

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 22 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0371-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
MARILEE ELSA GREEN-LEE,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2009131478001DT

Honorable Pamela D. Svoboda, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Marilee E. Green-Lee

Goodyear
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Pursuant to a plea agreement, petitioner Marilee Green-Lee was convicted in 2010 of manslaughter and possession of a dangerous drug for sale. The trial court sentenced her to concurrent aggravated and presumptive prison terms, the longer of which is fifteen years. Green-Lee filed a notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., and counsel filed a memorandum pursuant to Rule 32.4(c), stating she had found no colorable claims for relief and requesting Green-Lee be permitted to file

a supplemental petition for post-conviction relief. When Green-Lee had not filed a pro se petition for post-conviction relief within the prescribed time period, the court dismissed the notice in January 2011.¹ Green-Lee filed an additional notice of post-conviction relief in April 2011, which the court summarily dismissed the following month. She filed a third notice of post-conviction relief in July 2011, the dismissal of which is the subject of this petition for review.² Absent a clear abuse of discretion by the trial court, we will not disturb its ruling. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.2d 945, 948 (App. 2007). We find no such abuse here.

¶2 On review, Green-Lee contends she was unable to file a timely notice of post-conviction relief through no fault of her own, asserting her untimely filing was “[b]ased upon [Rule 32] counsel’s findings and lack of legal knowledge.” *See* Ariz. R. Crim. P. 32.1(f) (defendant’s failure to file notice of post-conviction relief of-right within prescribed time without fault on defendant’s part). Green-Lee also raises three claims of ineffective assistance of trial and Rule 32 counsel, as she did in the notice below.

¶3 In its minute entry ruling dismissing Green-Lee’s third notice of post-conviction relief, the trial court first briefly summarized the procedural history of the case. The court then correctly concluded that Green-Lee had not established why she

¹In its January 2011 ruling dismissing Green-Lee’s first notice, the trial court stated it had ordered the petition for post-conviction relief filed by November 8, 2010. Although it appears the court misspoke regarding the due date, its order was nonetheless entered well after the time period contemplated in its November 2, 2010, order granting Green-Lee a forty-five-day extension to file a pro se petition.

²Although Green-Lee entitled the pleading now before us a motion for rehearing, we treat it as a petition for review.

should be permitted to file an untimely, successive notice of post-conviction relief, and noted that her claims of ineffective assistance of counsel are, in any event, precluded. Based on the record before us, we cannot say the court abused its discretion in dismissing Green-Lee's notice of post-conviction relief. The court did so in a detailed ruling that clearly identified the nature of Green-Lee's arguments and correctly ruled on them in a manner that will allow any court in the future to understand their resolution. We therefore approve and adopt the court's ruling and see no need to restate it here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶4 We grant the petition for review but deny relief.

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

CONCURRING:

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

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