

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

REYES J. MIRANDA,
Petitioner.

No. 2 CA-CR 2017-0143-PR
Filed October 4, 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NOT FOR PUBLICATION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 Pima County
No. CR20123942001
The Honorable Christopher Browning, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Gallego Law Firm, P.C., Tucson
By Rafael F. Gallego
Counsel for Petitioner

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MEMORANDUM DECISION

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

E P P I C H, Judge:

¶1 Reyes Miranda seeks review of the trial court’s summary denial of his untimely, successive petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Miranda has not met his burden of demonstrating such abuse here.

¶2 In May 2014, Miranda pled guilty to manslaughter. Pursuant to the stipulated sentencing range set forth in the plea agreement, the trial court sentenced him to a slightly aggravated prison term of sixteen years. In September 2014, Miranda’s trial attorney filed a petition for post-conviction relief challenging the imposition of an aggravated sentence. Pursuant to the state’s motion for compliance with former Rule 32.5, the court returned the petition to Miranda for revision on October 1, 2014, noting it did not contain a certification as required by the rule, and that failure to file a revised petition by November 3, 2014 would result in dismissal with prejudice (“defendant shall include every ground known to him . . . for vacating, reducing, correcting or otherwise changing all judgments or sentences imposed upon him . . . and certify that he . . . has done so”). *See* 213 Ariz. XLVII-XLVIII (2006-2007). Miranda did not file a revised petition by the due date.

¶3 Almost two years later, in August 2016, Miranda’s new attorney filed a successive petition for post-conviction relief, again challenging Miranda’s sentence, as his prior attorney had done in his first petition, and further asserting, “this is the first proceeding in which [Miranda] could raise the ineffective assistance” of his first Rule 32 attorney for that attorney’s failure to amend his first petition

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pursuant to former Rule 32.5. In an October 2016 ruling, the trial court reviewed the procedural history of the case and denied Miranda's second petition as untimely. *See* Ariz. R. Crim. P. 32.4(a). Miranda did not seek review of that ruling.

¶4 In February 2017, Miranda filed a third Rule 32 petition, which was essentially identical to the petition he had filed in August 2016, again challenging his sentence and again maintaining "this is the first proceeding" in which he could raise the claim of his first Rule 32 counsel's deficient conduct in failing to file a revised petition in 2014.¹ In a March 2017 ruling, the trial court noted that Miranda's current petition was "almost identical" to his August 2016 petition, which it had rejected as untimely. "Given the state of the Record, the fact that [Miranda's] current pleading is untimely by almost two and one half years and the Court's prior ruling on what was essentially the same issue as presented by [Miranda] on August 12, 2016," the court denied the petition as untimely.

¶5 On review, Miranda restates the claims he raised in his petition below, but does not address the trial court's conclusion that his third petition is untimely. Claims of ineffective assistance of counsel fall within Rule 32.1(a) and thus cannot be raised in an untimely proceeding like this one. Ariz. R. Crim. P. 32.1(a) cmt. (acknowledging ineffective-assistance-of-counsel claims fall under this subsection); 32.4(a). Nor can a sentencing claim be raised in an untimely proceeding. Ariz. R. Crim. P. 32.1(c), 32.4(a). With respect to claims under Rule 32.1(a) through (c), "no exception to the preclusion or timeliness rules exists." *State v. Rosales*, 205 Ariz. 86, ¶ 11, 66 P.3d 1263, 1267 (App. 2003). Moreover, other than asserting, without factual or legal support, that he could not have raised his claim of ineffective assistance of counsel in an earlier proceeding,²

¹In a separate document entitled "Petition for Post-Conviction Relief" filed on the same day as Miranda's third petition, he checked boxes suggesting he might be raising other claims, but indicated the "primary issue is the ineffective assistance of counsel."

²In support of this proposition, Miranda asserted in both his second and third petitions that his first Rule 32 counsel, who was also

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Miranda does not contend his claims fall within any of the exceptions to preclusion; he simply reasserts all of his claims on review.

¶6 Because the trial court did not abuse its discretion by denying Miranda's petition as untimely, we grant review but deny relief.

trial counsel, "could have raised the claim [of ineffective assistance of counsel] only by asserting his own ineffectiveness." In light of the fact that Miranda's petition is patently untimely, we need not address this argument.