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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Nina Alley, as Guardian and Conservator for and on behalf of Louis Taylor, a single man,

Plaintiff,

vs.

Pima County, a body politic; The City of Tucson, a body politic,

Defendants.

No. 15-cv-00152-TUC-RM

JOINT MOTION TO RE-OPEN

(UNDER SEAL)

Judge Márquez

In this Court's March 14, 2025 Order (Doc. 1192) the parties were ordered to: (1) summarize the state trial court's resolution of Taylor's Petition for Post-Conviction Relief; (2) specify the pending issues in the above-captioned matter upon which the parties seek rulings; and (3) specify whether supplemental briefing on any pending issues is necessary considering the state trial court's ruling.

Plaintiff's Response:

(1) State Trial Court Resolution

On November 6, 2025, the state court denied Taylor's Petition for Post Conviction Relief, finding that: (a) Taylor failed to prove that the new evidence related to the sealed declarant was "newly discovered evidence"; (b) that Taylor's claim that he should be exonerated because the evidence did not establish that arson was committed was precluded by his nolo plea in the 2012-2013 proceeding in state court; and (c) that Taylor is "precluded" by his nolo plea from arguing his innocence. Ex. 1 (11/7/25 Under Advisement Ruling at p. 24).

The witness whose identity and information are presently "sealed" in this case testified during the PCR, and Taylor wishes to submit his testimony to this Court.

The Arizona Justice Project may appeal the ruling although Taylor's understanding is that this decision has not yet been made by the Project.

Taylor respectfully requests that a status conference at the Court's earliest convenience may be helpful to all.

(2) A.R.S. §13-4296

Earlier this year, the Arizona Legislature passed a new statute, A.R.S. §13-4296, which creates a right of compensation for "erroneously convicted" persons. Taylor

will assert a request for compensation under this statute. This statute creates a short timetable for the court entertaining the challenge. Under section (D), the Attorney General must respond within 30 days, and it may seek one 30-day extension for good cause. If the Attorney General does not object in its Response, the court would enter an order granting relief and then determine damages. If the Attorney General objects to the request, the court must hold an evidentiary hearing.

The statute becomes effective January 1, 2026 and Taylor intends to file it then. It is reasonable to expect a ruling by early 2026.

If that claim succeeded, *Heck*'s "favorable termination" requirement would likely be met.

When the Court reopens this matter, Taylor asks that this court set a trial date that will reasonably allow a ruling on his A.R.S. §13-4296 claim. Taylor emphasizes that this matter was filed more than 10 years ago and that Plaintiff is now in his 70s. Any further delays should and must be minimized.

(3) Requested Rulings

With one exception, Taylor requests that the Court rule on any motions he or the Defendants previously filed that the Court has not yet addressed. This includes but is not limited to Taylor's Motion for Order Re: Other Act Evidence (Doc. 1145), his Motion for reconsideration re: privilege (Doc. 1169) and Defendant's motion to "disregard" matters contained in Taylor's equitable estoppel Reply.

The Court also previously granted Taylor leave to refile his supplemental "equitable estoppel" exhibits (Doc. 1185) and his Motion to Reopen Discovery. Taylor wishes to refile both motions.

The exception is Taylor's request for equitable estoppel relief. While Taylor believes the court should entertain additional matters relating to potential application of equitable estoppel (Defendants' motion to "disregard" and Taylor's request to refile supplemental equitable estoppel exhibits), Taylor does not believe that a substantive equitable estoppel ruling is necessary until his §13-4296 claim is resolved. If Taylor were granted relief under §13-4296, this would likely satisfy *Heck*'s "favorable termination" requirement, which could affect whether this Court needs or wishes to rule on equitable estoppel.

The current equitable estoppel briefing is comprised of: Plaintiff's (redacted) Equitable Estoppel Motion (Doc. 1112) (Defendants' Response (Doc. 1157), Plaintiff's Reply (Doc. 1149), Defendants "Motion to Disregard" certain arguments raised in Plaintiff's Reply (Doc. 1151) and Taylor's Response (Doc. 1164)).

(4) <u>Supplemental Briefing</u>

Aside from previously filed motions that remain pending or motions that the Court has granted leave to refile, Taylor does not believe that any additional briefing is needed.

<u>Defendants' Response:</u>

(1) A Summary of the Trial Court's Resolution of Taylor's Petition for Post-Conviction Relief.

On November 7, 2025, in a 26-page ruling, the Pima County Superior Court denied Taylor's petition for post-conviction relief. Taylor understates and misstates the scope and findings contained therein. Defendants attach a copy of the court's order as Defendants' Exhibit 1 for the Court's review.

The superior court summarized Taylor's claim for post-conviction relief as follows:

> Taylor alleges that through investigation, he located Wallmark in the Arizona Department of Corrections, and that Wallmark was willing to testify that his trial testimony in 1972 was false. Taylor further alleges that Wallmark enlisted Jackson to testify falsely, and that Jackson knew nothing about the Pioneer fire until Wallmark enlisted his help. He contends that this information constitutes newly discovered evidence which would entitled him to relief. Additionally, Taylor claims that without Wallmark's testimony, no reasonable fact finder could find that his plea of no contest is supported by a factual basis.

(Def. Ex. 1 at 10.) The superior court held a four-day evidentiary hearing. Bruce Wallmark testified in open court on July 31, 2025. The superior court made the following findings:

- "Taylor's claim regarding fire science constituting newly discovered evidence was therefore addressed on its merits in the 2012 petition, and he waived any further challenge to whether it was in fact arson by pleading no contest. Accordingly, any claim for relief that is based solely on the argument that this fire could not be arson, is precluded here." (Def. Ex. 1 at 12.)
- "Taylor claims that Wallmark's willingness to admit his alleged perjury is newly discovered evidence. Assuming that Wallmark's recent admission to perjury in 1972 is true, this Court cannot find that it is, in fact, newly discovered." (Def. Ex. 1 at 13.)
- Taylor did not exercise "due diligence" in filing his petition for post-conviction relief as required by Rule 33.1(e). (Def. Ex. 1 at 14.)

- Wallmark's 2025 testimony did not "substantially undermine[] testimony that was of such critical significance that the impeachment evidence probably would have changed the judgment or sentence." (Def. Ex. 1 at 14.)

- "Even if the trier of fact were to take the substantial step of completely discrediting and ignoring the 1972 testimony, Wallmark's testimony was not the lynchpin to Taylor's convictions, and the factual basis for Taylor's plea would remain." (Def. Ex. 1 at 15.)

- "Wallmark's trial testimony regarding his conversations with Taylor simply was not the key to Taylor's conviction. The content of Wallmark's testimony was simple: he spoke to Taylor, Taylor admitted to being on the fourth floor, Taylor said he was stealing from rooms and that as he tried to get away when the fire began, and Taylor had been told that the fire was started by either matches or a lighter on the carpet. It was not an admission by Taylor to any wrongdoing directly connected to the fire. Nor was it evidence which was only available from Wallmark. At least two witnesses – David Johnson and Giles Scoggins – saw Taylor on the third floor near an area with easy access to the fourth at a time close to the start of the fire. In his statements to officials and witnesses, Taylor placed himself at various times anywhere between the first and seventh floors of the building and specifically told Det. Angeley that he saw two individuals of varying descriptions on the fourth floor at the time the fire started. Taylor went so far as to identify one of those individuals as having started the fire. Taylor also told Capt. Gilmore he was on the fourth floor of the hotel. Taylor was found to be in possession of matches when he was processed at the Juvenile Center, and at least one witness, Rodney Dingle, testified that Taylor told him he had

matches in his possession when he asked Dingle for a cigarette. Given all this other evidence, even if the Court were to eliminate Wallmark's trial testimony entirely – a logical step if Wallmark's 2025 testimony is to be believed – it cannot find that it probably would have changed the outcome of this case." (Def. Ex. 1 at 22–23.)

- "Wallmark's 2025 testimony does not substantially undermine Jackson's testimony in any meaningful way. When understood correctly, Wallmark simply states his belief that Jackson didn't know anything about the case and offers a potential motive for Jackson providing false testimony. Wallmark does not, and cannot, disprove Jackson with anything other than his opinion. He offers no new facts that substantially undermine Jackson's trial testimony. In fact, Wallmark's 2025 testimony is less impactful to Jackson's credibility than Jackson's post-trial statement which recanted his testimony, and which Jackson himself repudiated under oath." (Def. Ex. 1 at 23.)

- Wallmark's 2025 testimony "call[s] into significant question his credibility." (Def. Ex. 1 at 15, 21–22.)

