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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. LONGINO E. VALDEZ, Petitioner.	2 CA-CR 2012-0030-PR DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR051831

Honorable Richard E. Gordon, Judge

REVIEW GRANTED; RELIEF DENIED

Lori J. Lefferts, Pima County Public Defender
By Dawn Priestman
Tucson
Attorneys for Petitioner

E C K E R S T R O M, Presiding Judge.

¶1 Petitioner Longino Valdez seeks review of the trial court's order denying and dismissing his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Valdez has not sustained his burden of establishing an abuse of discretion here.

¶2 In May 1996, Valdez entered a plea agreement and pleaded guilty to an attempted sexual abuse committed on April 8, 1995. The plea agreement authorized a prison sentence between .33 and two years and included the following language: "Defendant understands that he is pleading to a chapter 14 Offense of the Criminal Code, Title 13, A.R.S., and may be required to register in the county of his residence pursuant to A.R.S. § 13-3821." And, in addressing Valdez at the change-of-plea hearing, the trial court asked whether he understood that he could be required to register in the county of his residence as a sex offender, along with other consequences of his guilty plea, and Valdez answered affirmatively. At sentencing, Valdez was sentenced to one year in prison and was ordered to "register as a sex offender and [to] comply with the registration statutes pursuant to A.R.S. [§] 13-3821." The court advised him, "You also, because you've pled guilty, have the right to file a Rule 32 petition. You must file that petition within 90 days of today's date or you lose your right to file that petition." Valdez also received and signed a written notice of his right to post-conviction relief that included the following admonition:

> In order to exercise your post-conviction relief right, . . . [y]ou must file a Notice of Post-Conviction Relief . . . within 90 days of the entry of judgment and sentence if you do not file, or you do not have the right to file, a Notice of Appeal. . . . If you do not timely file a Notice of Post-Conviction Relief, you may never have another opportunity to have any errors made in your case corrected by another court.

¶3 Acting in propria persona, Valdez filed a timely, of-right notice of post-conviction relief, and appointed Rule 32 counsel filed a petition stating he had "reviewed all the available documents," "ha[d] been unable to find any claim to substantiate" the ineffective assistance of counsel that Valdez was "apparently alleging," and "believe[d] that [Valdez]'s sentence was within that prescribed by law and that he was, in fact, effectively represented by trial counsel." Counsel also averred that he had written to Valdez on two occasions and that Valdez had not responded to requests that he contact the attorney's office. The trial court then granted Valdez leave to file a supplemental petition, consistent with *Montgomery v. Sheldon*, 181 Ariz. 256, 259-60, 889 P.2d 614, 617-18 (1995), but that order was returned as undeliverable to Valdez. After no supplemental petition was filed, the court dismissed Valdez's Rule 32 petition in December 1996. The court's dismissal order also was returned to the court as undeliverable, marked as "moved left no address / unable to forward."

¶4 On June 9, 2011, Valdez filed a "delayed Petition for Post-Conviction Relief," arguing his claims were excepted from preclusion under Rule 32.2(b), Ariz. R. Crim. P., "because, through no fault of his own, he never received notice that he was entitled to file his own petition, once his trial attorney and [Rule 32] counsel failed to

raise the errors in his case."[1] He maintained the trial court had been without statutory authority to order him to register as a sex offender and argued both trial and Rule 32 counsel had been ineffective in failing to raise this issue.

¶5 After an evidentiary hearing, the trial court denied and dismissed Valdez's petition for post-conviction relief in a well-reasoned and detailed ruling, noting the petition was "some fifteen years late." The court found his claims precluded and rejected his argument that he was "'without fault'" for failing to raise his claims in a timely manner, and also denied his claims on their merits. In his petition for review, Valdez suggests "no law or authority" supports the court's conclusion that his claims are untimely or precluded and argues the court "err[ed]" in its analysis of the merits of his claims. We find no abuse of discretion in the court's ruling.

¶6 As an initial matter, we recently have observed that although Rule 32.1(f) provides relief for a defendant who is without fault for failing to file a timely notice of post-conviction relief of right, no provision in Rule 32.1 applies to a defendant who contends he is not at fault for failing to perfect that notice by filing a timely petition. *State v. Diaz*, 228 Ariz. 541, ¶ 10, 269 P.3d 717, 720 (App. 2012). Thus, as we explained in *State v. Poblete*, relief under Rule 32.1(f) is appropriate "if the trial court failed to advise the defendant of his right to seek of-right post-conviction relief or if the defendant intended to seek post-conviction relief in an of-right proceeding and had believed

[1]Because Valdez's first Rule 32 proceeding had been dismissed in 1996, we construe, as the trial court appears to have, his "delayed petition" as incorporating a notice and petition in a second Rule 32 proceeding. In his petition for review, Valdez acknowledges that "[t]his is a second petition for post-conviction relief in this case."

mistakenly his counsel had filed a timely notice or request." 227 Ariz. 537, ¶ 6, 260 P.3d 1102, 1104 (App. 2011), *citing* Ariz. R. Crim. P. 32.1(f) 2007 amended cmt. Here, Valdez did file a timely notice of post-conviction relief, but failed to maintain contact with the court or his appointed counsel after his release from prison, and so did not receive notices mailed by the court, including the notice granting him an opportunity to file a pro se petition. Because a notice of post-conviction relief was filed timely, Rule 32.1(f) does not apply here to except Valdez's claims, otherwise cognizable under Rule 32.1(a), from the rule of preclusion. *See* Ariz. R. Crim. P. 32.4(a) ("Any notice not timely filed may only raise claims pursuant to Rule 32.1(d), (e), (f), (g) or (h).").

¶7 Moreover, Rule 32.2(b) requires summary dismissal of an untimely notice of post-conviction relief that fails to include "meritorious reasons . . . why the claim was not stated . . . in a timely manner." Valdez fails to address the trial court's extensive discussion of his nearly fifteen-year delay in filing for post-conviction relief on his claims, and we cannot say the court abused its discretion in finding he had failed to state meritorious reasons for such a delay.[2]

¶8 Thus, in a thorough, well-reasoned ruling, the trial court correctly determined that Valdez's untimely petition should be dismissed for failure to comply with the requirements of Rule 32. That order is sufficient to allow this or any other court

[2]In a single sentence, Valdez relies on *Stewart v. Smith*, 202 Ariz. 446, 46 P.3d 1067 (2002), to assert that "the grounds upon which he seeks relief are of sufficient constitutional magnitude to require a knowing and voluntary waiver of relief, [and] he should not be precluded from having his issues finally adjudicated." Any such issue has been waived; we do not consider case citations mentioned "in passing" and not fully developed as arguments on appeal. *State v. Moody*, 208 Ariz. 424, n.11, 94 P.3d 1119, 1154 n.11 (2004).

to review and determine its propriety, and no purpose would be served by restating the court's ruling in its entirety. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Rather, we adopt the ruling.

¶9 Although we grant the petition for review, we deny relief.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge