

Appendix 4-AP

Forms

From: Staff
To: R32TF Members
Re: **Forms**
Date: March 22, 2019

The January 2019 Task Force rule petition noted that the adoption of the proposed rules would necessitate amendments to existing forms and the adoption of new forms. The petition requested a modified comment period and indicated that the Task Force would file proposed forms with the Amended Petition.

The March 22 meeting materials include six forms. Versions that amend existing forms have been restyled and reformatted (Forms 23(a), 23(b), 24(b), 25(a), and 26). A new form (Form 25(b) is based on a version presented to the Task Force in August but has been slightly modified and reformatted. Reformatting and reorganization of these six forms allows for a uniform appearance and enhances readability.

**Form 23(a): Notice of Rights After Sentencing in the Superior Court (non-capital) and
Form 23(b): Notice of Rights After Sentencing in a Capital Case**

The impetus for the revisions to Form 23 was to differentiate rights of post-sentencing review for pleading and non-pleading defendants, i.e., for those defendants who are governed by Rule 32 and those governed by Rule 33.

Current Form 23 (“Notice of Rights of Review After Conviction in Superior Court”) applies to capital as well as non-capital cases. Staff believes that at most, there are two dozen capital judgments annually in Arizona, compared to tens of thousands of non-capital judgments, and therefore saw little need to include capital case information that had no application to the overwhelming majority of cases. Form 23(a) therefore removed capital case verbiage and relocated that information to new Form 23(b).

Both forms include new topic headings (e.g., “what to file,” “when to file,” “how to file,” etc.) Some content has been modified, e.g., in Form 23(a), the current “the entry of judgment and sentence occurs at the time of sentencing” is now “the date the court entered your judgment and sentence is the day the judge orally pronounced your sentence in the courtroom,” which should be clearer and more informative.

- The draft form includes a question, based on the current form, about the clerk providing a “a full copy of the rules governing appeals and post-conviction relief...upon request.” Is this true?

Form 23(a) includes a new section on the right to apply to have a conviction set aside. This is mandated by a recent rule amendment. See Rules 26.11(a)(1)(D) and 26.11(b). Although this particular modification goes beyond the charge to the R32TF, information on a set aside should be

included if the Court is going to amend the form. Form 23(b) does not include set-aside information; see A.R.S. § 13-907(K).

Current Form 23 and proposed Form 23(a) both include a statement under the caption that says, “In limited jurisdiction cases, see Superior Court Rules of Appellate Procedure-Criminal, Form 1.” Staff believes that SCRAP Form 1 is inadequate for the purposes of fulfilling the requirements of Rule 26.11. The SCRAP form does not discuss post-conviction relief or the right to set aside the conviction.

- Staff suggests either deleting the statement in proposed Form 23(a), or redrafting SCRAP Form 1 to comply with Rule 26.11.

Form 24(b): Notice Requesting Post-Conviction Relief

The Notice of Post-Conviction Relief was modified to accommodate both Rule 32 and Rule 33 proceedings.

The prefatory instructions in the current form were substantially modified.

The form has three sections: (A) Information about the defendant; (B) Information about the defendant’s sentence; and (C) Post-conviction relief claim. The form includes distinct subparts for non-pleading and pleading defendants. The concluding sections are a “Request for post-conviction relief,” which requires the defendant’s signature, and a “request for an attorney and affidavit of indigency,” which requires the defendant’s notarized signature.

- Staff would like to reduce the length of the form (it is, after all, simply a notice), but this might not be possible if the form needs to include multiple questions about the timeliness of the filing.

Form 25: Petition for Post-Conviction Relief

The proposed form of the petition, like the notice form above, has been adapted to accommodate Rule 32 and Rule 33 claims.

The instructions in the current form have been substantially modified. For example, the current form begins by advising that “you should first file Form 24(b).” The proposed form makes this mandatory (“must file”), i.e., filing a petition without a notice is not an option. The proposed form also deletes certain precatory language in the current form (e.g., “take care to include every ground” in the current form, compared to the proposed, “include in this petition every ground...”) The proposed form, unlike the current form, does not use upper case sentences in the instructions, but it does extensively use bold font to highlight topics throughout the form. The proposed form notes that there are time limits for filing the petition.

