

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RYAN STARR SOUCY,
Petitioner.

No. 2 CA-CR 2017-0155-PR
Filed September 20, 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NOT FOR PUBLICATION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
Nos. CR20094029001; CR20101664001; CR20101978001;
CR20103081001

The Honorable Teresa Godoy, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Ryan Soucy, Eloy
In Propria Persona

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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 Ryan Soucy seeks review of the trial court’s order summarily dismissing his notice of post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb the court’s order unless it clearly abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Soucy has not met his burden of demonstrating such abuse here.

¶2 Soucy pled guilty in four different cause numbers to theft by misrepresentation, aggravated assault of a peace officer, and three counts of possession of a dangerous drug and was sentenced to concurrent and consecutive prison terms totaling 18.5 years. Soucy has sought post-conviction relief on several occasions before this proceeding, most recently in 2014, when he sought to raise claims of ineffective assistance of Rule 32 counsel. The trial court rejected that claim as untimely, and we agreed, denying relief on his petition for review. *State v. Soucy*, No. 2 CA-CR 2015-0354-PR, ¶ 8 (Ariz. App. Mar. 1, 2016) (mem. decision).

¶3 In March 2017, Soucy filed a notice of post-conviction relief claiming his Rule 32 counsel’s filing of a notice of completion pursuant Rule 32.4(c)(2), violated his right to counsel because he lacked “access to the courts,” citing *Montgomery v. Sheldon*, 181 Ariz. 256, 889 P.2d 614 (1995). Thus, he asserted, because he was denied meaningful access to legal resources and had not waived the right to counsel, he had been “denied counsel at a critical stage,” namely, his first Rule 32 proceeding. He further claimed he was denied his “right to accept or reject a plea” because the trial court had imposed a “cut-off date.” Finally, he contended he was entitled to raise his claims because he had not waived them, citing *Stewart v. Smith*, 202

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Ariz. 446, 46 P.3d 1067 (2002), and based on the “equitable principles” described in *State v. Diaz*, 236 Ariz. 361, 340 P.3d 1069 (2014), and *State v. Goldin*, 239 Ariz. 12, 365 P.3d 364 (App. 2015). The court summarily dismissed the notice, concluding he could not raise his claims in an untimely proceeding. This petition for review followed.

¶4 On review, Soucy argues the trial court erred by concluding he could not raise his claims in an untimely proceeding. We find no error.¹ First, Soucy is incorrect that *Montgomery* supports an argument that he has been denied the right to counsel if counsel files a notice of completion pursuant to Rule 32.4(c)(2).² Our supreme court determined only that counsel could not foreclose a defendant’s right to seek post-conviction relief by filing a notice of completion and, thus, a defendant was entitled to file a pro se petition when assigned counsel declined to file a petition. *Montgomery*, 181 Ariz. at 260, 889 P.2d at 618. Whether a defendant lacks access to legal resources is a separate issue, and one that is not cognizable under Rule 32 because it does not implicate Soucy’s conviction or sentence but, rather, concerns only the alleged post-trial denial of his rights. *See* Ariz. R. Crim. P. 32.1.

¶5 Nor is Soucy correct that he is entitled to raise his claims in an untimely proceeding pursuant to *Smith*, 202 Ariz. 446, 46 P.3d 1067, because he asserts he did not knowingly waive them. As this court has explained, the waiver principles discussed in *Stewart* do not apply to untimely proceedings like this one. *See State v. Lopez*, 234 Ariz. 513, ¶¶ 7-8, 323 P.3d 1164, 1166 (App. 2014).

¹Because we reject Soucy’s arguments that his claims are exempt from the timeliness requirement of Rule 32.4(a), we do not address the merits of his claim that the trial court erred by setting a deadline for him to accept or reject the state’s plea offer.

² Pursuant to Rule 32.4(c)(2), in an of-right proceeding, “counsel shall investigate the defendant’s case for any and all colorable claims. If counsel determines there are no colorable claims which can be raised on the defendant’s behalf, counsel shall file a notice advising the court of this determination.”

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¶6 Finally, Soucy has not demonstrated that the reasoning of *Diaz* and *Goldin* apply to his case. In *Diaz*, our supreme court determined that a defendant was entitled to raise a claim because his first and second notices of post-conviction relief were dismissed after appointed counsel failed to timely file a petition. 236 Ariz. 361, ¶¶ 1, 3-4, 340 P.3d at 1069-70. Similarly, in *Goldin*, we concluded a defendant may be entitled to raise an untimely post-conviction claim when his counsel had misled him both about the existence of the claim and the proper procedure by which to seek relief. 239 Ariz. 12, ¶¶ 20-25, 365 P.3d at 369-70. Unlike the defendants in *Diaz* and *Goldin*, Soucy has identified no conduct by his counsel that prevented him from seeking post-conviction relief.

¶7 We grant review but deny relief.