

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

JEFFREY PAUL COSTA,  
*Petitioner.*

No. 2 CA-CR 2017-0071-PR  
Filed March 30, 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NOT FOR PUBLICATION  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 Mohave County  
No. CR201101313  
The Honorable Steven F. Conn, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Jeffrey P. Costa, Tucson  
*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.

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ECKERSTROM, Chief Judge:

¶1 Jeffrey Costa seeks review of the trial court’s ruling summarily dismissing his post-conviction proceeding filed pursuant to Rule 32, Ariz. R. Crim. P., for failing to timely file a petition for post-conviction relief. We will not disturb that ruling unless the court clearly abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Costa has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Costa was found guilty of second-degree murder and sentenced to a twenty-one-year prison term. This court affirmed his conviction and sentence on appeal. *State v. Costa*, No. 1 CA-CR 13-0870 (Ariz. App. Jan. 8, 2015) (mem. decision). Costa sought post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record but found no “nonfrivolous issue of law or fact which may be raised under Rule 32” and requested that Costa be given leave to file a pro se petition. On March 23, 2015, the trial court granted counsel’s request and set May 1 as the due date for Costa’s petition.<sup>1</sup> The court’s order stated that no extension would be granted “without a showing of extraordinary circumstances.” The court, however, granted Costa’s April 2 request for an extension, ordering the petition would be due June 30.

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<sup>1</sup>Although Rule 32.4(c)(2) requires that a trial court permit a pleading defendant to file a pro se petition following review by appointed counsel, it contains no such requirement for a non-pleading defendant like Costa. But nothing in the rule prohibits the court from permitting a pro se petition following counsel’s review.

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¶3 Costa filed another request for an extension, dated June 18 and filed June 23. He claimed a lack of availability of legal resources “since May 23” prevented him from obtaining “copies and notary services required for filing.” The trial court denied that request on June 26, concluding Costa had not demonstrated “there are extraordinary circumstances justifying a further extension.” The court noted Costa had not “identified in any of his pleadings what meritorious claim . . . he would be making if given additional time” and had “been given more than 3 months to file a pro per petition.”

¶4 The trial court dismissed Costa’s Rule 32 proceeding on July 14 based on Costa’s failure to timely file his petition. On July 30, Costa filed his petition, which was dated July 6, claiming his trial counsel had been ineffective. The court reaffirmed its earlier order dismissing the proceeding. Costa also filed a motion for rehearing, in which he detailed his purported difficulties in accessing legal resources and asserted he was entitled to access to “a knowledgeable para-legal.” The court denied that motion, and this petition for review followed.

¶5 On review, Costa argues he established “extraordinary circumstances” justifying his late petition and, thus, the trial court was required to review it. He asserts legal services were unavailable “in June and July,” because the Arizona Department of Corrections (ADOC) was not compliant with “*Casey v. Lewis*” and various regulations, thereby “showing lack of assistance to inmate[s].”

¶6 Costa first referred to “*Casey v. Lewis*” in his motion for rehearing, but has not provided a reporter citation. It is not clear to which case Costa intends to refer. In *Casey v. Lewis*, 43 F.3d 1261, 1265 (9th Cir. 1994), the Ninth Circuit Court of Appeals partially affirmed a district court’s finding that ADOC’s legal access program was constitutionally deficient. That decision was reversed by the United States Supreme Court in *Lewis v. Casey*, 518 U.S. 343 (1996). Regardless, Costa has not adequately developed a claim that he was unconstitutionally denied access to sufficient legal resources, causing his failure to timely file his petition. See *State v. Stefanovich*,

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232 Ariz. 154, ¶ 16, 302 P.3d 679, 683 (App. 2013) (insufficient argument waives claim on review). And, in any event, a court is not required to address arguments raised for the first time in a motion for rehearing. See *State v. Bortz*, 169 Ariz. 575, 577, 821 P.2d 236, 238 (App. 1991). And, because Costa did not raise them below, we do not address his arguments that ADOC violated regulations or that appointed counsel was ineffective because counsel did not assist him in filing a petition. See *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); see also Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review shall contain “[t]he issues which were decided by the trial court and which the defendant wishes to present” for review).

¶7 Costa has not cited any authority suggesting the trial court erred in denying his second extension request. See *Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d at 683. Nor has he explained why he waited until less than two weeks before his petition was due before requesting that extension – particularly given that he was aware that inmate access to legal services was sporadic. And, although he listed in his motion for rehearing numerous days legal services had allegedly been unavailable, he provided no supporting documentation and did not explain why he could not access legal services on other days. Thus, he has not demonstrated the court abused its discretion in denying his second extension request or in dismissing his petition as untimely.

¶8 We grant review but deny relief.