Also, and unlike the current form, the proposed form uses rule citations (e.g., Rule 32.1(a)) to facilitate cross-references. Section 5 of the current form contains a list of about 20 grounds for relief, which on their face are available to pleading as well as non-pleading defendants. In the proposed form, the defendant completes either section 2, if the defendant is proceeding under Rule 32, or section 3, if the defendant is proceeding under Rule 33. Section 4, which requires supporting facts and exhibits, is by formatting given more prominence, and because of the importance of supporting facts, the form instructs the defendant to “use additional pages if necessary.”

- However, since the facts are the heart of the petition, members might consider adding additional language, such as “claims must be supported by facts, and not just generalizations and allegations.”

The attestation above the defendant’s signature on the proposed form is substantially similar to the attestation in the current form. However, these attestations deviate from the requirements of the current and proposed rules, both of which require the defendant to identify facts within the defendant’s personal knowledge separately from other factual allegations.

- Either the rule should be changed to conform to the attestation, or vice versa.

Form 25(b): Checklist for No Colorable Claims (Rule 33)

This form is based on an unnumbered form that Judge Viola and Mikel Steinfeld presented at an August Task Force meeting. Mr. Steinfeld clarified after the December Task Force meeting that this form was designed only for pleading defendants, and that there is no corresponding form for non-pleading defendants.

The proposed form is like the one previously presented, with a few exceptions. The introductory language was revised. The plea proceedings have been designated as Part A of the form, and the sentencing proceedings have been designated as Part B. The previous “Advising and Questioning the Defendant” in Part A is now “Advising and Questioning the Defendant During the Plea Colloquy.” The former “Factual Basis” is now “The court found a factual basis for the plea.” Rule references have been italicized so they stand out from each respective requirement. The previous checkboxes were removed to emphasize that completing the form requires more than a series of checkmarks.

Form 26: Defendant’s Request for the Court Record

The proposed form is significantly different than the current one. A note at the beginning of the form advises that the court’s record includes all documents filed with the clerk and transcripts of oral proceedings. The subsequent sections of the form are requests for “documents” and “transcripts.” The note also advises that a defendant who requests copies of items admitted into evidence must make the request by a separate motion. The proposed form requires the defendant

to indicate whether the notice requesting post-conviction relief was filed under Rule 32 or Rule 33.

The section on documents refers to “the presumptive record.” The form explains that presumptive record includes “charging documents, motions and responses to motions and replies, minute entries, reports to the court, and court orders.” The defendant can omit certain items in the presumptive record, or request additional items, by specifying those items on the form. Unlike the current form, the proposed form does not refer to “instruments,” a term whose meaning is not clear.

Under the transcripts section, the defendant who is proceeding under Rule 32 would complete subpart (1). A defendant proceeding under Rule 33 would complete subpart (2).

Form 23(a). Notice of Rights After Sentencing in the Superior Court (Non-Capital)

_____ **COURT** _____ **County, Arizona**

STATE OF ARIZONA, Plaintiff

[CASE/COMPLAINT NO.]

-vs-

Defendant (first, middle, and last name)

**NOTICE OF RIGHTS AFTER
SENTENCING IN THE SUPERIOR
COURT *
(Non-Capital)**

*In limited jurisdiction cases, see Superior Court Rules of Appellate Procedure-Criminal, Form 1.

RIGHT TO APPEAL

You have a right to appeal from a final judgment of conviction or a verdict of guilty except insane, from an order denying a motion for new trial, from an order entered after judgment affecting your substantial rights, or from a sentence that you claim is illegal or excessive.

However, you do not have a right to direct appeal from your final judgment of conviction and sentence if you: (1) entered a plea of guilty or no contest; (2) admitted that you violated your conditions of probation or had an automatic probation violation based on a plea of guilty or no contest; or (3) failed to appear at sentencing, which resulted in sentencing occurring more than 90 days after the date of conviction. In these three situations, you may seek relief only by filing a notice and petition for post-conviction relief under Rule 33. (See the section below on post-conviction relief.)

EXERCISING YOUR RIGHT TO APPEAL

1. Notice of Appeal. If you want to appeal from a judgment of conviction and imposition of sentence, you must file a Notice of Appeal (Form 24(a)) within 20 days after the court's oral pronouncement of your sentence in the courtroom. If you want to appeal from any other appealable judgment or order, you must file a Notice of Appeal (Form 24(a)) no later than 20 days after entry of the judgment or order. You will lose your right to appeal if you do not file a Notice of Appeal within the time required.

