

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

EDDIE SARMIENTO SALAZAR,
Petitioner.

No. 2 CA-CR 2016-0398-PR
Filed February 10, 2017

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NOT FOR PUBLICATION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 Pima County

No. CR20121291002

The Honorable Brenden J. Griffin, Judge

REVIEW GRANTED; RELIEF DENIED

Eddie S. Salazar, Buckeye
In Propria Persona

STATE v. SALAZAR
Decision of the Court

MEMORANDUM DECISION

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

ESPINOSA, Judge:

¶1 Eddie Salazar seeks review of the trial court's orders characterizing his notice of post-conviction relief and request for preparation of the record as petitions for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., and then summarily dismissing them. We will not disturb those orders unless the court clearly abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015).

¶2 After a jury trial, Salazar was convicted of armed robbery, theft of a credit card, kidnapping, and two counts of aggravated assault. The trial court sentenced him to concurrent and consecutive prison terms totaling 43.75 years. We affirmed his convictions and sentences on appeal. *State v. Salazar*, No. 2 CA-CR 2014-0139 (Ariz. App. Feb. 17, 2015) (mem. decision).

¶3 In October 2016, Salazar filed a notice of post-conviction relief stating he wished to raise claims of ineffective assistance of trial, appellate, and Rule 32 counsel. He additionally indicated he wished to raise a claim of newly discovered evidence. The trial court, noting it had previously denied a petition for post-conviction relief and "two motions which were treated as successive petitions for Post-Conviction Relief," regarded the filing as Salazar's "third successive petition for post-conviction relief" and summarily denied it.

¶4 Salazar then filed a request for preparation of the record, asking that numerous transcripts be prepared "to view for ineffective assistance of [counsel]." He also filed a motion for rehearing, arguing that his notice was not a petition, that he is

STATE v. SALAZAR
Decision of the Court

entitled to file a petition for post-conviction relief, and that the trial court erred by failing to appoint counsel. The court treated his request to prepare the record as another petition for post-conviction relief and denied it, and also denied his motion for rehearing. Salazar then filed the instant petition, which he characterizes as a petition for special action.

¶5 First, because the trial court treated Salazar's filings as petitions for post-conviction relief and summarily dismissed them, the proper method for seeking review is a petition for review pursuant to Rule 32.9(c). We therefore construe Salazar's petition as such. Salazar is correct that a notice of post-conviction relief merely initiates a post-conviction proceeding and, if a proper notice is filed, he is entitled to file a petition. *See* Ariz. R. Crim. P. 32.4(a), 32.5.

¶6 Salazar's most-recent notice nonetheless warranted summary dismissal. An untimely, successive notice is limited to claims raised pursuant to Rule 32.1(d) through (h). Ariz. R. Crim. P. 32.2, 32.4(a). A claim of ineffective assistance falls under Rule 32.1(a) and cannot be raised in an untimely proceeding like this one. *See State v. Petty*, 225 Ariz. 369, ¶ 11, 238 P.3d 637, 641 (App. 2010). And, even were the claim timely, as a non-pleading defendant, Salazar is not entitled to raise a claim of ineffective assistance of Rule 32 counsel. *State v. Escareno-Meraz*, 232 Ariz. 586, ¶¶ 4-6, 307 P.3d 1013, 1014 (App. 2013). The only eligible claim Salazar identified was a claim of newly discovered evidence under Rule 32.1(e). But, to be entitled to file a petition, he was additionally required to include with his notice "meritorious reasons . . . substantiating the claim and indicating why the claim was not stated in the previous petition or in a timely manner." Ariz. R. Crim. P. 32.2(b). Because Salazar did not do so, the court was required to dismiss his notice. *Id.* We may affirm the court's ruling if it is correct for any reason. *State v. Lopez*, 234 Ariz. 513, ¶ 10, 323 P.3d 1164, 1166 (App. 2014). And because no post-conviction proceeding was currently before the court, there was no reason to grant Salazar's request for preparation of transcripts. *See id.*; *see also* Ariz. R. Crim. P. 32.4(d).

¶7 Although we grant review, relief is denied.