

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

ANDREW ANTHONY USHER, *Petitioner*.

No. 1 CA-CR 14-0658 PRPC
FILED 9-27-2016

Petition for Review from the Superior Court in Maricopa County
No. CR2008-009407-049
The Honorable Roland J. Steinle, III, Judge, *Retired*

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Diane Meloche
Counsel for Respondent

Ballecer & Segal, LLP, Phoenix
By Natalee E. Segal
Counsel for Petitioner

STATE v. USHER
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Diane M. Johnsen, Judge Jon W. Thompson and Chief Judge Michael J. Brown delivered the decision of the court.

PER CURIAM:

¶1 Andrew Anthony Usher petitions this court for review from the dismissal of his successive post-conviction relief petition. Usher pled guilty to attempted possession of marijuana for sale in March 2010, and the superior court imposed probation. Usher argues his counsel was ineffective when he incorrectly advised Usher that his conviction would not affect Usher's immigration status. Usher argues he did not learn of the consequences of counsel's error until 2013, when deportation proceedings began.

¶2 Usher's claim is precluded because he could have raised it in his first petition for post-conviction relief. Ariz. R. Crim. P. 32.2(a). Usher argues he did not know his lawyer had given him faulty advice until two years after he entered the plea. But his failure to realize that his lawyer had not properly advised him until deportation proceedings began is not a cognizable exception from preclusion under Rules 32.2(b) and 32.1(f) (defendant is without fault in failing to file a timely notice of post-conviction relief). *State v. Poblete*, 227 Ariz. 537, 539-40, ¶¶ 6-7 (App. 2011).

¶3 Accordingly, we grant review but deny relief.



AMY M. WOOD • Clerk of the Court
FILED: AA