

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

LORENZO REYES FELIX,
Petitioner.

No. 2 CA-CR 2020-0132-PR
Filed October 2, 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NOT FOR PUBLICATION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 Pima County
No. CR20084461
The Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Lorenzo R. Felix, Florence
In Propria Persona

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MEMORANDUM DECISION

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

BREARCLIFFE, Judge:

¶1 Lorenzo Felix seeks review of the trial court’s order denying his motion to file a delayed appeal and for the appointment of counsel, purportedly filed pursuant to Rule 32, Ariz. R. Crim. P.¹ We review the order for an abuse of discretion. *See State v. Kolmann*, 239 Ariz. 157, ¶ 8 (2016). Felix has not met his burden of establishing such abuse here.

¶2 Felix was convicted after a jury trial of first-degree burglary, kidnapping, aggravated assault, armed robbery, two counts of sexual abuse, five counts of sexual assault, theft of a means of transportation, first-degree trafficking in stolen property, and theft of a credit card. The trial court sentenced him to a combination of consecutive and concurrent prison terms totaling ninety years. We affirmed his convictions and sentences on appeal. *State v. Felix*, No. 2 CA-CR 2010-0320 (Ariz. App. July 29, 2011) (mem. decision).

¶3 Felix sought post-conviction relief, and, after an evidentiary hearing, the trial court denied relief in a July 2017 ruling. This court denied review of that ruling because Felix had failed both to comply with Rule 32.16(c) and to present any legal argument supporting his claims. *State v. Felix*, No. 2 CA-CR 2017-0294-PR (Ariz. App. Apr. 3, 2018) (mem. decision).

¶4 In September 2019, Felix filed a motion for rehearing, requesting that the trial court “reconsider its resolution” of his prior petition for post-conviction relief. The court denied the motion. In May

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)).

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2020, Felix filed a motion to file an untimely petition seeking review of the July 2017 ruling. The court also denied that motion.² The following month, Felix filed a motion to file a delayed appeal and for the appointment of counsel. He cited Rule 32.1(f), which allows the court to grant relief when “the failure to timely file a notice of appeal was not the defendant’s fault.” The court denied the motion, explaining that Felix had previously appealed the judgment and sought post-conviction relief and that he was only entitled to counsel in his first Rule 32 proceeding. This petition for review followed.

¶5 On review, Felix argues that the trial court erred in denying his motion to file a delayed appeal and for the appointment of counsel because he properly sought relief under Rule 32.1(f). He contends that his former attorney “only raised one issue” on appeal and that he should be allowed to raise additional issues now.³

¶6 Below, Felix filed neither a notice of nor petition for post-conviction relief, instead styling his filing as a “Motion to File a Delayed Appeal and Motion to Request Appeal Attorney.” See Ariz. R. Crim. P. 32.16(a)(1) (limiting our review to ruling on “a petition or a motion for rehearing, or the dismissal of a notice”). Even assuming his motion could be construed as a notice or petition because he cited Rule 32.1(f), as the trial court noted, that provision is inapplicable because Felix had timely appealed his convictions and sentences. *Felix*, No. 2 CA-CR 2010-0320; see *State v. Rosales*, 205 Ariz. 86, ¶ 3 (App. 2003) (“The comment to Rule 32.1(f) explains that the provision is meant to apply when ‘the defendant intended to appeal and though[t] timely appeal had been filed by his attorney when in reality it had not.’”) (alteration in *Rosales*). And, generally, a defendant is only entitled to Rule 32 counsel in a first proceeding, see Ariz. R. Crim. P.

²Following the denial of Felix’s motion to file an untimely petition for review, Felix nonetheless sought review of the trial court’s July 2017 ruling. This court denied review. *State v. Felix*, No. 2 CA-CR 2020-0121-PR (Ariz. App. Sept. 15, 2020) (mem. decision).

³In his petition for review, Felix also raises several substantive arguments involving sentencing error, juror bias, and prosecutorial misconduct. However, those issues were not raised in his motion below and are not properly before us. See *State v. Ramirez*, 126 Ariz. 464, 467 (App. 1980) (this court does not address issues raised for first time in petition for review).

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32.5(a), which Felix has also had, *Felix*, No. 2 CA-CR 2017-0294-PR. We thus cannot say the trial court abused its discretion in denying Felix's motion.

¶7 Accordingly, we grant review but deny relief.