- Wallmark's 2025 testimony "contained significant departures from the statements made in his 2022 interview and declaration." (Def. Ex. 1 at 20; *see also id*. at 21.) As just one (significant) example, contrary to his 2022 interview and declaration, Wallmark "denied being coached, coerced, or otherwise influenced on what to testify to" by either investigators or the prosecution; rather, he testified "it's all on me." (*Id*. at 20–21.)

- "The Court is not convinced that Wallmark's credibility can be bolstered" by his claim that his "prior affiliations render him vulnerable to physical harm, and that

this threat is exacerbated by his willingness to testify here. … Without being callous, the Court fails to see how Wallmark's willingness to testify exacerbates what was already the ultimate threat." (Def. Ex. 1 at 22.)

- "Because Taylor fails to prove by a preponderance of the evidence that Wallmark's trial testimony is of such critical significance that it probably would have changed the outcome of this case, he is not entitled to relief under Rule 33.1(e)." (Def. Ex. 1 at 23.)
- By pleading no contest in 2013, "Taylor is precluded from arguing here that no reasonable fact finder could find that the Pioneer Hotel fire was arson, and that therefore no reasonable fact finder could have convicted him." However, "[e]ven if the claim wasn't precluded, Taylor fails to meet the burden of clear and convincing evidence" under Rule 33.1(h). (Def. Ex. 1 at 24.)
- "From the entirety of [the] record, the fact remains that sufficient evidence supports a factual basis for Taylor's no contest plea. … Wallmark's 2025 testimony does not exonerate Taylor, nor does it undercut any of the other pieces of evidence from which a fact finder could find a factual basis for Taylor's no contest plea. Neither the jury that convicted him nor the Court that accepted Taylor's no contest plea required Wallmark's trial testimony to reasonably conclude that Taylor was on the fourth floor of the Pioner Hotel at the time the fire began, and that he was in possession of matches. That conclusion, in addition to the other evidence adduced in trial, including Taylor's multiple, inconsistent statements which tended to establish that he knew when and where the fire started and that he was present when it started, supported the factual basis for Taylor's convictions here. Because Taylor fails to prove by clear

and convincing evidence that no reasonable factfinder would find him guilty of the offense beyond a reasonable doubt, he is not entitled to relief under Rule 33.1(h)." (Def. Ex. 1 at 25.)

- "Taylor alleges that the State forced him to plead by 'threatening' to take the case all the way to the United States Supreme Court (cite). The Court respectfully disagrees with the conclusion that this somehow coerced Taylor's plea of no contest. A fair reading of the record on this issue establishes that the State was willing to allow a plea of no contest for time served, but that if Taylor insisted upon pursuing a hearing to attempt to obtain a dismissal of the case, the State would utilize the legal remedies available to it to defeat that request. It is imperative to note that the State, in permitting Taylor to plead no contest, was not exonerating Taylor. Quite the opposite. The State maintained then, and maintains now, that Taylor is guilty of these crimes. There was nothing improper about the State informing Taylor that it would follow whatever permissible legal avenues it could to maintain the convictions here." (Def. Ex. 1 at 24 n.21.)

(2) Pending Issues Upon Which the Parties Seek Rulings.

When the Court stayed this matter, it deferred ruling on Plaintiff's Memorandum Re: Equitable Estoppel. (Dkt. 1109.) Defendants maintain that that Memorandum can and should be denied *as a matter of law* for the reasons asserted in their Response. (*See* Dkt. 1157, Sections II.A, II.B, IV.) Nothing in Plaintiff's Memorandum (Dkt. 1109), Reply (Dkt. 1158), Supplemental Exhibit (Dkt. 1163), or Second Supplemental Exhibit (Dkt. 1180) provide a legal (or factual) basis to equitably

estop Defendants from asserting a *Heck* bar defense. The Court should deny the Memorandum now.

If the Court is not inclined to deny the Memorandum now, it should first rule on Defendants' Motion to Disregard New Arguments Re: Plaintiff's Reply Re: Equitable Estoppel (Dkt. 1159, 1164, 1170). That Motion asks the Court to disregard the new arguments raised in Plaintiff's Reply Re: Equitable Estoppel (Dkt. 1158) and strike Plaintiff's Supplemental Exhibit (Dkt. 1163). In the alternative, it asks the Court to allow Defendants an opportunity to file a sur-reply and submit a rebuttal expert report. The Court should also permit Defendants to file a supplemental response to the Memorandum in light of revelations during Taylor's post-conviction proceeding (discussed below).

Once the Court has **(1)** ruled on Defendants' Motion to Disregard New Arguments Re: Plaintiff's Reply Re: Equitable Estoppel and Defendants have filed **(2)(a)** a supplemental response to the Memorandum Re: Equitable Estoppel and **(2)(b)** any ordered sur-reply/rebuttal expert report, the Court should then **(3)** address Plaintiff's Memorandum Re: Equitable Estoppel. Defendants note that, in their Response to the Memorandum Re: Equitable Estoppel, they requested an opportunity to conduct certain discovery into Plaintiff's estoppel allegations if the Memorandum was not denied on the existing record. (*See* Dkt. 1157, Section V.) If the Memorandum is not so denied, then that discovery should take place before a final ruling. If the Court denies Plaintiff's Memorandum, then all pending motions relating to equitable estoppel (including, e.g., Dkt. 1169) should be denied as moot and a trial on Taylor's substantive claims can proceed.

The Court should not await an end to Plaintiff's planned cause of action under A.R.S. § 13-4296. *See* https://www.azleg.gov/legtext/57leg/1R/laws/0230.pdf. That new legislation, which is believed to have been drafted and pushed through by Plaintiff's counsel, will undoubtedly face a host of legal challenges. And if the statute survives, Plaintiff must still establish that he is entitled to relief. Even then, Defendants do not agree that success in that state court action will lift the *Heck* bar in this case. But regardless of how that forthcoming action turns out for Plaintiff, the Court should not wait around. The Court and Defendants waited nearly three years for Plaintiff to pursue his interlocutory appeal (Dkt. 81, 82, 102) and seventeen months while Plaintiff pursued post-conviction relief (Dkt. 1174), both attempts to lift the *Heck* bar. If anything, Plaintiff's decision to pursue yet another avenue to lift the *Heck* bar is even more reason to deny his request for equitable relief in this case and proceed only on his substantive claims.

(3) Supplemental Briefing on Pending Issues in Light of the Post-Conviction Proceeding.

Defendants request an opportunity to brief the following issues in light of revelations at Plaintiff's post-conviction proceeding.

Supplemental Response to Memorandum Re: Equitable Estoppel

If the Memorandum is not denied now, Defendants request leave to supplement their Response by providing the Court with additional evidence submitted and discovered during the post-conviction proceeding, which is in direct contradiction to what Plaintiff previously presented to this Court.

Renewed Motion for Summary Judgment

Plaintiff's § 1983 conspiracy claim is based, in part, on his allegation that Pima County and the City of Tucson threatened and/or coerced Bruce Wallmark and Robert Jackson to testify. In light of Wallmark's admission during his testimony at the post-conviction hearing that he was *not* threatened or coerced into testifying at Plaintiff's 1972 criminal trial (Def. Ex. 1 at 20–21), and that Jackson allegedly testified as a favor to him (not because of any coercion), Defendants request to file a renewed motion for summary judgment on that claim.

Potential Reconsideration of the Seal Order

The Court has gone to great lengths to protect the identity of the sealed Declarant. However, the sealed Declarant has now testified in public. His testimony has also undermined the Court's justification in keeping his identity sealed. The Court should be made aware of that testimony and the circumstances surrounding his appearance (including rulings by the superior court) so that it can reevaluate the need and/or scope of the current Seal Order.

Dated November 14, 2025

MILLER PITT, FELDMAN & McANALLY, P.C.

/s/ *Peter Timoleon Limperis*
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CITY OF TUCSON

/s/ *Michelle Saavedra*
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I hereby certify that on November 14, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECR System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECR registrants:

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DEFENDANTS' EXHIBIT 1

DEFENDANTS' EXHIBIT 1

FILED
JAMES W. GIACOMINO
CLERK, SUPERIOR COURT
11/7/2025 1:32:01 PM

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. CASEY F MCGINLEY

CASE NO. A019672

DATE: November 06, 2025

STATE OF ARIZONA
Plaintiff,

vs.

LOUIS C. TAYLOR
Defendant

UNDER ADVISEMENT RULING

UNDER ADVISEMENT RULING

Pending before the Court and fully briefed is Petitioner Louis Taylor's Petition for Post-Conviction Relief. The Court held an evidentiary hearing, taking testimony and hearing argument over the course of four days, and took the matter under advisement. Having reviewed the pleadings and the record, and having considered the testimony of witnesses, the arguments of counsel, and the relevant law, the Court respectfully denies relief.

FACTUAL BACKGROUND[1]:

> Just after midnight on December 20, 1970, a fire devastated the Hotel Pioneer in downtown Tucson. The landmark hotel was full of room guests and hundreds of people attending a Christmas party for Hughes Aircraft. Due in part to the lack of fire safety measures at the time, the fire quickly spread to numerous floors of the hotel trapping people in their rooms. Twenty eight people died from smoke inhalation, burns, or, in some cases, by falling to

[1] The record in this case is voluminous, involving numerous preliminary hearings and a jury trial which lasted over forty days. The transcripts provided on appeal to the Supreme Court alone exceeded ten thousand pages. The Court therefore summarizes the material facts necessary to decide the discrete issues before it, using facts established at trial, facts found in the Arizona Supreme Court Opinion affirming Taylor's convictions (*See State v Taylor,* 112 Ariz, 68, 537 P.2d 938 (1975), statements made in various transcripts and exhibits, and other reliable sources within the record.

Kim McGrath
Judicial Administrative Assistant

> their death from windows in an effort to save themselves or loved ones. By every account the scene was horrific and unimaginable. The toll on human life was beyond tragic. Many of the victims were from Mexico who had come to stay in downtown Tucson for Christmas shopping. Entire families were killed in the fire. Bystanders were horrified as they watched helplessly as victims jumped from their windows to their deaths. One person died months later from injuries sustained in the fire although that victim was never added to the indictment.[2]

Nearly fifty-five years later, the Pioneer Hotel fire remains one of the most tragic days in the history of Tucson. It is neither the magnitude of the tragedy nor the unimaginable loss of life that is a question before the Court. Instead, the question this Court must answer is whether Louis Taylor, the man was first convicted at trial and then pled no contest to 28 counts of first degree murder, is entitled to relief from those convictions because a witness now recants his trial testimony.

Shortly after midnight the morning of December 20, 1970, a busboy from a nearby establishment rushed into the main entrance of the Pioneer Hotel and told the desk clerk that someone was yelling "fire" from an upper floor window. Only a few minutes later, the clerk received a call from a woman on either the third or fourth floor who stated that there was a fire on the third floor and that she could smell smoke. A bellman was sent to investigate the call, and a custodian went along which him.

The pair took the elevator to the third floor. There, they encountered thick smoke. The custodian went back downstairs and updated the desk clerk, who in turn called the fire department at 12:20am. Still on the third floor, the custodian, David Johnson, observed a young man standing near the north staircase leading to the fourth floor. According to Johnson, the young man was looking up at the stairs and at the fourth floor landing, watching the fire. As Mr. Johnson tried to put out the fire with a fire extinguisher; the young man continued to watch the fire. That young man was soon identified as Louis Taylor.

Johnson went to the second floor of the hotel, where he found Giles Scoggins, the Pioneer's beverage manager. Scoggins helped Johnson find more fire extinguishers and the pair went to

[2] *Memorandum in Support of Stipulated Finding of Post-Conviction Relief and Plea Agreement,* filed April 1, 2013, Exhibit M to these proceedings.

Kim McGrath
Judicial Administrative Assistant

the third floor together. When Johnson arrived, it appeared to him as if Taylor had retrieved a fire hose from the hotel wall. Johnson attempted to unkink the hose and douse the fire to no avail. Scoggins arrived and Taylor told him that he saw two African American[3] youths who were fighting and started the fire. Scoggins was ultimately able to get the firehose unkinked but could not douse the fire. The fire then raged for approximately two hours.

Tucson Police personnel established a command center on the street near the Pioneer. At approximately 2am, Scoggins approached an officer at the command center and told him about his encounter with Taylor. Detectives and officers gathered information from Scoggins and then two officers went with him to search for Taylor. Scoggins observed Taylor on the third-floor roof area, and observed that Taylor was now wearing a white busboy jacket.

Taylor shed the jacket and approached Officer Lewis Adams. Taylor told Adams that there were "seven boys" running around on the seventh or eighth floor, and that they didn't belong there. Adams began to follow Taylor up the stairs to the fourth floor when Scoggins informed Adams that Taylor was the individual that they were searching for. Adams asked Taylor if he'd be willing to accompany Adams and his partner outside. Taylor agreed. As they were walking downstairs, Taylor remarked "It's awful somebody would set a fire like that." At this point, no one had determined that the fire had been "set."

After reporting to his supervisor, Adams took Taylor to a police station to obtain his statement. Adams permitted Taylor to sit in the front seat of his police car, telling Taylor that he wasn't under arrest. Adams did perform a pat down search of Taylor to ensure he possessed no weapons. Adams and Taylor were at the station by 2:44 am. Over the course of the next nearly seven hours, Taylor gave a series of statements to various law enforcement personnel[4]:

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[3] The Court notes that, as can be expected given the age of this case, much of the record uses racial descriptions that were common for the time, but have since become less prevalent (e.g. "Caucasian" or "Mexican.") Unless directly quoting from a transcript, the Court opts to use descriptions that are more common in current times, while not changing the meaning of the evidence.

[4] As the case progressed, there was much litigation about, and attention drawn to, the number of statements Taylor gave, whether he was properly advised of his rights, and whether the number, length and timing of his statements combined with his age at the time rendered them involuntary. This question was answered by the Arizona Supreme Court in *State v. Taylor,* 112 Ariz. 68, 537 P.2d 938 (1975). The finding that Taylor's statements were voluntary has been reviewed by both State and Federal courts, with an ultimate decision that they were voluntary.

Kim McGrath
Judicial Administrative Assistant

In a coffee room with multiple officers present, Taylor spoke to Sgt Rosetti, an individual with whom he had previous experience. Taylor told Rosetti that he had gone to the Pioneer to see a friend named Tatum who worked there, but that at the time he arrived, he was told Tatum had gone home. Taylor said he went inside the hotel anyway because he had seen hotel staff decorating for a party, so he was aware that there was a party inside. Once inside the hotel, he made it to the third floor, where he saw two African American males fighting, and during the fight, he saw a fire. Taylor said it was a very bad fire, and he didn't know why anyone would want to do a thing like that. He also reported helping firemen who were attempting to save the lives of people who were jumping from upper floor windows.

A few minutes later, Taylor was escorted by Adams to the main briefing room. There, Taylor gave a statement detailing how he went to the hotel to meet his friend Tatum, who was not there, and that he then discovered a party on the second floor. While on the second floor, a woman stated she smelled smoke and Taylor observed smoke coming through the air vents. Taylor said he then then proceeded to the third floor where he saw two boys – one Latino, and one White – running. Adams noted this was inconsistent with the statement given to Rossetti, read Taylor his *Miranda* warnings, and asked him to go over the facts again. This time, Taylor said he had gone to the third floor, where he encountered two men – one being the hotel manager – who were trying to extinguish the fire. One of the men asked Taylor to turn the hose but he was unsuccessful. Taylor said he then went downstairs at the manager's request to retrieve extinguishers. When those didn't ease the fire, Taylor helped people evacuate the hotel. Taylor also told Adams that he did, in fact, see two boys running in the hall sometime prior, but he thought they were trying to rob patrons, so he tried to get them to leave the hotel.

After the conversation with Adams, Detective Gassaway arrived. He was briefed by Adams on Taylor's and Scoggins' statements. Gassaway and a second detective, Murchek, escorted Taylor upstairs to a new room, and asked him to describe his activities beginning with the previous afternoon. Taylor reported that he went downtown with a friend, Mike Tatum, and then went to various sites downtown before going to the Pioneer, where he expected to meet Mike's brother for a ride. Once he discovered that Mike's brother had left, Taylor said that he stayed in the Pioneer at a party on the second floor. Taylor said that while he was speaking with

various friends on the second floor, a woman reported that she smelled smoke. Taylo said he observed a hotel manager running upstairs with a fire extinguisher and that he followed the manager to the third floor. Once on the third floor, Taylor said that he and the manager attempted to use a hose to put the fire out, that they were unsuccessful, and that the manager told him and others to leave the area. Taylor told detectives that on his way out, he observed a girl with burns, and that he also saw a long-haired Latino male and a White male fighting near the scene of the fire, but that he had only seen the backs of their heads. Det. Murchek asked Taylor to draw a diagram of where these events took place. Taylor complied, and the resulting drawing appeared to show Murchek two separate fires.

After the conversation involving the diagram, Det. Gassway left the interview room to talk with Scoggins and another hotel employee. Gassway reentered the room about 20 minutes later and confronted Taylor with his belief that Taylor was either lying about, or refusing to identify, the individuals he saw fighting in the hotel. Taylor was read his rights under *Miranda* for a second time. The only new information Taylor provided at this time was an admission that his friend Tatum did not work at the hotel, and that Taylor instead was there because he knew there would be a party and he hoped to encounter some friends there. When asked about his statements to Scoggins, Taylor – in what the Arizona Supreme Court referred to as a "heated exchange" – admitted that he was on the third floor before the hotel manager arrived, but that the manager must have been mistaken as to what he said, and that the police could not prove otherwise. Taylor also said he would not "fink" on the individuals he saw, and then changed his description of the individuals, claiming he saw five total people – three White and two Latino – who were attempting to enter a liquor storeroom. He also told Adams and that one of the individuals was in possession of a gun. Taylor concluded that one of those individuals must have started the fire. Adams asked Taylor directly if the fire was set while rooms were being burglarized, and Taylor responded, "I didn't kill those people." Taylor did, however, admit to donning the white busboy jacket so that he could steal drinks, before admitting that he put the jacket on after the fire began. Taylor adamantly and repeatedly denied responsibility for the fire.

Detectives Murchek, Moore, and Gassway briefed a fourth Detective, Angeley, on the investigation. Angeley had previously worked in the juvenile division and was familiar with

from prior investigations. He came into the interview room and spoke with Taylor alone. Taylor told Angeley that he was at the Pioneer to see an employee named Grigsby but was denied entrance by hotel. Taylor then returned saying that he wanted to see Tatum but was again denied entry. Nonetheless, Taylor said that he entered the hotel and that he hung around a party on the second floor. Taylor told Angeley that he saw two individuals on the fourth floor (first describing them as African American and then describing them as Latino), one of whom had a gun, whom he observed starting the fire. He was unable to give any further description of these two individuals. Taylor later claimed to Angeley that one of the pair was White and the second was a "hippy" Latino whom he recognized as a drug dealer, and whom he claimed started the fire.

A short time after the statement to Det. Angeley, Captain Gilmore of the Tucson Fire Department interrogated Taylor. Taylor told Gilmore that he heard a woman say that she smelled smoke and that he ran up to the fourth floor, where he saw the fire in progress. Gilmore repeatedly accused Taylor of starting the fire himself; Taylor repeatedly denied the accusation.[5]

Based on the information obtained up to this point, detectives placed Taylor under arrest. While a juvenile report was being written, Detective Smith interviewed Taylor after ensuring that Taylor was provided with his *Miranda* warnings yet again. Taylor told Smith that he went to the Pioner because he was aware there'd be a party, that he observed four Latino individuals looting rooms and tried to restrain one of them, but that he could not do so because he was told to go home. Taylor suggested that one of the Latino individuals must have started the fire because of a "look in his eye". When asked if he started the fire, Taylor responded, "No, I didn't want to kill all those people."

By 9:30 a.m., Taylor had participated in eight different interviews over the course of seven hours. Within those interviews, Taylor provided often contradictory accounts of his reasons for being in the hotel, where in the hotel he had been, and what he had observed. Taylor was taken to a receiving room at the Juvenile Detention Center. At this time, Taylor was searched for the first time. Detectives discovered that he was carrying five books of matches. Detective Smith

[5] At some point, Taylor expressed a willingness to complete a polygraph exam, and one was completed. The Court does not consider the polygraph for purposes of this Petition.

would later testify that four of the matchbooks contained anywhere from one to seventeen matches while the fifth book was empty.

Taylor was charged with 28 counts of first degree murder and one count of arson. The arson charge was subsequently dismissed. At trial, both the State and the Defense called experts who provided opinions that the fire was arson. The State's expert, Cyrus Holmes, opined that the fire began in two separate areas, that matches alone would not have started the fire, and that he did not believe a liquid accelerant was used. Taylor's expert, Marshall Smyth, agreed that the fire was arson, but opined that the fire had only one point of origin.

Dozens of other witnesses testified at the trial, including Bruce Wallmark and Robert Jackson. Both Wallmark and Jackson were juveniles at the time of the fire, and both claimed to have had conversations with Taylor about the fire. Wallmark testified that he had several conversations with Taylor at the Juvenile Detention Center, and that Taylor told him that Taylor and two others were attempting to steal wallets, money, and televisions from rooms the night of the fire. He further testified that Taylor stated that he and his cohorts were almost caught so they decided to run. Wallmark said that Taylor noticed a fire had begun as he was trying to escape the hotel. According to Wallmark, police told Taylor that the fire began with matches or a lighter being placed against the carpet. Wallmark never claimed that Taylor admitted to starting the fire.

Jackson did not testify in the State's case in chief. Instead, the State was permitted to re-open its case for the purpose of his testimony. Jackson testified that while the pair were both housed at the Juvenile Center, Taylor told him that he had found a can of lighter fluid in the hotel and that he was squirting lighter fluid on the wall, lighting it, and extinguishing the flames with his hand. Jackson claimed that Taylor had been repeating this procedure when he thought he heard someone approaching him in the Hotel, so he left the area. Per Jackson's testimony, Taylor returned to the area, but by that time the fire was too big to extinguish, so he ran.

At the conclusion of the jury trial, Taylor was convicted of 28 counts of felony murder and sentenced to concurrent life sentences. Soon after trial, Jackson gave a statement to Taylor's trial counsel wherein he attempted to recant his testimony. Taylor filed a motion for a new trial based on that recantation. At the time set for the hearing, Taylor's trial counsel indicated that he

not only had a statement from Jackson, but that he also intended to call Wallmark as a witness, stating that Wallmark "indicated that his previous testimony was also false…." *Exh*. AZ[6] at p. 67.

Jackson was the first witness to be called, and he was provided counsel before he took the stand, as well as while testifying. On the advice of counsel, Jackson initially invoked his Fifth Amendment protections and declined to answer any questions. The trial court granted him immunity against prosecution for perjury for his trial testimony[7]. Thereafter, upon inquiry from Taylor's counsel, Jackson testified that his trial testimony was accurate. *Exh*. AZ at p.77-79. Taylor's counsel asked for a brief recess in the proceedings, indicating his surprise at Jackson's testimony. Before that request could be resolved, Jackson asked if the Court would like to know why he had recanted his testimony in his Phoenix statement, and he stated the following:

> The main reason is I don't like people on my back, you know, I don't like to be threatened. I would rather get that testimony dropped from the records, you know. That is what I would like. But, if I got up here and told you I lied, then I would just be perjuring myself, and I'm not going to do it.

Id. at 80.

Taylor's counsel told the Court that he believed Wallmark was willing to recant his trial testimony, although he acknowledged that Jackson's testimony at the hearing gave him pause:

> The testimony I hope to elicit through other witnesses, and based on what has happened to change Mr. Jackson, I have the feeling it is going to happen with some of these others like the boy arrested out there; in any event, I am prepared at the moment to establish that during the course of the trial, before the defense had rested, when Jackson and Wallmark were in Tucson, after Bruce Wallmark had escaped and subsequent to that, but still during the trial, that Wallmark made statements about having lied and that Jackson made admissions about having lied about Taylor's statements.

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[6] A transcript of this hearing was admitted in the Evidentiary Hearing on the instant Petition as Exhibit AZ, so the Court refers to it by that designation.

[7] In granting Jackson immunity, the Court made clear that if Jackson admitted he had lied during Taylor's trial, he could not be prosecuted for perjury regarding his trial testimony. However, the Court made clear, and Jackson indicated his understanding, that if he committed perjury at the hearing on the Motion for New Trial, he could be prosecuted.

Id. at 91-92.[8] Taylor's counsel was permitted to make a series of proffers, as well as to testify regarding his investigation and the diligence he exhibited in collecting statements from Jackson and others. No other witnesses were called, and the request for a new trial was denied.

In August 1972, Jackson's older brother submitted an affidavit alleging that he, Robert Jackson, and Wallmark had all been threatened with prosecution if they did not testify against Taylor. This formed the basis for a second motion for new trial, which was also denied. Taylor's convictions and sentences were ultimately affirmed on appeal by the Arizona Supreme Court. Taylor sought federal habeas relief as to the Arizona Supreme Court's ruling that his statements to police on December 20, 1970, were voluntary, which was ultimately unsuccessful.

