

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

LASHON ELMERSON PATTERSON, *Petitioner*.

No. 1 CA-CR 16-0211 PRPC
FILED 8-22-2017

Petition for Review from the Superior Court in Maricopa County
No. CR 2000-003831
The Honorable Bruce R. Cohen, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Lashon Elmerson Patterson, San Luis
Petitioner

STATE v. PATTERSON
Decision of the Court

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Chief Judge Samuel A. Thumma joined.

THOMPSON, Judge:

¶1 Lashon Elmerson Patterson petitions this court for review from the dismissal of his petition for post-conviction relief, filed pursuant to Arizona Rule of Criminal Procedure (Rule) 32. We have considered the petition and, for the reasons stated, grant review and deny relief.

¶2 A jury found Patterson guilty of first degree murder, attempted first degree murder, and drive-by-shooting. The trial court imposed prison sentences, the longest of which was twenty-five years to life for the first degree murder offense. On direct appeal, this court affirmed.¹ *State v. Patterson*, 203 Ariz. 513, 56 P.3d 1097 (App. 2002).

¶3 Before the mandate issued on October 5, 2004, Patterson filed a premature notice of post-conviction relief, and appointed counsel found no viable Rule 32 claims. The superior court granted counsel's request to extend the time by which Patterson was required to file a pro per petition. On October 14, 2004, four days before the petition was due, Patterson requested an additional sixty days to file the petition. The superior court did not address the motion to extend time and, after Patterson failed to file a petition, dismissed the Rule 32 proceeding on November 5, 2004.

¶4 Thereafter, Patterson filed a petition for post-conviction relief, raising claims of improper jury instructions, insufficiency of evidence, error in denying a motion for new trial, and error in refusing to sever the counts. The superior court dismissed the petition because the claims either were or

¹ The Arizona Supreme Court granted review of our decision and remanded for reconsideration in light of *State v. Thompson*, 204 Ariz. 471, 65 P.3d 420 (2003). *State v. Patterson*, CR-03-0007 PR, 2003 WL 21242145 (May 28, 2003). Upon reconsideration, we again affirmed Patterson's convictions and sentences.

STATE v. PATTERSON
Decision of the Court

should have been raised in Patterson's direct appeal. *See* Ariz. R. Crim. P. 32.2(a). This court denied review.

¶5 In February 2015, Patterson again sought post-conviction relief. He argued that his failure to timely file an initial petition in 2004 was without fault on his part. *See* Ariz. R. Crim. P. 32.1(f). Patterson also raised claims of ineffective assistance of trial and Rule 32 counsel. The superior court summarily dismissed the notice for post-conviction relief. Patterson filed a motion for rehearing, which the court denied. This petition for review followed.

¶6 As a non-pleading defendant, Patterson had no right to effective assistance of counsel in a post-conviction relief proceeding. *See State v. Escareno-Meraz*, 232 Ariz. 586, 587, ¶¶ 4-6, 307 P.3d 1013, 1014 (App. 2013) (rejecting argument that *Martinez v. Ryan*, 566 U.S. 1 (2012) requires otherwise). Patterson argues this rule violates his constitutional right to equal protection. We do not consider Patterson's argument because he provides no authority to support it.² "Merely mentioning an argument is not enough[.]" *State v. Moody*, 208 Ariz. 424, 452 n.9, ¶ 101, 94 P.3d 1119, 1147 n.9 (2004); *see In re Aubuchon*, 233 Ariz. 62, 64-65, ¶ 6, 309 P.3d 886, 888-89 (2013) ("[W]e consider waived those arguments not supported by adequate explanation, citations to the record, or authority.").

² Patterson does not argue the superior court erred in dismissing his claims for relief based on Rule 32.1(f) and ineffective assistance of trial counsel. Consequently, he has abandoned those claims. Nonetheless, the superior court properly dismissed them. *See State v. Rosales*, 205 Ariz. 86, 89, ¶ 10, 66 P.3d 1263, 1266 (App. 2003) ("Rule 32.1(f) is atypical of the eight possible grounds for post-conviction relief listed in Rule 32.1(a) through (h); it merely provides a procedural mechanism whereby a defendant who has failed to appeal through no fault of his or her own can obtain jurisdiction in this court."); *see also* Ariz. R. Crim. P. 32.2(a); *State v. Swoopes*, 216 Ariz. 390, 397, ¶ 23, 166 P.3d 945, 952 (App. 2007) ("[W]hen 'ineffective assistance of counsel claims are raised, or could have been raised, in a Rule 32 post-conviction proceeding, subsequent claims of ineffective assistance will be deemed waived and precluded.'") (quoting *State v. Spreitz*, 202 Ariz. 1, 2, ¶ 4, 39 P.3d 525, 526 (2002)).

STATE v. PATTERSON
Decision of the Court

¶7 Patterson fails to establish that the superior court abused its discretion in summarily dismissing his third Rule 32 proceeding. Accordingly, although we grant review, we deny relief.



AMY M. WOOD • Clerk of the Court
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