

**ARIZONA SUPREME COURT**

STATE OF ARIZONA,  
Respondent,

v.

BOBBY CHARLES PURCELL,  
Petitioner.

No. CR 21-0398-PR

Court of Appeals No. 1 CA-CR 21-0541

Maricopa County Superior Court  
No. CR1998-008705

CONSOLIDATED WITH

STATE OF ARIZONA,  
Respondent,

v.

SCOTT LEE DESHAW,  
Petitioner.

No. CR 21-0400-PR

Court of Appeals No. 1 CA-CR 21-0512

Maricopa County Superior Court  
No. CR 1994-011396

***AMICUS CURIAE BRIEF OF THE ARIZONA ATTORNEY GENERAL***

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## INTEREST OF AMICUS CURIAE

Over 20 years ago, the court of appeals affirmed the life sentences of Petitioners, Bobby Purcell and Scott DeShaw, who committed murders and other crimes when they were juveniles.<sup>1</sup> Petitioners now challenge the court of appeals' dismissal of their appeals of the superior court's final order ("PCR Order"), issued during Petitioners' post-conviction relief ("PCR") proceedings, which vacated Petitioners' resentencing hearings after an intervening change in the law. Petitioners argue the superior court's PCR order is appealable under [A.R.S. § 13-4033](#)—a longstanding Arizona statute that confers jurisdiction upon the court of appeals in criminal cases when, *inter alia*, a post-judgment order affects a criminal defendant's "substantial rights." *See* Purcell Petition for Review ("PFR") at 11-16.

The Arizona Attorney General, as the State's chief legal officer, *see* [A.R.S. § 41-192\(A\)](#), has a manifest interest in this important legal issue that impacts criminal cases throughout the state. Indeed, this Court recently accepted special action jurisdiction of the Attorney General's petition in *State v. Brearcliffe, et al. (RPI Johnson)*, No. CR-21-0174-SA—a case that requires interpretation of the

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<sup>1</sup> [State v. DeShaw](#), Arizona Court of Appeals No. 1 CA-CR 13-0635 PRPC, 2015 WL 1833801, ¶ 2 (Ariz. App. Apr. 21, 2015); [State v. Purcell](#), 199 Ariz. 319, 322, ¶¶ 1, 5 (App. 2001); *see also* [State v. Rhome](#), 235 Ariz. 459, 461, ¶ 8 (App. 2014) ("a court may properly take judicial notice of its own records").

same jurisdictional statute at issue here. The Attorney General also “has a duty to uphold the Arizona and United States Constitutions,” *see Fund Manager, Pub. Safety Pers. Ret. Sys. v. Corbin*, 161 Ariz. 348, 354 (App. 1988), including the Victim’s Bill of Rights (“VBR”) enumerated in [article II, § 2.1 of the Arizona Constitution](#). The Attorney General’s Office of Victim Services enforces victims’ rights laws and engages in collaborative efforts with courts and other state and local agencies to promote and facilitate justice for Arizona’s crime victims. Notably, Arizona law provides for an appeal by the State when the State’s or a crime victim’s “substantial rights” have been affected by a post-judgment order. [A.R.S. § 13-4032\(4\)](#).

Petitioners’ cases illustrate that allowing direct appeals of final orders issued in collateral PCR proceedings implicates crime victims’ constitutional and statutory rights. *Cf. Fay v. Fox in and for County of Maricopa*, 251 Ariz. 537, 540-41, ¶¶ 16, 23 (2021) (emphasizing, in a similar context, that a defendant’s “effort to file a delayed appeal implicates multiple rights expressly protected by the [VBR]”, including the right to finality—a “substantive right[]”). And this Court’s interpretation of the “substantial rights” clause in [§ 13-4033\(A\)\(3\)](#) will likely impact future State appeals that seek to vindicate “substantial rights” under [§ 13-4032\(4\)](#). For all of these reasons, the Attorney General submits this Amicus Brief in support of the State of Arizona.