If you want to appeal, you should let your lawyer know that you want to appeal. You can file a Notice of Appeal before you leave the courtroom on the day you are sentenced. After that, you should contact your lawyer by phone, letter, or in person, and tell your lawyer that you want to appeal.

2. If You Want to Appeal but Do Not Have a Lawyer. If you do not have a lawyer, ask the clerk of the court, or staff at the jail or prison where you are incarcerated, for Form 24 (a), which is a Notice of Appeal. Also ask for Form 5, which is Defendant's Financial Statement and Request for Appointment of Counsel. Complete both forms and immediately file them with, or send them to, the clerk of the superior court in the county where you were sentenced. These forms must arrive at the clerk's office within 20 days after the date you were sentenced.

3. Waiver of the Right to a Lawyer. You have a right to be represented by a lawyer or your appeal, and you should have a lawyer handle your appeal. However, you may also represent yourself. If you choose to waive your right to appellate counsel, you must file a written waiver no later than 30 days after filing your notice of appeal. If you file your waiver before you file your notice of appeal, or at the same time, the waiver must be filed in the superior court. If you file your waiver after you filed your notice of appeal, you must file the waiver in the superior court and in the appellate court. If the superior court determines that your waiver of appellate counsel is knowing, intelligent, and voluntary, you will be allowed to represent yourself on appeal. But the court may appoint advisory counsel for you during any stage of the appeal.

RIGHT TO POST-CONVICTION RELIEF

Every defendant in the superior court has a right to request post-conviction relief under Rule 32 or 33.

1. What to File. To exercise your right to post-conviction relief, you first must file a Notice Requesting Post-Conviction Relief, Form 24(b).

2. When to File. If you do not file a Notice Requesting Post-Conviction Relief within the required time, you may lose the opportunity to have the court correct any errors that might have occurred in your case.

(a) If you did not have an appeal. If you did not file, or if you did not have the right to file, a Notice of Appeal, you must file a Notice of Post-Conviction Relief within 90 days after the oral pronouncement of sentence.

(b) If you did have an appeal. If you did appeal, you must file a Notice Requesting Post-Conviction Relief within 30 days after the appellate court issues an order and mandate affirming the judgment and sentence.

(c) If you did not have a right to appeal but you had a first post-conviction proceeding and wish to raise a claim that post-conviction counsel was ineffective in a successive post-conviction proceeding. If you did not have the right to appeal but you did seek post-conviction relief in a first proceeding but you claim your attorney in that proceeding was ineffective, you must file a Notice Requesting Post-Conviction Relief within 30 days after the trial court enters its final order or, if you sought appellate review of that order, no later than 30 days after the appellate court issues an order and mandate in that first proceeding.

3. How to File. You must obtain a copy of Form 24(b) (Notice Requesting Post-Conviction Relief) from your attorney, the clerk of the court, or staff at the jail or prison where you are incarcerated. Complete the notice and file it with, or send it to, the clerk of the superior court of the county where you were sentenced. The notice must arrive at the clerk's office within the time specified in paragraph 2.

4. Requesting a Lawyer. If you want a lawyer to represent you in your post-conviction proceeding and you cannot afford to hire a lawyer, you must sign the declaration of indigency contained in the Notice Requesting Post-Conviction Relief and ask the court to appoint a lawyer to represent you.

If you want a full copy of the rules governing appeals and post-conviction relief, the clerk of the court in the county where you were convicted will send you one upon request.

RIGHT TO APPLY TO HAVE A CONVICTION SET ASIDE - On fulfillment of the conditions of probation or sentence, and discharge by the court, you may apply to the court where you were sentenced to have the judgment of guilt set aside. Your attorney or probation officer can apply on your behalf. If you were convicted of multiple offenses, the court must act on each individual case and each individual count. If you have more than one case number, you must file a separate application for each case number. The court will not charge a fee for filing an application to set aside a conviction.

The Application to Set Aside Conviction (Form 31(a)) is available online from the Arizona Judicial Branch Self-Service Center at azcourts.gov/ and from most superior court web sites. Complete the form and file it with, or send it to, the clerk of the superior court of the county where you were sentenced.

Note: A person who was convicted of any of the offenses listed in A.R.S. § 13-907(K) cannot apply to have the conviction set aside.

RECEIPT BY DEFENDANT

I have received a copy of this notice.

Date

Defendant's Signature

Form 23(b). Notice of Rights After Sentencing in a Capital Case

_____ COUNTY _____ County, Arizona

STATE OF ARIZONA, Plaintiff

[CASE/COMPLAINT NO.]

