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ARIZONA SUPREME COURT

In Re ARCrImP, Rule 32 –)
) **R 15 - 0029**
) **AMENDED**
)
) **Rule 28 Petition Re:**
Post-Conviction Relief) **Limited Court PCR**
) **Procedure, New Subsection**
) **Rule 32.13**
)
_____)

Since the filing of this original petition, various comments from other judges and attorneys have been helpful. This Amended Rule Change Petition is submitted to clarify mostly matters of style to improve uniformity of interpretation and completeness.

In particular, the amended changes: (1) specifically set a page limit for both petition and any state’s response; (2) to better allow for possible rural courts where prosecutors are not directly on site and may need additional time to receive and process pleadings, filing time limits for any state response have been enlarged; and (3) the comment explains that the filing deadline to initiate a LPPCR is analogous to a deadline to file a notice of appeal and is jurisdictional in nature; failure to file a petition timely is a basis to strike the petition; time limits for filing memoranda in contrast may be enlarged for good cause.

_____ **NEW SUBSECTION AS AMENDED** _____

Rule 32.13 Post-Conviction Relief Petition: Limited Court Offenses

The provisions of this subsection shall govern the procedure for seeking post-conviction relief for a person convicted of, or sentenced for, a misdemeanor or petty offense in a court of limited jurisdiction. This subsection shall be interpreted to provide a fair and just outcome but to avoid duplication of judicial resources or redundant issue resolution.

- a. Grounds; Time Limits; Preclusion.** The grounds for relief shall be those set forth in Rule 32.1. A limited court post-conviction relief petition (“LCPCR”) shall be filed no later than sixty days after entry of judgment and sentence. Post-conviction relief shall be precluded as to any issue raised or waived on direct appeal, adjudicated on the merits on appeal or collateral proceeding, except for claims under Rule 32.1 (d), (e), (f), (g), and (h); and provided further, no post-conviction petition shall be filed while petitioner’s case is already pending on appeal. A party failing to move to withdraw from a plea of guilty or no contest pursuant to Rule 17.5 shall also be precluded from post-conviction relief. The court may on motion or sua sponte strike a petition that is not timely filed.

Comment

Limited court offenses categorically involve less serious violations. The sixty-day time limit requires due diligence by any aggrieved party to seek relief without undue delay. Just as significant, if the case is already on appeal, no LCPCR is to be filed; by rule, while a limited court case is on appeal (restitution payable to clerk excepted), the case is already fully stayed, rendering an added LCPCR of marginal use. Finally, some ninety-five percent of criminal offenses in limited courts are resolved by way of plea agreement. Rule 17.5 already provides an avenue of relief from a plea agreement that does not meet constitutional standards. A party failing to seek Rule 17.5 relief is similarly barred from LCPCR.

The petition must be timely filed. This should be interpreted in a similar manner as a notice of appeal. In Arizona, defendants cannot be sentenced in absentia. Absent extraordinary circumstances, as where a party is not advised of the right to file for post-conviction relief after a guilty plea, petitions may be stricken. In contrast, if due to clerical error or inadvertence by the court, a party was not advised of Rule 32 rights, a delayed petition may be allowed.

To better ensure proper notice to defendant, court forms concerning plea agreements, changes of plea, or findings of guilt after trial should be modified to state time limits under this rule.

b. Commencement of Proceedings; Contents; Length; Response. A LCPCR shall be commenced by the filing of a Post-Conviction Relief Petition. The petition shall set forth in concise terms: the offense and sentence imposed, the relief requested, and the legal basis supporting the request. No supplemental petition shall be filed except by leave of court. The petition shall not exceed eighteen pages, inclusive of attachments, exhibits, and any appendices. Exhibits already in the court file shall not be attached and shall be referred to by incorporation but relevant portions may be set out in the petition. New matters such as affidavits or exhibits shall be limited to the issues raised. The state may file a response within thirty days, with enlargement of time for good cause. The state's response shall not exceed eighteen pages, inclusive of attachments, exhibits, and any appendices. Failure to file a response shall not be deemed a confession of error. No reply shall be permitted.

Comment

This rule seeks to balance the interests of the state, the rights of any victim, and the purpose of finality against the accused's right to a fair trial and due process. The first change in process is that, for a limited court PCR, the process is initiated with the filing of the actual petition, not a "Notice of Post-Conviction Relief" and subsequent memorandum. This two-step process is combined. The substantive PCR petition is filed at the outset. For misdemeanor and petty offenses, the content of the petition need not set forth papers and pleadings already within the judicial knowledge of court file and should not require extensive elaboration. The state may, but is not obligated

to respond; no reply is to be filed. Further adjudication of a limited court matter may then receive further appellate review at the superior court level or beyond as permitted by existing rules.

c. Limited Transcript Use; Right to Court Appointed Counsel

Conditional on Original Charges. For matters where the proceedings are less than ninety minutes duration and for which there is an audio recording was made, no transcript shall be required. Petitioner shall be provided a copy of any audio and may refer to portions of the proceedings in the petition. For matters exceeding ninety minutes, petitioner shall provide only those portions of the transcript relevant to the issues raised. If indigent, petitioner may obtain a waiver of any audio copy or transcript costs. A petitioner shall not be eligible for court appointed counsel for PCR relief if the original offense charged did not mandate jail or probation or if jail or probation were not imposed in the original judgment or sentence. A court may appoint counsel in the interests of justice however. A party seeking court appointed counsel shall request same in writing accompanied with a court financial statement form, at least twenty-five days before the deadline to file a post-conviction relief petition and the court shall rule on same within five calendar days of filing.

Comment

This subparagraph accomplishes various objectives: first, where an audio recording is available (by rule not mandated for certain proceedings such as change of pleas), for summary matters under ninety minutes, reference to the audio recording suffices; second, unlike the other provisions of Rule 32,

this subparagraph on court appointed counsel corrects an imbalance. If petitioner was not exposed to jail or probation in the underlying case, that status quo should obtain for post-conviction relief purposes to avoid unintended betterment, unless in the interests of justice the court finds independent grounds to provide court appointed counsel for petitioner. Petitioner's request for court appointed counsel is required at an early stage of the sixty-day time limit to promote due diligence in seeking relief and to improve the reviewing process at the outset and avoid delay.

d. Oral Argument and Evidentiary Hearings. A party by written motion may request oral argument, which may be granted if the court determines additional argument would assist in its determination. A party seeking an evidentiary hearing shall set forth same in a separate pleading, not to exceed five pages, stating what evidentiary matters are clearly shown to be necessary for a fair adjudication of the petition. Granting oral argument or an evidentiary hearing shall be within the court's discretion. A court may also set an oral argument or evidentiary hearing sua sponte.

Comment

This provision on oral argument and evidentiary hearing is based on reason. Petitioner, as proponent, has the burden to identify grounds for an evidentiary hearing that will genuinely advance the content of a good faith petition; the evidentiary hearing should not be a fishing expedition. It should also be kept in mind that, as noted, most limited court matters result in written pleas such that the purpose of an evidentiary hearing to re-litigate

the court's written file will have a smaller scope, especially recalling the explicit availability of Rule 17.5. A court may also set hearings sua sponte.

e. Summary Disposition; No Motion for Rehearing; Format;

Distribution; Notices. After review of the petition, any response, oral argument, and evidentiary hearing matters, if any, the court may enter appropriate orders on the motion, including denial of the petition. No motion for rehearing or reconsideration shall be filed. All other review of the petition and its merits shall be by available appellate procedure. Document format and distribution of copies of pleadings to the court, the prosecutor, and any victim shall be in accordance with the general rules of criminal procedure.

Comment

As noted above, given the nature and mitigated severity of risk of misdemeanors and petty offenses, and the competing social values involved, the merits of any petition should be addressed in accordance with due process but not at the expense of delay or inefficient use of judicial resources. From the outset of any criminal matter, both parties, the state and the defendant, have an obligation to understand the consequences of any disposition being challenged but still be bound by adjudications that meet the standards of Arizona's comprehensive criminal rule procedures. Thus, for limited court matters, summary disposition is appropriate; motions for rehearing add little to the trial court's consideration of the issues and, unlike felonies, no rehearing or reconsideration is warranted. Rule 32 has provisions for potential notice to the attorney general and county attorney.

Distribution under this subsection need only be to the immediate parties as necessary.

As set forth in the original rule change petition, post-conviction relief is an important part of providing due process to a criminal defendant. At the same time, the nature of offenses, the interests at stake, and the rights of victims must also be given consideration. Conforming post-conviction relief to the substantive aspects of limited court matters may assist in attaining those goals.

Respectfully submitted this 7th of April, 2015,

Hon. George T. Anagnost