

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

SAMUEL ANTONIO PARRA,  
*Petitioner.*

No. 2 CA-CR 2017-0247-PR  
Filed November 22, 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NOT FOR PUBLICATION  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 Pima County  
No. CR20042732  
The Honorable Howard Fell, Judge Pro Tempore

**REVIEW GRANTED; RELIEF DENIED**

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Samuel A. Parra, Florence  
*In Propria Persona*

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**MEMORANDUM DECISION**

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

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ECKERSTROM, Chief Judge:

¶1 Samuel Parra seeks review of the trial court’s order summarily dismissing his successive and untimely notice of post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb the court’s order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Parra has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Parra was convicted of sexual abuse of a minor, two counts of attempted sexual conduct with a minor, child molestation, sexual conduct with a minor under the age of fifteen, and sexual abuse of a minor under the age of fifteen. The trial court sentenced him to concurrent and consecutive prison terms totaling thirty-seven years. We affirmed his convictions and sentences on appeal. *State v. Parra*, No. 2 CA-CR 2006-0436 (Ariz. App. Mar. 13, 2008) (mem. decision). Parra then sought post-conviction relief, which was denied, and this court denied relief on review. *State v. Parra*, No. 2 CA-CR 2010-0331-PR (Ariz. App. Feb. 15, 2011) (mem. decision).

¶3 In April 2017, Parra filed a notice of post-conviction relief asserting his Rule 32 counsel had been ineffective. He claimed that, because his first proceeding was “of right,” he was entitled to the effective assistance of counsel. The trial court dismissed the notice, concluding Parra could not raise the claim in an untimely proceeding. This petition for review followed.

¶4 On review, Parra asserts the trial court erred by dismissing his notice, claiming his Rule 32 counsel was ineffective, apparently because he declined to raise various issues Parra had identified. He again argues he was entitled to effective assistance in his first, “of right” proceeding. But the term “of-right proceeding” under Rule 32 refers only the first Rule 32 proceeding brought by a pleading defendant. Ariz. R. Crim. P. 32.1. Such a defendant is entitled to claim, in a subsequent proceeding, that of-right Rule 32 counsel was ineffective. *Osterkamp v. Browning*, 226 Ariz. 485, ¶ 20

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(App. 2011). As this court has explained, however, non-pleading defendants, like Parra “have no constitutional right to counsel in post-conviction proceedings.” See *State v. Escareno-Meraz*, 232 Ariz. 586, ¶ 4 (App. 2013). Thus, even had he timely raised this claim, it is not cognizable under Rule 32.<sup>1</sup> Nor may his related claim that the denial of counsel creates a jurisdictional defect be raised in this untimely proceeding. Ariz. R. Crim. P. 32.1(b), 32.4(a).

¶5 Parra additionally argues the trial court erred by “convert[ing]” his notice of post-conviction relief “into a petition.” He argues the court was required to allow him to file a supporting petition before it was permitted to reject his claims. Although the court occasionally referred to Parra’s notice as a “petition” in its ruling, we find no error warranting relief. Pursuant to Rule 32.4(a), an untimely post-conviction proceeding is restricted to claims arising under Rule 32(d) through (h). Parra expressly indicated in his notice that he was not raising any such claim. And, as we have explained, the only claim he did raise is not cognizable under Rule 32. Thus, the court was required to dismiss his notice. See Ariz. R. Crim. P. 32.2(b).

¶6 We grant review but deny relief.

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<sup>1</sup>Parra also claims he was denied the right to counsel in his Rule 32 proceeding because counsel was permitted to withdraw. To the extent he raised this issue below, it is not a cognizable claim for a non-pleading defendant pursuant to Rule 32. See *Escareno-Meraz*, 232 Ariz. 586, ¶ 4.