

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

WILLIAM JACK WARD,  
*Petitioner.*

No. 2 CA-CR 2015-0316-PR  
Filed September 18, 2015

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.*

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Petition for Review from the Superior Court in Mohave County  
No. CR201300140  
The Honorable Rick A. Williams, Judge

**REVIEW GRANTED; RELIEF DENIED**

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William J. Ward, Eloy  
*In Propria Persona*

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**MEMORANDUM DECISION**

Judge Howard authored the decision of the Court, in which Presiding Judge Vásquez and Judge Kelly<sup>1</sup> concurred.

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H O W A R D, Judge:

¶1 In this petition for review, petitioner William Ward challenges the trial court's orders dismissing his notice of post-conviction relief, *see* Ariz. R. Crim. P. 32, and denying his motion to reconsider that dismissal. We will not disturb the ruling absent a clear abuse of discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Ward has not met his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Ward was convicted of aggravated robbery and shoplifting as a third offense. The trial court sentenced him on October 1, 2013, to aggravated, consecutive prison terms of 4.75 and 3.5 years respectively. Ward filed a notice of post-conviction relief on January 13, 2014. He checked the box on the form notice reflecting he wanted counsel appointed to represent him. In response to the question on the form whether he was raising a claim of ineffective assistance of counsel, Ward checked the space before the word "Yes." He did not check any of the spaces to reflect his intent to raise claims under Rule 32.1(d), (e), (f), (g) or (h) in the section pertaining only to untimely or successive notices, and did not complete any other portions of the form under this section or otherwise identify the claim he wished to raise.

¶3 In its ruling on the notice, the trial court observed that the "deadline" for filing the notice "expired on December 30, 2013," *see* Ariz. R. Crim. P. 32.4(a), and that Ward had not "allege[d] any colorable claims under Rule 32.1(d)-(h)." The court dismissed the

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<sup>1</sup>The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

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notice. Ward filed a motion to reconsider in which he stated that although the notice was “a few days late,” the untimeliness was through “no fault of said defendant, due to lockdowns, different staff positions (for legal mail), and the holidays.” He asked the court to take into account that the notary had signed the notice on December 27, “three days before the deadline.”

¶4 The trial court denied Ward’s motion, finding he had failed “to demonstrate how lockdowns or ‘different staff positions’ caused a delay.” “Further,” the court added, “the holidays amounted to a mere fraction of the 90 day time period the defendant is afforded pursuant to court rule,” and observed Ward had provided no explanation for the delay between his signing of the notice of post-conviction relief and mailing it. Additionally, the court noted that Ward never had requested an extension of the deadline based on “these apparent hurdles.” In his petition for review, Ward challenges the court’s rulings, arguing he had adequate reasons for the untimely filing and the dismissal violated his constitutional rights.

¶5 There is no question but that the notice was untimely filed. *See* Ariz. R. Crim. P. 32.4(a) (“of-right” notice must be filed within ninety days after entry of judgment and sentence). Nothing in the rules permits a trial court to extend the time limits set forth in Rule 32.4(a). Indeed, the time limits for filing a notice and petition “are jurisdictional, and an untimely filed notice or petition shall be dismissed with prejudice.” A.R.S. § 13-4234(G). “Any notice not timely filed may only raise claims pursuant to Rule 32.1(d), (e), (f), (g) or (h).” Ariz. R. Crim. P. 32.4(a). Ward did not raise a claim under any subsection of the rule, much less any of the subsections exempt from the time limit. An “of-right” defendant such as Ward may seek relief pursuant to Rule 32.1(f) if “[t]he defendant’s failure to file a notice of post-conviction relief of-right . . . within the prescribed time was without fault on the defendant’s part.” Although Ward asked the court to excuse the untimeliness of the notice in his motion to reconsider, he did not properly present the court with a claim under Rule 32.1(f) in his notice.

¶6 We grant the petition for review but deny relief.