

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ROSALIO DELGADO BELTRAN,  
*Petitioner.*

No. 2 CA-CR 2016-0013-PR  
Filed May 18, 2016

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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NOT FOR PUBLICATION  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 Pima County  
No. CR20100750001  
The Honorable Howard Fell, Judge Pro Tempore

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines, Deputy County Attorney, Tucson  
*Counsel for Respondent*

Rosalio D. Beltran, Florence  
*In Propria Persona*

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**MEMORANDUM DECISION**

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

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H O W A R D, Presiding Judge:

¶1 Rosalio Beltran seeks review of the trial court's orders summarily denying his petition for post-conviction relief and motion for reconsideration filed pursuant to Rule 32, Ariz. R. Crim. P.<sup>1</sup> We will not disturb those rulings unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 Following a jury trial, Beltran was convicted of two counts of aggravated driving under the influence and three counts of endangerment and sentenced to enhanced, presumptive, concurrent ten-year prison terms on the first two counts and to time served on the other three counts. We affirmed Beltran's convictions and sentences on appeal. *State v. Beltran*, 2 CA-CR 2011-0157 (memorandum decision filed Feb. 29, 2012).

¶3 According to the procedural summary of this case provided by the trial court below, in 2011, Beltran filed a notice of post-conviction relief and, in 2012, appointed Rule 32 counsel filed a notice citing *Montgomery v. Sheldon*, 181 Ariz. 256, 260, 889 P.2d 614, 618 (1995).<sup>2</sup> However, because Beltran failed to file a timely pro se,

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<sup>1</sup>Although Beltran states he is petitioning solely from the trial court's order denying his motion for reconsideration, it is clear he is also challenging the court's denial of his Rule 32 petition.

<sup>2</sup>Although the record on review does not contain all of the documents related to Beltran's first Rule 32 proceeding, Beltran apparently does not dispute the accuracy of the procedural history provided by the trial court.

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supplemental petition, the court dismissed his first Rule 32 proceeding in March 2013. In March 2015, Beltran filed an untimely, successive notice of post-conviction relief in propria persona, and appointed counsel again filed a *Montgomery* notice stating he was unable to find any claims to raise in a Rule 32 petition. Beltran filed a pro se petition in May 2015, which the court summarily denied. This petition for review followed.

¶4 On review, Beltran raises numerous claims, which we summarize as follows: (1) he was denied the right to counsel during his arrest; (2) he was unconstitutionally denied disclosure; (3) he was denied a fair trial by limiting his confrontation rights during cross-examination; (4) his sentence was illegally enhanced with a prior conviction from 1987; and, (5) trial and appellate counsel were ineffective. Beltran asks us to vacate his convictions and sentences or remand for a new trial or an evidentiary hearing.

¶5 Beltran's claims are precluded and untimely: he raised claim one on appeal, *see Beltran*, 2 CA-CR 2011-0157, ¶¶ 4, 7; could have raised claims two, three and four on appeal; and, could have raised claim five in his first Rule 32 proceeding.<sup>3</sup> *See* Ariz. R. Crim. P. 32.2(a)(1), (2), and (3); *see State v. Spreitz*, 202 Ariz. 1, ¶ 4, 39 P.3d 525, 526 (2002) (when ineffective assistance of counsel raised or could have been raised in Rule 32 proceeding, subsequent claims of ineffective assistance deemed waived and precluded). And, other than a reference to claims based on newly discovered evidence and actual innocence in his form notice of post-conviction relief, Beltran did not provide any meaningful basis for excusing an untimely claim, nor does he challenge on review the court's denial of claims based on those arguments. *See* Ariz. R. Crim. P. 32.4(a) (untimely notice "may only raise claims pursuant to Rule 32.1(d), (e), (f), (g) or (h)").

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<sup>3</sup>Additionally, as the trial court noted in its ruling denying post-conviction relief, it previously had denied claim four in a 2014 ruling addressing various motions.

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¶6 Based on the record before us, we cannot say the trial court abused its discretion in denying Beltran's petition for post-conviction relief. The court did so in a detailed and thorough minute entry order that clearly identified Beltran's arguments and correctly ruled on them in a manner that will allow any future court to understand their resolution. We therefore approve and adopt the court's ruling and see no need to restate it here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶7 Finally, to the extent Beltran suggests, for the first time on review, that Rule 32 counsel was ineffective, we do not address that claim. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (court of appeals does not address issues raised for first time in petition for review); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii).

¶8 Because Beltran's claims are clearly precluded, the trial court properly denied his petition for post-conviction relief without conducting an evidentiary hearing. Accordingly, we grant the petition for review but deny relief.