

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

MICHAEL RICHARD WAIN,  
*Petitioner.*

No. 2 CA-CR 2015-0427-PR  
Filed January 11, 2016

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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NOT FOR PUBLICATION  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.*

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Petition for Review from the Superior Court in Mohave County  
No. CR201000921  
The Honorable Lee F. Jantzen, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Ronald S. Gilleo, Mohave County Legal Defender  
By Diane S. McCoy, Deputy Legal Defender, Kingman  
*Counsel for Petitioner*

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**MEMORANDUM DECISION**

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

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H O W A R D, Presiding Judge:

¶1 Michael Wain seeks review of the trial court's order summarily dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Wain has not met his burden of demonstrating such abuse here.

¶2 Wain pled guilty to possession of a dangerous drug and first-degree failure to appear and was sentenced to consecutive prison terms totaling 3.5 years. After a hearing, the trial court ordered Wain to pay restitution on December 6, 2012. Wain then filed a notice of appeal, which was dismissed on March 12, 2013, for lack of jurisdiction because Wain was required to seek review pursuant to Rule 32. *See* Ariz. R. Crim. P. 32.1; A.R.S. § 13-4033(B); *Hoffman v. Chandler*, 231 Ariz. 362, ¶¶ 7, 9, 17, 295 P.3d 939, 940-42 (2013). On March 15, 2013, Wain filed a notice of post-conviction relief, followed by a petition in which he argued counsel had been ineffective concerning restitution, and that a portion of the court's restitution determination was improper. The court summarily denied relief, and this petition for review followed.

¶3 We need not address the arguments raised in Wain's petition because his notice was not timely filed. Pursuant to Rule 32.4(a), a pleading defendant like Wain was required to file his notice within ninety days "after the entry of judgment and sentence or within thirty days after the issuance of the final order or mandate by the appellate court in the petitioner's first petition for post-conviction relief proceeding." Wain's notice, filed 100 days after the trial court's restitution order, was therefore untimely and, because

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he did not identify in his notice any claims exempt from the time limit set forth in Rule 32.4(a), the court was required to dismiss it.<sup>1</sup> See A.R.S. § 13-4234(G); Ariz. R. Crim. P. 32.2(b), 32.4(a); see also *State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984) (reviewing court will affirm for any reason supported by record).

¶4 We grant review but deny relief.

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<sup>1</sup>The trial court modified the restitution order nunc pro tunc on January 16, 2013, to correct a clerical error. That order, however, does not alter the time in which Wain was required to file his notice. A court is permitted to correct clerical errors at any time, Ariz. R. Crim. P. 24.4, and a nunc pro tunc order merely “correct[s] the record to make it speak the truth and [does not] supply judicial action,” *State v. Pyeatt*, 135 Ariz. 141, 143, 659 P.2d 1286, 1288 (App. 1982).