



DIVISION ONE
 FILED: 07/28/22
 AMY M. WOOD,
 CLERK
 BY: JT

IN THE
 COURT OF APPEALS
 STATE OF ARIZONA
 DIVISION ONE

IN THE MATTER OF:) ADMINISTRATIVE ORDER
) 2022-03
)
 PETITIONS FOR REVIEW OF POST-)
 CONVICTION RULINGS FILED AS)
 NOTICES OF APPEAL)
)
)
)

A defendant who seeks appellate review of the superior court’s final decision in a post-conviction relief proceeding must file a petition for review under Arizona Rule of Criminal Procedure 32.16 (defendants convicted at trial) or Rule 33.16 (defendants who entered a plea) and may not file a direct appeal under Rule 31. *See* A.R.S. § 13-4033. Nevertheless, defendants commonly file a notice of appeal in the superior court after that court has entered a final decision in post-conviction relief proceedings. The clerk of the superior court then transmits the notice of appeal to this court as it would a direct appeal pursuant to Rule 31. This court’s practice has been to dismiss these appeals and note in the dismissal order that the defendant may only challenge the superior court’s order in a petition for review.

Although this practice is correct under the Arizona Rules of Criminal Procedure, and although it does not preclude a defendant from pursuing a delayed petition for review, it creates unnecessary delay in cases in which the defendant is clearly seeking review of the superior court's final decision in a post-conviction relief proceeding. Accordingly, Division One will no longer dismiss an appeal from a final decision in a

post-conviction relief proceeding and will instead direct the Clerk of the Court to refile the notice of appeal as a petition for review. *See* Ariz. R. Crim. P. 1.2 (noting that rules are to be construed to “secure simplicity in procedure, fairness in administration, the elimination of unnecessary delay and expense, and to protect the fundamental rights of the individual while preserving the public welfare”).

IT IS THEREFORE ORDERED that when the Arizona Court of Appeals, Division One, receives a notice of appeal filed from a final decision in a post-conviction relief proceeding, the court will order the Clerk of the Court to refile the notice of appeal as a petition for review and transfer all records from the appeal to the post-conviction relief matter. If the document filed as a notice of appeal does not otherwise comply with the requirements for a petition for review set forth in Rules 32.16(c) or 33.16(c), the court will allow the defendant time to file a compliant petition.

_____/s/_____
Kent E. Cattani
Chief Judge, Division One
Arizona Court of Appeals