

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Respondent*,

*v.*

ANTONIO AGUILAR, *Petitioner*.

No. 1 CA-CR 14-0777 PRPC  
FILED 11-29-2016

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Petition for Review from the Superior Court in Maricopa County  
No. CR2005-008712-001  
The Honorable M. Scott McCoy, Judge

**REVIEW GRANTED; RELIEF DENIED**

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APPEARANCES

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

Antonio Aguilar, Phoenix  
*Petitioner Pro Se*

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**MEMORANDUM DECISION**

Judge Patricia A. Orozco delivered the decision of the Court in which  
Presiding Judge Andrew W. Gould and Judge Peter B. Swann joined.

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STATE v. AGUILAR  
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O R O Z C O, Judge:

¶1 Antonio Aguilar petitions for review of the summary dismissal of his second notice of post-conviction relief and his motion for rehearing. We have considered the petition for review and, for the reasons stated, grant review and deny relief.

¶2 A jury convicted Aguilar of theft of means of transportation, and he was sentenced as a repetitive offender to a prison term of 11.25 years. This court affirmed his conviction and sentence on appeal. *State v. Aguilar*, 1 CA-CR 06-0175 (Ariz. App. Jan. 25, 2007) (mem. decision).

¶3 The superior court dismissed Aguilar's first petition for post-conviction relief in 2008. In 2014, Aguilar filed an untimely and successive notice of post-conviction relief indicating intent to raise a claim of newly discovered evidence with respect to a violation of his right against double jeopardy. Finding Aguilar failed to state a claim for which relief could be granted in an untimely and successive post-conviction relief proceeding, the superior court summarily dismissed the notice.

¶4 We review the summary dismissal of a post-conviction relief proceeding for abuse of discretion. *State v. Bennett*, 213 Ariz. 562, 566, ¶ 17 (2006). Furthermore, we may affirm the superior court's ruling "on any basis supported by the record." *State v. Robinson*, 153 Ariz. 191, 199 (1987).

¶5 The superior court properly dismissed Aguilar's notice of post-conviction relief. Although a claim of newly discovered material facts is one that can be raised in an untimely or successive post-conviction relief proceeding, Ariz. R. Crim. P. 32.2(b), Aguilar's factual allegations fail to meet the requirements for a claim of newly discovered material facts. *See* Ariz. R. Crim. P. 32.1(e). Specifically, the alleged fact that he was previously indicted and arraigned on the same offense was undisputedly within his knowledge when he was re-indicted on that offense. Consequently, under no circumstances can it be said to be a fact that was only "discovered after the trial." *See* Ariz. R. Crim. P. 32.1(e)(1). And because the notice of post-conviction relief was properly dismissed, no basis for relief exists for the manner in which the superior court addressed Aguilar's motion for rehearing.

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¶6

Accordingly, although we grant review, we deny relief.



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