## INTRODUCTION

The court of appeals correctly dismissed Petitioners' appeals of the PCR order issued in Petitioners' PCR proceedings. *See* Purcell PFR App'x at 7A; DeShaw App'x at 251A. Citing [A.R.S. § 13-4033](#), the court of appeals reasoned, “[t]he superior court’s final decision in a [PCR] proceeding is not an appealable order”, explaining that Petitioners “must file a petition for review” under [Arizona Rule of Criminal Procedure 32.16\(a\)\(1\)](#). *Id.*

The court of appeals' order was correct as a matter of law. Petitioners' assertion that the PCR Order is appealable under [§ 13-4033\(A\)\(3\)](#) or [\(A\)\(4\)](#) finds no support in the statute's text. Significantly, Arizona courts have long held that when Arizona's PCR rules provide an avenue for appellate review of a claim challenging a post-judgment order, the order is not appealable under the “substantial rights” clause of [A.R.S. § 13-4033\(A\)\(3\)](#). Here, Rule 32.16 expressly authorizes an aggrieved party to seek appellate review of a superior court's final decision on a PCR petition, [Ariz. R. Crim. P. 32.16](#), and the parties agree that the final PCR Order here is reviewable under Rule 32.16. Accepting Petitioners' proposed rule—i.e., that a PCR order is appealable under [A.R.S. § 13-4033\(A\)\(3\)](#) or [\(4\)](#) as long as the order vacated a resentencing hearing previously granted during PCR proceedings—would essentially nullify Rule 32.16.

Petitioners' interpretation of [A.R.S. § 13-4033](#) would also lead to parallel appellate proceedings in a criminal case, where some final PCR orders could be challenged only via Rule 32.16, while other PCR orders (or perhaps rulings issued in the same PCR order) could be simultaneously appealed (to the same appellate court) via direct appeal. Such a procedure would not only be confusing; it would cause unnecessary delay that deprives crime victims of their constitutionally-guaranteed right to finality. This Court wisely rejected that system of hybrid appellate review when reconciling [A.R.S. § 13-4033\(A\)](#) with [subsection \(B\)](#), and should likewise do so here. *See Hoffman v. Chandler ex rel. County of Pima*, 231 [Ariz.](#) 362, 364, ¶ 10 (2013) (reasoning that “excluding a post-judgment restitution order entered pursuant to a plea agreement from the reach of [A.R.S. § 13-4033\(B\)](#) would create a hybrid system of appellate review” that “would unnecessarily burden the appellate justice system and could lead to inconsistent results”). The court of appeals' order should be affirmed.

## **BACKGROUND**

Arizona law allows criminal defendants and the State alike to directly appeal post-judgment orders that affect either party's “substantial rights.” *See* [A.R.S. § 13-4032\(4\)](#) (2009) (“Appeal by state”); [A.R.S. § 13-4033\(A\)\(4\)](#) (2022) (“Appeal by defendant”). Because these jurisdictional statutes have existed in substantially similar form since statehood, Arizona's appellate courts have exercised jurisdiction



over post-judgment orders (or have found jurisdiction lacking) in many criminal cases under the “substantial rights” clause.

Nearly a century ago, this Court held the “substantial rights” ground appearing in § 1155 of the 1913 Penal Code authorized the State to appeal an order denying the State’s motion to vacate a release order challenging the trial court’s jurisdiction. *State v. McKelvey*, 30 Ariz. 265, 267 (1926). Then in 1960, this Court held that the “substantial rights” clause conferred appellate jurisdiction to hear a defendant’s appeal of an order denying his request for free transcripts for appellate purposes. *State v. Vallejos*, 87 Ariz. 119, 119-20 (1960) (applying A.R.S. § 13-1713(2) (1960)). And in *State v. Pill*, the court of appeals held that “an order refusing to set aside a void judgment of conviction, upon motion made within a reasonable time after judgment, is an order affecting [a defendant’s] substantial rights, hence appealable.” 5 Ariz. App. 277, 278 (App. 1967).

In 1973, this Court promulgated the first modern set of the Arizona Rules of Criminal Procedure. See *State v. Brown*, 23 Ariz. App. 225, 226 & 228, n.1 (App. 1975). Under the proposed rules, post-conviction relief proceedings were outlined in proposed Rule 35. *Id.* at 228. “Under proposed Rule 35.10, the review of post-conviction proceedings was by Appeal. However, prior to adoption of the rules, the right of appeal was dropped, and Rule 32.9 was substituted, providing for a discretionary review of post-conviction relief proceedings.” *Id.*

