

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

FERNANDO SEGOVIANO ALMANZA,  
*Petitioner.*

No. 2 CA-CR 2017-0064-PR  
Filed July 25, 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NOT FOR PUBLICATION  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 Pinal County  
No. S1100CR201103026  
The Honorable Joseph R. Georgini, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Kent Volkmer, Pinal County Attorney  
By Rodney States, Deputy County Attorney, Florence  
*Counsel for Respondent*

Jon M. Sands, Federal Public Defender  
By Alexandra Hicks LeClair, Assistant Federal Defender, Phoenix  
*Counsel for Petitioner*

STATE v. ALMANZA  
Decision of the Court

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**MEMORANDUM DECISION**

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Kelly<sup>1</sup> concurred.

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ECKERSTROM, Chief Judge:

¶1 Fernando Almanza seeks review of the trial court’s ruling denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. 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). Almanza has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Almanza was convicted of sexual conduct with a minor under the age of twelve and sentenced to life imprisonment without the possibility of release for thirty-five years. We affirmed his conviction and sentence on appeal. *State v. Almanza*, No. 2 CA-CR 2014-0034, ¶ 1 (Ariz. App. Aug. 29, 2014) (mem. decision). Our mandate issued October 9, 2014.

¶3 In March 2015, Almanza filed a notice of post-conviction relief stating his failure to file a timely notice of post-conviction relief was without fault on his part. The trial court appointed counsel, who filed a notice stating she had reviewed the record but found “no colorable claims” to raise in a post-conviction proceeding. Almanza then filed a pro se petition claiming his trial counsel had been ineffective for failing to present certain facts, including that he “would have been unable to lift” the victim due to recent surgery and that the victim’s mother had requested he be fired because he refused

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<sup>1</sup>The 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.

STATE v. ALMANZA  
Decision of the Court

to “transport drugs for her.” The court summarily denied relief, and this petition for review followed.

¶4 On review, Almanza expands his claim of ineffective assistance of trial counsel, asserting counsel failed to adequately investigate his case and present a defense, investigate his mental health, and object to purported misconduct by the state. He also raises the state’s alleged misconduct as a separate claim and argues his appellate and Rule 32 counsel were ineffective.

¶5 We need not address Almanza’s claims. He was required to file his notice of post-conviction relief within thirty days of our mandate and failed to do so. *See* Ariz. R. Crim. P. 32.4(a). The time limits provided in Rule 32.4(a) are jurisdictional. *See* A.R.S. § 13-4234(G); *State v. Lopez*, 234 Ariz. 513, ¶ 8, 323 P.3d 1164, 1166 (App. 2014). In his petition below and on review, he has not identified any claim that may be raised in an untimely proceeding. *See* Ariz. R. Crim. P. 32.4(a) (only claims under Rule 32.1(d), (e), (f), (g) or (h) may be raised in notice filed after time limit).

¶6 Although Almanza asserted in his initial notice that his failure to timely seek post-conviction relief was without fault on his part, he is not entitled to relief under Rule 32.1(f) because, for non-pleading defendants, relief is available only for the failure to timely appeal, not the failure to timely seek post-conviction relief. Nor is Almanza entitled to the effective assistance of Rule 32 counsel, *State v. Escareno-Meraz*, 232 Ariz. 586, ¶¶ 4-6, 307 P.3d 1013, 1014 (App. 2013), even if this claim could be raised for the first time on review, *see* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review limited to “[t]he issues which were decided by the trial court”).

¶7 We grant review but deny relief.