

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MATTHEW TIMOTHY PROVINSAL, *Petitioner*.

No. 1 CA-CR 21-0156 PRPC
FILED 9-30-2021

Petition for Review from the Superior Court in Maricopa County
No. CR 2018-158042-001
The Honorable Roy C. Whitehead, Judge

REVIEW GRANTED AND RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Amanda M. Parker
Counsel for Respondent

Matthew Timothy Provinsal, Tucson
Petitioner

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MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Brian Y. Furuya and Judge Michael J. Brown joined.

H O W E, Judge:

¶1 Matthew Timothy Provinsal petitions this Court for review from the dismissal of his notice requesting post-conviction relief (“PCR”) under Arizona Rule of Criminal Procedure (“Rule”) 33.1. We have considered the petition for review and, for the reasons stated, grant review and deny relief.

FACTS AND PROCEDURAL HISTORY

¶2 Provinsal entered a plea agreement with the State in which he pled guilty to an amended count of possession of dangerous drugs. In February 2020, the superior court sentenced him to a mitigated term of six years’ imprisonment. In April 2021, Provinsal filed his first, untimely PCR notice. On his PCR form, he checked various boxes to indicate he was raising claims under Rule 33.1(a) and (e). Acknowledging his notice was untimely, Provinsal asserted that the delay was not his fault because he had “newly discovered evidence pursuant to A.R.S. § 35-181.01 [and] A.R.S. § 12-821.” The notice otherwise contained no information related to his claims of newly discovered evidence. The superior court summarily dismissed his notice, finding *inter alia* his claims were inexcusably untimely under Rules 33.2(b)(1) and 33.4(b)(3). This petition for review followed.

DISCUSSION

¶3 We will not disturb the superior court’s dismissal of a PCR proceeding absent an abuse of discretion. *State v. Kolmann*, 239 Ariz. 157, 160 ¶ 8 (2016). The petitioner carries the burden of establishing error. *State v. Poblete*, 227 Ariz. 537, 538 ¶ 1 (App. 2011). Provinsal has not met his burden here.

¶4 To pursue a Rule 33.1(a) claim, a pleading defendant must file a PCR notice within ninety days after the pronouncement of sentence. Ariz. R. Crim. P. 33.4(b)(3)(A). The superior court may summarily dismiss a notice when it violates that deadline, *State v. Rosario*, 195 Ariz. 264, 266 ¶ 7

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(App. 1999), unless the defendant sufficiently explains why the untimeliness was not the defendant's fault, Ariz. R. Crim. P. 33.4(b)(3)(D). When raising a claim under Rule 33.1(b) through (h), a defendant must file a PCR notice within a reasonable time after discovering the claim's basis, Ariz. R. Crim. P. 33.4(b)(3)(B), and must "provide sufficient reasons why the defendant did not raise the claim . . . in a timely manner," Ariz. R. Crim. P. 33.2(b)(1). The court may summarily dismiss a notice if a defendant fails to comply with these requirements. *Id.*

¶5 In his petition for review, Provinsal asserts the superior court denied his "right to state a claim and access the courts by unlawfully dismissing the notice." He further contends that "a pending case cannot be exhausted unless it is based on the merits" and that "a notice presents no merits and cannot be dismissed on its merits." He then suggests "a notice is to notify the court and adverse party on [his] intentions to file [a PCR petition]" but is "not a vehicle to seek any kind of relief . . . [and] there are no assertive substantive grounds that can be brought up in a notice."

¶6 Provinsal's general assertions do not identify any legal or factual error in the superior court's conclusion that he had not timely commenced his PCR proceeding. Nor does he cite relevant authority or meaningfully develop his argument. *See* Ariz. R. Crim. P. 33.16(c)(2)(C)-(D) (requiring a review petition to include material facts with references to the record and reasons the petitioner is entitled to relief, supported by citations to relevant legal authority). Given the absence of proper argument that the court erred in rejecting his claims, he has not established that he is entitled to relief. *See State v. Stefanovich*, 232 Ariz. 154, 158 ¶ 16 (App. 2013) (failing to cite relevant legal authority or sufficiently develop a supporting argument waives a claim on review).

¶7 Furthermore, Provinsal's contention that the superior court erred by dismissing his notice without permitting him to file a PCR petition is meritless. Rule 33.2(b)(2) authorizes the court to do so when, as here, the notice does not provide a sufficient explanation for a petitioner's untimeliness.

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CONCLUSION

¶8

For the above reasons, we grant review and deny relief.



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