

Robert L. Jaramillo - 039278

A.S.P.C. - Eyman

Browning Unit - ~~4-1-55~~ 4-K-55

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CLERK SUPREME COURT

IN THE SUPREME COURT  
STATE OF ARIZONA

R-14-0031

Petition For Adoption,  
Amendment or Repeal of  
Rules 32.2(a) and Rule (b),  
Arizona Rules of Criminal  
Procedure.

SUPREME COURT NO. \_\_\_\_\_

MOTION FOR:

Rule 28, Petition For rules  
change, Adoption, Amendment, or  
Repeal of Rules 32.2 (a), (b).

Comes Now, Petitioner, Robert L. Jaramillo in pro-persona, to respectfully requests this honorable Court 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 judgement 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 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". *State v. Payne*, 223 Ariz. 555, 918, 225 P.3d 1131, 1135 (App. 2009), quoting A.R.S. section 12-122. The Arizona Constitution grants the superior court original jurisdiction over all felony cases. ARIZ. CONST., art. VI, section 14(4); also; A.R.S. section 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. *Duwyenie v. Muran*, 220 Ariz. 501, 917, 207 P.3d 754 (App. 2009). When a trial court lacks jurisdiction, its orders are null and void; and appellate courts have no choice but to vacate them. *Id.* n. 9.

Subject matter jurisdiction is never waived. *State v. Silva*, 222 Ariz. 457, 919, 216 P.3d 1203, 1205 (App. 2009); *Thomas v. Thomas*, 220 Ariz. 290, 916, 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. *State v. Henderson*, 210 Ariz. 561, 919/119-20, 115 P.3d 601, 607 (2005).

As written, Rule 32.2(b) has the practical effect of precluding post-conviction relief "PER" claims surrounding personal jurisdiction and subject matter jurisdiction when not raised in prior proceedings.

Since subject matter jurisdiction is never waived, the first sentence of Rule 32.2(b) should be modified 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 to claims for relief based on Rules 32.1(b) involving subject matter jurisdiction, (d), (e), (f), (g) and (h)".

### Conclusion

Petitioner respectfully requests this honorable Court grant this Petition and thereby modify Rule 32.1(b) as set forth above.

Respectfully submitted this 6<sup>th</sup>, day of, November, 2014;

By: Robert L. Jaramello  
Petitioner in pro-persona