

Robert Ritchie - 107421

A.S.P.C. - Eyman

Browning Unit - 4152

P.O. Box 3400

Florence, AZ, 85132

<b>FILED</b>
<b>SEP 23 2013</b>
JANET JOHNSON CLERK SUPREME COURT BY:

RECEIVED

SEP 23 2013

CLERK SUPREME COURT

IN THE SUPREME COURT  
STATE OF ARIZONA

R. 13-0045

Robert Ritchie Petitioner,
v.
State of Arizona, Respondants.

Supreme Court no.
<u>Motion to:</u>
Petition For Adoption, Amendment or Repeal of Rules 32.2(a) and (b), Arizona Rules of Criminal Procedure.

Comes now Petitioner in pro-persona, to hereby Petition the Supreme Court 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 judgement 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 adjudicated on the merits on appeal or in any previous collateral proceeding, or that has been waived at trial, on appeal, or in any previous collateral proceeding.

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

The Superior Court is a court of general jurisdiction and may exercise "the powers conferred by constitution, rule or statute, [as well as] the common law." see: State v. Payne, 223 Ariz. 555, 911 8, 225 P.3d 1131, 1135 (App. 2009), quoting A.R.S. sec. 12-122. The Arizona Constitution grants the superior court original jurisdiction over all felony cases. Ariz. Const. art. VI, section 14(4); see also, A.R.S. sec. 12-123. The superior court and lower courts have jurisdiction over criminal misdemeanors.

Whether a court has jurisdiction is a question of law reviewed de novo on appeal. see: Downyenic v. Moran, 220 Ariz. 501, 911 7, 207 P.3d 754 (App. 2009) courts have no choice but to vacate them. Id. n. 9.

Subject matter jurisdiction is never waived. State v.

Silva, 222 Ariz. 457, 911 9, 216 P.3d 1203, 1205 (App. 2009); Thomas v. Thomas, 220 Ariz. 290, 911 6, 205 P.3d 1137, 1138 (App. 2009). However, criminal defendants who fail to raise a claim of lack of personal jurisdiction at the trial court level forfeit the right to seek relief on the claim for all but fundamental, prejudicial error. see: State v. Henderson, 210 Ariz. 561, 911 19-20, 115 P.3d 601, 607 (2005); State v. Marks, 186 Ariz. 139, 141, 920 P.2d 19, 21 (App. 1996) ("Personal jurisdiction may be waived...").

As written, Rule 32.2(b) has the practical effect of precluding post-conviction relief ("PCR") claims surrounding personal jurisdiction and subject matter jurisdiction when not raised in prior proceedings. Although personal jurisdiction is waived as shown above, subject matter jurisdiction is never waived.

Therefore, Petitioner seeks that this honorable court modify the first sentence of Rule 32.2(b) as follows:

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

Modified Version: " b. Exceptions. Rule 32.2(a) shall not apply for relief based on Rules 32.1 (b) involving subject matter jurisdiction, (d), (e), (f), (g) and (h). "

### Conclusion

Petitioner respectfully requests that the Court modify

Rule 32.1 (b) as stated above.

Respectfully submitted this 13<sup>th</sup>, day of  
September, 2013.

Robert Ratche  
Petitioner, pro'se

1 Original and 1 Copy mailed this 19, day of,  
September, 2013 to:

Janet Johnson - Clerk  
Clerk of the Supreme Court  
Supreme Court of Arizona  
Phoenix, AZ, 85007