

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RUPERTO BERNAVE DELEON SALES,
Petitioner.

No. 2 CA-CR 2017-0141-PR
Filed October 16, 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NOT FOR PUBLICATION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

**REVIEW GRANTED; RELIEF GRANTED IN PART AND
REMANDED**

Ruperto Sales, Florence
In Propria Persona

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Judge Eppich and Judge Staring concurred.

ECKERSTROM, Chief Judge:

¶1 Ruperto Sales seeks review of the trial court’s order summarily dismissing his post-conviction relief proceeding, filed pursuant to Rule 32, Ariz. R. Crim. P. We grant review, and for the reasons that follow, we grant relief in part and remand the case for further proceedings.

¶2 In 2014, Sales pled guilty to two counts of child molestation and one count of attempted child molestation. The trial court sentenced him to consecutive, 17.5-year prison terms for the first two counts, to be followed by lifetime probation for the third count. Sales filed a notice of post-conviction relief in 2014. After appointed counsel filed a notice stating he had reviewed the record and found no claims to raise in a post-conviction proceeding, the court granted Sales leave to file a pro se petition by June 4, 2015. On June 1, 2015, Sales filed a “Post Conviction Relief Amendment R. 32,” a pleading he signed and in which he indicated he was filing “in propria persona via Jailhouse Lawyer (Non-Lawyer).” On July 1, 2015, the court rejected Sales’s petition on the ground that it violated the prohibition against the unauthorized practice of law under Arizona Supreme Court Rule 31.

¶3 Sales filed a petition for review of that ruling on July 27, 2015. After the Maricopa County Superior Court record had been transmitted, Sales notified this court that the trial court had, on September 17, 2015, dismissed his post-conviction relief proceeding on the ground that he had failed to file a petition for post-conviction relief by the court-imposed deadline of June 4, 2015. In our February 13, 2017 memorandum decision, we found that because the purported final decision in this matter was not entered until September 17, 2015, a ruling that was not before us on review, and

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because our jurisdiction is limited to a “final decision of the trial court” under Rule 32.9(c), we lacked jurisdiction to review the July 1, 2015 order “rejecting” Sales’s petition for post-conviction relief. *State v. Sales*, No. 2 CA-CR 2017-0031-PR, ¶¶ 2, 4 (Ariz. App. Feb. 13, 2017) (mem. decision). Noting that Sales had not filed a petition for review from the final decision in the matter, we dismissed the petition for review without prejudice as to his ability to seek an extension of time to file a petition for review of the court’s September 17, 2015 order. *Id.* ¶ 4. The trial court granted Sales’s request to do so, and this petition for review followed.

¶4 We review a trial court’s summary dismissal of a Rule 32 petition for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). As previously noted, in its September 17, 2015 ruling, the court found that Sales had not filed a petition for post-conviction relief by the court-imposed June 4, 2015 deadline, and thus dismissed his Rule 32 proceeding. However, as we observed in our memorandum decision, we construed Sales’s June 1, 2015 “Post Conviction Relief Amendment R. 32” as a pro se Rule 32 petition. *Sales*, No. 2 CA-CR 2017-0031-PR, n.1. On review, Sales presents, inter alia, an accurate chronology of the procedural history of this case and asks that we allow him to file a Rule 32 petition. Because we conclude the court abused its discretion by finding Sales had failed to file a timely petition before the June 4, 2015 deadline, we conclude it improperly dismissed the proceeding without considering his petition. We therefore remand the case for further consideration of whether Sales has stated a colorable claim in the Rule 32 petition filed on June 1, 2015, and if so, for further proceedings. *See* Ariz. R. Crim. P. 32.6(c).

¶5 For the foregoing reasons, we grant review and grant relief in part. We vacate the trial court’s ruling dismissing this proceeding and remand the case for further consideration consistent with this decision.