This Court later explained that “[p]ost-conviction relief pursuant to Rule 32 of the Rules of Criminal Procedure 1973 is a remedy separate and apart from the right to appeal.” *State v. Gause*, 112 Ariz. 296, 297 (1975). When a defendant “pursue[s] post-conviction remedies, [the defendant] is limited to procedures set forth in the rule.” *Id.* In 1975, Rule 32.9(a) “require[d] that the petitioner timely move the court for rehearing in order that the trial court have a last chance to correct any errors or omissions.” *Id.* Then, “[u]pon denial of the motion for rehearing the petitioner [could] timely seek review in the appropriate court as provided by Rule 32.9(c).” *Id.* Noting that Gause had not sought appellate review of the PCR ruling under Rule 32, this Court dismissed his appeal. *Id.*<sup>2</sup>

One year later, in *State v. White*, the State attempted to appeal a superior court’s order granting the defendant a new trial during Rule 32 PCR proceedings. 27 Ariz. App. 213 (App. 1976). The court of appeals dismissed the State’s appeal for lack of jurisdiction. *Id.* at 215. Relying on *Gause*, the court of appeals concluded the State did not have the right to directly appeal the order granting a

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<sup>2</sup> Today, former Rule 32.9 appears in two rules, which have been modified so that the aggrieved party is not required to file a motion for rehearing or file such a motion before filing a petition for review from a PCR ruling. See Ariz. R. Crim. P. 32.14(a) (“any party aggrieved by the decision *may* file a motion for rehearing) (emphasis added); Ariz. R. Crim. P. 32.16 (an aggrieved party may petition the appropriate appellate court for review of a final PCR decision no later than 30 days after entry of the trial court’s final decision).

new trial (even though the jurisdictional statute expressly allowed the State to appeal “[a]n order granting a new trial”), reasoning the State instead should have followed Rule 32.9. *Id.* at 214. The court of appeals held the former versions of [A.R.S. § 13-4032](#) and [-4033](#) “relate only to appeals from the basic criminal action and have no effect to review a decision in a [PCR] proceeding under Rule 32”, which is “governed exclusively by the provisions of [Rule 32].” *Id.* at 215.

Significantly, the court of appeals emphasized that “Rule 32 proceedings involve a separate and distinct procedure from that of the basic criminal action” and that the plain language of Rule 32, combined with this Court’s decision in *Gause*, was “sufficient to remove such proceeding” from former [A.R.S. § 13-4032](#). *Id.* at 214. The court noted that the State had “over-looked” that the right of appeal granted to parties in criminal cases was *also* governed by [A.R.S. § 13-1711](#)—the former version of [A.R.S. § 13-4031](#) (1989)—which stated that “[t]he state, or any party to a prosecution by indictment or information, may appeal to the court of appeals as prescribed by law *and in the manner provided by the rules of criminal procedure...*” *Id.* at 214-15 (emphasis added).

The following year, in 1977, the Legislature amended [A.R.S. §§ 13-1711](#), [13-1712](#), and [13-1713](#), renumbering those laws as [A.R.S. §§ 13-4031](#), [13-4032](#), and [13-4033](#). *See* Ariz. Laws 1977, Ch. 142, § 161 eff. Oct. 1, 1978. Seven years later, the Legislature added Article 29 of the Arizona Criminal Code ([A.R.S. §§](#)

[13-4231](#) to [13-4240](#) (Supp. 1986)), which governs the scope and nature of post-conviction relief. *See* Ariz. Laws 1984, Ch. 303, § 1.

The Victim’s Bill of Rights was later added to the Arizona Constitution in 1990 when Arizona’s electorate approved Proposition 104, a voter initiative measure. *See* [ARIZ. CONST. art. II, § 2.1](#), [hist. note](#). Ever since, “[c]rime victims’ rights in Arizona [have been] protected by our constitution, by statute, and by court rule.” *State v. Nichols*, [224 Ariz. 569, 571, ¶ 7](#) (App. 2010); *see generally* *State v. Roscoe*, [185 Ariz. 68, 70](#) (1996) (providing historical summary of victims’ rights in Arizona). In 1991, through the Victims’ Rights Implementation Act, the Legislature modified [A.R.S. 13-4032\(4\)](#) to allow the State to appeal an order affecting the substantial rights of a victim “at the victim’s request.” *See* 1991 Ariz. Legis. Serv. Ch. 229 (H.B. 2412).

