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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OF ARIZONA, Respondent, v. PEDRO GABRIEL VELASQUEZ, Petitioner.	2 CA-CR 2012-0326-PR DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. S1200CR201000185

Honorable James A. Soto, Judge

REVIEW GRANTED; RELIEF DENIED

Law Offices of Matthew H. Green
By Matthew H. Green — Tucson
Attorney for Petitioner

H O W A R D, Chief Judge.

¶1 Petitioner Pedro Velasquez seeks review of the trial court's order summarily denying his untimely 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). We find no abuse here.

¶2 Velasquez pled guilty to attempted possession of marijuana for sale and the trial court suspended the imposition of sentence and placed him on a three-year term of probation that included a ninety-day jail term. As a result of that conviction, Velasquez, a Mexican citizen and lawful permanent resident of the United States, subsequently was transferred to federal custody and ordered removed from the United States.

¶3 Velasquez then filed a combined notice of and petition for post-conviction relief arguing, pursuant to *Padilla v. Kentucky*, ___U.S. ___, 130 S. Ct. 1473 (2010), that his trial counsel was ineffective for advising him that he would not be deported as a result of his guilty plea and in referring him to a non-lawyer "immigration professional" who gave similar advice and had told him that, "if Immigration got hold of [him]," she could secure his release and that he "had a very easy case." Velasquez acknowledged his petition was untimely, *see* Ariz. R. Crim. P. 32.4(a), but argued *Padilla* was a significant change in the law permitting him to raise his claim in an untimely petition pursuant to Rule 32.1(g) and that his failure to timely seek relief should be excused pursuant to Rule 32.1(f).

¶4 The trial court denied relief after an evidentiary hearing. The court found counsel had been ineffective, but that Velasquez's untimely claim did not fall within Rule 32.1(f) or (g). It concluded that Rule 32.1(g) was inapplicable because *Padilla* had been decided well before Velasquez had been charged. Velasquez "conced[ed]" that our decision in *State v. Poblete*, 227 Ariz. 537, 260 P.3d 1102 (2011), determined *Padilla* was not applicable retroactively and therefore made relief under Rule 32.1(g) "unavailable in Mr. Vela[s]quez' situation." But he argued that case was wrongly decided. The court further determined, relying on *Poblete*, that Rule 32.1(f) did not apply because Velasquez's only basis for the late filing was that he had discovered he would face removal proceedings only after the time for seeking post-conviction relief had passed.

¶5 On review, Velasquez does not address the trial court's ruling that Rule 32.1(f) does not excuse his untimely attempt to seek post-conviction relief. His sole argument is instead that Rule 32.1(g) applies and, to that end, he identifies purported errors in our retroactivity analysis in *Poblete*. But Rule 32.1(g) and the retroactivity of *Padilla* are entirely irrelevant here. As the court correctly noted, *Padilla* was decided well before Velasquez was charged; thus, his case clearly was not final, and *Padilla* would apply to his case had he made a timely claim. *See State v. Febles*, 210 Ariz. 589, ¶ 7 & n.4, 115 P.3d 629, 632 & n.4 (App. 2005) (non-retroactive decision applies to convictions not yet final at time of decision).

¶6 Velasquez does not address the portion of *Poblete* relevant to Rule 32.1(f) relied on by the trial court, *see Poblete*, 227 Ariz. 537, ¶¶ 6-7, 260 P.3d at 1104-05, and, in any event, we find no error in the court's determination that Rule 32.1(f) does not excuse Velasquez's untimely filing. We therefore adopt the court's thorough analysis. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court's correct ruling in a written decision").

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

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

CONCURRING:

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

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

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed August 15, 2012.