

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

LARRY SAMILLE ALEXANDER,  
*Petitioner.*

No. 2 CA-CR 2020-0151-PR  
Filed September 23, 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NOT FOR PUBLICATION  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 Maricopa County  
No. CR1993005585  
The Honorable Suzanne E. Cohen, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Larry S. Alexander, Florence  
*In Propria Persona*

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## MEMORANDUM DECISION

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Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

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ECKERSTROM, Judge:

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

¶2 After a jury trial, Alexander was convicted of three counts each of kidnapping and armed robbery and sentenced to concurrent and consecutive prison terms totaling forty-eight years. We affirmed his convictions and sentences on appeal. *State v. Alexander*, Nos. 1 CA-CR 94-0327, 1 CA-CR 94-0328 (Ariz. App. Mar. 28, 1995) (consol. mem. decision). Alexander was denied post-conviction relief in 1996.

¶3 In 2019, Alexander again sought post-conviction relief, arguing that the state had failed to prove he acted with the intent necessary to be liable as an accomplice, thus violating various constitutional provisions. He characterized his argument as a claim of newly discovered evidence under Rule 32.1(e). The trial court summarily dismissed the petition, noting his constitutional claims were precluded and untimely and "[h]is recent discovery of legal issues does not support Rule 32.1(e) relief" and, "[i]n any event, [Alexander] has not demonstrated reasonable diligence in raising these issues." This petition for review followed.

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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).

¶4 On review, Alexander asserts that he provided newly discovered facts in the form of various trial documents, transcripts, and copies of statutes and jury instructions. He also argues the trial court erred in finding he had not been diligent in raising his claim, asserting the court's conclusion was "speculative" and "[d]iligence is different in all of us."

¶5 We find no error in the trial court's order dismissing Alexander's petition. As the court noted, his constitutional claims cannot be raised in this untimely and successive proceeding. *See* Ariz. R. Crim. P. 32.1(a), 32.2(a)(3), 32.4(b)(3)(A). And Rule 32.1(e) does not encompass newly discovered legal arguments like Alexander raises here but is instead limited to "newly discovered material facts" that "probably would have changed the judgment or sentence." *See also State v. Serna*, 167 Ariz. 373, 374 (1991) (describing five elements of cognizable newly discovered evidence claim).

¶6 We grant review but deny relief.