

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

KENT LEE MANNING, *Petitioner*.

No. 1 CA-CR 16-0455 PRPC
FILED 10-3-2017

Petition for Review from the Superior Court in Mohave County
No. S8015CR201000608
The Honorable Steven F. Conn, Judge

REVIEW GRANTED; RELIEF GRANTED; REMANDED

COUNSEL

Mohave County Attorney's Office, Kingman
By Matthew J. Smith
Counsel for Respondent

Kent Lee Manning, Kingman
Petitioner

STATE v. MANNING
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Paul J. McMurdie delivered the decision of the Court, in which Judge Peter B. Swann and Chief Judge Samuel A. Thumma joined.

M c M U R D I E, Judge:

¶1 Kent Lee Manning petitions for review from the summary dismissal of his notice of post-conviction relief. We have considered the petition for review and, for the reasons stated, grant review and relief and remand for further proceedings consistent with this decision.

¶2 Manning pled guilty to promoting prison contraband, a Class 5 felony, with one historical prior felony conviction. The superior court sentenced him on September 8, 2010, as a repetitive offender to a presumptive 2.5-year prison term to commence upon the completion of the 10-year prison term Manning was currently serving.

¶3 In June 2016, Manning filed a notice of post-conviction relief. Manning indicated in the notice that he intended to raise claims of ineffective assistance of counsel, newly discovered material facts, and the failure to file a timely notice of post-conviction relief was without fault on his part. He further requested the appointment of counsel. The superior court summarily dismissed the notice, ruling the notice was untimely and that Manning failed to set forth the substance of the specific exception and the reason for not raising the claim in a timely manner. This petition for review followed.

¶4 On review, Manning argues the superior court erred in summarily dismissing his notice. We review the summary dismissal of a petition for post-conviction relief for abuse of discretion. *State v. Bennett*, 213 Ariz. 562, 566, ¶ 17 (2006). An abuse of discretion occurs when the court's decision is legally incorrect or unsupported by the record. *State v. Peralta*, 221 Ariz. 359, 361, ¶ 3 (App. 2009).

¶5 The superior court summarily dismissed the notice filed by Manning on grounds that it failed to set forth the substance of the specific exception for the claims sought to be raised and the reason for not raising the claim in a timely manner. *See* Ariz. R. Crim. P. 32.2(b) (authorizing summary dismissal of an untimely notice if the notice fails to "set forth the substance of the specific exception and the reasons for not raising the claim

STATE v. MANNING
Decision of the Court

. . . in a timely manner”). The record reflects, however, that contrary to the superior court’s finding, Manning’s notice was accompanied by a 17-page petition that included an affidavit by Manning stating that, upon the conclusion of his sentencing, he directed his counsel to file a timely notice of post-conviction relief and his counsel failed to do so. For some unknown reason, it appears the notice reviewed by the superior court failed to include this attachment, leading to the court’s incorrect finding that Manning failed to comply with the requirements of Rule 32.2(b) for specifying his claims and explaining his untimely notice.

¶6 Rule 32.1(f) provides that a petitioner is entitled to a delayed Rule 32 proceeding appeal if the “failure to file a notice of post-conviction relief-of-right . . . within the prescribed time was without fault on the [petitioner’s] part.” If the allegations contained in his affidavit are found to be true, Manning would be entitled to relief pursuant to Rule 32.1(f), which would include the appointment of counsel to assist with the additional claims he indicated he intended to raise. *See* Ariz. R. Crim. P. 32.4(c)(2) (providing for appointment of counsel upon the filing of a first notice in a Rule 32 proceeding). On this record, we hold the superior court’s finding that Manning failed to set forth the specific exceptions for his claims and state a meritorious reason for the late filing of his notice is unsupported by the record. Thus, the superior court’s summary dismissal of the notice was an abuse of discretion.

¶7 Accordingly, we grant review and relief. We remand the case to the superior court for appointment of counsel and a determination of whether Manning is entitled to file a delayed, of-right petition for post-conviction relief under Rule 32.1(f).



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