

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ISRAEL ANDRES CORREA, *Petitioner*.

No. 1 CA-CR 16-0107 PRPC
FILED 8-29-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2009-138380-001
The Honorable Bruce R. Cohen, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Israel Andres Correa, Buckeye
Petitioner

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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CATTANI, Judge:

¶1 Israel Andres Correa petitions for review of the superior court's summary dismissal of his petition for post-conviction relief. For reasons that follow, we grant review but deny relief.

¶2 Correa pleaded guilty to one count of aggravated assault, and the superior court sentenced him in accordance with the terms of his plea agreement to five years' imprisonment. Just over one year later, Correa filed his first, untimely notice of post-conviction relief. *See* Ariz. R. Crim. P. 32.4(a) (requiring that a Rule 32 of-right proceeding be initiated within 90 days after entry of judgment and sentence). Correa's notice and his subsequently filed amended notice raised claims of ineffective assistance of counsel, prosecutorial misconduct (discovery violations), involuntariness of his guilty plea, and newly discovered evidence. The superior court summarily dismissed the post-conviction proceeding, finding that Correa had failed to present a colorable claim of newly discovered evidence and that none of his other claims could be raised in an untimely proceeding. This petition for review followed.

¶3 We deny relief. Most of Correa's arguments—ineffective assistance of counsel, prosecutorial misconduct, and voluntariness of his plea—are constitutional claims under Rule 32.1(a) and cannot be raised in an untimely post-conviction proceeding. *See* Ariz. R. Crim. P. 32.4(a). While his claim of newly discovered evidence may be raised in an untimely proceeding, it is not colorable. *See* Ariz. R. Crim. P. 32.1(e), 32.4(a). He argues only that he rediscovered contact information for two witnesses that he knew about before entering the plea (including one who had been interviewed by both the State and the defense), meaning the evidence was not newly discovered. *See* Ariz. R. Crim. P. 32.1(e)(1) (requiring that the evidence have been "discovered after the trial"). Moreover, as the superior court observed, the substance of his argument is that defense counsel failed to adequately investigate these witnesses and that the State misrepresented the status of one witness; as noted above, these are constitutional claims under Rule 32.1(a) and cannot be raised in an untimely Rule 32 proceeding.

¶4 In an argument raised for the first time in his petition for review, Correa further alleges that his counsel was responsible for his failure to file a timely notice of post-conviction relief. We do not address this claim, however, because Correa did not present it to the superior court, and a petition for review may not include new arguments not first presented in the petition for post-conviction relief. *See State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (limiting

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petition for review to review of “issues which were decided by the trial court”).

¶5 Accordingly, we grant review but deny relief.



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