

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

TIMOTHY JOHN LINDEKEN,
Petitioner.

No. 2 CA-CR 2015-0351-PR
Filed October 28, 2015

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NOT FOR PUBLICATION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.

Petition for Review from the Superior Court in Maricopa County
No. CR2007157945001SE
The Honorable Connie Contes, Judge

REVIEW GRANTED; RELIEF DENIED

Timothy Lindeken, Florence
In Propria Persona

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Judge Espinosa and Judge Kelly¹ concurred.

ECKERSTROM, Chief Judge:

¶1 Timothy Lindeken seeks review of the trial court's order summarily dismissing his untimely, successive post-conviction relief proceeding 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). Lindeken has not met his burden of demonstrating such abuse here.

¶2 Lindeken pled guilty to sexual conduct with a minor under the age of fifteen and two counts of attempted child molestation. Pursuant to a plea agreement, the trial court sentenced him in June 2009 to a thirteen-year prison term for sexual conduct with a minor, to be followed by concurrent terms of lifetime probation for attempted child molestation. In August 2010, Lindeken filed an untimely notice of and petition for post-conviction relief. The trial court summarily dismissed the proceeding, and this court denied review.

¶3 Lindeken then filed a "motion to file delayed-untimely pos[t]-conviction relief," citing without explanation Rule 32.1(a), (c), (e), (f), and (h). Treating that filing as a petition for post-conviction relief, the court summarily dismissed it, stating Lindeken had identified no claims that could be raised in an untimely proceeding. This petition for review followed.

¹The 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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¶4 In his petition for review, Lindeken asserts for the first time that his sentence and terms of probation are improper and requests that he be resentenced. In a supplement to his petition, he further states he “is arguing the unconstitutionality of his sentence not the plea.”² He also claims that “the person assisting him” in filing his motion below “was not aware” he was required to include “the reasons for an untimely or delayed petition” in his filing and that the trial court should have allowed him to “at least file a petition for post-conviction relief and state the grounds for his delay.”

¶5 We find no error in the trial court’s summary dismissal. In an untimely post-conviction proceeding, a defendant may raise claims only under Rule 32.1(d) through (h). Ariz. R. Crim. P. 32.4(a). And, to do so, the defendant’s notice of post-conviction relief must “set forth the substance of the [claim] and the reasons for not raising the claim in the previous petition or in a timely manner.” Ariz. R. Crim. P. 32.2(b). Although Lindeken cited Rule 32.1(e), (f), and (h) below, he did not identify any basis for those claims. In any event, he is not entitled to a delayed post-conviction proceeding under Rule 32.1(f) because he has previously litigated an of-right proceeding for post-conviction relief. See Ariz. R. Crim. P. 32.1. Finally, Lindeken cites no authority, and we find none, suggesting the trial court was required to give him an opportunity to comply with Rule 32.2(b) due to his purported confusion about the requirements of that rule. See *Smith v. Rabb*, 95 Ariz. 49, 53, 386 P.2d 649, 652 (1963) (pro se litigants entitled to no more consideration than if represented by counsel, and are held to same standards as attorneys for complying with procedural rules).

¶6 We do not address Lindeken’s sentencing claims raised for the first time in his petition for review. Not only can those

²We allowed the supplement in part, stating we accepted Lindeken’s clarification that he was challenging his sentence but noted that “to the extent the pleading adds any additional issue or argument that was not first presented to the trial court, this court may not consider those matters.”

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claims not be raised in an untimely proceeding, Ariz. R. Crim. P. 32.1(c), 32.4(a), we do not address claims raised for the first time on review, *see State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review should contain “issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review”).

¶7 We grant review but deny relief.