

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

JUAN GARCIA SANABRIA,  
*Petitioner.*

No. 2 CA-CR 2017-0112-PR  
Filed April 24, 2017

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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NOT FOR PUBLICATION  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 Maricopa County  
No. CR2009007406001DT  
The Honorable Joseph Kreamer, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Juan Garcia Sanabria, Florence  
*In Propria Persona*

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MEMORANDUM DECISION

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

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ESPINOSA, Judge:

¶1 Petitioner Juan Sanabria seeks review of the trial court's order dismissing his successive notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 Following a jury trial, Sanabria was convicted of sexual conduct with a minor and sexual abuse, both dangerous crimes against children. The trial court imposed a life sentence, which is to be followed by lifetime probation. This court affirmed Sanabria's convictions and sentences on appeal. *State v. Sanabria*, No. 1 CA-CR 10-0865 (Ariz. App. Apr. 26, 2012) (mem. decision). Sanabria sought post-conviction relief, and after appointed counsel<sup>1</sup> filed a notice stating he was "unable to discern any colorable claim upon which to base a Petition for Post-Conviction Relief," the court granted Sanabria additional time to file a pro se petition. However, Sanabria failed to file a petition by the extended deadline and did not explain to the court why he was unable to do so. The court summarily dismissed the Rule 32 proceeding in July 2013, one month after the deadline to file the petition had passed.

¶3 In June 2015, almost two years after the dismissal of his first Rule 32 proceeding, Sanabria filed a pro se notice of post-conviction relief, checking the boxes on the form notice indicating

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<sup>1</sup>After Sanabria's first Rule 32 counsel was disbarred, a second attorney was appointed to represent him in that proceeding.

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his attorney had been ineffective and his late filing was without fault on his part. *See* Ariz. R. Crim. P. 32.1(a), (f). Sanabria explained he had been unable to file his first Rule 32 petition through no fault of his own, to wit, because his first Rule 32 attorney had “kept” his transcripts after he had been disbarred. The trial court summarily dismissed his notice, and this petition for review followed.

¶4 On review, Sanabria contends he was unable to timely file his first Rule 32 petition because he did not have access to his file due to the actions of his first Rule 32 attorney, as previously noted, and he was unable to otherwise obtain it. He thus asserts he was prevented from filing his “of right” Rule 32 petition.<sup>2</sup> He further maintains the underlying notice of post-conviction relief, filed almost two years after the trial court dismissed his first Rule 32 proceeding, is an attempt to obtain the necessary documents to “review for colorable claims.”<sup>3</sup>

¶5 We find no error in the trial court’s determination that Sanabria did “not state any claims for which Rule 32 can provide relief.” In its order dismissing Sanabria’s notice, the court identified and addressed the claims he had raised, and resolved them correctly in a manner permitting this court to review and determine the propriety of that order. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). The court correctly concluded that Rule 32.1(f) does not apply to Sanabria, and that he is not entitled to raise

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<sup>2</sup>Sanabria also contends he has been denied his “right to appeal his convictions and sentences.” However, as we have noted, he filed a direct appeal from his convictions and sentences, which was resolved by this court in 2012. *Sanabria*, No. 1 CA-CR 10-0865.

<sup>3</sup>To the extent Sanabria also asks to “amend” his first Rule 32 petition, we do not address this claim, raised for the first time on review. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review to contain issues “decided by the trial court . . . which the defendant wishes to present to the appellate court for review”); *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court does not consider issues in petition for review that “have obviously never been presented to the trial court for its consideration”).

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a claim of ineffective assistance of Rule 32 counsel. No purpose would be served by restating the court's ruling in its entirety here. *See Whipple*, 177 Ariz. at 274, 866 P.2d at 1360. Rather, we adopt the court's ruling.

¶6 Accordingly, although we grant review, relief is denied.