-vs-

Defendant (first, middle, and last name)

**NOTICE OF RIGHTS
AFTER SENTENCING IN A
CAPITAL CASE**

RIGHT TO APPEAL (CAPITAL CASE) If you were sentenced to death, the clerk will automatically file a notice of appeal at the time the court enters judgment and the death sentence. This notice is a sufficient notice of appeal with respect to all judgments entered and sentences imposed in your case. If you are indigent, the Supreme Court will appoint an attorney to represent you on your direct appeal.

RIGHT TO POST-CONVICTION RELIEF (CAPITAL CASE) If the Supreme Court affirms your death sentence, upon the issuance of a mandate affirming your conviction and sentence on direct appeal, the Supreme Court Clerk will automatically file with the superior court a Notice Requesting Post-Conviction Relief. The superior court will appoint a lawyer to represent you in the post-conviction relief proceeding.

If on direct appeal the Supreme Court vacates your death sentence, it is your responsibility to file your own Notice Requesting Post-Conviction Relief. See the section below: Right to Post-Conviction Relief (Non-Capital Case).

RIGHT TO POST-CONVICTION RELIEF (NON-CAPITAL CASE) Every defendant has a right to file a petition in the superior court requesting post-conviction relief.

1. What to File. To exercise your right to post-conviction relief, you first must file a Notice Requesting Post-Conviction Relief, Form 24(b).

2. When to File. The notice must arrive at the clerk's office within 30 days after the issuance of the order and mandate on direct appeal. If you do not file a Notice Requesting Post-Conviction Relief within the required time, you may lose the opportunity to have the court correct any errors that might have occurred in your case.

3. How to File. You must obtain a copy of Form 24(b) (Notice Requesting Post-Conviction Relief), either from your attorney, the clerk of the court, or staff at the jail or prison where you are incarcerated. Complete the notice and file it with, or send it to, the clerk of the superior court of the county where you were sentenced. The notice must arrive at the clerk's office within the time specified in paragraph 2.

4. Requesting a Lawyer. If you want a lawyer to represent you in your post-conviction proceeding and you cannot afford to hire a lawyer, you must sign the Declaration of Indigency contained in the Notice Requesting Post-Conviction Relief and request the court to appoint a lawyer to represent you.

If you want a full copy of the rules governing appeals and the post-conviction relief proceeding, the clerk of the court in the county where you were convicted will send you one upon request.

RECEIPT BY DEFENDANT

I have received a copy of this notice.

Date

Defendant's Signature

Form.24(b). Notice Requesting Post-Conviction Relief

Court Name or Location: _____

County: _____

STATE OF ARIZONA,
Plaintiff,

Case number: _____

vs.

**NOTICE REQUESTING
POST-CONVICTION RELIEF**

Defendant's Name

If the Defendant was sentenced after a **trial** or after a **probation violation hearing**, the Defendant must request relief under **Rule 32** of the Arizona Rules of Criminal Procedure.

If the Defendant was sentenced after a **plea of guilty or no contest**, after the **admission of a probation violation**, or after an **automatic violation of probation**, the Defendant must request relief under **Rule 33** of the Arizona Rules of Criminal Procedure.

There are time limits for filing this notice. See section C below. There are also time limits for filing a petition for post-conviction relief. See **Rules 32.7 and 33.7**.

A. INFORMATION ABOUT THE DEFENDANT:

1. Name (first, middle, and last): _____
2. Date of Birth: _____
3. Mailing address: _____
City, State, Zip Code: _____
4. Is the Defendant currently in jail or prison? **Yes** **No**
If yes, the defendant's inmate number is: _____

B. INFORMATION ABOUT THE DEFENDANT'S SENTENCE:

1. The Defendant was sentenced on the following date: _____
2. The Defendant was sentenced after:
 a plea of guilty or no contest.
 a trial.
 an admission of a probation violation.
 an automatic violation of probation (because the defendant was convicted of another crime).
 a probation violation hearing.
3. The Defendant was sentenced in this case for the following crime or crimes:

4. The Defendant received the following sentence:

5. The Defendant was represented by the following lawyer at sentencing:

6. After the Defendant was sentenced, the Defendant had an appeal: **Yes** **No**
If yes, the appellate court issued its mandate on: _____

