

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

LINDA IEZZA,
Petitioner.

No. 2 CA-CR 2017-0404-PR
Filed July 10, 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NOT FOR PUBLICATION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. S1100CR201301344
The Honorable Joseph R. Georgini, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Kent P. Volkmer, Pinal County Attorney
By Thomas C. McDermott, Appellate Bureau Chief, Florence
Counsel for Respondent

Lorona Mead PLC, Phoenix
By Jess A. Lorona
Counsel for Petitioner

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MEMORANDUM DECISION

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

BREARCLIFFE, Judge:

¶1 Linda Iezza seeks review of the trial court's order summarily denying her successive petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). We find no such abuse here.

¶2 After a jury trial, Iezza was convicted of possession of marijuana for sale, transportation of marijuana for sale, conspiracy to commit transportation of marijuana for sale, and human smuggling. The trial court sentenced her to concurrent prison terms, the longest of which was 15.75 years. On appeal, we found that possession of marijuana for sale was a lesser-included offense of the transportation charge and vacated the possession conviction, but we affirmed the remaining convictions and sentences. *State v. Iezza*, No. 2 CA-CR 2014-0229, ¶¶ 11-12 (Ariz. App. Mar. 5, 2015) (mem. decision). Iezza received the same prison term upon resentencing in June 2015.

¶3 After appointed counsel filed a notice stating she had reviewed the record but found no claims to raise pursuant to Rule 32, Iezza filed a pro se Rule 32 petition in September 2016, asserting trial and Rule 32 counsel had been ineffective; her right to a speedy trial had been violated; the state had a conflict of interest arising from charges against one of the detectives who had been involved in Iezza's case; and, her right to represent herself at trial had been violated. In an order signed on January 26, 2017, the trial court summarily denied Iezza's Rule 32 petition, finding all of the matters raised "precluded as having been previously ruled upon or untimely filed or [that] the Petition lacks sufficient basis in law and fact to warrant further proceedings." And, on March 6, 2017, the court denied Iezza's motion for reconsideration.¹ Although Iezza did not seek review of

¹ Presumably, the trial court treated Iezza's motion for reconsideration as a motion for rehearing pursuant to Rule 32.9(a)(1).

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those rulings, she filed a successive, pro se petition for post-conviction relief on March 20, 2017, reasserting her claim that trial counsel had been ineffective and claiming for the first time that appellate counsel had been ineffective. In November 2017, the court summarily denied Iezza's successive petition "for the reasons set forth in its Order of January 26, 2017." Retained counsel then filed this petition for review.²

¶4 On review, Iezza argues: (1) she was denied her right to a speedy trial; (2) she was denied the right to represent herself; (3) the state had a conflict of interest; (4) trial, appellate and Rule 32 counsel were ineffective; and, (5) she was denied her right to review certain trial transcripts. We initially note that, insofar as Iezza seeks review of the trial court's "[o]rders" denying issues in her "[p]etitions," we only consider on review the court's November 20, 2017 order denying her successive petition for post-conviction relief filed in March 2017. We additionally note that, to the extent Iezza seeks review of the court's rulings denying her first petition, she was required to file a petition for review from those rulings, which she did not do.³ See Ariz. R. Crim. P. 32.9(c)(1)(A).

¶5 And, because Iezza raised or could have raised the first three claims she presents on review either on appeal or in her first post-conviction proceeding, they are precluded. See Ariz. R. Crim. P. 32.2(a). Moreover, nothing in her petition for review establishes that Rule 32.2(a) is inapplicable to her petition or that she should be excused from that rule's preclusive effect. Successive post-conviction proceedings, like this one, are limited to claims raised pursuant to Rule 32.1(d) through (h). See Ariz. R. Crim. P. 32.2(b). Nor does Iezza argue her claims fall within Rule 32.1(d) through (h). In addition, because Iezza's claims of ineffective assistance of counsel (argument four above) fall within Rule 32.1(a), they likewise are precluded.⁴ See Ariz. R. Crim. P. 32.2(a), (b); *State v. Petty*, 225 Ariz. 369, ¶ 11 (App. 2010) (ineffective assistance claim falls under Rule 32.1(a)).

²Counsel filed a notice of appeal, which this court treated as a petition for review.

³For similar reasons, Iezza has waived review of her claim that the trial court abused its discretion in denying her requests, when her first Rule 32 was pending, for certain transcripts (fifth argument above). See Ariz. R. Crim. P. 32.9(c)(4)(D) (failure to raise issue in petition for review "constitutes waiver of appellate review of that issue").

⁴Moreover, to the extent Iezza challenges the conduct of her first trial attorney (Tom Larson) and Rule 32 counsel, because she did not raise these

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¶6 For all of these reasons, we grant review but deny relief.

claims in her successive Rule 32 petition, the only one before us on review, she may not raise them now. *See State v. Vera*, 235 Ariz. 571, ¶ 8 (App. 2014); *see also* Ariz. R. Crim. P. 32.9(c)(4)(B)(ii) (petition for review “must contain . . . issues the trial court decided that the defendant is presenting for appellate review”). And, a non-pleading defendant like Iezza cannot raise a claim of ineffective assistance of Rule 32 counsel. *State v. Escareno-Meraz*, 232 Ariz. 586, ¶¶ 4-6 (App. 2013) (non-pleading defendants “have no constitutional right to counsel in post-conviction proceedings”).