

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

MILOVAN UROSEVIC,  
*Petitioner.*

No. 2 CA-CR 2017-0277-PR  
Filed October 23, 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NOT FOR PUBLICATION  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. CR2005123523001DT  
The Honorable Carolyn K. Passamonte, Judge Pro Tempore

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

James J. Haas, Maricopa County Public Defender  
By Louise Stark and Christopher V. Johns, Deputy Public Defenders,  
Phoenix  
*Counsel for Petitioner*

STATE v. UROSEVIC  
Decision of the Court

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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 Petitioner Milovan Urosevic seeks review of the trial court's orders summarily dismissing his petition for post-conviction relief and motion for rehearing, filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb those rulings unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 In 2010, Urosevic pled guilty to aggravated driving under the influence of an intoxicant (DUI). In December 2010, the trial court sentenced Urosevic to a 2.5-year prison term and placed him on probation in two unrelated matters, one of which arose from a jury trial and the other from a guilty plea, and sentenced him to time served for a probation violation. More than one year later, Urosevic filed a delayed notice of post-conviction relief in the DUI matter, asserting his failure to file a timely notice was without fault on his part. *See Ariz. R. Crim. P. 32.1(f)*. In a January 2012 ruling, the court determined Urosevic had "sufficiently raised a colorable claim to permit this Rule 32 proceeding to move forward." In its ruling, the court noted that Urosevic had asserted that he asked trial counsel, who "was out on maternity leave during the crucial events relevant to [his] Rule 32 proceeding," to file a Rule 32 proceeding on his behalf.

¶3 In May 2012, appointed counsel filed a Rule 32 petition on Urosevic's behalf, asserting he was entitled to relief under Rule 32.1(f) for the following reasons: (1) when trial counsel had assured him a notice of appeal "would be filed in his cases," he did not "discern" that "only the case that went to trial" and not the ones in which he had pled guilty had been "appealed"; (2) he did not receive a letter from trial counsel instructing him to file a notice of post-conviction relief; (3) trial counsel was ineffective because she had

STATE v. UROSEVIC  
Decision of the Court

failed to object to the court's sentencing him to prison rather than placing him on probation for the DUI offense, in violation of his plea agreement; and, (4) he was entitled to additional presentence incarceration credit.

¶4 Although Urosevic initially asked that he be resentenced pursuant to the terms of the plea agreement, he also requested the trial court allow him to withdraw from the agreement. The state conceded sentencing error, and in a July 8, 2013 minute entry ruling, the court found Urosevic's sentence for the DUI offense violated the terms of his plea agreement, declined his request to withdraw from the plea agreement, and granted relief on his claim regarding presentence incarceration credit. Acknowledging that Urosevic had completed his sentence and "that re-sentencing provides an unsatisfactory remedy," the court nonetheless set the matter for resentencing.<sup>1</sup>

¶5 In January 2014, Urosevic filed a petition for review of the trial court's July 2013 ruling, arguing the court had erred in concluding he was not entitled to withdraw from the guilty plea in the DUI case. In our related memorandum decision, we noted that Urosevic's claim that he is entitled to withdraw from his guilty plea and that trial counsel was ineffective do not fall within those claims that may be raised in an untimely proceeding for post-conviction relief under Rule 32.1(d), (e), (f), (g), or (h). *State v. Urosevic*, No. 2 CA-CR 2015-0173-PR, ¶ 5 (Ariz. App. June 19, 2015) (mem. decision). We also concluded that Urosevic's only remedy was to demonstrate, pursuant to Rule 32.1(f), that the "failure to file a notice of post-conviction relief of-right . . . within the prescribed time was without fault on [his] part." *Urosevic*, No. 2 CA-CR 2015-0173-PR, ¶ 5, quoting *State v. Lopez*, 234 Ariz. 513, ¶ 9, 323 P.3d 1164, 1166 (App. 2014) (alteration in *Urosevic*). We further noted that the court had failed to "make a finding as to whether [Urosevic's] failure to timely file the

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<sup>1</sup>At resentencing, the trial court suspended the imposition of sentence for the DUI offense and imposed a one-day probation term. In a separate minute entry ruling filed two months later, the court found that Urosevic had "received ineffective assistance of counsel at the 12-20-2010 sentencing hearing in this matter."

STATE v. UROSEVIC  
Decision of the Court

notice ‘was without fault on [his] part’” pursuant to Rule 32.1(f), or to “hold an evidentiary hearing to evaluate whether Urosevic’s factual allegations . . . were credible or whether his extraordinary delay in seeking relief was reasonable under the circumstances.” *Urosevic*, No. 2 CA-CR 2015-0173-PR, ¶ 6; *see* Ariz. R. Crim. P. 32.8(a). We determined that “[b]efore the trial court could address Urosevic’s other claims it was required to first decide the Rule 32.1(f) claim.” *Urosevic*, No. 2 CA-CR 2015-0173-PR, ¶ 7. We thus granted relief, vacated the court’s July 8, 2013 ruling, and remanded for a determination whether Urosevic was entitled to file a delayed petition under Rule 32.1(f). *Id.*

¶6 In March 2016, upon remand, the trial court summarily determined that Urosevic had “failed to state sufficient cause pursuant to Rule 32.4(a) to justify a finding that [his] ‘failure to file a notice of post-conviction relief . . . within the prescribed time period was without fault on [his] part’” pursuant to Rule 32.1(f). The court noted that in the affidavit Urosevic had attached to his Rule 32 petition he had not mentioned the written explanation of rights he had received and signed at sentencing, which had included the timeliness requirement for filing a notice of post-conviction relief. The court also found unavailing Urosevic’s assertion that he had believed appellate counsel, who represented him on appeal in one of the other matters for which he had been sentenced at the December 2010 hearing, was also “addressing” his post-conviction claim in the DUI matter. The court also denied Urosevic’s related motion for rehearing and request for evidentiary hearing. This petition for review followed.

¶7 On review, Urosevic contends that in the absence of any previous argument by the state challenging the now-disputed issues of material fact regarding the reasons for the untimely filing of his post-conviction proceeding, he is entitled to an evidentiary hearing to determine if his filing was without fault on his part. *See* Rules 32.1(f), 32.8(a). Maintaining the trial court “misread[.]” his petition and affidavit, he asserts he is entitled to an evidentiary hearing to explain his “belated realization” that he was confused about his “‘appeal’ rights in the guilty plea,” and to determine who was responsible for pursuing those rights.

STATE v. UROSEVIC  
Decision of the Court

¶8 Although the record contains material facts that may be disputed in determining whether Urosevic's untimely filing was without fault on his part, we nonetheless deny relief and decline to remand for an evidentiary hearing. In his petition below, and in the affidavit attached thereto, Urosevic asked that he be resentenced *or* be given the opportunity to withdraw his guilty plea. As previously noted, Urosevic was resentenced. And although a defendant should be given the opportunity to withdraw his guilty plea when a trial court rejects or does not follow a provision of the plea agreement, that did not occur here.<sup>2</sup> See Ariz. R. Crim. P. 17.4(e) (if court rejects plea agreement, "it shall give the defendant an opportunity to withdraw his . . . plea"); *State v. Hawkins*, 134 Ariz. 403, 405, 656 P.2d 1264, 1266 (App. 1982) (rejection of provision of plea agreement gives rise to mandatory duty to grant defendant opportunity to withdraw plea). Although it is undisputed that the sentence imposed did not comport with the plea agreement, the court did not reject any provision of that agreement. Rather, it made a mistake.

¶9 Moreover, because Urosevic has already been resentenced, it appears no purpose would be served by remanding for an evidentiary hearing. Notably, neither the state nor Urosevic presents any authority suggesting otherwise. Accordingly, although we do not necessarily agree with the trial court's reasoning in its ruling below, we nonetheless find that it reached the right result and also deny relief. Cf. *State v. Oakley*, 180 Ariz. 34, 36, 881 P.2d 366, 368 (App. 1994) (appellate court "will affirm the trial court when it reaches the correct result even though it does so for the wrong reasons").

¶10 Therefore, we grant review but deny relief.

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<sup>2</sup>In a companion case, this court rejected Urosevic's claim that he should be given the opportunity to withdraw his guilty pleas in that case and the DUI matter because the trial court improperly sentenced him in the DUI matter. *State v. Urosevic*, No. CR 13-0787, ¶¶ 4, 7-8 (Ariz. App. Apr. 21, 2016) (mem. decision).