IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

LINDA IEZZA,
Petitioner.

No. 2 CA-CR 2020-0046-PR
Filed September 25, 2020

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NOT FOR PUBLICATION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 Pinal County
No. S1100CR201301344
The Honorable Joseph R. Georgini, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Kent P. Volkmer, Pinal County Attorney
By Thomas C. McDermott, Appellate Bureau Chief, Florence
Counsel for Respondent

Linda Iezza, Goodyear
In Propria Persona

MEMORANDUM DECISION

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

S T A R I N G, Presiding Judge:

¶1 Petitioner Linda Iezza seeks review of the trial court's order dismissing her petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P.[1] "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4 (App. 2007). Iezza has not sustained her burden of establishing such abuse here.

¶2 After a jury trial, Iezza was convicted of possession of marijuana for sale, transportation of marijuana for sale, conspiracy to commit transportation of marijuana for sale, and human smuggling. The trial court sentenced her to concurrent prison terms, the longest of which was 15.75 years. On appeal, we determined possession of marijuana for sale was a lesser-included offense of the transportation charge and vacated the possession conviction but affirmed the remaining convictions and sentences. *State v. Iezza*, No. 2 CA-CR 2014-0229, ¶¶ 11-12 (Ariz. App. Mar. 5, 2015) (mem. decision). Iezza thereafter sought post-conviction relief, filing a petition in September 2016, raising claims of ineffective assistance of counsel; violations of her right to a speedy trial, her right to counsel, and her right to represent herself; and the state's purported conflict of interest. The trial court denied relief in January 2017, and Iezza did not seek review of that decision.

¶3 In March 2017, Iezza filed a pro se petition for post-conviction relief, arguing she had received ineffective assistance of trial and appellate

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[1] Our supreme court amended the post-conviction relief rules, effective January 1, 2020. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). "Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules." *State v. Mendoza*, 249 Ariz. 180, n.1 (App. 2020) ("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'" (quoting Ariz. Sup. Ct. Order R-19-0012)).

counsel, including an assertion that her trial counsel had not properly designated transcripts. The trial court denied relief, citing the reasons set forth in its previous decision. Iezza this time sought review of the court's decision, and this court denied relief in that proceeding, concluding her claims were precluded because she could have raised them on appeal or in her first post-conviction proceeding. *State v. Iezza*, No. 2 CA-CR 2017-0404-PR, ¶¶ 4-6 (Ariz. App. July 10, 2018) (mem. decision).

¶4 In March 2019, Iezza again sought post-conviction relief, arguing that newly discovered evidence entitled her to relief, specifically "missing transcripts relev[a]nt to initial post[-]conviction relief claims" and a letter from the prosecutor. She also argued she had received ineffective assistance of counsel in her previous Rule 32 proceeding. The trial court summarily dismissed her petition.

¶5 On review, Iezza maintains the trial court abused its discretion by denying relief. Iezza contends the transcripts, which she asserts were prepared in January 2018, are newly discovered evidence entitling her to relief. To establish a claim of newly discovered material facts under Rule 32.1(e), a defendant must show "that the evidence was discovered after trial although it existed before trial; that it could not have been discovered and produced at trial through reasonable diligence; that it is neither cumulative nor impeaching; that it is material; and that it probably would have changed the verdict" or sentence. *State v. Saenz*, 197 Ariz. 487, ¶ 7 (App. 2000); *see also* Ariz. R. Crim. P. 32.1(e).

¶6 Iezza argues the transcripts provided details about her requests for new counsel and to represent herself, as well as her claims of ineffective assistance of trial counsel. But none of these constitute facts material to her conviction. Rule 32.1(e) does not contemplate claims of newly discovered evidence of ineffective assistance of counsel such as those presented here. Instead, that rule is limited to "newly discovered material facts . . . [that] probably would have changed the judgment or sentence." Ariz. R. Crim. P. 32.1(e); *see State v. Amaral*, 239 Ariz. 217, ¶ 9 (2016) (listing five requirements for claim of newly discovered evidence); *cf. United States v. Hanoum*, 33 F.3d 1128, 1130-31 (9th Cir. 1994) (claim of "newly discovered evidence" under Rule 33, Fed. R. Crim. P., "limited to where the newly discovered evidence relates to the elements of the crime charged"). A claim of ineffective assistance of counsel falls under Rule 32.1(a), *State v. Petty*, 225 Ariz. 369, ¶ 11 (App. 2010), and is precluded and untimely in this successive proceeding, *see* Ariz. R. Crim. P. 32.2(a), 32.4(b)(3)(A).

¶7 Iezza also asserts she was entitled to relief based on a letter the prosecutor sent to her counsel in June 2018, providing a "one-page memorandum," dated in May 2018, from an investigator for the prosecutor's office "regarding a subject referred to as 'Carlos,'" a confidential informant. The document explained that in March 2018, a federal prosecutor had told the prosecutor that the Drug Enforcement Agency (DEA) had used a confidential informant during the timeframe of Iezza's offense who "may have arranged" the transport of marijuana for which Iezza was convicted. Carlos had been an informant for a Mesa Police detective, who had been assigned to a DEA task force at the time of Iezza's offense. The detective confirmed that he had worked with Carlos but denied that Carlos had provided information relating to Iezza's offense. We cannot say this evidence "probably would have changed the verdict," *Saenz*, 197 Ariz. 487, ¶ 7, therefore the trial court did not abuse its discretion in summarily denying relief.

¶8 Finally, we cannot say the trial court abused its discretion in denying relief as to Iezza's claim of ineffective assistance of Rule 32 counsel. As a non-pleading defendant, Iezza had "no constitutional right to counsel in post-conviction proceedings," therefore "a claim that Rule 32 counsel was ineffective is not a cognizable ground for relief in a subsequent Rule 32 proceeding." *State v. Escareno-Meraz*, 232 Ariz. 586, ¶ 4 (App. 2013). In her reply to the state's response to her petition for review, Iezza contends the United States Supreme Court's decision in *Martinez v. Ryan*, 566 U.S. 1 (2012), alters this rule, but we rejected that claim in *Escareno-Meraz*. *Id.* ¶¶ 3, 6.

¶9 For these reasons, although we grant the petition for review, we deny relief.