

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

APR 24 2013

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2013-0070-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
CHAD LEE BUMPUS,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF YAVAPAI COUNTY

Cause No. P1300CR20080078

Honorable Celé Hancock, Judge

REVIEW GRANTED; RELIEF DENIED

Sheila S. Polk, Yavapai County Attorney  
By Steven A. Young

Prescott  
Attorneys for Respondent

Chad Lee Bumpus

Kingman  
In Propria Persona

ECKERSTROM, Presiding Judge.

¶1 Petitioner Chad Bumpus seeks review of the trial court's dismissal of his pro se notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., and

the court's denial of his motion for reconsideration of that ruling.<sup>1</sup> Pursuant to a plea agreement, Bumpus was convicted in May 2008 of transportation of a dangerous drug for sale and misconduct involving weapons. The court imposed concurrent, mitigated and aggravated sentences, the longer of which was 7.5 years. In May 2011, Bumpus filed his first notice of post-conviction relief. In that notice, he asserted he intended to raise claims of ineffective assistance of counsel and newly discovered evidence and maintained that his failure to file a timely notice of post-conviction relief was "without fault" on his part. He also asserted he "was diagnosed before the instant crime as bipolar" and he had "now ceased taking" his prescribed medication and was "more lucid."

¶2 The trial court summarily dismissed the notice of post-conviction relief, concluding it was untimely, and denied Bumpus's motion for reconsideration. Bumpus then filed a delayed petition for review<sup>2</sup> seeking review of both of those rulings. We review a trial court's denial of post-conviction relief for an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no such abuse here.

¶3 On review, Bumpus asks that we "review his medical records as new evidence," asserting he is unable to receive proper treatment for his mental condition

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<sup>1</sup>Because Rule 32 contains no provision for a motion for reconsideration, we construe Bumpus's motion as a motion for rehearing, which is permitted by Rule 32.9(a).

<sup>2</sup>In November 2011, the trial court granted Bumpus's motion to file a delayed petition for review.

while incarcerated.<sup>3</sup> Noticeably missing from Bumpus’s notice of post-conviction relief and his petition for review, however, is any explanation for his untimely filing. *See* Ariz. R. Crim. P. 32.2(b) (untimely notice of post-conviction relief that fails to state specific exception to preclusion or “meritorious reasons . . . substantiating the claim . . . shall be summarily dismissed”). Bumpus’s notice, filed nearly three years after he was sentenced, was patently untimely. *See* Ariz. R. Crim. P. 32.4(a) (notice of post-conviction relief in noncapital case “must be filed within ninety days after the entry of judgment and sentence”). In addition, Bumpus fails on review to address the trial court’s finding that his claims are untimely.

¶4           Apparently in an attempt to avoid preclusion, Bumpus asserted he was seeking relief based on newly discovered evidence pursuant to Rule 32.1(e). However, to be entitled to relief on a claim of newly discovered evidence, a petitioner first must demonstrate the evidence is, in fact, newly discovered. *See State v. Serna*, 167 Ariz. 373, 374, 807 P.2d 1109, 1110 (1991) (describing five elements of successful newly discovered evidence claim). Bumpus has not explained why his mental condition, which he maintains existed before he committed the underlying offenses, and of which he apparently was aware, should be treated as newly discovered evidence. In the absence of

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<sup>3</sup>Bumpus appears to be raising this claim for the first time in his petition for review, having failed to mention it in his notice of post-conviction relief as a claim he intended to raise and develop in a petition for post-conviction relief. We will not address claims or arguments raised for the first time in a petition for review. *State v. Rodriguez*, 227 Ariz. 58, n.4, 251 P.3d 1045, 1048 n.4 (App. 2010). We note, too, that the assertion that Bumpus is not receiving proper mental health treatment in prison is not a cognizable claim under Rule 32.1.

any exception to preclusion set forth in Rule 32.2(b), Bumpus's notice of post-conviction relief was untimely and, therefore, precluded. *See* Ariz. R. Crim. P. 32.2(b).

¶5 Accordingly, although we grant the petition for review, we deny relief.

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

/s/ Michael Miller  
MICHAEL MILLER, Judge