Form.24(b). Notice Requesting Post-Conviction Relief

7. After the Defendant was sentenced, the Defendant had a previous post-conviction proceeding (under Rule 32 or Rule 33): **Yes** **No**
If yes, that proceeding was final on the following date: _____

C. POST-CONVICTION RELIEF CLAIM:

Under Rule 32.1(a), a defendant may request post-conviction relief after a trial or a contested probation violation hearing if the defendant's conviction was obtained, or the sentence was imposed, in violation of the United States or Arizona constitutions. **Under Rule 33.1(a)**, a defendant may request post-conviction relief if the defendant's guilty or no contest plea or admission to a probation violation was obtained, or the sentence was imposed, in violation of the United States or Arizona constitutions. A claim of incompetent or ineffective assistance of counsel is raised under Rule 32.1(a) or Rule 33.1(a).

1. Is the Defendant raising a claim under **Rule 32.1(a)**? **Yes** **No**
If yes, this notice is being timely filed:
 within 90 days after the **oral pronouncement** of sentence,
OR
 within 30 days after the issuance of the mandate in the **direct appeal**.
OR
 This notice is not timely, but that is not the defendant's fault because:

2. Is the Defendant raising a claim under **Rule 33.1(a)**? **Yes** **No**
If yes, this notice is being timely filed:
 within 90 days after the oral pronouncement of sentence,
OR
 The Defendant is raising a claim that the Defendant received **ineffective assistance** of Rule 33 counsel in Defendant's first Rule 33 proceeding **AND**
This notice is being filed:
 no later than 30 days after the **trial court's final order** in the first post-conviction proceeding
OR
 if the defendant requested appellate review of that order, no later than 30 days after the **appellate court issued its mandate** in that proceeding
OR
 This notice is not timely, but that is not the defendant's fault because:

3. Is the Defendant raising a claim under **Rule 32.1(b)-(h)** or **Rule 33.1(b)-(h)**?
 Yes **No**
If yes, check all boxes that apply.
 The court did not have **subject matter jurisdiction** to render a judgment or impose a sentence on the Defendant [Rule 32.1(b) or 33.1(b)]

Form.24(b). Notice Requesting Post-Conviction Relief

- The sentence as imposed is **not authorized by law**, or, if the Defendant entered a plea, the sentence is **not authorized** by the plea agreement. [Rule 32.1(c) or 33.1(c)]
- The Defendant continues to be or will continue to be **in custody after the sentence expires** [Rule 32.1(d) or 33.1(d)]
- Newly discovered material facts** probably exist, and those facts probably would have changed the judgment or sentence [Rule 32.1(e) or 33.1(e)]
- The **failure to timely file a notice** of appeal or a notice of post-conviction relief was not the Defendant's fault [Rule 32.1(f) or 33.1(f)]
- There has been a **significant change in the law** that, if applicable to the Defendant's case, would probably overturn the Defendant's judgment or sentence [Rule 32.1(g) or 33.1(g)]
- There is **clear and convincing evidence** that the facts underlying the Defendant's claim are sufficient to establish that no reasonable fact-finder would find the Defendant guilty of the offense beyond a reasonable doubt [Rule 32.1(h) or 33.1(h)]

The Defendant:

- has raised each claim within a reasonable time after learning of the claim,
- OR**
- has failed to timely file a notice, but that is not the defendant's fault because:

REQUEST FOR POST-CONVICTION RELIEF

I am requesting post-conviction relief. I understand that my petition for post-conviction relief must include every ground for relief that is known to me that has not been previously raised and decided.

Date

Defendant's signature

REQUEST FOR AN ATTORNEY AND DECLARATION OF INDIGENCY

I request the court to appoint an attorney to represent me in this post-conviction proceeding.

I am indigent, and because of my poverty I am financially unable to pay a lawyer to represent me without incurring substantial hardship to myself or my family.

I declare under penalty of perjury that the foregoing is true and correct.

Date

Defendant's Signature

Form 25. Petition for Post-Conviction Relief

_____ **COURT** _____ **County, Arizona**

STATE OF ARIZONA, Plaintiff

[CASE/COMPLAINT NO.]