In 1992, the Legislature added subsection (B) to [A.R.S. § 13-4033](#), which restricts non-capital defendants’ right to “appeal from a judgment or sentence that is entered pursuant to a plea agreement or an admission to a probation violation.” 1992 Ariz. Legis. Serv. Ch. 184 (H.B. 2481). The following year, this Court interpreted [§ 13-4033](#) in harmony with Rule 32 and held that a defendant, who admitted to a probation violation and sought a transcript of the proceedings, lost the right to a direct appeal under [A.R.S. § 13-4033\(B\)](#) and was required to “first

seek post-conviction relief in the trial court, pursuant to Rule 32, before exercising his constitutional right to appeal.” *Wilson v. Ellis*, 176 Ariz. 121, 123-24 (1993).

Several years later, in *State v. Jimenez*, the court of appeals held that an order denying a pleading defendant’s motion to vacate probation conditions was not appealable under § 13-4033(A)(3). 188 Ariz. 342, 343 (App. 1996). The court of appeals reasoned that the order did not affect the defendant’s substantial rights because the order did not change or modify the judgment or sentence originally imposed. *Id.* at 345. Accordingly, the court dismissed the defendant’s appeal. *Id.*

One year after *Jimenez*, the court of appeals held that, under the “substantial rights” clause of § 13-4033(A)(3), a “defendant is entitled to appeal the issue of whether the trial court’s [order designating his offense a felony], made without either notice or a hearing, violated his right to due process.” *State v. Delgarito*, 189 Ariz. 58, 59 (App. 1997). In *Delgarito*, the court of appeals emphasized that the felony-designation issue “could not have been raised in connection with the original judgment of guilt and imposition of [sentence].” *Id.* at 60-61 (citing *Jimenez*, 189 Ariz. at 344). “Significantly,” the court of appeals observed that the defendant was “not attempting to circumvent Rule 32 by pausing long enough after sentencing to file a motion, appeal from that motion, and thereby appeal from the original judgment and sentence.” *Id.* at 60 (internal quotations and citations omitted). The court of appeals expressly noted that its determination that the

felony-designation order was appealable under [A.R.S. § 13-4033\(A\)\(3\)](#) was “influenced by the fact that [the] defendant ha[d] no other means of appellate review” and that “[t]he Arizona Constitution requires, and our supreme court has held, that a defendant is guaranteed some form of appellate relief.” *Id.* at 61 (citing [Ariz. Const. art. 2, § 24](#) and [Wilson, 176 Ariz. at 123](#)). The court of appeals stated, “[w]e have carefully examined Rule 32 and cannot find any language that authorizes a criminal defendant to utilize Rule 32 for the purpose of reviewing the trial court’s denial of a felony designation hearing.” *Id.* Thus, the court of appeals concluded that denying appellate review under [A.R.S. § 13-4033](#) would have violated the Arizona Constitution. *Id.*

Then in [Hoffman](#), just nine years ago, this Court implicitly endorsed [Delgarito](#) while holding that [A.R.S. § 13-4033\(B\)](#) “bars a defendant from directly appealing a contested post-judgment restitution order entered pursuant to a plea agreement that contemplated payment of restitution up to a capped amount.” [231 Ariz. at 362-63, ¶ 1](#); *id.* at 364, ¶ 12 (citing [Delgarito, 189 Ariz. at 59](#)). In those circumstances, “a pleading defendant must vindicate the constitutionally guaranteed right of appellate review through Rule 32 [PCR] proceedings.” *Id.* at 366, ¶ 19.

## ARGUMENT

### I. The PCR Order Is Not an Order Affecting Petitioners' Substantial Rights Under A.R.S. § 13-4033(A)(3)

This Court has not directly addressed whether a post-judgment PCR order vacating a resentencing hearing is directly appealable as an order affecting a defendant's "substantial rights" under [A.R.S. § 13-4033\(A\)\(3\)](#). Nonetheless, application of statutory interpretation principles and adherence to the precedent summarized above leads to one conclusion: the final PCR Order here is not appealable under [§ 13-4033\(A\)\(3\)](#). Instead, Petitioners must seek appellate review of the PCR Order under [Rule 32.16](#).

