

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JAMES DANIEL FLORES,
Petitioner.

No. 2 CA-CR 2015-0363-PR
Filed March 3, 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NOT FOR PUBLICATION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 Cochise County
No. S0200CR201100683
The Honorable Wallace R. Hoggatt, Judge

REVIEW GRANTED; RELIEF DENIED

James Daniel Flores, Douglas
In Propria Persona

STATE v. FLORES
Decision of the Court

MEMORANDUM DECISION

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

ESPINOSA, Judge:

¶1 Petitioner James Flores seeks review of the trial court's order denying 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). Flores has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Flores was convicted of possession of a dangerous drug for sale and possession of drug paraphernalia. The trial court imposed concurrent prison terms, the longest of which was ten years. This court affirmed the convictions and sentences on appeal, *State v. Flores*, No. 2 CA-CR 2013-0006 (memorandum decision filed Sept. 27, 2013), and we issued our mandate on November 13, 2013.

¶3 Flores then initiated a proceeding for post-conviction relief, signing his notice of post-conviction relief on December 23, 2013, and including an affidavit by his sister that was signed on December 27, 2013.¹ The trial court appointed counsel, allowed Flores to file a pro se supplemental petition after counsel filed a notice stating she could find no claims to raise, and ordered a hearing on certain claims before ultimately vacating the hearing. The court dismissed the proceeding, concluding Flores's claims of

¹The Clerk of the Cochise County Superior Court stamped the notice as filed on "Jan. 03[,] 2013," but in view of the contents of the notice, it must have been filed on January 3, 2014.

STATE v. FLORES
Decision of the Court

trial error were precluded and that his claims of ineffective assistance of counsel were not colorable.

¶4 We conclude, however, that because Flores's notice of post-conviction relief was filed more than thirty days after this court issued its mandate, it was untimely. *See* Ariz. R. Crim. P. 32.4(a). He therefore could only raise claims under Rule 32.1(d), (e), (f), (g), or (h). *See* Ariz. R. Crim. P. 32.4(a). Flores did not indicate any such claims on his notice, but did assert a claim of actual innocence in his pro se petition. He did not, however, meaningfully develop that claim. His remaining claims of ineffective assistance of trial counsel, due process violations, Fourth Amendment violations, and other violations of his constitutional rights arise under Rule 32.1(a), and cannot be raised in an untimely proceeding.

¶5 Flores also indicated in his notice that he had only learned of this court's decision on appeal on December 23, 2013, and his sister's affidavit also explained that his attorney had failed to notify him of the decision. But, to the extent this information could be construed as a claim under Rule 32.1(f), Flores is not entitled to relief under that subsection because he is a non-pleading defendant. *See* Ariz. R. Crim. P. 32.1(f) (providing relief when defendant was without fault as to untimely filing of "notice of post-conviction relief of-right or notice of appeal").

¶6 On review, Flores again argues he received ineffective assistance of counsel and the trial court abused its discretion in rejecting his claims. But, because his notice was untimely and he has raised no claim that can be considered in an untimely proceeding, we cannot say the trial court abused its discretion in dismissing the proceeding. *Cf. State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984) (appellate court will affirm trial court's ruling if result legally correct for any reason).

¶7 Although we grant the petition for review, relief is denied.