-vs-

Defendant (FIRST, MI, LAST)

**PETITION FOR POST-
CONVICTION RELIEF UNDER**
 RULE 32
 RULE 33

INSTRUCTIONS TO THE DEFENDANT

- (1) You must file a Notice Requesting Post-Conviction Relief (Form 24(b)) before you file this petition.
- (2) Answer the questions in this petition in readable handwriting or by typing. Use additional blank pages for completing your answers, if necessary, but write on only one side of the page.
- (3) Indicate above whether you are filing this petition under **Rule 32** or **Rule 33**. If you are filing under **Rule 32**, answer question **2**. If you are filing under **Rule 33**, answer question **3**.
- (4) Do not raise issues you have already raised on your appeal (if any) or in a previous petition for post-conviction relief (if any). Include in this petition every ground for relief you are aware of and that has not been raised and decided before. If you do not raise a ground now, you will not be able to raise it later.
- (5) File your complete petition with the clerk of the court where you were convicted and sentenced (or mail it to the clerk of that court for filing.)

There are **time limits** for filing the petition.

- If you file under Rule 32, see the time limits in Rule 32.7.
- If you file under Rule 33, see the time limits in Rule 33.7.

1. INFORMATION ABOUT THE DEFENDANT

Name: _____

Current Status: On Probation Incarcerated On Parole On Community Supervision

Inmate number (if any): _____

2. RULE 32 GROUNDS FOR RELIEF - Defendant claims the following grounds for relief.

- Rule 32.1(a):** The defendant's conviction was obtained, or the defendant's sentence was imposed, in violation of the United States or Arizona constitutions, specifically:
 - The Defendant was denied the constitutional right to representation by a **competent and effective lawyer** at every critical stage of the proceeding.
 - The State used evidence at trial it obtained during an **unlawful arrest**.
 - The State used evidence at trial it obtained during an **unconstitutional search and seizure**.
 - The State used an **identification** at trial that violated the Defendant's constitutional rights.

- The State used a **coerced confession** at trial; used a statement obtained in the absence of a lawyer, at a time when representation by a lawyer was constitutionally required; or there was other infringement of the Defendant's right against self-incrimination.
- The State **suppressed** favorable evidence.
- The State used **perjured testimony**.
- There was a violation of the defendant's right not to be placed **twice in jeopardy** for the same offense or punished twice for the same act.
- To determine the defendant's sentence, the State used a **prior conviction** that was obtained in violation of the United States or Arizona constitutions or Arizona statutes.
- Other rights** guaranteed by the United States or Arizona constitutions were abridged or denied.
- Rule 32.1(b):** The court did not have subject matter **jurisdiction** to render a judgment or to impose a sentence on the defendant.
- Rule 32.1(c):** The **sentence** is not authorized by law.
- Rule 32.1(d):** The defendant continues to be or will continue to be in custody after his or her **sentence expired**.
- Rule 32.1(e):** newly discovered **material facts** probably exist, and those facts probably would have changed the judgment or sentence.

Specify when the Defendant learned of these facts for the first time, and how they would have affected the trial.

- Rule 32.1(f):** the failure to **timely file** a notice of appeal was not the defendant's fault.
- Rule 32.1(g):** There has been significant **change in the law** that, if applicable to the defendant ' s case, would probably overturn the defendant's conviction or sentence.
- Rule 32.1(h):** This petition demonstrates by **clear and convincing evidence** that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would find the defendant guilty of the offense beyond a reasonable doubt.
- Any **other ground** within the scope of Rule 32, Rules of Criminal Procedure (Specify):

3. RULE 33 GROUNDS FOR RELIEF - Defendant claims the following grounds for relief.

- Rule 33.1(a):** The defendant's plea or admission to a probation violation was obtained, or the defendant's sentence was imposed, in violation of the United States or Arizona constitutions.
 - The Defendant was denied the constitutional right to representation by a **competent and effective lawyer** at every critical stage of the proceeding.
 - There was a violation of the defendant's right not to be **punished twice** for the same act.
 - Other rights** guaranteed by the United States or Arizona constitutions were abridged or denied.
- Rule 33.1(b):** The court did not have subject matter **jurisdiction** to render a judgment or to impose a sentence on the defendant.
- Rule 33.1(c):** The **sentence** is not authorized by law or by the plea agreement.
- Rule 33.1(d):** the defendant continues to be or will continue to be in custody after his or her **sentence expired**.
- Rule 33.1(e):** newly discovered **material facts** probably exist, and those facts probably would have changed the judgment or sentence.

Specify when the Defendant learned of these facts for the first time, and how they would have affected the trial.

