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IN THE SUPREME COURT OF THE  
STATE OF ARIZONA

In the Matter of: ) Supreme Court No. R15-0029  
)  
)  
Petition to Amend Rule 32, )  
Limited Court PCR Procedure, )  
New Subsection Rule 32.13 )  
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Kristina J. Bohn, Supervising Tucson City Public Defender, lead attorney on the appellate work of that office, offers this comment to Petition R15-0029.

**DISCUSSION**

The Petition seeks to create an entirely new rule subsection for application to all criminal proceedings in limited jurisdiction courts. The premise behind the proposed change is that misdemeanors and minor offenses warrant a proportionally more limited and brief Post-Conviction Relief (PCR) process in limited jurisdiction courts than felony matters receive in superior courts. While there parts of the R15-0029 proposal that merit further consideration, this comment maintains that the

creation of a new rule subsection does not serve a critical need, and may, in fact, merely add complexity and undercut fundamental constitutional rights.

**1. Any ostensible resource savings for limited jurisdiction courts by this change of rules is outweighed by the fundamental importance of the rights concerned and the interests of equal treatment.**

It is the legitimate concern of Petitioner to avoid delay and inefficient use of judicial resources. In this regard, the proposal to forego written transcripts in favor of audio recordings when proceedings are less than ninety minutes duration is a reasonable change. However, as Petitioner notes, “some ninety-five percent of criminal offenses in limited courts are resolved by way of plea agreement,” and the number of actual Rule 32 petitions filed in limited jurisdiction courts amount to only a handful each year. Therefore, the resource savings of shortening the time limits and increasing the procedural hurdles for those few PCR cases is a relatively minute gain, as measured by the efficiency of eliminating some of those matters summarily.

The risk to fundamental rights, however, is relatively greater. The right of appellate review, enshrined in the Arizona constitution, is only available by way of Rule 32 PCR in all cases wherein the right of direct appeal is unavailable. For those who have pled guilty, Rule 32 becomes “the only means available for exercising [his] constitutional right to appellate review.” *State v. Pruett*, 185 Ariz. 128, 130-31, 912 P.2d 1357, 1359-60 (Ct. App. 1995), quoting

*Montgomery v. Sheldon*, 181 Ariz. 256, 258, 889 P.2d 614, 616 (1995). Shortening and consolidating time limits may have the effect of precluding exactly the types of claims for which the PCR process is precisely needed: Those in which the process has gone wrong as a matter of law, additional material facts have been discovered, or the failure to file a notice of appeal or post-conviction relief was “without fault on the defendant’s part.” Az. R.Crim.Pro., Rule 32. When something does go wrong in the criminal justice process, the time to correct it is time well-spent. There is no indication that a defect in a misdemeanor case takes less time to discover, investigate or research than a defect in a felony case.

Therefore, while it is legitimate to be concerned about court resources and the potential to abuse process under the rules, there is not sufficient indication that this problem occurs in PCRs with the exigency required to set up a different set of rules and added restrictions for one set of criminal defendants as compared to another.

**2. The premise of “proportionality”—of applying rules differently for different offenses—generalizes about the gravity of offenses in an overbroad fashion.**

Without doubt, conviction for an “underage consumption misdemeanor” is not remotely identical to “one for felony armed robbery.” [Petition at 2.] However, it is certainly not the case that all misdemeanor convictions are

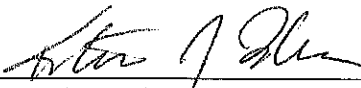
substantially less oppressive than all felonies, or that judicial redress of errors is any less important. For instance, Arizona law allows for the restoration of civil rights for felons, but not for misdemeanants, under A.R.S. §13-908 through §912. The defendant convicted for a misdemeanor domestic violence offense may never be able to get rights restored, whereas a wide variety of felonies would not present an obstacle. Additionally, sentencing and restitution awards do not confine themselves proportionally to offenses: A misdemeanor DUI case may have restitution awards of \$50,000 dollars or more and a minimum of six months incarceration, and yet a felony DUI or Endangerment case may have no restitution and only four months of incarceration. *See e.g.* A.R.S. 28-1382(E), 28-1383(D), *Hoffman v. Chandler ex rel. Cnty. of Pima*, 231 Ariz. 362, 363, 295 P.3d 939, 940 (2013).

Ultimately, there is no precise way to assess the many consequences of criminal conviction and categorically declare PCR as more or less important to individual defendants. The Arizona Constitution ultimately provides that all criminal defendants have the right to review. Justification for the creation of separate rules appears unconvincing, and unnecessarily increases procedural rule complexity.

## CONCLUSION

The undersigned respectfully requests the Court deny Petition R15-0029, and allow the rules for Post-Conviction Relief to remain available to all criminal defendants in equal, uniform and consistent measure.

RESPECTFULLY SUBMITTED: (electronically filed) May 5, 2015.

  
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