Taylor filed his first Petition for Post-Conviction Relief in December 1984. In that Petition, Taylor argued that his statements to police were the fruit of an illegal detention and should have been suppressed. The trial court denied the Petition, and that denial was affirmed by the Arizona Supreme Court.

Taylor filed a second Petition for Post-Conviction Relief on October 12, 2012. Of particular import to the instant Petition, Taylor alleged that new developments in fire science called into question the validity of any opinion that the Hotel Pioneer fire was arson.[9] In support of the Petition, evidence was established that the Arson Review Committee published a report which was critical of the analyses conducted for trial and opined that the fire could only be classified as "undetermined." The State requested that the Tucson Fire Department conduct its own review of the case. TFD attempted to review the evidence that still existed, and applying the appropriate methodology for the time, concluded that an origin cause determination was not possible. The TFD report noted that it was unable to review the scene and that certain pieces of evidence had been destroyed in the intervening years, which made certain analysis impossible. The State's

[8] The "boy arrested out there" was a reference to a witness named James Higgins, an associate of both Wallmark and Jackson, who was apparently arrested on an unrelated matter upon his arrival to the courthouse. The Court ordered that Higgins could not be removed from the courthouse, and he remained available to Taylor's counsel for testimony if needed.

[9] This Second Petition for Post-Conviction Relief also alleged that and that the State engaged in misconduct by not properly disclosing a report which found no evidence of accelerants in the fire, that the prosecutor engaged in ex parte communications with the trial court, that a detective impermissibly had contact with a dismissed juror, and that the prosecutor otherwise acted unethically during trial. Those allegations did not form the basis for relief in 2013.

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trial expert, who at the time still conducted fire analysis and was aware of the updated methodology, maintained his original opinion that the fire was arson.

In response to Taylor's second Petition, the State argued that no Arizona court had, at the time, found that advancement of arson techniques and fire science constituted newly discovered evidence as that term was defined by State law, but noted that at least one other jurisdiction had drawn such a conclusion. The State conceded that "if that were the result in the instant case, the state of the evidence is such that the State would be unable to proceed with a retrial, and the convictions would not stand." *Memorandum in Support of Stipulated Finding of Post-Conviction Relief and Plea Agreement,* filed April 1, 2013, Exhibit M, at p. 10. Accordingly, the State conceded "solely under the singular and unique facts of this particular case that advances in fire science investigation constitute newly discovered evidence." *Id.* Based on that concession, the State stipulated to the Court granting Taylor a new trial so long as Taylor agreed to plead no contest to 28 counts of first degree murder in order to receive a time-served sentence. The Court accepted this plea and sentenced Taylor accordingly on April 2, 2013.

Taylor filed the instant Petition in 2023. Taylor alleges that through investigation, he located Wallmark in the Arizona Department of Corrections, and that Wallmark was willing to testify that his trial testimony in 1972 was false. Taylor further alleges that Wallmark enlisted Jackson to testify falsely, and that Jackson knew nothing about the Pioneer fire until Wallmark enlisted his help. He contends that this information constitutes newly discovered evidence which would entitle him to relief. Additionally, Taylor claims that without Wallmark's testimony, no reasonable fact finder could find that his plea of no contest is supported by a factual basis.

LAW AND ANALYSIS:

Precluded Claims

Because he pled no contest, Taylor has may seek relief only on specific grounds:

(a) the defendant's plea or admission to a probation violation was obtained, or the sentence was imposed, in violation of the United States or Arizona constitutions;
(b) the court did not have subject matter jurisdiction to render a judgment or to impose a sentence on the defendant;

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> **(c)** the sentence as imposed is not authorized by law or by the plea agreement;
> **(d)** the defendant continues to be or will continue to be in custody after his or her sentence expired;
> **(e)** newly discovered material facts probably exist, and those facts probably would have changed the judgment or sentence. Newly discovered material facts exist if:
>
> (1) the facts were discovered after sentencing;
> (2) the defendant exercised due diligence in discovering these facts; and
> (3) the newly discovered facts are material and not merely cumulative or used solely for impeachment, unless the impeachment evidence substantially undermines testimony that was of such critical significance that the impeachment evidence probably would have changed the judgment or sentence.
>
> **(f)** the failure to timely file a notice of post-conviction relief was not the defendant's fault;
> **(g)** 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; or
> **(h)** the defendant 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.

Ariz. R. Crim. P. 33.1. Any claim raised in a petition pursuant to Rule 33.1 may be subject to preclusion:

> A defendant is precluded from relief under Rule 33.1(a) based on any ground:
>
> 1. waived by pleading guilty or no contest to the offense;
> 2. finally adjudicated on the merits in any previous post-conviction proceeding;
> 3. waived in any previous post-conviction proceeding, except when the claim raises a violation of a constitutional right that can only be waived knowingly, voluntarily, and personally by the defendant.

Ariz. R. Crim. P. 33.2(a). Preclusion is not absolute. "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)." Ariz. R. Crim. P. 33.2(b)(1). "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." *Id.*

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Much of Taylor's current Petition examines the arson investigations completed in 1970, the changes in fire science that have occurred since that time, and subsequent arson investigations which have been unable to conclude that the Pioneer Hotel fire was arson. To be sure, the latter investigations took issue with the conclusions drawn by both the State and defense experts testified that this fire was arson. However, that information was known to Taylor, and was raised by him, in his 2012 Petition for Post-Conviction Relief. Indeed, it was this very concern – that the State feared it could not prove that the fire was arson – which led the State to stipulate to a new trial based on newly discovered evidence and to permit Taylor to plead no contest in exchange for a time served sentence. Taylor's claim regarding fire science constituting newly discovered evidence was therefore addressed on its merits in the 2012 petition, and he waived any further challenge to whether it was in fact arson by pleading no contest. Accordingly, any claim for relief that is based solely on the argument that this fire could not be arson, is precluded here.

Taylor's Claim of Newly Discovered Evidence Under Rule 33.1(e)

A petitioner may be entitled to relief where "newly discovered material facts probably exist, and those facts probably would have changed the verdict or sentence." Ariz. R. Crim. P. 33.1(e). Newly discovered material facts exist if:

1. the facts were discovered after sentencing;

2. the defendant exercised due diligence in discovering these facts; and

3. the newly discovered facts are material and not merely cumulative or used solely for impeachment, unless the impeachment evidence substantially undermines testimony that was of such critical significance that the impeachment evidence probably would have changed the judgment or sentence.

Id. Taylor bears the burden of proving factual allegations in his petition by a preponderance of the evidence. Ariz. R. Crim. P. 32.11(c); *See also State v. Verdugo*, 183 Ariz. 135, 139, 901 P.2d 1165, 1169 (App. 1995).

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Motions for new trials based on newly discovered evidence are disfavored, and granted cautiously. *State v. Serna*, 167 Ariz. 73, 374, 807 P.2d 1109, 1110 (1991), *citing State v. Schantz,* 102 Ariz. 212, 214, 427 P.2d 530, 532 (1967). When the evidence is overwhelming such that the newly discovered evidence would not change the conviction or sentence, the petitioner has not brought a colorable claim, and relief should be denied. *State v. Apelt*, 176 Ariz. 349, 369, 861 P.2d 634, 654 (1993). The Court is entitled to end its analysis if a defendant fails to establish that the evidence is, in fact, newly discovered. *See State v. King*, 250 Ariz. 433, 439, 480 P.3d 1250, 1256 (App. 2021) ("To secure post-conviction relief, King had the burden to prove *each* requirement of Rule 32.1(e), beginning with "the first requirement" that her post-conviction diagnosis was "in fact" newly discovered and ending there if unproven.: *citing State v. Bilke*, 162 Ariz. 51, 53, 781 P.2d 28, 30 (1989) *Serna*, 167 Ariz. at 374, 807 P.2d at 1110; *State v. Harper*, 64 Wash.App. 283, 823 P.2d 1137, 1143-44 (1992) (holding that due diligence prong "need[ ] not be addressed" where new psychiatric opinion did not meet first prong).

Taylor claims that Wallmark's willingness to admit his alleged perjury is newly discovered evidence. Assuming that Wallmark's recent admission to perjury in 1972 is true, this Court cannot find that it is, in fact, newly discovered. Taylor has adamantly and repeatedly denied setting fire to the Pioneer Hotel. From the moment Wallmark and Jackson claimed to have discussed the fire with Taylor, Taylor was in the unique position to know whether he had had such conversations with them. Wallmark's willingness to testify in Taylor's favor now does not change the simple fact that Taylor would have known whether Wallmark and Jackson's testimony was false at the moment it was uttered. The only newly discovered evidence is Wallmark's willingness to testify that he lied in 1972.

However, even that does not appear to be a recent development. The transcript of the hearing on Taylor's first motion for new trial establishes without question that Taylor had evidence that Wallmark and Jackson both had recanted their trial testimony as false by May of 1972.[10]. Taylor therefore possessed evidence of the witness' potential recantations in 1972.

[10] It is important to note that Wallmark himself testified in the instant proceedings that he made a statement recanting his testimony shortly after trial, before giving a statement to Detective Angeley which indicated his trial testimony was true. *See* R.T. July 31, 2025, at p. 59-61. That Wallmark had recanted his testimony was therefore known by Taylor and was the subject of investigation in the months following the trial.

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Because That Wallmark himself is only now willing to testify about that recantation does not change the fact that it first occurred in 1972, nor does it make it newly discovered under the law.

The Court could end its analysis here. However, because Taylor has the right to seek review of this decision, the Court finds it prudent to analyze the remaining factors outlined in Rule 33.1(e) to produce the most complete record possible of the Corts ruling.

The Court is not convinced that Taylor exercised due diligence in bringing this information to the Court, as is required by Rule 33.1(e)(2). Taylor had the opportunity to present the information he had regarding Wallmark in 1972 during the hearing on his motion for new trial. Beginning in May 1972, Taylor and his then counsel were on notice of both Wallmark and Jackson's alleged recantations but did not call Wallmark or witnesses other than Jackson to testify in support of his allegations. It is unclear on the record before this Court what efforts, if any, Taylor or his counsel undertook to locate individuals who could establish that Wallmark or Jackson's trial testimony was untrue or otherwise attempt to investigate and litigate the issue further. As noted below, Wallmark alleged in his statement and testimony that others overheard his conversations with Taylor – a ripe area for investigation given the events post-trial. Taylor had ample opportunity, over numerous decades, to investigate Wallmark, Jackson, and their associates to readily disprove the testimony, including at times when such associates would have been more readily known, identified, and available.[11] Taylor failed to do so. Thus, Taylor does establish due diligence as required by Rule 33.1(e)(2).

Taylor's claim also fails to satisfy Rule 33.1(e)(3). If believed, Wallmark's new testimony is purely impeachment – repudiation of his prior testimony and impeachment of Jackson's credibility. Accordingly, Taylor must prove that Wallmark's 2025 testimony "substantially undermines testimony that was of such critical significance that the impeachment evidence probably would have changed the judgment or sentence." Taylor fails to meet this burden.

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[11] Indeed, Taylor presented this Court with testimony from a witness who was friends with Wallmark in 1972 and who testified as to his racist motivations, his admission to false testimony at that time, and to her extreme discomfort with this admission. Taylor does not credibly explain why he could not have located this witness in 1972 when he sought a new trial, in 2006 when the Arizona Innocence Project began examining his case, or in 2012 when he filed his successful Petition for Post-Conviction Relief.

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Wallmark's new testimony clearly renounces what he said in 1972, However, there are significant issues regarding Wallmark's recent allegations which call into significant question his credibility. These concerns make it difficult to find that a trier of fact would be able to discount Wallmark's trial testimony altogether based on his 2025 testimony. Even if the trier of fact were to take the substantial step of completely discrediting and ignoring the 1972 trial testimony, Wallmark's testimony was not the lynchpin to Taylor's conviction, and the factual basis for Taylor's plea would remain.

To properly understand why this is so, it is necessary to provide a thorough history of the statements Wallmark made regarding Taylor's involvement in the Pioneer Hotel fire. Wallmark first gave a statement to Sgt. Moore on August 11, 1971.[12] In that Statement, Wallmark told authorities that he first met Taylor in approximately January 1971 – one month after the fire – in the Pima County Juvenile Court Center. Wallmark indicated that he was in a living unit at the Center with Taylor and identified other juveniles who were housed in the same unit. He told authorities that he spoke with Taylor "several times" about various topics, including the Fire.

Wallmark told authorities that Taylor told him that Taylor and two other individuals were on the fourth floor of the hotel stealing wallets, money, and TVs from various hotel rooms. Wallmark relayed that Taylor said that he almost got caught and that the three decided to run. As they were running down the stairs, a fire was starting on the fourth floor. While the two friends were able to escape, police were on scene by the time Taylor tried to leave the hotel, so Taylor said that he went back inside to attempt to help people escape from the fire. Wallmark told Moore that Taylor had been informed that the fire started on the fourth floor by someone dropping either a book of lit matches or a lit lighter on the carpet. It is important to note that Wallmark never claimed that Taylor admitted to starting the fire himself.

Wallmark's trial testimony began on February 25, 1972[13]. On that day, Wallmark testified in a manner largely consistent with his August 11, 1971, statement. He also testified that two juveniles, named Estrada and Kern, were present for his conversation with Taylor about how the fire started, and that he was aware that Taylor had similar conversations with other juveniles in

[12] Exhibit AD, admitted in the Evidentiary Hearing on the instant Petition.
[13] Exhibit AE, admitted in the Evidentiary Hearing on the instant Petition.

the housing unit. As part of Wallmark's testimony, the assigned prosecutor read Wallmark's August 11, 1971, statement into evidence. On cross examination, Wallmark testified that he was never told who started the fire, and that it was the police who told Taylor the fire started on the fourth floor. During cross examination, an issue arose regarding whether certain reports had been provided to Taylor counsel. Counsel ceased cross examination to permit him the opportunity to review any such reports provided by the State.

On the evening of February 25, 1972, Wallmark fled from the hotel where he was staying during the trial. He was apprehended rather quickly and brought back to conclude his testimony on February 28, 1972[14]. On that day, Wallmark testified that he was not told who was in the hotel with Taylor. He also repeated his testimony that the information about the fire starting on the fourth floor was something that the police provided to Taylor, not something that Taylor alleged to know firsthand. Finally, Wallmark testified that Taylor never told him that he saw the fire start, much less who started it.

On May 5, 1972, Wallmark signed a sworn affidavit regarding his testimony in the Taylor trial.[15] In that affidavit, Wallmark said that his trial testimony was true. He stated that in the time between trial and the date of the affidavit, two individuals identifying themselves as investigators with the Public Defender visited him at the jail and showed him a piece of paper that was covered in its entirety except for the signature of Robert Jackson. Wallmark said the investigators claimed that the document was an affidavit wherein Jackson admitted his testimony was untrue and that they also had affidavits from James Hoggins and John Swearinger to the same effect. Wallmark stated in his affidavit that he told the investigators that the affidavit was "either a lie or a mistake" as he didn't believe Jackson would ever sign such a document. Wallmark specifically denied ever telling anyone that his trial testimony was false.

Later in this affidavit, Wallmark stated that, the next day, two other investigators from the Public Defender's office visited him and confirmed that they had an affidavit from Jackson. However, they stated that the affidavit was "not for the reason they told him." Wallmark

[14] Exhibit AF, admitted in the Evidentiary Hearing on the instant Petition.
[15] Exhibit 1, admitted in the Evidentiary Hearing on the instant Petition.

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indicated that he told these investigators that his trial testimony was the truth. The investigators asked Wallmark if Detective Angeley or any member of the County Attorney's Office promised him anything in exchange for his testimony, and Wallmark denied receiving anything. When investigators alleged that Angeley had given Jackson something in return for his testimony, Wallmark denied that this had occurred. Wallmark stated in his affidavit that he spoke with Jackson in March of 1971 about the Taylor case. In that conversation, Jackson told Wallmark that Taylor had admitted starting the fire by squirting lighter fluid on the walls of the hotel.

