

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

HILARIO VASQUEZ, *Petitioner*.

No. 1 CA-CR 15-0450 PRPC  
FILED 6-20-2017

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Appeal from the Superior Court in Maricopa County  
No. CR2009-142391-004  
The Honorable Warren J. Granville, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By D. Matthew Conti  
*Counsel for Respondent*

Hilario Vasquez, Eloy  
*Petitioner*

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**MEMORANDUM DECISION**

Judge Donn Kessler delivered the decision of the Court, in which Presiding Judge Margaret H. Downie and Judge Kenton D. Jones joined.

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**K E S S L E R**, Judge:

¶1 Petitioner Hilario Vasquez petitions this Court for review from the dismissal of his petition for post-conviction relief. In 2010, the superior court found Vasquez guilty of conspiracy and transportation of marijuana for sale in an amount over the statutory threshold, both class 2 felonies. Before trial, Vasquez waived his right to counsel, and advisory counsel was appointed. Vasquez was sentenced to 15.75 years' imprisonment. At sentencing, the court notified Vasquez of his right to appeal and provided him with the standard notice of rights of review after conviction and procedure. Vasquez acknowledged receipt of the notice by signing the form.

¶2 Vasquez did not pursue a direct appeal. Instead, more than eighteen months after sentencing, he filed a motion entitled: "Secured Party's Motion for Hearing, Pursuant to Supplemental Rule E(4)(F) and Relief Pursuant to Rule 60(C)(4)(5)(6), Actual and Constructive Notice, Judicial Notice Required Pursuant to Rules of Evidence 201 and 44 et seq." The superior court construed this filing to be a request for permission to file a delayed notice of appeal and ordered the State to respond to the request. The State opposed the notice and Vasquez responded, clarifying that his intent was not to file a delayed notice of appeal but to seek relief via the Civil Rules of Procedure. Ultimately, the superior court denied the request for a hearing.

¶3 In June 2012, Vasquez filed a petition for post-conviction relief. In his petition, Vasquez explained that he had been confused during the entire criminal case process and that this was compounded by his waiver of counsel. Vasquez did not argue he was not at fault for the delayed notice of appeal and he did not argue that the delay was due to his assumption that advisory counsel had filed a notice of appeal in a timely manner. The superior court found that Vasquez sufficiently raised a colorable claim to permit the proceeding to move forward. The court appointed counsel to investigate the potential claims which may entitle Vasquez to post-conviction relief.

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¶4 Counsel filed a petition for post-conviction relief wherein the relief sought was permission to file a delayed notice of appeal. In that petition, counsel, for the first time, asserted that fault was directly attributable to trial advisory counsel for failing to file the timely notice. The superior court denied Vasquez's petition and Vasquez sought review. Division Two of this Court accepted transfer of the petition for review and granted relief; remanding the matter to the superior court for an evidentiary hearing to determine whether Vasquez was entitled to a delayed appeal pursuant to Rule 32.1(f).

¶5 The superior court conducted an evidentiary hearing. At this hearing, Vasquez remembered the court instructing him that he had twenty days to file a notice of appeal. In fact, at sentencing, the court explained that if Vasquez failed to file a notice of appeal within twenty days, Vasquez would forever lose that right. Finally, the court told Vasquez at sentencing,

You file it with the Clerk. And [your advisory counsel] will give you that paperwork or make sure that—make sure you tell him that you want it done, and he'll take care of it. All right? He has to do it within 20 days, and failure to file that notice within 20 days means you forever lose your right to appeal.

At the evidentiary hearing, Vasquez indicated that was an accurate recounting of what the court informed him.

¶6 Following the hearing, the superior court found that Vasquez was at fault for failing to file a timely appeal. Because Vasquez was at fault, the court held he was not entitled to seek a delayed appeal. The court further found that it was without jurisdiction to consider the matter further.

¶7 In his petition for review, Vasquez asserts his advisory counsel was directed by the judge to file a notice of appeal, and it was his counsel's obligation to follow the directive of the court. He argues the court abused its discretion by not finding his counsel had been ordered to file the notice of appeal.

¶8 We review the superior court's findings of fact after an evidentiary hearing to determine if they are clearly erroneous. *State v. Herrera*, 183 Ariz. 642, 648 (App. 1995) (citations omitted). "In reviewing a decision on a hearing for post-conviction relief, we must view the facts in the light most favorable to sustaining the lower court's ruling, and we must resolve all reasonable inferences against the defendant." *State v. Sasak*, 178

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Ariz. 182, 186 (App. 1993) (citation omitted). We will affirm if the court's ruling is based on substantial evidence. *Id.* (citation omitted).

¶9 Here, substantial evidence supports the superior court's ruling. Vasquez signed a one page form that clearly outlined his right to appeal and his right to post-conviction relief, including the deadlines. Although Vasquez did not supply this Court with the sentencing transcript, the portions cited in the evidentiary hearing indicate the superior court explained the process to Vasquez. At the evidentiary hearing, Vasquez testified he remembered the court instructing him that he had twenty days to file a notice of appeal. Finally, there is no evidence the court ordered Vasquez's advisory counsel to file a notice of appeal. Rather, the court informed Vasquez his counsel could assist with the filing process if he asked his counsel for help.<sup>1</sup>

¶10 For the reasons stated above, we grant review but deny relief.



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

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<sup>1</sup> Vasquez also argues in his petition for review that, after remand by Division Two, the State used evidence at the evidentiary hearing which this Court held could not be used. Vasquez does not identify that evidence. Accordingly, we will not address that issue. *State v. Donald*, 198 Ariz. 406, 413, ¶ 17 (App. 2000) ("A petitioner need not provide detailed evidence, but must provide specific factual allegations that, if true, would entitle him to relief.").