

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

RAMON ANGEL LOPEZ ROBLES,  
*Petitioner.*

No. 2 CA-CR 2015-0328-PR  
Filed October 13, 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NOT FOR PUBLICATION  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 Maricopa County  
No. CR1996010576  
The Honorable John R. Ditsworth, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Ramon Angel Lopez Robles, Florence  
*In Propria Persona*

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**MEMORANDUM DECISION**

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

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VÁSQUEZ, Presiding Judge:

¶1 Ramon Robles seeks review of the trial court's order summarily dismissing his untimely notice of and petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Robles has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Robles was convicted of four counts of sexual conduct with a minor and sentenced to consecutive prison terms totaling fifty-four years. His convictions and sentences were affirmed on appeal. *State v. Robles*, No. 1 CA-CR 99-0046, CA-CR 99-0815 (consolidated) (memorandum decision filed May 25, 2000). Robles unsuccessfully sought post-conviction relief on at least two occasions, once in 2008 and again in 2009. Robles did not seek timely review of the orders denying relief.

¶3 In January 2014, Robles filed a notice of and petition for post-conviction relief. He raised claims of prosecutorial misconduct and ineffective assistance of trial, appellate, and Rule 32 counsel. He additionally asserted that his failure to seek timely post-conviction relief was without fault on his part and raised claims of newly discovered evidence and actual innocence. His arguments chiefly focused on his recent discovery of purported exculpatory information he claimed was not presented to the grand jury or at

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<sup>1</sup>The Hon. J. William Brammer, Jr., 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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trial. The trial court summarily denied relief, and this petition for review followed.

¶4 On review, Robles again claims the state concealed exculpatory evidence that would establish his innocence and that his trial counsel was ineffective. As he did below, he asserts he “only recently” became aware of “transcripts and forensic reports and interviews” he believes support his claims. As Robles seems to recognize, he is permitted to raise only claims pursuant to Rule 32.1(d) through (h) in this untimely proceeding. Ariz. R. Crim. P. 32.4(a). Pursuant to Rule 32.2(b), a defendant raising such a claim must provide in his notice of post-conviction relief “meritorious reasons . . . substantiating the claim and indicating why the claim was not stated in the previous petition or in a timely manner.” Although Robles characterizes his claims as falling under Rule 32.1(e) and (h),<sup>2</sup> he has not complied with Rule 32.2(b). He has not explained why the evidence he believes supports his claims only recently came to his attention, or why he was unable to raise these arguments in an earlier proceeding. And, even had Robles complied with Rule 32.2(b), his claims nonetheless fail because he has produced no evidence to support them. *See* Ariz. R. Crim. P. 32.5 (petition must include “[a]ffidavits, records, or other evidence currently available to the defendant supporting the allegations of the petition”).

¶5 Robles also appears to assert he is entitled to relief because the state did not file a response to his petition. But the trial court is required to summarily dismiss a notice, like Robles’s, that fails to comply with Rule 32.2(b). In any event, the lack of response by the state does not entitle Robles to relief. *State v. Cawley*, 133 Ariz. 27, 29, 648 P.2d 142, 144 (App. 1982). And we reject Robles’s claim that the court was required to appoint him counsel. He is not entitled to counsel in a successive post-conviction proceeding. *See*

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<sup>2</sup>To the extent Robles reasserts he is entitled to raise these claims pursuant to Rule 32.1(f), that provision does not apply to untimely post-conviction proceedings for non-pleading defendants like Robles.

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*Osterkamp v. Browning*, 226 Ariz. 485, ¶¶ 11, 15-16, 250 P.3d 551, 554-55 (App. 2011) (defendant entitled to appointed counsel “[u]pon the filing of a timely or first notice” of post-conviction relief), *quoting* Ariz. R. Crim. P. 32.4(c)(2) (alteration in *Osterkamp*). Finally, although Robles complains the court did not take the time to properly review his claims, the court’s minute entry clearly shows it carefully considered Robles’s arguments and correctly rejected them.

¶6           Although we grant review, we deny relief.