

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RUPERTO BERNAVE DELEON SALES,
Petitioner.

No. 2 CA-CR 2017-0031-PR
Filed February 13, 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NOT FOR PUBLICATION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 Maricopa County
No. CR2014123489001DT
The Honorable Danielle J. Viola, Judge

PETITION DISMISSED

Ruperto Bernave Deleon Sales, Florence
In Propria Persona

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MEMORANDUM DECISION

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

ECKERSTROM, Chief Judge:

¶1 Ruperto Sales seeks review of the trial court’s order “rejecting” his timely filed, pro se, of-right petition for post-conviction relief,¹ *see* Ariz. R. Crim. P. 32.1 and 32.4, filed after appointed counsel notified the court, pursuant to Rule 32.4(c)(2), that he found no colorable claims to raise on Sales’s behalf. Although signed by Sales, the petition was purportedly brought “in propria persona via Jailhouse Lawyer (Non-Lawyer).” On July 1, 2015, the court rejected the petition on the ground that it violated the prohibition against the unauthorized practice of law under Arizona Supreme Court Rule 31. Sales filed a petition for review of that ruling on July 27, 2015.

¶2 On October 5, 2015, after the Maricopa County Superior Court record had been transmitted, *see* Ariz. R. Crim. P. 32.9(e), Sales notified this court that the trial court had, on September 17, 2015, dismissed his post-conviction relief proceeding on the ground that he failed to timely file a petition for post-conviction relief. No order of that date is before this court for review, and, under Rule 32.9(c), our jurisdiction is limited to a “final decision of the trial court” in Rule 32 proceedings. *See also* A.R.S. § 13-4239(C).

¹We construe Sales’s filing of June 1, 2015, captioned as “Post Conviction Relief Amendment R. 32,” as a pro se petition pursuant to Rule 32.4(c)(2), Ariz. R. Crim. P. *Cf.* Ariz. R. Crim. P. 32.6(c) (court shall “disregard[] defects of form” in reviewing post-conviction relief petition).

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¶3 Although it is understandable that Sales believed the trial court's "reject[ion]" of his petition was a final decision subject to review under Rule 32.9, the only final decisions contemplated by Rule 32 are dismissals, pursuant to Rules 32.2(b), 32.5, or 32.6(c), or a grant or denial of relief after an evidentiary hearing, pursuant to Rule 32.8. Based on the record before us, it appears "the final decision of the trial court" in these proceedings, Ariz. R. Crim. P. 32.9(c), was not entered until September 17, 2015, and Sales has not filed a petition for review of that decision.

¶4 Because we lack jurisdiction to review the trial court's order of July 1, 2015, "rejecting" Sales's petition for post-conviction relief, we dismiss this petition for review. We do so without prejudice to Sales's ability to seek an extension of time to file a petition for review of the trial court's final decision of September 17, 2015. *See* Ariz. R. Crim. P. 32.9(c) (motions for extensions of time to file petitions for review "shall be filed in and ruled upon by the trial court").