, 223 P.3d 653,
18 655 (2010). “The authority of courts derives from constitutional provisions or from statutory
19 provisions adopted in the exercise of a legislative authority, express or implied, to establish courts
20 and to provide for their jurisdiction.” In other words, subject matter jurisdiction is “the power of a
21 court to hear and determine a controversy.” *State v. Bryant*, 219 Ariz. 514, ¶ 14, 200 P.3d 1011,
1014 (App.2008) (citation omitted). Because it involves a court’s power to hear a case, subject
matter jurisdiction can never be forfeited or waived. *State v. Flores*, 218 Ariz. 407, 409–10, ¶ 6,

1 188 P.3d 706, 708–09 (App.2008); *see also* *U.S. v. Cotton*, 535 U.S. 625, 630 (2002) (holding that
2 defects in subject-matter jurisdiction require correction regardless of whether the error was raised in
3 the lower court.¹

4 Subject matter jurisdiction can never be waived by operation of law and, therefore, it is
5 axiomatic that it can never be waived by operation of Rule 32.2(a)(3). Thus, it is unnecessary—in
6 fact, it would be redundant—to specifically include “Rule 32.1(b) [claims] involving subject matter
7 jurisdiction” in Rule 32.2(b)’s list of exceptions to preclusion. As such, the proposed amendment is
8 unnecessary.

9 Moreover, the proposed amendment will cause confusion on the part of convicted
10 defendants (especially those acting in *propria persona*) and lead to a waste of judicial resources.
11 Convicted defendants will construe the change in terminology proposed in the amendment as a
12 substantive change to Rule 32 which, as explained above, it not the case. As it currently stands,
13 convicted defendants, among others, do not grasp the concept of “jurisdiction.” *See Taliaferro v.*
14 *Taliaferro*, 186 Ariz. 221, 223, 921 P.2d 21, 23 (1996) (“[T]he word ‘jurisdiction’ means different
15 things in different contexts” and has been used “imprecise[ly]”); *Estes v. Superior Court*, 137 Ariz.
16 515, 517, 672 P.2d 180, 182 (1983) (distinguishing the term jurisdiction from legal error); *Collins v.*
17 *Superior Court*, 48 Ariz. 381, 393, 62 P.2d 131, 137 (1936) (explaining that “jurisdiction” is often
18 incorrectly used to mean, “not the *power* to perform a certain act, but the *performing of it when it*
19 *was prohibited*, a very different thing”) (emphasis in original); *State v. Espinoza*, 229 Ariz. 421,
20 425, ¶ 19276 P.3d 55, 59 (App. 2012) (recognizing “that not all legal errors are jurisdictional errors
21 and that Arizona courts have, on occasion, conflated the two”); *State ex rel. Dandoy v. City of*
Phoenix, 133 Ariz. 334, 338-39, 651 P.2d 862, 866-67 (App. 1982) (noting that lack of jurisdiction

¹ In contrast to subject matter jurisdiction, an objection to the existence of personal jurisdiction may be waived by failing to timely object. *State v. Marks*, 186 Ariz. 139, 140, 920 P.2d 19, 20 (App. 1996).

1 is often confused with legal error).

2 The proposed unnecessary change to Rule 32.2(b) will be misconstrued as a substantive
3 change to the Rule and will encourage convicted defendants to file petitions for post-conviction
4 relief alleging meritless claims of “lack of subject matter jurisdiction” that trial courts, in turn, will
5 needlessly be forced to adjudicate.

6 **IV. Conclusion.**

7 For the foregoing reasons, the Maricopa County Attorney respectfully petitions this Court to
8 reject the proposed amendment to Rule 32.2(b), Arizona Rules of Criminal Procedure.

9 Respectfully submitted this 16th of May, 2013.

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