IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

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THE STATE OF ARIZONA,
Respondent,

v.

PETER MASSINGA,
Petitioner.

No. 2 CA-CR 2019-0256-PR
Filed April 29, 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NOT FOR PUBLICATION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. CR20052209
The Honorable Deborah Bernini, Judge

REVIEW GRANTED; RELIEF DENIED

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COUNSEL

Harold L. Higgins P.C., Tucson
By Harold L. Higgins
Counsel for Petitioner

MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

¶1   Peter Massinga seeks review of the trial court's ruling summarily dismissing his untimely petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.[1] We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Massinga has not shown such abuse here.

¶2   After a jury trial, Massinga was convicted of second-degree murder, attempted first-degree murder, and three counts of aggravated assault. He was sentenced to concurrent and consecutive prison terms totaling thirty-four years. We affirmed his convictions and sentences on appeal. *State v. Massinga*, No. 2 CA-CR 2007-0083 (Ariz. App. Sept. 15, 2008) (mem. decision). Massinga has previously sought and been denied post-conviction relief on three occasions: we denied petitions for review of the denial of post-conviction relief in 2010 and 2011, and he did not seek review of the trial court's summary dismissal of a petition for post-conviction relief filed in 2016. *State v. Massinga*, No. 2 CA-CR 2011-0115-PR (Ariz. App. July 29, 2011) (mem. decision); *State v. Massinga*, No. 2 CA-CR 2009-0305-PR (Ariz. App. Mar. 25, 2010) (mem. decision).

¶3   In July 2019, Massinga filed his fourth petition for post-conviction relief, arguing he had been denied his "right to assistance of counsel" in his first post-conviction proceeding, his due process rights had been violated when he was not advised of potential conflicts in his trial and first post-conviction proceeding, his trial counsel had been ineffective,

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[1] Effective January 1, 2020, our supreme court amended the post-conviction relief rules. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). The amendments apply to all cases pending on the effective date unless a court determines that "applying the rule or amendment would be infeasible or work an injustice." *Id.* at 2. Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.

and the state had committed misconduct at trial. The trial court summarily dismissed the proceeding. This petition for review followed.

¶4 On review, Massinga repeats his claims and argues, as he did below, that they are not subject to preclusion or waiver because he was "denied his constitutional right to assistance of counsel" in his first post-conviction proceeding, he could not have been aware of the "possible conflicts of the trial court and his attorney," and he lacked "reasonable access to [legal] materials."

¶5 Massinga's claims cannot be raised in this successive and untimely proceeding. The bulk of his claims are constitutional claims falling within Rule 32.1(a), which are barred as untimely by Rule 32.4(b)(3), as well as being precluded under Rule 32.2(a). He has identified no applicable provision of Rule 32.1 that is exempt from the timeliness requirements of Rule 32.4 or from preclusion under Rule 32.2. His remaining claims concern previous post-conviction proceedings and are not encompassed by any provision of Rule 32.1. And, he is incorrect that he had a constitutional right to counsel in his first Rule 32 proceeding. *See State v. Escareno-Meraz*, 232 Ariz. 586, ¶¶ 4-6 (App. 2013).

¶6 We grant review but deny relief.