

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ADAM ALCANTAR,  
*Petitioner.*

No. 2 CA-CR 2017-0211-PR  
Filed October 26, 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NOT FOR PUBLICATION  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 Pinal County  
No. S1100CR200601723  
The Honorable Kevin D. White, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Kent P. Volkmer, Pinal County Attorney  
By Thomas C. McDermott, Deputy County Attorney, Florence  
*Counsel for Respondent*

Adam Alcantar, Florence  
*In Propria Persona*

STATE v. ALCANTAR  
Decision of the Court

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**MEMORANDUM DECISION**

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

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E P P I C H, Judge:

¶1 Petitioner Adam Alcantar seeks review of the trial court’s order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Alcantar has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Alcantar was convicted of indecent exposure, two counts of child molestation, three counts of attempted sexual conduct with a minor, and four counts of sexual conduct with a minor. He was sentenced to concurrent and consecutive prison terms totaling 144 years. We affirmed his convictions and sentences on appeal. *State v. Alcantar*, No. 2 CA-CR 2009-0109 (Ariz. App. Apr. 30, 2010) (mem. decision). And we denied relief pursuant to his petition for review of the trial court’s denial of his first petition for post-conviction relief. *State v. Alcantar*, No. 2 CA-CR 2013-0077-PR (Ariz. App. Jun. 10, 2013) (mem. decision). We dismissed a subsequent petition for review from the court’s denial of Alcantar’s second petition for post-conviction relief. *State v. Alcantar*, No. 2 CA-CR 2016-0361-PR (Ariz. App. Jan. 25, 2017) (mem. decision).

¶3 Alcantar then initiated another proceeding for post-conviction relief, arguing in his petition that the trial court had erroneously instructed the jury, erred in ruling on trial objections, and demonstrated “judicial bias.” The court summarily denied relief, concluding Alcantar’s claims could have been raised in previous proceedings and were therefore precluded.

STATE v. ALCANTAR  
Decision of the Court

¶4 On review, Alcantar argues his claims are “fundamental and structural” and of sufficient constitutional magnitude that they “cannot be deemed waived or precluded.” But, claims of fundamental error are subject to preclusion. *See Swoopes*, 216 Ariz. 390, ¶ 42, 166 P.3d at 958. And, although a timely claim of sufficient constitutional magnitude may be exempt from preclusion, such a claim is not exempt from the timeliness requirements of Rule 32.4(a). *See State v. Lopez*, 234 Ariz. 513, ¶ 8, 323 P.3d 1164, 1166 (App. 2014). “Thus, whether the underlying claim is of a sufficient constitutional magnitude to require a knowing, voluntary, and intelligent waiver is immaterial . . . .” *Id.* Because Alcantar’s claims are either untimely or precluded, we conclude the trial court properly rejected them.

¶5 Therefore, we grant the petition for review, but deny relief.