

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

EDWARD LOPEZ DE LA CRUZ,
Petitioner.

No. 2 CA-CR 2015-0455-PR
Filed June 7, 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NOT FOR PUBLICATION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. CR20022853
The Honorable Michael Butler, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Edward de la Cruz, Buckeye
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 Edward de la Cruz seeks review of the trial court's summary dismissal of his untimely, successive notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. Although we grant review, we deny relief for the following reasons.

¶2 After a jury trial in 2004, de la Cruz was convicted of aggravated assault with a deadly weapon and sentenced to an enhanced, presumptive, 15.75-year prison term. This court affirmed his conviction and sentence on appeal. *State v. de la Cruz*, No. 2 CA-CR 2004-0229 (memorandum decision filed Nov. 23, 2005). De la Cruz then filed a notice of and petition for post-conviction relief in which he alleged ineffective assistance of trial counsel. The trial court denied relief after an evidentiary hearing, and this court denied his petition for review of that decision. *State v. de la Cruz*, No. 2 CA-CR 2007-0100-PR (memorandum decision filed Sep. 10, 2007). De la Cruz filed another Rule 32 notice in October 2007, but the court dismissed the proceeding when he failed to file his petition for post-conviction relief as required by Rule 32.4(c). De la Cruz did not petition this court for review of that dismissal. After the trial court denied relief in another successive Rule 32 proceeding, initiated in 2010, we again denied relief on review. *State v. de la Cruz*, No. 2 CA-CR 2011-0088-PR (memorandum decision filed Aug. 8, 2011). De la Cruz has not sought our review in any other post-conviction proceedings, but he does not dispute the trial court's finding that the instant notice, filed in November 2015, is his sixth.

¶3 In a thorough order explaining its reasoning, the trial court dismissed de la Cruz's instant notice pursuant to Rule 32.2(b). In sum, the court found his claim of ineffective assistance of counsel

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precluded and, with respect to his assertion of claims pursuant to Rule 32.1(e), (f), (g), and (h), found his notice failed to contain “meritorious reasons to substantiate each claim or to indicate why the claim was not stated in his previous petition or in a timely manner,” as required by Rule 32.2(b).¹ This petition for review followed.

¶4 On review, de la Cruz asserts the trial court’s dismissal of his notice was an abuse of discretion because it was “contrary to Supreme Court precedent” in *Martinez v. Ryan*, ___ U.S. ___, 132 S. Ct. 1309 (2012), and because the court “refus[ed] to acknowledge a ‘diminished-capacity’ state of mind as [an] exemption to defaulted/precluded claims.” He also maintains we should presume the court was prejudiced against him based on a “Request for an Extension of Time to File Petition for Special Action” he sent to this court after the same judge denied an earlier petition for post-conviction relief.²

¶5 We review a trial court’s dismissal of a post-conviction relief notice for an abuse of discretion. *State v. Harden*, 228 Ariz. 131, ¶ 3, 263 P.3d 680, 681 (App. 2011). We find none here. To the extent de la Cruz maintains the court was prejudiced against him, nothing in the record supports his argument. The court correctly found de la Cruz’s ineffective assistance claim precluded, and it did not abuse its discretion in finding his notice insufficient. *See* Ariz. R. Crim. P. 32.2(b), 32.4(a); *State v. Escareno-Meraz*, 232 Ariz. 586, ¶ 6, 307 P.3d

¹ In his notice, de la Cruz provided only the following explanation of his untimely claims: “Claims are being raised in accordance with *Martinez v. Ryan*, 132 S. Ct. 1309 (2012). Due to the traumatic impact of being ‘wrongfully convicted’ (mental and emotional duress) I was unable to comprehend rules of procedures, thus unable to effectively raise and present claims/evidence.”

² Although de la Cruz refers to this 2014 motion as a “complaint in the form of a Special Action” filed against the judge, we have found no record of a special action filed by de la Cruz in 2014.

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1013, 1014 (App. 2013) (holding “*Martinez* does not alter established Arizona law”).

¶6 Accordingly, although review is granted, relief is denied.