

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

KYLE YAZZIE, *Petitioner*.

No. 1 CA-CR 15-0726 PRPC  
FILED 8-17-2017

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Petition for Review from the Superior Court in Maricopa County  
Nos. CR2013-425402-001  
CR2013-449042-002  
The Honorable Danielle J. Viola, Judge

**REVIEW GRANTED; RELIEF GRANTED**

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COUNSEL

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

Kyle Yazzie, Phoenix  
*Petitioner*

STATE v. YAZZIE  
Decision of the Court

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**MEMORANDUM DECISION**

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Jon W. Thompson and Judge Paul J. McMurdie joined.

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**C A T T A N I**, Judge:

¶1 Kyle Yazzie petitions for review from the superior court’s summary dismissal of his first notice of post-conviction relief. For reasons that follow, we grant review and grant relief.

¶2 Yazzie pleaded guilty to aggravated driving under the influence, and the superior court sentenced him to 4.5 years’ imprisonment. At the time of the DUI offense, Yazzie was on probation for possession of marijuana, and the court revoked probation in that matter and sentenced him to a concurrent term of one year of imprisonment.

¶3 Yazzie filed his first notice of post-conviction relief – in which he requested appointment of counsel – more than five months after entry of judgment and sentence in both cases. The superior court summarily dismissed the untimely notice without appointing counsel, and the court later denied Yazzie’s request for reconsideration.

¶4 Among other arguments, Yazzie challenges the superior court’s failure to appoint counsel to represent him in the post-conviction proceedings. Yazzie was entitled to appointment of counsel upon his request (and affidavit of indigency) in his first notice of post-conviction relief. *See* Ariz. R. Crim. P. 32.4(c)(2) (“*Rule 32 of-right and non-capital cases.* Upon the filing of a timely or first notice in a Rule 32 proceeding, the presiding judge, or his or her designee, shall appoint counsel for the defendant within 15 days if requested and the defendant is determined to be indigent.”). We therefore grant relief by reversing dismissal of Yazzie’s notice of post-conviction relief and remanding for further proceedings consistent with decision.

