

TO:

Rule 28 Distribution

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Rule 32.2. Preclusion of Remedy

(a) [[[no changes]]]

(b) Claims Not Precluded. Claims for relief based on Rule 32.1(b) through (h) are not subject to preclusion under Rule 32.2(a)(3), but they are subject to preclusion under Rule 32.2(a)(2) ~~Rule 32.1(a)(2)~~. However, when a defendant raises a claim that falls under Rule 32.1(b) through (h) in a successive or untimely postconviction notice, the defendant must explain the reasons for not raising the claim in a previous notice or petition, or for not raising the claim in a timely manner. If the notice does not provide sufficient reasons why the defendant did not raise the claim in a previous notice or petition, or in a timely manner, the court may summarily dismiss the notice. At any time, a court may determine by a preponderance of the evidence that an issue is precluded, even if the State does not raise preclusion.

Rule 33.2. Preclusion of Remedy

(a) [[[no changes]]]

(b) Claims Not Precluded.

(1) Generally. Claims for relief based on Rule 33.1(b) through (h) are not subject to preclusion under Rule 33.2(a)(3), but they are subject to preclusion under Rule 33.2(a)(2). However, when a defendant raises a claim that falls under Rule 33.1(b) through (h) in a successive or untimely post-conviction notice, the defendant must explain the reasons for not raising the claim in a previous notice or petition, or for not raising the claim in a timely manner. If the notice does not provide sufficient reasons why the defendant did not raise the claim in a previous notice or petition, or in a timely manner, the court may summarily dismiss the notice. At any time, a court may determine by a preponderance of the evidence that an issue is precluded, even if the State does not raise preclusion.

(2) Ineffective Assistance of Post-Conviction Counsel. A defendant is not precluded from filing a timely second notice requesting post-conviction relief claiming ineffective assistance of counsel in the first Rule 33 post-conviction proceeding.

* Additions are shown in underline and deletions are in ~~striketrough~~.