

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

SHANNON ROGER WATSON,
Petitioner.

No. 2 CA-CR 2017-0301-PR
Filed April 11, 2018

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NOT FOR PUBLICATION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. 31.19(e).

Petition for Review from the Superior Court in Pinal County
No. S1100CR201502646
The Honorable Kevin D. White, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Kent P. Volkmer, Pinal County Attorney
By Geraldine L. Roll, Deputy County Attorney, Florence
Counsel for Respondent

Shannon Watson, Florence
In Propria Persona

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MEMORANDUM DECISION

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

E P P I C H, Judge:

¶1 Shannon Watson seeks review of the trial court’s order summarily denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We review a trial court’s denial of post-conviction relief for an abuse of discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). We grant review but, for the following reasons, we deny relief.

¶2 Pursuant to a plea agreement, Watson was convicted of attempted money laundering in the second degree. Consistent with a stipulation in his plea agreement, he was sentenced to 2.5 years in prison, to be served consecutively to the prison term he was already serving for his conviction in Maricopa County Cause No. CR2008145150001.

¶3 Watson filed a pro se “Notice of Appeal” dated October 3, 2016, and file-stamped in Pinal County Superior Court on October 12, 2016. That same day, the trial court issued an order “denying” the notice of appeal and explaining Watson had been “sentenced on July 18, 2016, after accepting a plea” and, “therefore, has no right to appeal.” The court further directed the clerk of court to forward a “Rule 32 packet” to Watson.

¶4 Watson next filed a form “Petition for Post-Conviction Relief,” signed and notarized on October 4, 2016, and file-stamped on October 20, 2016, in which he challenged his sentence on the ground that he had been wrongly denied presentence incarceration credits. On November 4, the trial court struck the petition on two grounds. First, the court found the petition premature, as Watson had not first commenced the Rule 32 proceeding by filing a notice, as specified in Rule 32.4. Second, the court noted the deadline for filing a timely of-right notice had “lapsed on October 17, 2016,” and it therefore found Watson’s claim, apparently grounded in Rule 32.1(a) or (c), was untimely. *See* Ariz. R. Crim. P. 32.4(a)(2)(A), (C), (D) (ninety-day time limit for first post-conviction notice applies to all claims but those raised under Rule 32.1(d) through (h)).

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¶5 Watson did not file a petition for review of that ruling. Later that November, he filed a form notice of post-conviction relief that did not identify any claims raisable in an untimely proceeding. *See* Ariz. R. Crim. P. 32.4(a)(2)(A). Instead, as “reasons for not raising [his] claim[s] . . . in a timely manner,” he wrote, “The claim was raised within time constraints previously; yet denied.” And, as “[p]roof of a timely filing,” he attached a “Legal Mail Accountability” form from “ASPC-Safford/Ft Grant” to show he sent outgoing legal mail to the clerk of the court on October 4 and October 14, 2016. Although he asked that counsel be appointed, he simultaneously filed a pro se petition in which he again claimed he was wrongly denied presentence incarceration credits. He also asserted his attorney was ineffective for not raising the issue at sentencing.

¶6 Counsel was appointed, and she filed another petition stating that, although “Watson tried very hard to file for post-conviction relief on a timely basis, he did not do so,” and she acknowledged his grounds for relief were therefore limited to claims arising under Rule 32.1(d) through (h). But she did not assert any such claims on his behalf. Instead, she argued the merits of his claims related to presentence incarceration credits, grounded in Rule 32.1(c),¹ and asserted he had no colorable claim for ineffective assistance of counsel, a claim grounded in Rule 32.1(a). *See State v. Petty*, 225 Ariz. 369, ¶ 11 (App. 2010) (recognizing ineffective assistance as claim of constitutional violation under Rule 32.1(a)).

¶7 In its order denying relief, the trial court first concluded Watson’s claims, grounded in Rule 32.1(a) and (c), were barred as untimely pursuant to Rule 32.4(a)(2)(A). The court further found that, “in any event,” Watson’s claim for presentence incarceration credits was not colorable under the rule announced in *State v. McClure*, 189 Ariz. 55 (1997), and, accordingly, his related claim of ineffective assistance of counsel was likewise not colorable. This petition for review followed.

¶8 On review, Watson restates his argument that he is entitled to presentence incarceration credits. He also refers to Rule 32.1(f) and, on review, expressly asserts that his “failure to file a timely notice of [post-conviction relief] was not by his direct fault.” Based on his notice of post-conviction relief and attached documentation, he appears to be challenging the trial court’s dismissal of his initial Rule 32 proceeding as untimely, in

¹ Rule 32.1(c) provides a ground for relief when “the sentence imposed exceeds the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law.”

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light of the “prisoner mailbox rule,” *State v. Goracke*, 210 Ariz. 20, ¶ 6 (App. 2005).² Although he could have made that argument in a petition for review of the ruling in his first proceeding, he did not do so, and has therefore “waive[d] . . . appellate review of that issue.” Ariz. R. Crim. P. 32.9(c)(4)(D). Also, neither Watson nor his counsel cited Rule 32.1(f) in their post-conviction relief petitions, and we do not address issues raised for the first time on review.³ See *State v. Ramirez*, 126 Ariz. 464, 467-68 (App. 1980).

¶9 Accordingly, the trial court correctly concluded that Watson may not challenge the legality of his sentence in this untimely, successive proceeding. In addition, as a separate basis to deny relief on review, the trial court correctly concluded Watson’s substantive claim of error is not colorable as a matter of law. See *McClure*, 189 Ariz. at 57 (App. 1997) (defendant serving prison term when indicted on new charge not entitled to presentence incarceration credit for new consecutive sentence imposed). In *McClure*, we reasoned that an imprisoned defendant’s incarceration pending sentencing on a new charge had already been credited against completion of his first sentence, and an additional credit against his new, consecutive prison term would result in a “double credit windfall.” *Id.*, quoting *State v. Cuen*, 158 Ariz. 86, 87 (App. 1988). The same rule applies here, and Watson’s claim for presentence incarceration credit is not colorable.

²“The prisoner mailbox rule, as applied to appeals, is ‘that a *pro se* prisoner is deemed to have filed his notice of appeal at the time it is delivered, properly addressed, to the proper prison authorities to be forwarded to the clerk of the superior court.’” *Goracke*, 210 Ariz. 20, ¶ 5, quoting *Mayer v. State*, 184 Ariz. 242, 245 (App. 1995); see also *State v. Rosario*, 195 Ariz. 264, ¶ 10 (App. 1999) (applying rule to notice of post-conviction relief; case remanded for determination whether defendant “timely gave his notice . . . to the Arizona Department of Corrections”; if so, it “must be considered timely filed”).

³In any event, the comment to Rule 32.1(f) suggests it applies to circumstances in which a trial court has failed to inform a defendant of provisions for appeal or post-conviction relief, or when a defendant “thought timely appeal had been filed by his attorney when in reality it had not.” Ariz. R. Crim. P. 32.1(f) cmt. Even had the issue been presented to the trial court, Watson has cited no authority suggesting Rule 32.1(f) would encompass his challenge to the court’s dismissal of an earlier proceeding.

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¶10 The trial court did not abuse its discretion in denying Watson's claims for post-conviction relief. Accordingly, although we grant review, we deny relief.