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(STATE BAR NUMBER 011474)

6 IN THE SUPREME COURT OF THE STATE OF ARIZONA

7 IN THE MATTER OF:

R-13-0010

8 PETITION TO AMEND RULE 32.4 OF THE
9 ARIZONA RULES OF CRIMINAL
PROCEDURE

MARICOPA COUNTY ATTORNEY'S
OFFICE COMMENT ON PETITION TO
AMEND RULE 32.4 OF THE ARIZONA
RULES OF CRIMINAL PROCEDURE

10 The Maricopa County Attorney hereby comments to the Petition to Amend Rule 32.4 of the
11 Arizona Rules of Criminal Procedure.

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

13 WILLIAM G. MONTGOMERY
14 MARICOPA COUNTY ATTORNEY

15 BY:


16 Mark C. Faull
17 Chief Deputy
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1 For the following reasons, the Maricopa County Attorney's Office opposes the petition to
2 amend Rule 32.4 of the Arizona Rules of Criminal Procedure.

3 Arizona law is clear that direct appeals, not Rule 32 petitions, are the post-conviction
4 proceedings of primary importance and are the preferred method for presenting claims of reversible
5 error. *State v. Carriger*, 143 Ariz. 142, 145, 692 P.2d 991, 994 (1984). Accordingly, Rule 32
6 petitions are not intended to be a primary method of review, but are instead designed to
7 accommodate the unusual situation where justice ran its course and yet went awry. *Id.* at 146, 995.
8 And since Rule 32 was enacted in 1973, Arizona courts have consistently emphasized that the
9 process is not designed to add to the law's delays by giving an accused additional days in court
10 where one is sufficient for doing substantial justice. *State v. Guthrie*, 111 Ariz. 471, 473, 532 P.2d
11 862, 864 (1975). *See also Carriger*, 143 Ariz. at 145-46, 692 P.2d at 994-95 (petition for post-
12 conviction relief is not designed to afford a second appeal or to unnecessarily delay the rendition of
13 justice). The preclusion doctrine of Rule 32.2(a) emphasizes the importance of raising claims
14 promptly, serving important principles of finality and allowing relief to be issued at a time when the
15 interests of justice, from the perspectives of the defendant, the State, and the victim can be best
16 served. *State v. Shrum*, 220 Ariz. 115, ¶ 12, 203 P.3d 1175, 1178 (2009).

17 As the case law cited above makes clear, the Rule 32 process was not designed as a means
18 to reinvestigate and relitigate a case *ab initio*. Unfortunately however, the post-conviction process,
19 particularly in capital cases, has become notorious for prolonging cases and avoiding finality. The
20 petition's proposal to extend the time for filing a capital petition from 120 days after the filing the
21 notice to eighteen months only contributes to that perception. Rule 31.13(f)(1) gives capital
defendants 90 days to file the appellate brief after the notice of completion of record in the direct
appeal, the post-conviction proceeding of primary importance in Arizona. The petition proposes to

1 give capital defendants six times as much time to file the Rule 32 petition. That much delay is
2 unwarranted. It also is contrary to the right of crime victims to a prompt and final conclusion after
3 conviction and sentence. Ariz. Const., Art. 2, § 2.1 (A)(10). The current rule allows courts to grant
4 additional time to file a petition upon a showing of good cause. The petition's proposal
unnecessarily guarantees an additional eighteen months of delay. The petition should be rejected.

5 Respectfully submitted this 16th of May, 2013.

6 WILLIAM G. MONTGOMERY
7 MARICOPA COUNTY ATTORNEY

8 BY:


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Chief Deputy