

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

JOSE LUIS DICOCHEA,  
*Petitioner.*

No. 2 CA-CR 2018-0048-PR  
Filed October 5, 2018

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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NOT FOR PUBLICATION  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. 31.19(e).*

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Petition for Review from the Superior Court in Pima County  
Nos. CR20140140001, CR20152524001, and CR20154163001  
The Honorable Paul E. Tang, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Jose Luis Dicochea, Buckeye  
*In Propria Persona*

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**MEMORANDUM DECISION**

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

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BREARCLIFFE, Judge:

¶1 In this petition for review, Jose Dicochea contends the trial court erred by dismissing his post-conviction proceeding before he could file a pro se petition after appointed counsel filed a notice and by denying his request for additional time to file a pro se petition. We will not disturb the court's ruling unless it abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). We see no such abuse here.

¶2 Dicochea was convicted pursuant to plea agreements in three separate causes, including seven felonies, related to robberies in CR-20140140-001, possession of dangerous drugs in CR-20152524-001, and retail theft in CR-20154163-001. In August 2016, the trial court sentenced him to presumptive, concurrent prison terms on all counts, the longest of which were two 15.75-year terms. Dicochea filed notices of post-conviction relief in October. Appointed counsel filed a notice pursuant to Rule 32.4(c), Ariz. R. Crim. P., avowing she had found no colorable claim to raise in the proceeding and requesting that Dicochea be given forty-five days within which to file a pro se petition. The court granted that request, setting a deadline of April 10, 2017. Dicochea requested an extension, which the court granted, setting the deadline for May 22.

¶3 In June, counsel filed a request for ruling, stating to her knowledge Dicochea had not filed a pro se petition and requesting that the trial court enter its ruling. The court dismissed the proceeding. At the end of July, Dicochea filed a notice of post-conviction relief, to which he attached a letter to the court, explaining he had been unable to file the petition because he had witnessed the murder of a cell mate and was placed in involuntary protective custody. He stated he had been unable to prepare the petition because his "legal paper work was taken from [him]."

¶4 The trial court treated the new notice of post-conviction relief as a motion to set aside the dismissal and a request for further extension. Finding good cause existed, the court vacated its order dismissing the

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proceeding and set a new deadline for October 9, 2017. In November, when Dicochea failed to file a pro se petition, the court dismissed the proceeding. The court also denied Dicochea's request for appointment of counsel to assist him in preparing the petition and for portions of the record, noting counsel had already been appointed to represent him and she continued to serve as advisory counsel after filing a notice stating there were no claims to raise. The court also stated, "[the] defendant can obtain those records from counsel." Dicochea filed a motion asking the court to "strike the notice" of post-conviction relief filed in August 2017 and "all pleadings related" to the notice, and "toll[]" the proceeding until he receives the "authentic record." The court denied the motion, treating it as a motion for reconsideration.

¶5 Dicochea contends in his petition for review that the trial court erred by refusing to reinstate the dismissed proceeding. He contends the court acknowledged the circumstances that had resulted in his failure to file the pro se petition by the deadline were beyond his control. But the court did not make such a finding. Rather, the court was simply identifying the motion in its ruling, by referring to it precisely as Dicochea had titled it.

¶6 Dicochea argues he is entitled to relief pursuant to Rule 32.1(f) because his failure to timely file a petition was through no fault of his own. He also claims the rule, as well as other rules, repealed statutes, and *Anders v. California*, 386 U.S. 738 (1967), entitle him to a review of the record for fundamental error. As he did below, he argues he was unable to obtain the record in this case. He also asserts the Arizona Department of Corrections interfered with his ability to prepare his pro se petition, and claims the trial court abused its discretion by dismissing this proceeding.

¶7 Rule 32.1(f) provides a pleading defendant with relief if the failure to file a timely of-right notice of post-conviction relief was not the defendant's fault. It does not provide relief for the defendant's failure to timely file a petition, particularly a pro se petition, after the court has granted extensions and set a specific deadline. Moreover, a request for relief under any provision of Rule 32.1 must first be presented to the trial court. See *State v. Ramirez*, 126 Ariz. 464, 467 (App. 1980). Rule 32.1(f) does not provide this court with a basis for granting relief from the dismissal of the proceeding under these circumstances. In addition, neither this court nor the trial court has an obligation to conduct an independent review of the record for fundamental error or for arguable issues. *State v. Chavez*, 243 Ariz. 313, ¶¶ 1, 18 & n.6 (App. 2017).

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¶8 Finally, under the circumstances, we cannot say the trial court abused its discretion. After court-appointed counsel filed a notice pursuant to Rule 32.4(d)(2), stating she had found no colorable claim to raise, she remained appointed as advisory counsel, as the court correctly found. *See* Ariz. R. Crim. P. 32.4(d)(2)(A). Consistent with the rule, Dicochea's pro se petition was due within forty-five days of the filing of counsel's notice, but "[t]he court may grant additional extensions only on a showing of extraordinary circumstances." Ariz. R. Crim. P. 32.4(d)(2)(B). The court extended the initial deadline and excused Dicochea's failure to file his pro se petition by the new deadline. Dicochea did not file a motion for additional time as the October deadline approached, never explaining that he still was unable to obtain records in the case or why he had not obtained the records through appointed, advisory counsel. Instead, he let the time lapse, seeking relief and explaining the circumstances only after the court dismissed the proceeding for the second time.

¶9 We grant the petition for review and, for the reasons stated, we deny relief.