

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

SHAYKH MUHAMMAD ALSAUD,
Petitioner.

No. 2 CA-CR 2015-0285-PR
Filed January 6, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County
No. CR20130740001
The Honorable Christopher Browning, Judge

REVIEW DENIED; JURISDICTION DECLINED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Shaykh Muhammad Alsaud, Florence
In Propria Persona

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Staring concurred.

ESPINOSA, Judge:

¶1 Shaykh Alsaud seeks review of the trial court's order denying various motions and dismissing his notice of post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We deny review pursuant to Rule 32.9(c) and, to the extent Alsaud seeks special action relief, we decline jurisdiction.

¶2 Alsaud pled guilty to kidnapping and was sentenced to a ten-year prison term. Before his sentencing, Alsaud submitted a variety of pro se filings, including a notice of post-conviction relief attempting, inter alia, to raise a claim of ineffective assistance of counsel pursuant to Rule 32, a motion seeking to withdraw from his guilty plea, and a motion seeking an evaluation pursuant to Rule 11, Ariz. R. Crim. P. The trial court denied those motions, noting Alsaud's attempt to raise claims pursuant to Rule 32 was premature because he had not yet been sentenced. Alsaud then filed in this court a "Petition Review Special Action," raising various arguments. He attached the court's ruling dismissing his notice and denying his various motions.

¶3 We agree with the trial court that Alsaud's attempt to raise claims pursuant to Rule 32 in advance of sentencing was premature. *See State v. Saenz*, 197 Ariz. 487, ¶¶ 3-6, 4 P.3d 1030, 1031-32 (App. 2000); *see also* Ariz. R. Crim. P. 32.4(a) (post-conviction notice to be filed "after the entry of judgment and sentence"). Thus, the court did not err in summarily dismissing without prejudice Alsaud's notice of post-conviction relief.

¶4 To the extent Alsaud seeks special action review of the trial court's rulings, in our discretion, we decline jurisdiction. *See*

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State v. Simon, 229 Ariz. 60, ¶ 4, 270 P.3d 887, 888 (App. 2012) (special action jurisdiction discretionary). After sentencing, the court appointed counsel to investigate and pursue any claims for post-conviction relief. That proceeding is still pending in the trial court. Alsaud has not attempted to demonstrate that he lacks an adequate remedy via Rule 32. See Ariz. R. P. Spec. Actions 1(a) (“[T]he special action shall not be available where there is an equally plain, speedy, and adequate remedy by appeal.”); *State v. Ward*, 211 Ariz. 158, ¶ 9, 118 P.3d 1122, 1126 (App. 2005) (Rule 32 proceeding “functional equivalent of a direct appeal” for pleading defendants); see also *Fisher v. Kaufman*, 201 Ariz. 500, ¶ 7, 38 P.3d 38, 40 (App. 2001) (special action review appropriate for pleading defendant when “no remedy other than by special action”).

¶5 To the extent Alsaud seeks review pursuant to Rule 32.9(c), we deny review. To the extent he seeks special action relief, we decline jurisdiction.