

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ANTHONY JOHN VALENZUELA JR.,  
*Petitioner.*

No. 2 CA-CR 2020-0124-PR  
Filed September 28, 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NOT FOR PUBLICATION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. CR063237001

The Honorable Christopher Browning, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Anthony John Valenzuela, Florence  
*In Propria Persona*

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MEMORANDUM DECISION

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

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V Á S Q U E Z, Chief Judge:

¶1 Anthony Valenzuela Jr. seeks review of the trial court’s ruling dismissing his notice of post-conviction relief filed pursuant to Rule 33, Ariz. R. Crim. P.<sup>1</sup> We review the court’s ruling for an abuse of discretion. *See State v. Kolmann*, 239 Ariz. 157, ¶ 8 (2016). Valenzuela has not met his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement in 1999, Valenzuela was convicted of sexual conduct with a minor under eighteen years of age. The trial court suspended the imposition of sentence and placed Valenzuela on probation for five years. The court also required Valenzuela to register as a sex offender pursuant to A.R.S. § 13-3821. Valenzuela violated the terms of his probation several times, resulting in three separate disposition hearings, and the court ultimately sentenced him to 254 days in jail in 2002.

¶3 In June 2020, Valenzuela filed a notice of post-conviction relief, alleging that he had received ineffective assistance of counsel, that there had been a significant change in the law that would probably overturn his “sentence of lifetime registration,” and that his “sentence of lifetime registration” violates the state and federal constitutions. *See Ariz. R. Crim. P. 33.1(a), (g)*. In addition, Valenzuela asserted that the failure to file a timely notice was not his fault. *See Ariz. R. Crim. P. 33.1(f)*. With his notice, Valenzuela also filed a motion to expedite the post-conviction proceeding.

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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.” *State v. Mendoza*, 249 Ariz. 180, n.1 (App. 2020).

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¶4 The trial court summarily dismissed the notice and denied the motion to expedite as moot. The court explained that the notice was untimely because Valenzuela was originally sentenced in 1999 and he had not initiated post-conviction proceedings previously. In addition, the court found that Valenzuela had not “adequately explained the reason for his delay or that the notice was filed within a reasonable time of discovering the basis of the claims.” This petition for review followed.

¶5 On review, Valenzuela contends the trial court erred in dismissing his notice as “time-bar[red]” when he had asserted claims pursuant to Rule 33.1(f) and (g). Valenzuela argues that he “outlined his lack of a formal . . . education, lack of legal training, inability to afford the consultation of an attorney, the claims’ recent arrival to his attention, and the ineffective assistance of his counsel . . . in his juvenile conviction” as reasons why his notice was untimely. He also points out that he “utilized the same reasoning” in three other cases for establishing the timeliness of his post-conviction claims and that the court accepted the reasoning in those cases.

¶6 “A defendant must file the notice for a claim under Rule 33.1(a) within 90 days after the oral pronouncement of sentence.” Ariz. R. Crim. P. 33.4(b)(3)(A). However, a “defendant must file the notice for a claim under Rules 33.1(b) through (h) within a reasonable time after discovering the basis for the claim.” Ariz. R. Crim. P. 33.4(b)(3)(B). When a defendant raises a claim pursuant to Rule 33.1(b) through (h) “in a successive or untimely post-conviction notice, the defendant must explain the reasons for not raising the claim in a previous notice or petition, or for not raising the claim in a timely manner.” Ariz. R. Crim. P. 33.2(b)(1). “If the notice does not provide sufficient reasons why the defendant did not raise the claim in a previous notice or petition, or in a timely manner, the court may summarily dismiss the notice.” *Id.*

¶7 As Valenzuela seems to recognize on review, because his notice was filed more than ninety days after his sentencing, his Rule 33.1(a) claims were untimely. *See* Ariz. R. Crim. P. 33.4(b)(3)(A). The trial court thus did not abuse its discretion in summarily dismissing them. *See Kolmann*, 239 Ariz. 157, ¶ 8; *see also* A.R.S. § 13-4234(G) (“The time limits are jurisdictional, and an untimely filed notice or petition shall be dismissed with prejudice.”).

¶8 With regard to the Rule 33.1(f) and (g) claims, the trial court expressly considered Valenzuela’s reasons for not raising them sooner, *see*

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Ariz. R. Crim. P. 33.2(b)(1), and the court found them insufficient. Specifically, the court noted that the record contained “ample evidence” that Valenzuela had been advised of his rights of review – including at the original sentencing and at the three subsequent disposition hearings – and had indicated he understood them. In addition, the court explained that “the cases, laws, and evidence cited by [Valenzuela] are not reasonably recent to justify such a delay in filing his notice.” Indeed, that delay is what makes this case distinguishable from Valenzuela’s other three cases that the court allowed to go forward because the delay in this case is more “extreme.” Rule 33.2(b) provides for summary dismissal of an insufficient notice, and we find no abuse of discretion by the court here. *See Kolmann*, 239 Ariz. 157, ¶ 8; *see also State v. Harden*, 228 Ariz. 131, ¶ 4 (App. 2011) (no abuse of discretion in trial court’s determination that defendant’s reasons for filing Rule 32 notice more than seven months past deadline lacked merit).

¶9           Accordingly, we grant review but deny relief.