

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ROBERT WILLIAM LEIGHTON,
Petitioner.

No. 2 CA-CR 2017-0180-PR
Filed September 14, 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NOT FOR PUBLICATION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. CR20092025002
The Honorable Danelle B. Liwski, Judge

REVIEW GRANTED; RELIEF DENIED

Robert William Leighton, Florence
In Propria Persona

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Staring and Judge Kelly¹ concurred.

ESPINOSA, Judge:

¶1 Petitioner Robert Leighton seeks review of the trial court's order dismissing his notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We grant review but deny relief.

¶2 After a 2010 jury trial, Leighton was convicted of first-degree murder, burglary, kidnapping, and armed robbery. The trial court sentenced him to life imprisonment for murder and to concurrent prison terms for the other offenses. This court affirmed his convictions and sentences on appeal. *State v. Leighton*, No. 2 CA-CR 2010-0120 (Ariz. App. Dec. 22, 2010) (mem. decision).

¶3 In March 2017, Leighton filed an untimely notice of post-conviction relief in which he alleged, as newly discovered material facts that probably would have changed the verdict, *see* Ariz. R. Crim. P. 32.1(e), that his trial attorney lacked a comprehensive grasp of the law of marital privilege, as evinced by a pretrial motion that "inaccurately state[d] the legal issue," and that his appellate counsel failed to seek review of the trial court's ruling on that issue. In its order dismissing the notice, the court explained why Leighton's claim was not based on Rule 32.1(e), a ground for relief that may be available in an untimely Rule 32 proceeding. *See* Ariz. R. Crim. P. 32.2(b), 32.4(a). The court further concluded Leighton was "in fact arguing ineffective assistance of counsel," a claim based on Rule 32.1(a) that cannot be raised in an untimely

¹The 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.

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notice of post-conviction relief. *See* Ariz. R. Crim. P. 32.2(a), 32.2(b), 32.4(a). This petition for review followed.

¶4 On review, Leighton does not dispute the trial court's determination that his claims do not involve newly discovered material facts. Instead, he maintains the court's allegedly erroneous evidentiary ruling at trial involves a "pure question of law" that has not yet "been subject to appellate review," and he devotes his petition for review to the merits of that claim. We review a trial court's summary dismissal of a Rule 32 proceeding for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006) (dismissal of petition for lack of colorable claim); *State v. Harden*, 228 Ariz. 131, ¶ 3, 263 P.3d 680, 681 (App. 2011) (dismissal of notice pursuant to Rule 32.2(b)). We find none here.

¶5 Leighton simply does not address the trial court's determination that the claims raised in his notice for post-conviction relief, filed more than seven years after his conviction, are time-barred. *See* Rule 32.4(a) (limiting grounds for claim raised in untimely petition); 32.9(c)(1) (petition for review shall contain "issues which were decided by the trial court"; issue deemed waived for failure to raise it in petition for review). "Because the general rule of preclusion serves important societal interests, Rule 32 recognizes few exceptions." *State v. Shrum*, 220 Ariz. 115, ¶ 13, 203 P.3d 1175, 1178 (2009). Leighton's notice of post-conviction relief failed to identify any exception in Rule 32.2(b) or 32.4(a) that applied to his untimely claims of trial error and ineffective assistance of counsel, and the trial court did not abuse its discretion in dismissing that notice. *See* Ariz. Crim. P. 32.2(b) (to avoid dismissal, defendant's untimely notice must include "meritorious reasons" substantiating a claimed exception to preclusion).

¶6 Accordingly, although we grant review, relief is denied.