

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MARTIN RIVERA-LONGORIA, *Petitioner*.

No. 1 CA-CR 16-0864 PRPC
FILED 9-14-2017

Petition for Review from the Superior Court in Coconino County
No. S0300CR201200059
The Honorable Dan R. Slayton, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Coconino County Attorney's Office, Flagstaff
By William P. Ring
Counsel for Respondent

Martin Rivera-Longoria, Florence
Petitioner

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MEMORANDUM DECISION

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

M c M U R D I E, Judge:

¶1 Petitioner Martin Rivera-Longoria petitions this court for review from the summary dismissal of his first post-conviction relief proceeding. We have considered the petition for review and, for the reasons stated, grant review but deny relief.

¶2 A jury convicted Rivera-Longoria of six counts of child abuse, all dangerous crimes against children.¹ The superior court sentenced Rivera-Longoria to an aggregate term of 101 years' imprisonment and we affirmed his convictions and sentences on direct appeal. *State v. Rivera-Longoria*, 1 CA-CR 12-0506, 2013 WL 5820509 (Ariz. App. Oct. 29, 2013) (mem. decision). Rivera-Longoria filed a timely notice of post-conviction relief and the superior court appointed counsel to represent him. After several extensions of time to file a petition and one change of counsel, Rivera-Longoria's appointed counsel eventually filed notice that he could find no colorable claims for relief. The superior court granted counsel's motion to withdraw and ordered Rivera-Longoria to file a *pro se* petition for post-conviction relief within 45 days. Rivera-Longoria never filed a petition and the superior court dismissed the proceedings 11 months after the deadline passed. Ten months after the court dismissed the proceedings, Rivera-Longoria filed a motion for reconsideration. The superior court denied the motion as untimely because Rivera-Longoria failed to file the motion within 15 days after the court dismissed the proceedings. *See* Ariz. R. Crim. P. 32.9(a).

¶3 In his petition for review, Rivera-Longoria argues his post-conviction relief counsel was ineffective because counsel failed to file

¹ Rivera-Longoria was originally indicted on one count of child abuse. *Rivera-Longoria v. Slayton, ex rel. County of Coconino*, 228 Ariz. 156, 157 (2011). After pre-trial litigation concluded, he was indicted on additional charges.

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a timely petition for post-conviction relief. He also argues the superior court erred when it denied his motion for reconsideration.

¶4 We deny relief. First, ineffective assistance of post-conviction relief counsel is not a valid claim under Rule 32 unless made against counsel who provided representation in an “of-right” post-conviction relief proceeding. *State v. Pruett*, 185 Ariz. 128, 131 (App. 1995). Because Rivera-Longoria’s convictions and sentences resulted from a jury trial, this post-conviction relief proceeding is not an “of-right” proceeding. *See* Ariz. R. Crim. P. 32.1. Further, counsel did not “fail” to file a petition. Counsel informed the court there were no colorable claims for relief and the court allowed counsel to withdraw. It is also important to note that Rivera-Longoria has never identified any issues counsel should have raised. Finally, the superior court did not abuse its discretion when it dismissed Rivera-Longoria’s motion for reconsideration after he filed it nearly ten months late.

¶5 We grant review but deny relief.



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