#### A. The Text and Structure of A.R.S. § 13-4033 Shows that the "Substantial Rights" Clause Does Not Encompass Final Orders Issued in Rule 32 Proceedings

The court of appeals has jurisdiction to consider only direct appeals authorized by statute. [Ariz. Const. art. VI, § 9](#); [A.R.S. § 12-120.21\(A\)](#) (2003). It is well-established that when interpreting a statute, the statute's text "should be read in context in determining [its] meaning." [Stambaugh v. Killian, 242 Ariz. 508, 509, ¶ 7 \(2017\)](#) (citation omitted). When construing a specific provision of a statute, the court looks "to the statute as a whole" and "also consider[s] statutes that are *in pari materia*—of the same subject or general purpose—for guidance and to give effect to all of the provisions involved." *Id.*

In *Hoffman*, when this Court construed the “substantial rights” clause of § 13-4033, the Court correctly read “[t]he statute and its subsections as a consistent and harmonious whole.” 231 Ariz. at 363, ¶ 7. There, it was necessary to construe the “substantial rights” clause in harmony with § 13-4033(B) because the defendant had entered a plea agreement that contemplated restitution and the court later ordered a post-judgment restitution order after a contested restitution hearing. *Id.* at 362-363, ¶¶ 1, 3. This Court reasoned that if § 13-4033(A)(3) were read in isolation, then the defendant could appeal the restitution order because the order arguably affected his “substantial rights.” *Id.* at 363, ¶ 7. But in holding the defendant’s restitution claim was precluded under § 13-4033(B), this Court viewed the statute as a whole and in conjunction with the remedies available under Rule 32. *Id.* at 363-66, ¶¶ 5-18.

*Hoffman* is instructive here because this Court should consider A.R.S. § 13-4031, another statute *in pari materia*, to give effect to § 13-4033. See *Stambaugh*, 242 Ariz. at 509, ¶ 7. Section 13-4031 provides that “[t]he state, or any party to a prosecution by indictment, information or complaint, may appeal as prescribed by law and in the manner provided by the rules of criminal procedure[.]” (Emphasis added.) This jurisdictional statute therefore incorporates the Arizona Rules of Criminal Procedure when describing the right to appeal in criminal cases. It is unsurprising that, decades ago, this Court (in *Gause*) and the court of appeals (in



*White*) refused to entertain direct appeals under the former versions of [A.R.S. §§ 13-4032](#) and [13-4033](#) when the parties had a forum under Rule 32 to litigate their PCR-related claims in the appellate courts. *See Gause, 112 Ariz. at 297* (dismissing defendant’s appeal of PCR ruling); *White, 27 Ariz. App. at 214-15* (dismissing State’s appeal of PCR ruling). As the court of appeals aptly stated, the former versions of [A.R.S. §§ 13-4032](#) and [-4033](#) “relate only to appeals from the basic criminal action and have no effect to review a decision in a [PCR] proceeding under Rule 32, such a review being governed exclusively by the provisions of [Rule 32].” *White, 27 Ariz. App. at 215.*

Petitioners do not address [§ 13-4031](#), let alone explain why this statute is inapplicable. Instead, Petitioners allege the superior court “mischaracterize[ed] the proceedings to be [PCR] proceedings.” Purcell PFR at 15. This allegation fails in light of the procedural history of Petitioners’ cases. Petitioners’ direct appeals became final over 20 years ago. It is undisputed that the court of appeals granted PCR relief in the course of Petitioners’ appellate PCR proceedings in February 2018. *See Purcell PFR App’x at 28A.* Then the proceedings languished in the superior court pending the outcome of two Supreme Court cases: *Mathena v. Malvo, 140 S.Ct. 35*, and *Jones v. Mississippi, 141 S. Ct. 1307 (2021)*. *See Purcell Response to PFR at 7.* Ultimately, as the State explains, *Jones* and another intervening decision of this Court, *State v. Soto-Fong, 250 Ariz. 1 (2020)*, changed

the legal landscape governing Petitioners' Eighth Amendment PCR claim. *Id.* And the superior court ruled that, despite the court of appeals' grant of PCR relief years earlier, this change in the law warranted dismissal of Petitioners' underlying PCR claim and dismissal of the resentencing hearings because the previous grant of relief was based on a now-flawed reading of *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). See Purcell PFR App'x at 28A & 33A. Petitioners disagree with the superior court's PCR order, and may challenge it through a petition for review under Rule 32.16. See *Gause*, 112 Ariz. at 297; *White*, 27 Ariz. App. at 214-15.

