

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

WILLIAM COREY BATCHELDER,
Petitioner.

No. 2 CA-CR 2019-0131-PR
Filed August 19, 2019

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NOT FOR PUBLICATION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 Graham County
No. CR990256
The Honorable Michael D. Peterson, Judge

REVIEW GRANTED; RELIEF DENIED

William Batchelder, San Luis
In Propria Persona

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MEMORANDUM DECISION

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

ECKERSTROM, Judge:

¶1 William Batchelder seeks review of the trial court’s orders summarily dismissing his untimely notice of post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., and denying his motion for reconsideration. We will not disturb those orders unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Batchelder has not shown such abuse here.

¶2 After a jury trial, Batchelder was convicted in 2002 of first-degree felony murder, aggravated assault, kidnapping, and conspiracy to commit kidnapping. The trial court sentenced him to a term of natural life for first-degree murder and to consecutive prison terms for the other offenses. We affirmed his convictions and sentences on appeal. *State v. Batchelder*, No. 2 CA-CR 2002-0191 (Ariz. App. Jul. 31, 2003) (mem. decision). Batchelder sought post-conviction relief in 2004 and was denied relief. He did not seek review of that ruling.

¶3 In January 2019, Batchelder filed a notice of post-conviction relief requesting that counsel be appointed and indicating he was raising a claim of newly discovered material facts, asserting he had recently begun treatment for a mental defect of which he had previously been unaware. He further claimed that his trial and Rule 32 counsel had failed to investigate his mental health, thus violating his due process rights. The trial court noted that Batchelder’s unsupported claim warranted summary dismissal but granted him several months “to provide written documentation from medical professionals and/or other treatment providers to substantiate his claim(s).”

¶4 Batchelder then filed a document claiming to have had a “mental health history,” apparently resulting from head injuries sustained in “a series of car accidents.” He also asserted his trial counsel had been ineffective in failing to investigate his medical history. However, he provided no information about his recent diagnosis or treatment beyond generally stating he had “bec[o]me aware of [his] mental defects” after

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starting prescription treatment in August 2017 and claiming his case file had been lost and “ASPC Yuma/Dakota ha[d] not responded to [his] request to view [his] medical records.” The trial court summarily dismissed his notice and denied his subsequent motion for reconsideration. This petition for review followed.

¶5 On review, Batchelder repeats his claim of ineffective assistance of counsel and again asserts he only “recently became cognizant of the claims” when he began treatment for “mental health issues.” He argues he is entitled to raise the claim in this untimely proceeding pursuant to Rule 32.1(e). Batchelder is correct that a claim of newly discovered evidence pursuant to Rule 32.1(e) is normally not subject to preclusion and may be raised in an untimely proceeding like this one. *See* Ariz. R. Crim. P. 32.2(b), 32.4(a)(2)(A). Rule 32.1(e), however, does not apply because it does not contemplate a claim of newly discovered ineffective assistance of counsel and is instead restricted to “newly discovered” material facts that “probably would . . . change[] the verdict.” *See State v. Serna*, 167 Ariz. 373, 374 (1991) (describing five elements of cognizable newly discovered evidence claim). Batchelder has identified no such facts. Nor has he explained why, despite having learned of the purported mental health issues in 2017, he did not seek post-conviction relief until 2019. *See* Ariz. R. Crim. P. 32.2(b) (notice must “provide reasons why defendant did not raise the claim in a previous petition or in a timely manner”).

¶6 Batchelder additionally asserts the trial court erred by failing to appoint him counsel.¹ Although Rule 32.4(b)(2) allows a trial court to appoint counsel in an untimely and successive Rule 32 proceeding, the court is not required to do so. Batchelder’s argument, at its core, is that his trial counsel failed to discern a still-unidentified mental health issue of which Batchelder claims he had been unaware. A trial court is not required to appoint post-conviction counsel when notice of post-conviction relief is “facially non-meritorious,” like Batchelder’s is here. *See State v. Harden*, 228 Ariz. 131, ¶ 11 (App. 2011).

¹On review, Batchelder suggests his claim is not precluded because he was represented at trial and in his first Rule 32 proceeding by the same attorney and that attorney therefore “had a direct conflict of interest” preventing her from raising a claim of ineffective assistance. Not only has Batchelder not explained the fifteen-year delay in identifying this issue, he did not raise it below and cites no authority in support of it on review. We therefore do not address it. *See State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980).

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¶7 Finally, Batchelder repeats his claim that he has been denied access to legal resources, including his case file. These are not cognizable claims under Rule 32 because they do not implicate his conviction or sentence but rather concern only the alleged post-trial denial of his rights. *See* Ariz. R. Crim. P. 32.1.

¶8 We grant review but deny relief.