

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

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

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STATE OF ARIZONA, *Respondent*,

*v.*

PEDRO JESUS CONCHOS, *Petitioner*.

No. 1 CA-CR 14-0589 PRPC  
FILED 1-31-2017

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Petition for Review from the Superior Court in Maricopa County  
No. CR2009-162376-002  
The Honorable Joseph C. Welty, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Maricopa County Attorney's Office, Phoenix  
By Diane Meloche  
*Counsel for Respondent*

Pedro Jesus Conchos, Florence  
*Petitioner*

**MEMORANDUM DECISION**

Acting Presiding Judge Peter B. Swann delivered the decision of the court, in which Judge Patricia A. Orozco (retired) and Judge Jon W. Thompson joined.

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**S W A N N**, Judge:

¶1 Pedro Jesus Conchos petitions for review of the summary dismissal of his untimely, successive notice for post-conviction relief, filed pursuant to Arizona Rule of Criminal Procedure (“Rule”) 32, and the denial of his motion for rehearing. We have considered the petition for review and, for the reasons stated, grant review and deny relief.

¶2 In December 2009, Conchos pled guilty to sexual conduct with a minor under age 15 and two counts of attempted child molestation. The superior court sentenced him to a presumptive twenty-year term of imprisonment on the conviction for sexual conduct with a minor and placed him on lifetime probation with respect to the two counts of attempted child molestation.

¶3 Conchos filed a timely notice of post-conviction relief. His court-appointed counsel then submitted a petition for post-conviction relief alleging the state breached the plea agreement. The superior court granted relief and ordered that Conchos be re-sentenced. The superior court re-sentenced Conchos to a mitigated 18-year term of imprisonment on the conviction for sexual conduct with a minor and placed him on lifetime probation with respect to the two counts of attempted child molestation.

¶4 More than two and one-half years after his re-sentencing, Conchos filed a second notice of post-conviction relief claiming ineffective assistance of his first Rule 32 counsel for failing to raise a claim with respect to the trial judge’s participation in plea negotiations. Finding the notice to be both untimely and successive, the superior court summarily dismissed the notice, ruling that there is no constitutional right to effective assistance of counsel in a post-conviction-relief proceeding. The superior court further denied Conchos’s motion for rehearing, and this petition for review followed.

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¶5 We review the summary dismissal of a post-conviction-relief proceeding for abuse of discretion. *State v. Bennett*, 213 Ariz. 562, 566, ¶ 17 (2006). We may affirm the superior court’s ruling “on any basis supported by the record.” *State v. Robinson*, 153 Ariz. 191, 199 (1987).

¶6 In dismissing the second notice of post-conviction relief, the superior court ruled that Conchos failed to state a colorable claim for relief because there is no constitutional right to effective assistance of counsel in a Rule 32 proceeding. Conchos is correct that the superior court erred in this ruling. As a pleading defendant, Conchos was entitled to the effective assistance of counsel in his first “of right” Rule 32 post-conviction relief proceeding and therefore could raise a cognizable claim of ineffective assistance of Rule 32 counsel in a second post-conviction proceeding. *State v. Pruett*, 185 Ariz. 128, 131 (App. 1995). Such a claim, however, is still subject to the timeliness requirements of Rule 32 and may only be raised in a second notice of post-conviction relief filed “within thirty days after the issuance of the final order . . . in the petitioner’s first petition for post-conviction relief proceeding.” Ariz. R. Crim. P. 32.4(a); *Pruett*, 185 Ariz. at 131.

¶7 Because Conchos’s second notice of post-conviction relief was filed more than thirty days after the final order entered in his first Rule 32 proceeding, it was untimely. *See* Ariz. R. Crim. P. 32.4(a). The only claims that may be raised in an untimely notice are expired sentence, newly discovered evidence, no fault failure to timely file notice, a significant change in the law, and actual innocence. Ariz. R. Crim. P. 32.4(a), (e)–(g); *see also State v. Shrum*, 220 Ariz. 115, 118, ¶ 13 (2009) (noting “few exceptions” to “general rule of preclusion” for claims in untimely petitions). Claims of ineffective assistance of counsel are not one of these exceptions, because they are “cognizable under Rule 32.1(a).” *State v. Petty*, 225 Ariz. 369, 373, ¶ 11 (App. 2010); *see also* Ariz. R. Crim. P. 32.1(a) cmt. (noting claims of ineffectiveness of counsel and violations of other constitutional rights fall under Rule 32.1(a)). Thus, while the superior court was incorrect to dismiss Conchos’s notice because there is no right to effective assistance of counsel in a Rule 32 proceeding, the notice was still properly dismissed because his ineffective-assistance claim was untimely.

¶8 Finally, Conchos checked the box on the notice of post-conviction relief indicating his intent to raise a claim that the failure to file a timely notice was without fault on his part. Such a claim for relief, however, is limited to the failure to file a timely notice of post-conviction relief “of right.” Ariz. R. Crim. P. 32.1(f). Because his second post-conviction relief notice is not one “of right,” it is not a cognizable claim

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under Rule 32. Moreover, Conchos failed to set forth facts in the notice to support such a claim. Thus, even if the claim was cognizable, it was subject to summary dismissal based on the failure to present facts substantiating the claim. *See* Ariz. R. Crim. P. 32.2(b).

¶9 Accordingly, we grant review and deny relief.



AMY M. WOOD • Clerk of the Court  
FILED: AA