

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

MICHAEL LESLIE JONES,  
*Petitioner.*

No. 2 CA-CR 2017-0029-PR  
Filed February 17, 2017

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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NOT FOR PUBLICATION  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. CR1998010023  
The Honorable Robert L. Gottsfield, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Michael Leslie Jones, Florence  
*In Propria Persona*

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**MEMORANDUM DECISION**

Presiding Judge Howard authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Vásquez concurred.

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H O W A R D, Presiding Judge:

¶1 Michael Jones seeks review of the trial court's order summarily dismissing his untimely and successive notice of and petition for post-conviction relief. We will not disturb that order unless the court clearly abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Jones has not met his burden of demonstrating such abuse here.

¶2 In 1999, Jones pled guilty to child molestation and attempted sexual conduct with a minor under the age of fifteen. He absconded, but was taken into custody in 2007 and sentenced the following year to a seventeen-year prison term for child molestation, to be followed by lifetime probation for attempted sexual conduct with a minor. In 2010, the court modified the term of probation to five years pursuant to *State v. Peek*, 219 Ariz. 182, 195 P.3d 641 (2008).

¶3 Jones filed a notice of and petition for post-conviction relief in 2011. The trial court appointed counsel, who filed a notice stating he had reviewed the record and found no claims to raise in a post-conviction proceeding. Although the court granted Jones leave to file a pro se petition, he failed to do so. The court dismissed the proceeding in June 2012. Jones did not seek review of that order.

¶4 In September 2014, Jones filed a second notice of and petition for post-conviction relief. He asserted, inter alia, that the prosecutor had committed misconduct, his trial and Rule 32 counsel had been ineffective, and the trial court had committed misconduct. He further claimed there were newly discovered material facts, there had been a significant change in the law, that he was actually innocent, and that his failure to timely seek post-conviction relief

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was without fault on his part. *See* Ariz. R. Crim. P. 32.1(e) through (h). The trial court summarily dismissed the petition, and this petition for review followed.

¶5 On review, Jones reasserts his arguments and again contends he “has raised many cogniz[able] claims” pursuant to Rule 32.1(e) through (h). The bulk of Jones’s claims, however, cannot be raised in an untimely proceeding like this one. Ariz. R. Crim. P. 32.4(a). And, insofar as he raises claims of newly discovered evidence, a significant change in the law, and actual innocence—claims not subject to the timeliness requirement of Rule 32.4(a)—he has not complied with Rule 32.2(b) by providing his “reasons for not raising the claim in the previous petition or in a timely manner.” Thus, the trial court was required to summarily dismiss those claims. *See id.*

¶6 As he did below, Jones claims, pursuant to Rule 32.1(f), that his failure to timely seek post-conviction relief was without fault on his part. Claims pursuant to Rule 32.1(f) are exempt from the timeliness requirement of Rule 32.4(a). But, for pleading defendants like Jones, Rule 32.1(f) only provides relief for the “failure to file a notice of post-conviction relief of-right.” *See* Ariz. R. Crim. P. 32.1 (defining “of-right proceeding”). The trial court concluded that Jones was not entitled to relief under Rule 32.1(f), reasoning it was not an “of right” proceeding because Jones had a previous Rule 32 proceeding.

¶7 A pleading defendant, however, may raise a claim of ineffective assistance of Rule 32 counsel in a second proceeding. *State v. Martinez*, 226 Ariz. 464, ¶ 9, 250 P.3d 241, 243-44 (App. 2011). And Rule 32.4(a) describes that second proceeding as a “Rule 32 of-right proceeding.” Thus, relief under Rule 32.1(f) is at least arguably available to a defendant who initiates a second post-conviction proceeding to raise a claim of ineffective assistance of Rule 32 counsel. But, even if we assume that is the case, Jones did not identify any reason for his delayed filing in his petition below. Thus, his claim under Rule 32.1(f) did not comply with Rule 32.2(b), and the court was required to summarily reject it.

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¶8

We grant review but deny relief.