In sum, this Court should consider the application of A.R.S. § 13-4031 when deciding whether Petitioners' claim is appealable under § 13-4033(A)(3). See *Stambaugh*, 242 Ariz. at 509, ¶ 7; *Hoffman*, 231 Ariz. at 363-66, ¶¶ 5-18. Petitioners do not offer any compelling reason to interpret § 13-4033 in isolation or why this Court should depart from *Gause* and *White*.

**B. The Plain Language of Rule 32 Allows Parties in a Criminal Case to Challenge a Final PCR Order via a Petition for Review**

As discussed above, § 13-4031 provides that the State or a defendant “may appeal as prescribed by law and in the manner provided by the rules of criminal procedure[.]” A.R.S. § 13-4031. This case only implicates Rule 32 of the Arizona Rules of Criminal Procedure because DeShaw and Purcell did not plead guilty.

Rule 32.1 authorizes a defendant to request post-conviction relief provided he or she has met one of the applicable grounds. *Ariz. R. Crim. P. 32.1*. After the

trial court's final decision on a defendant's PCR petition, "any party aggrieved by the decision may file a motion for rehearing." [Ariz. R. Crim. P. 32.14](#). "No later than 30 days after the entry of the trial court's final decision on a [PCR petition] or a motion for rehearing, or the dismissal of a notice, an aggrieved party may petition the appropriate appellate court for review of the decision." [Ariz. R. Crim. P. 32.16](#). For pleading defendants, the same avenues for relief are provided in Rule 33. *See* [Ariz. R. Crim. P. 33.1, 33.14, 33.16](#).

The plain language of Rules 32 and 33 confirm that a PCR order is not directly appealable and must be challenged through a motion for rehearing or a petition for review. [Ariz. R. Crim. P. 32.14, 32.16, 33.14, 33.16](#). Thus, the court of appeals correctly dismissed Purcell's and DeShaw's direct appeals because the plain language of Rule 32 precludes such review. *See also* [A.R.S. § 13-4031](#).

**C. Arizona Case Law Supports the Court of Appeals' Determination that it Lacked Jurisdiction Over the PCR Order**

Finally, the court of appeals' order should be affirmed because Arizona case law further confirms that the court of appeals correctly interpreted [A.R.S. § 13-4033](#) in harmony with Rule 32. As discussed above, Arizona courts have consistently required the State and criminal defendants alike to proceed through Rule 32 when seeking appellate review of final PCR orders. *See* [Gause, 112 Ariz. at 297; White, 27 Ariz. App. at 214-15](#).

*Delgarito* also supports the court of appeals’ conclusion here. There, the court of appeals held that a post-judgment order designating the defendant’s offense as a felony without notice or a hearing was appealable under the “substantial rights” clause under [A.R.S. § 13-4033](#). *Delgarito*, 189 Ariz. at 60. Importantly, the court of appeals’ holding turned on its conclusion that Rule 32 would *not* have permitted the defendant to raise that claim in PCR proceedings. *Id.* at 60-61. Similarly, in *Hoffman*, this Court reasoned that the defendant seeking to challenge a restitution order contemplated by his plea agreement was required to challenge the order via Rule 32. 231 Ariz. at 366, ¶ 19.

Arizona precedent therefore confirms that a post-judgment order is appealable under [A.R.S. § 13-4033\(A\)\(3\)](#) when it flows directly from the conviction, not from collateral proceedings, and when a claim challenging the order presents an issue that cannot be litigated in PCR proceedings. When a final PCR order is issued in connection with ongoing PCR proceedings, as in Petitioners’ cases, the aggrieved party must seek appellate review under Rule 32.

## **II. The PCR Order is Not Appealable Under A.R.S. § 13-4033(A)(4) Because the PCR Order Did Not Impose a Sentence**

Petitioners also mistakenly rely on [§ 13-4033\(A\)\(4\)](#) to argue that the PCR order is directly appealable, but that argument fails at the outset. Subsection [\(A\)\(4\)](#) allows a defendant to appeal “[a] sentence on the grounds that it is illegal or excessive.” [A.R.S. § 13-4033\(A\)\(4\)](#). As the State argues, the PCR Order here did

not impose any sentence, so Petitioners cannot invoke (A)(4). *See* Purcell Response to PFR at 10-11.

