

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK
OCT 31 2012
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0208-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
CHARLES WILLIAM PARSONS,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20063573

Honorable Jose Robles, Judge Pro Tempore

DISMISSED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Charles William Parsons

Florence
In Propria Persona

E S P I N O S A, Judge.

¶1 On June 26, 2012, Petitioner Charles Parsons filed a petition for review of the trial court’s April 2011 denial of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. He also challenges the court’s order denying his May 21, 2012, motion requesting a hearing on whether, as he alleged, he never received notice of the court’s ruling and asking the court to construe that motion as “a Notice of Appeal.” For the following reasons, Parsons’s petition for review is dismissed.

¶2 Ordinarily, a Rule 32 petitioner who seeks appellate review of the actions of the trial court must file a petition for review within thirty days after the trial court’s final decision on the petition for post-conviction relief. Ariz. R. Crim. P. 32.9(c). The trial court may, “after being presented with proper evidence, allow a late filing” if it finds that a petitioner was not responsible for an untimely filing under Rule 32.9 and that the late filing would not prejudice the state. *State v. Pope*, 130 Ariz. 253, 255, 635 P.2d 846, 848 (1981); *see also* Ariz. R. Crim. P. 32.9(c) (“Motions for extensions of time to file petitions [for review] . . . shall be filed in and ruled upon by the trial court.”).

¶3 Here, the trial court could have construed Parsons’s May 21 motion as a request for leave to file a delayed petition for review and considered whether Parsons had sustained the “heavy burden in showing the court why the non-compliance [with Rule 32.9] should be excused.” *Pope*, 130 Ariz. at 256, 635 P.2d at 849. But it did not do so. Absent an express motion by Parsons requesting the trial court’s leave for late filing under Rule 32.9, and a ruling by that court allowing a delayed petition for review, Parson’s petition for review is untimely and unauthorized.

¶4

Accordingly, Parsons's petition for review is dismissed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge