

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DAVID WAYNE FRODSHAM,
Petitioner.

No. 2 CA-CR 2017-0214-PR
Filed November 29, 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NOT FOR PUBLICATION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 Cochise County

No. S0200CR201600419

The Honorable Wallace R. Hoggatt, Judge

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

David W. Frodsham, Kingman
In Propria Persona

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MEMORANDUM DECISION

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

STARING, Presiding Judge:

¶1 David Frodsham seeks review of the trial court’s order dismissing his of-right notice of post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., based on his having failed to timely file a petition. We grant review and partial relief, and remand the case to the trial court to determine whether Frodsham should be given an extension in which to file a pro se petition for post-conviction relief. We reject his claim that he is entitled to review pursuant to *Anders v. California*, 386 U.S. 738 (1976).

¶2 Frodsham pled guilty to two counts of sexual conduct with a minor and the trial court sentenced him to consecutive 8.5-year prison terms. Frodsham filed a notice of post-conviction relief,¹ and appointed counsel filed a notice stating he had reviewed the record but “found no colorable claims for post-conviction relief which can be raised on [Frodsham’s] behalf.” The court granted Frodsham “45 days from [March 28, 2017] plus five days for mailing” to file a supplemental petition. On May 25, having not received a petition, the court dismissed the proceeding. This petition for review followed.

¶3 On review, Frodsham first asserts, “[s]ince Arizona’s first-tier Rule 32 is the functional equivalent to a direct appeal for plea-convicted defendants,” he is entitled to “the prophylactic procedures outlined in *Anders*.” This court recently rejected a similar claim, concluding a superior court is not required “to conduct *Anders* review in a Rule 32 of-right petition.” *State v. Chavez*, No. 1 CA-CR 15-0482 PRPC, ¶ 18, 2017 WL 5590152 (Ariz. Ct. App. Nov. 16, 2017).

¶4 Frodsham additionally asserts he did not receive the trial court’s order granting him leave to file a pro se petition and setting the

¹As part of the plea agreement, Frodsham pled guilty to attempted sexual conduct with a minor under a different cause number. Frodsham’s notice of post-conviction relief did not include that number.

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deadline for that petition. He asks that we order the trial court to “allow [him] to file his *pro se* PCR petition.” Frodsham has included with his petition for review an affidavit avowing he did not receive the order and a letter from advisory counsel dated April 10, 2017—nearly two weeks after the trial court’s order—advising Frodsham that the forty-five day time would begin “upon the signing of the Order by the Court” and he would “receive a copy of that order when it is signed.”

¶5 Pursuant to Rule 32.4(c)(2), when, as here, counsel in an of-right proceeding files a notice of completion stating counsel has found no colorable claims to raise, the trial court is required to “extend the time for filing a petition by the defendant in propria persona. The extension shall be 45 days from the date the notice is filed.” Extensions are permitted “only upon a showing of extraordinary circumstances.” *Id.* If Frodsham in fact did not receive the order, that could support a finding that “extraordinary circumstances” exist, allowing the court to grant an extension. We therefore remand the case to the trial court to determine whether Frodsham is entitled to such relief.

¶6 We grant review and relief in part, remanding the case to the trial court to determine whether Frodsham has demonstrated he is entitled to an extension under Rule 32.4(c)(2). We otherwise deny relief.