- Rule 33.1(f):** the failure to **timely file** a notice of post-conviction was not the defendant's fault.
- Rule 33.1(g):** There has been a significant **change in the law** that, if applicable to the defendant's case, would probably overturn the defendant's conviction or sentence.
- Rule 33.1(h):** This petition demonstrates by **clear and convincing evidence** that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would find the defendant guilty of the offense beyond a reasonable doubt.

4. SUPPORTING FACTS AND DOCUMENTS.

- A.** The Defendant submits the following **facts and legal authorities** in support of this petition. (Use additional pages if necessary.)

B. The following **affidavits, transcripts, and documents** are attached in support of the petition:

Affidavits [Exhibit(s) # _____]

Transcripts [Exhibit(s) # _____]

Documents [Exhibit(s) # _____]

C. **No** affidavits, transcripts or other supporting documents are attached because:

5. ACTIONS TAKEN - The Defendant has taken the following actions to secure relief from his conviction or sentence:

A. Appeal? [] **Yes** [] **No** (If yes, name the courts to which appeals were taken, date, number, and result.)

B. Previous Post-Conviction Proceedings? [] **Yes** [] **No** (If yes, name the court in which the previous petitions were filed, dates, and results. Include any appeals from decisions on those petitions.)

C. Previous Habeas Corpus or Special Action Proceedings in the Courts of Arizona? [] **Yes** [] **No** (If yes, name the courts in which such petitions were filed, dates, numbers, and results, including all appeals from decisions on such petitions.)

D. Habeas Corpus or Other Petitions in Federal Courts? **Yes** **No** (If yes, name the districts in which petitions were filed, dates, court numbers--civil action or miscellaneous, and results, including all appeals from decisions on such petitions.)

E. If the answers to one or more of the questions 5A, 5B, 5C, or 5D are “yes,” explain why the issues that are raised in this petition have not been finally decided or raised before. (State facts.)

6. RELIEF REQUESTED

Because of the foregoing reasons, the relief which the petitioner requests is:

- A.** Release from custody and discharge.
- B.** A new trial.
- C.** Correction of sentence.
- D.** The right to file a delayed appeal.
- E.** Other relief (specify): _____

I declare under penalty of perjury that the information contained in this form and in any attachments is true to the best of my knowledge or belief.

Date

Defendant

Form 25(b). Checklist for No Colorable Claims (Rule 33)

Case Number: _____

Defendant

To demonstrate that the trial court and the parties met each of these requirements, provide in the right-hand column the location in the record, the reporter's transcript, the plea agreement, the presentence report (PSR), or elsewhere that shows compliance.

Part A. Guilty or No Contest Plea – Ariz. R. Crim. Proc. – Rule 17.

1. The Plea Agreement. The plea agreement contains the correct classification of offenses and the correct sentencing range of each offense. _____

2. Advising and Questioning the Defendant during the plea colloquy. *Rules 17.1; 17.2* _____

(a) Defendant was personally present. *Rules 17.1(a)(2)* _____

(b) The court explained the nature of the charge for the plea. *Rule 17.2(a)(1)* _____

(c) The court explained the range of possible sentences: minimum, maximum, fines, special conditions. *Rule 17.2(a)(2)* _____

(d) The court explained the constitutional rights waived by entering a plea. *Rules 17.2(a)(3); 17.3(a)(1)* _____

(e) The court informed the defendant of the right to plead not guilty. *Rule 17.2(a)(4)* _____

(f) The court explained that the entry of a guilty or not contest plea would result in the waiver of the defendant's right to appeal and that post-conviction relief would be the only available form of review. *Rules 17.1(e); 17.2(a)(5)* _____

(g) The court advised the defendant of the immigration consequences of a guilty plea. *Rule 17.2(b)* _____

3. Voluntariness of Plea. The court determined the plea was voluntary, not the result of threats, not the result of force, not the result of promises. *Rules 17.1(b); 17.3(a); 17.4(c)* _____

4. Factual Basis. The court found a factual basis for the plea. *Rule 17.3(b)* _____

5. Acceptance of Plea. The court accepted the plea agreement either at the time of the change of plea or at sentencing, if acceptance was deferred. *Rules 17.4(d); 17.3(b)* _____

6. Written and Signed. The plea agreement was in writing and signed by the defendant. *Rule 17.4(b)* _____

Part B. Sentencing – Ariz. R. Crim. Proc. – Rule 26.