Petitioners contend that the court of appeals' order below conflicts with *State v. Rodriguez-Gonzales*, 208 Ariz. 198 (App. 2004), where the court of appeals held that under § 13-4033(B), a pleading defendant cannot appeal a new sentence under § 13-4033(A)(4) after obtaining PCR relief from the originally-imposed sentence. Purcell PFR at 12-13. No conflict exists, however, because *Rodriguez-Gonzales* is distinguishable for two reasons. First, Petitioners were not resentenced. Second, the restriction in subsection (B) clearly does not apply to Petitioners because they did not plead guilty.

In any event, *Rodriguez-Gonzales* did not survive this Court's later decision in *State v. Regenold*, 226 Ariz. 378 (2011), which gave a narrower construction to the scope of § 13-4033(B) than the one given by the court of appeals in *Rodriguez-Gonzales*. In *Regenold*, this Court held that "a defendant who pleads guilty but later contests an alleged probation violation may appeal the resulting sentence." 226 Ariz. at 337, ¶ 1. The Court reasoned that "[a]ny punishment imposed after a probation revocation hearing is a consequence that would not exist but for the defendant's violation of probation"; therefore, "although the range of punishment for a probation violation may be constrained by a plea agreement, the sentence

imposed after a contested probation revocation is not entered ‘pursuant to [the] plea agreement’ for purposes of § 13-4033(B).” *Id.* at 379, ¶ 8.

Hypothetically, if Petitioners had been resentenced, *Regenold*’s analysis would suggest—notwithstanding *Rodriguez-Gonzales*—that Petitioners could challenge their newly-imposed sentences under § 13-4033(A)(4). But unless and until a resentencing occurs, Petitioners must continue to pursue appellate relief from final PCR orders through Rule 32. *See supra*, Section I.

### **III. Requiring Criminal Defendants to Challenge Final PCR Orders through Rule 32.16 Best Serves the Interests of Justice**

The State’s proposed construction of A.R.S. § 13-4033, which would require Petitioners to challenge the final PCR Order through Rule 32, is consistent with the statutory framework, the Arizona Rules of Criminal Procedure, and Arizona case law. The State’s construction also serves the interests of justice.

When interpreting § 13-4033 in prior cases, the Court has emphasized that one of the relevant considerations is whether the defendant’s proposal “would create a hybrid system of appellate review.” *Hoffman*, 231 Ariz. at 364, ¶ 10. In *Hoffman*, for example, the defendant’s interpretation meant, in effect, that a pleading defendant could challenge a post-judgment restitution order via direct appeal but would have to challenge the remaining issues via Rule 32 proceedings. *Id.* “This dual-track review would unnecessarily burden the appellate justice system and could lead to inconsistent results.” *Id.* Similarly, in *Regenold*, this

Court bolstered its holding that an order revoking probation after a contested hearing is appealable notwithstanding a plea agreement because holding otherwise would result in “parallel proceedings.” 226 Ariz. at 380, ¶ 11.

Here, Petitioners’ proposed interpretation of A.R.S. § 13-4033 would inevitably result in parallel appellate proceedings. If the final PCR order is subject to direct review under § 13-4033(A)(3) merely because it vacated a resentencing previously granted in the PCR proceedings, but all other final PCR orders must be challenged through Rule 32.16, the court of appeals would exercise jurisdiction over two appeals arising from the same criminal case (and potentially arising from the same final PCR order). Processing PCR-related claims through two avenues of appellate review will cause unnecessary delay in criminal cases and does not promote judicial economy. The State’s construction, however, is consistent with existing law, promotes finality in criminal cases, and supplies a rule that is easy to apply in practice.

Finally, because defendants retain the right to challenge collateral orders in PCR proceedings, the State’s proposed rule does not violate article 2, § 24 of the Arizona Constitution, as Petitioners contend. As in *Hoffman*, this Court should “trust that courts will broadly interpret Rule 32 [and Rule 33] to preserve the rights” of defendants to appellate review. See 231 Ariz. at 366, ¶ 18.

## CONCLUSION

This Court should affirm the court of appeals' order dismissing Petitioners' appeals of the final PCR Order for lack of jurisdiction.

Respectfully submitted,

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