

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

EDWARD RABAGO BACA,  
*Petitioner.*

No. 2 CA-CR 2019-0199-PR  
Filed January 24, 2020

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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NOT FOR PUBLICATION  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  
No. CR20152596001  
The Honorable Javier Chon-López, Judge

**REVIEW DENIED**

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Edward Rabago Baca, Tucson  
*In Propria Persona*

STATE v. BACA  
Decision of the Court

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**MEMORANDUM DECISION**

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

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E P P I C H, Presiding Judge:

¶1 Edward Baca seeks review of the trial court’s order denying his most recent motion to dismiss with prejudice.<sup>1</sup> For the reasons that follow, we deny review.

¶2 In April 2018, the month before Baca’s trial was set to begin, the state filed a motion to dismiss without prejudice based on “prosecutorial discretion.”<sup>2</sup> The trial court granted the state’s motion, and Baca did not challenge that ruling. Instead, almost two months later, Baca filed a pro se motion to dismiss with prejudice, asserting his speedy trial rights had been violated. The court denied that motion in June 2018, stating that Baca had not only failed to support his speedy trial violation argument, but he had expressly “waived time” at the January 2018 pretrial conference. Moreover, the court found Baca had failed to timely respond to the state’s motion to dismiss. *See* Ariz. R. Crim. P. 1.9.

¶3 In December 2018, almost eight months after the trial court dismissed this case in April 2018, and more than five months after it denied Baca’s first motion to dismiss, Baca filed another motion to dismiss with prejudice, contending he “should not have to incur any further duress, delay, or uncertainty to his future in this matter.” The court denied the motion in January 2019, finding it untimely and noting Baca had not

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<sup>1</sup>It is not entirely clear whether Baca is challenging the trial court’s most recent ruling or all of its rulings in this matter.

<sup>2</sup>It appears that Baca was charged in Maricopa County based on the same conduct underlying several of the charges in this case and that he pled guilty and is currently incarcerated for convictions in that case. Further, as the state explained in its response to Baca’s second motion to dismiss below, although the state filed its motion to dismiss based on double jeopardy concerns, there was at least one charge that “was committed exclusively in Pima County” that did not raise such a concern.

STATE v. BACA  
Decision of the Court

established harm sufficient to justify dismissing the matter with prejudice. In June 2019, Baca filed yet another motion to dismiss with prejudice, asserting the “case . . . violates double jeopardy” based on his convictions in Maricopa County.<sup>3</sup> The court dismissed the motion as untimely in July 2019, reminding Baca that “this case is dismissed,” and the court “has no jurisdiction to decide any further issue in this case. Not dismissal with prejudice, not double jeopardy issues.”

¶4 Baca then filed in this court what he describes as a petition for review, asking us to vacate the trial court’s order dismissing this matter without prejudice and direct the court to dismiss it with prejudice. He provides a summary of the motions he filed below and suggests he is at risk for a double jeopardy violation if this matter is not dismissed with prejudice. However, because there was no petition for post-conviction relief pending before the court below, Baca’s pleading does not comply with Rule 32.16 or 33.16, Ariz. R. Crim. P.,<sup>4</sup> in any way.<sup>5</sup> Accordingly, our summary denial of review is justified. *See* Ariz. R. Crim. P. 32.16(k), 33.16(k) (appellate review under Rules 32.16 and 33.16 discretionary); *State v. French*, 198 Ariz. 119, ¶ 9 (App. 2000) (summarily rejecting claims not complying with rules governing form and content of petitions for review), *disapproved on other grounds by Stewart v. Smith*, 202 Ariz. 446, ¶ 10 (2002).

¶5 Accordingly, we deny review.

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<sup>3</sup> Baca also filed a pleading entitled “Notice of Assertion of Constitutional Rights and Request for Final Disposition of Charges” in May 2019, which the trial court denied as moot in June 2019.

<sup>4</sup>The Supreme Court of Arizona abrogated the prior version of Rule 32 and adopted new Rule 32 and Rule 33 effective January 1, 2020. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). Because the new rules do not work an injustice in this matter, we apply them.

<sup>5</sup>And, even were we to construe Baca’s most recent motion below as a notice of post-conviction relief, it likewise did not comply with Rule 32 or Rule 33 in any way. *See* Ariz. R. Crim. P. 32.1 and 33.1. We note, moreover, that because there has never been a conviction or sentence in this matter, a necessary predicate to post-conviction relief, Baca could not have filed a notice of post-conviction relief below.