

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

STATE OF ARIZONA, *Respondent*,

v.

ANGEL LABORIN TORRES, *Petitioner*.

No. 1 CA-CR 15-0231 PRPC
FILED 4-6-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2011-007448-001
The Honorable Bruce R. Cohen, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Angel Laborin Torres, Florence
Petitioner

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MEMORANDUM DECISION

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Paul J. McMurdie joined.

NORRIS, Judge:

¶1 Angel Laborin Torres petitions this court for review from the dismissal of his Rule 32 proceeding. We grant review, but deny relief.

¶2 In 2012, a jury found Torres guilty of conspiracy to commit aggravated robbery, conspiracy to commit kidnapping, aggravated robbery, two counts of kidnapping, theft of means of transportation, and aggravated assault. The superior court sentenced Torres to an aggregate term of 23 years' imprisonment. On direct appeal, this court conducted a review of the trial record pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). After searching the entire record for reversible error, we found none and affirmed Torres' convictions and sentences.

¶3 Torres filed a timely notice of post-conviction relief. The superior court appointed post-conviction relief counsel who ultimately advised the court she could not find a tenable issue to submit to the court pursuant to Arizona Rule of Criminal Procedure 32. The court then set a deadline of January 9, 2015, for Torres to file a pro per petition for post-conviction relief.

¶4 On February 17, 2015, the superior court dismissed Torres' Rule 32 proceeding because he had failed to file a petition for post-conviction relief. Torres then asked the superior court to reconsider its ruling dismissing his Rule 32 proceeding. Torres' motion for reconsideration was dated on February 23, 2015, but the clerk of the superior court did not file the motion until March 9, 2015. In his motion for reconsideration, Torres asserted he had moved for an extension of time to file his petition for post-conviction relief on December 22, 2014, but had not received any ruling on the motion. Torres attached a copy of what he asserted was his motion for extension of time to his motion for reconsideration.

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¶5 The superior court denied Torres' motion for reconsideration for two reasons. First, the superior court ruled that his motion for reconsideration was untimely. Second, the superior court noted that his motion for extension of time attached to the motion for reconsideration did not appear in the record. Therefore, the court concluded Torres had "fail[ed] to provide sufficient factual or legal basis to support reconsideration."

¶6 In his petition for review, Torres argues the superior court should have granted his motion for reconsideration and should not have dismissed his Rule 32 proceeding because he had sought an extension before the January 9, 2015 deadline, and the superior court had not ruled on his request. Based on the record before it, the superior court did not abuse its discretion in dismissing Torres' Rule 32 proceeding and in denying his motion for reconsideration. *See State v. Swoopes*, 216 Ariz. 390, 393, ¶ 4, 166 P.3d 945, 948 (App. 2007) (appellate court reviews superior court's ruling on petition for post-conviction relief for abuse of discretion) (citation omitted).

¶7 Torres attached to his petition for review an Arizona Department of Corrections inmate banking form, signed by a Department of Corrections officer on December 22, 2014, that reflects a fellow inmate withdrew from his own inmate banking account an amount of money to cover the postage charge for mailing Torres' motion for an extension of time. Torres also attached an affidavit from his fellow inmate explaining that the inmate assisted Torres in mailing Torres' motion for an extension of time on December 23, 2014, because Torres "had no funds in his account to pay for the mail." Torres did not, however, submit either the form or affidavit to the superior court with his motion for reconsideration.

¶8 A defendant may not supplement a petition for review with additional issues not first presented to the superior court, *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980), and this court's review is limited to the record before the superior court, *see* Ariz. R. Crim. P. 32.9(c) and (e). Therefore, on the record before it, we cannot say the superior court abused its discretion in dismissing Torres' Rule 32 proceeding and in denying his motion for reconsideration.

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¶9

Accordingly, although we grant review, we deny relief.



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