On May 23, 1972, shortly after Taylor's bid for a new trial was denied, Wallmark gave an interview to Detective Angeley regarding his trial testimony.[16] In this statement, Wallmark told Angeley that student investigators with the Public Defender's office visited him at the Pima County Jail with a piece of paper which they claimed was an affidavit allegedly signed by Jackson saying that Wallmark's trial testimony was false. The investigators covered portions of the paper but claimed they knew that both Jackson and Wallmark had been promised something in return for their testimony. Wallmark told Angeley that he told the investigators that neither he nor Jackson received anything in exchange for their testimony. Wallmark also told Angeley that he was offered immunity by a lawyer who worked with Taylor's trial counsel if he would be willing to admit his trial testimony was false, but he declined the offer because his trial testimony was true. At the conclusion of the statement, when Angeley asked whether Wallmark wanted to add anything to his statement, Wallmark said "Yeah, that I've never been promised anything by Rex Angeley or any member of the Tucson Police department or County Attorney's Office [inaudible] Louis Taylor trial." *Exh. AG* at p. 3. The contents of this interview were reduced to a sworn affidavit which contained largely the same information.[17]

On May 5, 2022, Wallmark participated in an interview with an investigator and counsel working for Taylor.[18] In that interview[19], Wallmark stated that he had numerous contacts with

[16] Exhibit AG, admitted in the Evidentiary Hearing on the instant Petition.
[17] Exhibit 2, admitted in the Evidentiary Hearing on the instant Petition.
[18] As noted in the Petition, Taylor's counsel tried in 2006 to find Wallmark and get a statement from him. That year Wallmark denied being the individual who had testified in Taylor's trial. After various contact from an investigator working with Taylor, Wallmark in 2022 admitted that he did in fact testify and that he was willing to give a statement.

law enforcement during his teen years and identified Detectives Hust and Walsh as individuals with whom he had frequent contact. Wallmark told Taylor's investigators that he joined the Marine Corps at age 17, permitting a waitress that he knew at a diner to sign his mother's name, and that after graduating from boot camp he came to Tucson on a ten-day leave. He claimed that during that leave, Hust and Walsh tracked him down, threw him against the hood of car, handcuffed him, and accused him of being in a stolen vehicle and of participating in a recent burglary.

Wallmark told the investigators that Hust and Walsh took him to the Juvenile Detention Center, where he did, in fact, meet Taylor. Wallmark recounted how Hust pulled him out of the unit to inquire what Taylor was saying, and to specifically inquire whether Taylor admitted possessing matches. He also told investigators that over time, Hust "spoon fed" him information against Taylor, and that Hust and Walsh promised to either help him get back in the Marines or help him him "get out of the case" that he was in custody for in exchange for evidence against Taylor. Wallmark alleged that Hust visited him "dozens" of times, sometimes alone and sometimes with other detectives.

As a result, Wallmark told Taylor's investigators that Hust had him "scared to death" and that he "manipulated" the young Wallmark into working with him. Wallmark claimed that Hust had undertaken similar actions in other cases, too, including manipulating him into confessing to crimes he did not commit. Wallmark related Hust took him to Fort Grant to talk to other juveniles and get them to say similar things and promise that they'd receive leniency if they did. Wallmark claimed that Hust maintained this effort even after Wallmark testified *Id.* at p.56.

Wallmark made specific claims that Hust, and others, undertook efforts to coach his testimony:

> Wallmark: And they took me - - would take me from that room over to this prosecutor's room and we would go over my statement and all that kind of stuff. Correct 'em - -
> Herf: And - - and go over what they expected you to say?
> Wallmark: My - - my statement - - my statement and all that
> Downer: Your - - your testimony. Your future testimony.

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[19] Exhibit AK, admitted in the Evidentiary Hearing on the instant Petition.

Wallmark: Yeah.

Id. at p. 71. He also claimed that members of the prosecution team would encourage him to modify his answers, saying things such as "maybe you should, you know, not say this or say this, you know?" *Id.* at p. 72. Wallmark told Taylor's counsel and investigator that he went along with this because he "was under the fear tactic of Hust". *Id.* at p. 73, because they promised to help him get back into the Marines. *Id.*

Wallmark remembered testifying for one day and that he was supposed to return the next day. He recalled that "got scared about something," and that he therefore "took off" but did not identify what that "something" that scared him was. Wallmark recalled that he went to a friend's house, and that he was discovered there by Walsh in relatively short order, perhaps only one or two days after he left Phoenix. He alleged that Walsh slammed him against a car again, and that Walsh was angry at him.

Wallmark claimed that everything he testified to at Taylor's trial was untrue, and that it was all information that to which Hust directed him to testify. Wallmark stated that Taylor never made any statements to him about the Pioneer Hotel fire. Wallmark also claimed that the language in his August 11, 1972, statement was not language he would use, and that it was not, in fact, his statement. Wallmark also claimed that he had multiple conversations with Robert Jackson about his involvement in the Taylor case, that Jackson agreed to support him, and that everything Jackson knew about the case came from Wallmark.

The May 5, 2022, interview resulted in a sworn declaration signed by Wallmark the same day.[20] In the declaration, Wallmark stated that Taylor never made any admissions to him, that he was "threatened and coerced to testify" by at least one Tucson police officer, and that the prosecutor was aware that he "offered schooled testimony." Wallmark stated that Hust asked him to recruit other witnesses and coached or told him what his testimony "needed to be." Wallmark claimed that he felt immense pressure to testify, and that he therefore testified as to what Hust and the Pima County Attorney's office influenced him to say. Wallmark again claimed that any information provided by Jackson was untrue, as Jackson didn't know anything about the Taylor case except for what Wallmark had told him.

[20] Exhibit AJ, admitted in the Evidentiary Hearing on the instant Petition.

Wallmark was called as Taylor's first witness in the evidentiary hearing on the instant Petition. Much of his testimony was consistent with the information provided in his interview with Taylor's investigative team and in his declaration: that he was in juvenile with Taylor, that he was aware of Taylor and of his charges, and that he never had any conversations with Taylor about the fire or his involvement therein. He again stated that he was on leave from the Marines when he was arrested for a burglary with which he was never charged and also because he was a runaway from a previous juvenile placement. Wallmark additionally testified that, while on the run from trial, he ran into Robert Jackson, told him about his experience in trial, briefed him on his testimony, and that Jackson offered to assist him by supporting his testimony. Wallmark testified as to his belief that Jackson didn't know anything about the Taylor case, and that any information Jackson had must have come from Wallmark.

However, Wallmark's testimony contained significant departures from the statements made in his 2022 interview and declaration. Instead of being approached "dozens" of times by Hust and others, Wallmark testified that, sometime in August 1971, he was approached by Hust to give a statement on the Taylor matter. He testified that he and Hust had multiple conversations before any statement was reduced to writing, and that he recalled being asked if Taylor made any statements about being on the fourth floor. Instead of being coached into what to say, Wallmark testified:

> I believe, if I remember correctly, that I was asked if Louis ever made any statements about being on the fourth floor. And then being in that sort of, for lack of a better term, survival mode I was in to not want to get in trouble with the Marine Corps, to not lose my position there, to not go to jail, all those things, and being a kid, when I heard that, I believe I just ran with it. Just sort of cued me on what he was looking for.

R.T. July 31, 2025, p.29. When asked specifically if he was told what to say, Wallmark denied the same, saying, "No. He never -- he never instructed me to say something specifically. It was me. It was all me. Only wrong that was done here, it's all on me." *Id.* Later, when asked a similar question, Wallmark again testified that Hust was not to blame for his trial testimony in any way,

saying, "You know, I don't want it to look like I'm trying to vilify Hust because I'm not. I don't know the man. That was all on me. I was the only one there lying at that point." *Id.,* at p. 41

Contrary to what he had said in his 2022 interview and declaration, Wallmark denied being coached, coerced, or otherwise influenced on what to testify. He said that in meetings with the prosecution in preparation for trial, the prosecution agents told him

> Just to read [his statement] and make sure that I -- remembering what I had said and to articulate that. They didn't say it in those words, but they basically were telling me to articulate to the jury what I had on the statement.

Id. at p44. He specifically agreed that any information he provided came from information he "gleaned from previous statements from law enforcement" and "from conversations I overheard or I may have overheard in the room by the adults talking around me." *Id.* at p. 49.

There are several reasons to question the credibility of Wallmark and his 2025 testimony. First and foremost amongst them is the fact that the Wallmark's recollections have not only changed since 1971 and 1972 but have changed remarkably from the recollections he had in talking with Taylor's investigators in 2022. In 2022, Wallmark was adamant that he was coached, coerced, threatened, and otherwise plied into testifying a certain way, against a threat of criminal charges and or a prohibition of his returning to the military. In 2025, Wallmark testified that it was "all [him]." In 2022, Wallmark related that he was told with specificity what to say by investigators and prosecutors, and that he felt threatened by the lead detective. When called to testify under oath, in public, Wallmark gave a different history of the case – one where he, and he alone, decided to fabricate his testimony and that the police and prosecutors took no part in his deception. In 2022, Wallmark said that he talked to Robert Jackson "numerous" times about the Taylor case, and in those conversations told Jackson about the case and his testimony. In 2025, Wallmark testified that he talked to Jackson once, while he was on the run from trial. This last statement stands in stark contrast to Wallmark's 1972 affidavit where he said he spoke with Jackson in March of 1971.