1. Disclosure of Reports. The PSR and any other reports were disclosed to the defendant before sentencing. *Rule 26.6(a)* _____

2. Opportunity for Objections. The defendant had the opportunity to raise objections to the PSR. *Rule 26.8(b)* _____

Form 25(b). Checklist for No Colorable Claims (Rule 33)

- 3. **Rulings and Remedies on Objections.** The court ruled on the defendant's objections and provided remedies where appropriate (e.g. new PSR, excision, sealing). *Rule 26.8(c)* _____
- 4. **Prosecutorial Compliance.** The prosecutor complied with any promises or guarantees made in the plea agreement. *Santobello v. New York*, 404 U.S. 257 (1971). _____
- 5. **Pronouncement of Judgment.** *Rule 26.10(a)* _____
- 6. **Pronouncement of Sentence.** *Rule 26.10(b)*
 - (a) The court gave the defendant an opportunity to address the court. *Rule 26.10(b)(1)*
 - (b) The court considered defendant's time in custody. *Rule 26.10(b)(2)*
 - (c) The court explained the terms of sentence/probation. *Rule 26.10(b)(3)*
 - (d) The court specified the commencement date. *Rule 26.10(b)(4)* _____
- 7. **Reasons for Sentence.** The court set forth its reasons for the sentence. *A.R.S. § 13-701(C)*
 - (a) The court considered any mitigation evidence that was offered _____
 - (b) Any aggravating factors are supported by the record _____
 - (c) If a sentence above the presumptive term was imposed, the court relied on one proven statutory aggravating factor _____
- 8. **Enforcement of Plea.** The court sentenced the defendant pursuant to the plea agreement. *17.4(d), (e), (g)* _____

Form 26. Defendant's Request for the Court Record

_____ **COURT** _____ **County, Arizona**

STATE OF ARIZONA, Plaintiff

[CASE/COMPLAINT NO.]

-vs-

**DEFENDANT'S REQUEST FOR
THE COURT RECORD**

Defendant (FIRST, MI, LAST)

Note: The court's record includes all documents filed with the clerk. The court's record also includes transcripts of oral proceedings conducted in the courtroom. A defendant who requests copies of items admitted into evidence must make the request by a separate motion.

The Defendant has filed a Notice Requesting Post-Conviction Relief under [] **Rule 32** (or) [] **Rule 33**.

The Defendant now requires items from the court's record to prepare the Defendant's petition for post-conviction relief.

The Defendant requests the items checked below. The Defendant's signature below affirms that the Defendant has not previously received the requested items.

[] **THE DEFENDANT REQUESTS DOCUMENTS FILED WITH THE CLERK**

The filed documents presumptively include the charging documents, motions and responses to motions and replies, minute entries, reports to the court, and court orders. This is referred to as "the presumptive record."

If the Defendant wants to **omit items** in the presumptive record, list them here:

If the Defendant requests **items in addition to** what is in the presumptive record, list them here:

[] **THE DEFENDANT REQUESTS TRANSCRIPTS OF COURT PROCEEDINGS:**

1. If the Defendant's Notice Requesting Post-Conviction Relief was filed under **Rule 32**, the Defendant requests transcripts of the following:

[] Evidentiary hearings.

Specify the subjects of the evidentiary hearings, or indicate "all": _____

[] Trial. If this box is checked, specify whether the Defendant requests transcripts of: (Check all that apply.)

[] Hearings on pretrial motions

[] Jury selection

[] Opening statements

[] Testimony of witnesses

- Final arguments
- Hearings on legal issues during trial
- Hearings on Post-Trial Motions

- Sentencing, including any presentence hearing
- Rule 11 Hearing
- Other (specify): _____

2. If the Defendant's Notice Requesting Post-Conviction Relief was filed under **Rule 33**, the Defendant requests transcripts of the following:

- Change of Plea
- Presentence Hearing
- Sentencing
- Probation Revocation Arraignment
- Probation Violation Hearing
- Probation Violation Disposition Hearing
- Rule 11 Hearing
- Other (specify): _____

3. **Omitted Proceedings.** The court will **not** provide transcripts of the following proceedings unless the Defendant checks a box requesting one or more specific items.

- Hearings on Motions to Continue
- Hearings Concerning Conditions of the Defendant's PreTrial Release
- Arraignments
- Pretrial Conferences
- Trials in which no verdict was returned

Dated this ____ day of _____, 20__.

Defendant or Attorney for Defendant

Copy of the foregoing

Mailed this ___ day of _____, 20__ to:

