

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

RAYMOND GILBERT DOMINGUEZ,  
*Petitioner.*

No. 2 CA-CR 2017-0273-PR  
Filed November 1, 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NOT FOR PUBLICATION  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 Maricopa County  
No. CR2012132519003DT  
The Honorable Alfred M. Fenzel, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Raymond Dominguez, Eloy  
*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 Raymond Dominguez seeks review of the trial court’s order summarily denying his untimely and successive 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 clearly abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Dominguez has not met his burden of demonstrating such abuse here.

¶2 In 2012, Dominguez pled guilty to armed robbery and robbery. The trial court sentenced him to a fourteen-year prison term for armed robbery and, for robbery, suspended the imposition of sentence and placed Dominguez on a consecutive, three-year term of probation. More than a year later, Dominguez filed a notice of post-conviction relief asserting his trial counsel had been ineffective and that he had not timely sought post-conviction relief because his counsel had failed to file a notice on his behalf. He also claimed there had been a significant change in the law relevant to his case. The court summarily denied relief, and Dominguez did not seek review of that ruling.

¶3 Nearly two years later, Dominguez filed another notice of post-conviction relief, again asserting his trial counsel had been ineffective and his failure to timely seek post-conviction relief was due to counsel’s conduct. He asserted he had instructed counsel to file a notice on his behalf and he was entitled to a “merits review” of his untimely claim of ineffective assistance pursuant to *State v. Diaz*, 236 Ariz. 361, 340 P.3d 1069 (2014), and on the ground that he had not personally waived his claim. The trial court summarily dismissed the notice, and this petition for review followed.

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¶4 On review, Dominguez repeats the arguments he made below. A defendant may claim in an untimely proceeding that he was without fault in failing to timely seek post-conviction relief pursuant to Rule 32.1(f). See Ariz. R. Crim. P. 32.4(a). However, as the trial court pointed out, Dominguez raised a Rule 32.1(f) claim in his first post-conviction proceeding, and the court denied it. The claim is therefore barred by res judicata. See *State v. Little*, 87 Ariz. 295, 304, 350 P.2d 756, 761-62 (1960) (doctrine of res judicata generally applies in criminal cases). And, whether Dominguez personally waived any claims is immaterial—his claim of ineffective assistance cannot be raised in an untimely proceeding irrespective of waiver. See Ariz. R. Crim. P. 32.4(a). Although our supreme court concluded in *Diaz* that the defendant did not waive his claim of ineffective assistance and therefore could raise it in a subsequent Rule 32 proceeding, the court’s reasoning was limited to preclusion pursuant to Rule 32.2(a)(3). 236 Ariz. 361, ¶ 11, 340 P.3d at 1071. A claim is precluded pursuant to Rule 32.2(a)(3) if it “has been waived at trial, on appeal, or in any previous collateral proceeding.” As we explained in *State v. Lopez*, 234 Ariz. 513, ¶¶ 7-8, 323 P.3d 1164, 1166 (App. 2014), waiver under Rule 32.2(a)(3) has no application to an untimely proceeding like this one. The court did not err in summarily dismissing his untimely and successive notice.

¶5 We grant review but deny relief.