Inconsistencies in recall are to be expected in a case as old as this one, especially lapses in memory of the events of 1972. However, what cannot be understood or explained are the glaring inconsistencies between Wallmark's 2022 statements and his 2025 testimony. While the

underlying theme of Wallmark's testimony is consistent – that he lied at trial – the surrounding circumstances vary wildly. In 2022, Wallmark wanted Taylor's team to believe that he was coerced and threatened. In 2025, he wants this Court to believe it was his own doing. These are not the types of inconsistencies one would expect from a credible witness. The inconsistencies offered by Wallmark – offered at a time when he was supposedly doing this for his own benefit and to clear his conscience – do little to assure the Court that it can take Wallmark's word as credible.

Taylor urges the Court to consider that Wallmark testified at great risk to his own safety, and that such enhances his credibility. Taylor has repeatedly pointed out that Wallmark's prior affiliations render him vulnerable to physical harm, and that this threat is exacerbated by his willingness to testify here. The Court is not convinced that Wallmark's credibility can be bolstered on this basis. By 2022, Wallmark had already renounced his affiliation with certain organizations, resulting in certain precautions to be taken to ensure his safety. It has been opined by Taylor, and this Court has no reason to contest, that this renunciation alone put Wallmark at great personal peril including the risk of physical harm, if not death. Without being callous, the Court fails to see how Wallmark's willingness to testify exacerbates what was already the ultimate threat.

Regardless, even if the Court were to find Wallmark's 2025 testimony credible, the fact remains that Wallmark's trial testimony regarding his conversations with Taylor simply was not the key to Taylor's conviction. The content of Wallmark's testimony was simple: he spoke to Taylor, Taylor admitted to being on the fourth floor, Taylor said he was stealing from rooms and that as he tried to get away when the fire began, and Taylor had been told that the fire was started by either matches or a lighter on the carpet. It was not an admission by Taylor to any wrongdoing directly connected to the fire.

Nor was it evidence which was only available from Wallmark. At least two witnesses – David Johnson and Giles Scoggins – saw Taylor on the third floor near an area with easy access to the fourth at a time close to the start of the fire. In his statements to officials and witnesses, Taylor placed himself at various times anywhere between the first and seventh floors of the building and specifically told Det. Angeley that he saw two individuals of varying descriptions on

the fourth floor at the time the fire started. Taylor went so far as to identify one of those individuals as having started the fire. Taylor also told Capt. Gilmore he was on the fourth floor of the hotel. Taylor was found to be in possession of matches when he was processed at the Juvenile Center, and at least one witness, Rodney Dingle, testified that Taylor told him he had matches in his possession when he asked Dingle for a cigarette. Given all this other evidence, even if the Court were to eliminate Wallmark's trial testimony entirely – a logical step if Wallmark's 2025 testimony is to be believed – it cannot find that it probably would have changed the outcome of this case.

As it relates to Jackson, Wallmark's 2025 testimony does not substantially undermine Jackson's testimony in any meaningful way. When understood correctly, Wallmark simply states his *belief* that Jackson didn't know anything about the case and offers a potential motive for Jackson providing false testimony. Wallmark does not, and cannot, disprove Jackson with anything other than his opinion. He offers no new facts that substantially undermine Jackson's trial testimony. In fact, Wallmark's 2025 testimony is less impactful to Jackson's credibility than Jackson's post-trial statement which recanted his testimony, and which Jackson himself repudiated under oath.

Because Taylor fails to prove by a preponderance of the evidence that Wallmark's trial testimony is of such critical significance that it probably would have changed the outcome of this case, he is not entitled to relief under Rule 33.1(e).

Taylor's Claim under 33.1(h)

Taylor is entitled to relief if he demonstrates by clear and convincing evidence that the facts underlying his claim are sufficient to establish that no reasonable factfinder would find him guilty of the offense beyond a reasonable doubt. Ariz.R.Crim.P. 33.1(h). In other words, as posed by Taylor, the question before the Court is whether, after excising the testimony of Wallmark, sufficient evidence remains which supports Taylor's plea of no contest. Evidence is clear and convincing if it makes "'the thing to be proved ... highly probable or reasonably certain.'" *Parker v. City of Tucson*, 233 Ariz. 422, 436, 314 P.3d 100, 114 (Ct. App. 2013), quoting *Kent K. v. Bobby*

M., 210 Ariz. 279, ¶ 25, 110 P.3d 1013, 1018–19 (2005). The Court finds that Taylor fails to meet this burden.

Like a guilty plea, a plea of no contest "is an admission of guilt for the purposes of the case." *Hudson v. United States*, 272 U.S. 451, 455, 47 S.Ct. 127, 129, 71 L.Ed. 347 (1926). In a no contest plea, "a defendant does not expressly admit his guilt, but nonetheless waives his right to a trial and authorizes the court for purposes of the case to treat him as if he were guilty." *North Carolina v. Alford*, 400 U.S. at 35, 91 S.Ct. at 166. "[T]here is no significant difference between a plea of guilty with a protestation of innocence and a plea of no contest. As noted above, under Arizona law, both pleas are authorized if they are voluntarily and intelligently entered. *State v. Stewart*, 131 Ariz. 251, 254, 640 P.2d 182, 185 (1982). As is the case with a plea of guilty, there must be an adequate factual basis to support a plea of no contest. Ariz.R.Crim.P. 17.3(a).

As noted above, Taylor is precluded from arguing here that no reasonable fact finder could find that the Pioneer Hotel fire was arson, and that therefore no reasonable fact finder could have convicted him. All the evidence to which Taylor points regarding the scientific examinations, their conclusions, and the challenges thereto were both known to Taylor in 2012 and argued by him in his Petition that year. Taylor had every opportunity to fully litigate this claim in 2012. Instead, he chose to plead no contest and receive a time served sentence. By so doing, Taylor acknowledged then, with the same evidence, that a factual basis could be found to support the claim that the Pioneer Hotel fire was arson. He therefore waived his ability to seek relief on this specific ground when he entered his plea.[21]

Even if the claim wasn't precluded, Taylor fails to meet the burden of clear and convincing evidence. The factual basis is not limited to the memo or to that which was said in the 2013 change of plea and sentencing hearing. It can be drawn from the entire universe of evidence

[21] Taylor alleges that the State forced him to plead by "threatening" to take the case all the way to the United States Supreme Court (cite). The Court respectfully disagrees with the conclusion that this somehow coerced Taylor's plea of no contest. A fair reading of the record on this issue establishes that the State was willing to allow a plea of no contest for time served, but that if Taylor insisted upon pursuing a hearing to attempt to obtain a dismissal of the case, the State would utilize the legal remedies available to it to defeat that request. It is imperative to note that the State, in permitting Taylor to plead no contest, was not exonerating Taylor. Quite the opposite. The State maintained then, and maintains now, that Taylor is guilty of these crimes. There was nothing improper about the State informing Taylor that it would follow whatever permissible legal avenues it could to maintain the convictions here.

Kim McGrath
Judicial Administrative Assistant

gathered and presented over the long history of this case. From the entirety of that record, the fact remains that sufficient evidence supports a factual basis for Taylor's no contest plea.

Both experts at trial deemed this fire arson. The State's expert maintained that opinion, even with the advancement of arson investigation and technology. His opinion must be considered strongly because he observed and examined the fire itself and was directly aware of the condition of the building. A subsequent arson investigation conducted by the Tucson Fire Department could not rule arson out, nor could it conclusively prove arson was the cause, but those reviews were based on evidence as it existed long after the fire, at a time when evidence had been lost or destroyed.

Wallmark's 2025 testimony does not exonerate Taylor, nor does it undercut any of the other pieces of evidence from which a fact finder could find a factual basis for Taylor's no contest plea. Neither the jury that convicted him nor the Court that accepted Talor's no contest plea required Wallmark's trial testimony to reasonably conclude that Taylor was on the fourth floor of the Pioner Hotel at the time the fire began, and that he was in possession of matches. That conclusion, in addition to the other evidence adduced in trial, including Taylors multiple, inconsistent statements which tended to establish that he knew when and where the fire started and that he was present when it started, supported the factual basis for Taylor's convictions here. Because Taylor fails to prove by clear and convincing evidence that no reasonable factfinder would find him guilty of the offense beyond a reasonable doubt, he is not entitled to relief under Rule 33.1(h).

For the reasons set forth above,

IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief is respectfully **DENIED.**

Kim McGrath
Judicial Administrative Assistant

/s/
HON. CASEY F. MCGINLEY
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