

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

NIKKI MONTIJO,  
*Petitioner.*

No. 2 CA-CR 2019-0267-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NOT FOR PUBLICATION  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  
Nos. CR20123633001, CR20160912001, and CR20161544001  
The Honorable Teresa Godoy, Judge Pro Tempore

**REVIEW DENIED**

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Nikki Montijo, Florence  
*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.

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ECKERSTROM, Judge:

¶1 Nikki Montijo seeks review of the trial court’s ruling dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.<sup>1</sup> For the reasons stated below, we deny review.

¶2 Pursuant to a plea agreement, Montijo was convicted of armed robbery and aggravated assault in Cause No. CR20123633001. The trial court sentenced him to three years’ imprisonment for armed robbery and suspended the imposition of sentence and placed Montijo on three years’ probation for aggravated assault, consecutive to his prison term. While on probation, Montijo was indicted for various offenses in Cause Nos. CR20160912001 and CR20161544001. In Cause No. CR20160912001, pursuant to a plea agreement, Montijo was convicted of kidnapping. Based on that plea, the court also found Montijo in violation of his probation conditions in Cause No. CR20123633001. In Cause No. CR20161544001, Montijo was convicted of armed robbery and aggravated assault after pleading to the indictment. The court sentenced him to 3.5 months’ imprisonment in CR20123633001, to be followed by concurrent terms of imprisonment in CR20160912001 and CR20161544001, the longest of which were fifteen years.

¶3 Thereafter, Montijo filed a petition for post-conviction relief, asserting that the trial court “violated the ban on consecutive sentences under A.R.S. § 13-116” by sentencing him “to prison after revocation of his probation” in Cause No. CR20123633001. In January 2019, the court summarily dismissed Montijo’s petition, concluding that the consecutive

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<sup>1</sup> 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.* Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.

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sentences were proper because the armed robbery and aggravated assault convictions were “separate criminal acts.” Montijo filed a petition for review, but it was dismissed after Montijo failed to comply with this court’s order directing him to refile his petition in compliance with Rule 32.16. *State v. Montijo*, No. 2 CA-CR 2019-0034-PR (Ariz. App. Mar. 14, 2019) (order).

¶4 Montijo then filed in the trial court a motion to re-open his petition for post-conviction relief. The court denied that motion, noting that Montijo had cited no “rules or law that would allow [it] to reopen a case that has already been decided on the merits.” Montijo filed a motion to reconsider re-opening his petition for post-conviction relief. In its ruling, the court noted that Montijo “still fail[ed] to cite any authority that allows him to ‘re-open’ a previous ruling on a Rule 32.” However, the court treated Montijo’s motion as a successive petition for post-conviction relief and gave Montijo leave to revise his petition in compliance with Rule 32. Meanwhile, Montijo also filed the instant petition for review with this court, again challenging the trial court’s January 2019 ruling in his first post-conviction relief proceeding.

¶5 Pursuant to Rule 32.16(a)(1), a petition for review must be filed “[n]o later than 30 days after the entry of the trial court’s final decision on a petition or a motion for rehearing.” Here, the ruling Montijo attempts to challenge was filed in January 2019. But his petition for review was not filed until November 2019, and he did not file a motion for rehearing. Indeed, his timely petition for review was dismissed in March 2019. Because the instant petition was not timely filed, Montijo is not entitled to review. *See* Ariz. R. Crim. P. 32.16(k) (describing review by appellate court as discretionary).

¶6 Accordingly, we deny review.