

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

BRIAN ADRIAN ORTIZ,
Petitioner.

No. 2 CA-CR 2020-0180-PR
Filed October 27, 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NOT FOR PUBLICATION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 Maricopa County
No. CR2013453402001DT
The Honorable Jo Lynn Gentry, Judge

PETITION DISMISSED

Brian A. Ortiz, Buckeye
In Propria Persona

STATE v. ORTIZ
Decision of the Court

MEMORANDUM DECISION

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

BREARCLIFFE, Judge:

¶1 Petitioner Brian Ortiz seeks review of the trial court’s summary dismissal of his first petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.,¹ and its denial of his motions to reconsider that ruling. Because Ortiz has not filed a petition for review for us to review that complies with Rule 32.16(c), we dismiss this proceeding.

¶2 After a jury trial in 2014, Ortiz was convicted of aggravated assault, resisting arrest, and criminal trespass. The trial court imposed concurrent prison terms, the longest of which was twelve years. We affirmed Ortiz’s convictions and sentences on appeal. *State v. Ortiz*, No. 1 CA-CR 15-0624 (Ariz. App. Dec. 6, 2016) (mem. decision). In an order filed on May 15, 2018, the court dismissed Ortiz’s first Rule 32 petition, filed in propria persona,² and subsequently denied his motion to reconsider that ruling on July 17, 2018.³

¹ 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).

²After appointed counsel filed a notice stating she had been unable to find any claims to raise in a Rule 32 proceeding, Ortiz filed a pro se Rule 32 petition.

³Although Ortiz filed two motions for reconsideration, which we refer to as such, we note that Rule 32.14, Ariz. R. Crim. P., provides for a motion for rehearing, rather than a motion for reconsideration.

STATE v. ORTIZ
Decision of the Court

¶3 On August 22, 2018, Ortiz filed a motion requesting a sixty-day extension of the time for filing a petition for review of the trial court's dismissal of his Rule 32 petition and its denial of his motion for reconsideration. That same day, Ortiz also filed a second motion for reconsideration, asking the court to reconsider its denial of his first motion for reconsideration. On September 12, 2018, the court denied Ortiz's second motion for reconsideration. In a separate ruling filed on the same day, the court "forwarded" Ortiz's motion for an extension of time to file his petition for review to this court,⁴ apparently based upon the mistaken belief that this court was required to rule on it. *See* Ariz. R. Crim. P. 32.16(a)(4)(A). On November 29, 2018, Ortiz filed a "Notice of Appeal" in this court, explaining that he had not received a ruling on his August 2018 request for an extension of time to file the petition for review, and requesting "at least 60 days" to file his "appeal."

¶4 In a December 7, 2018 order, this court dismissed Ortiz's petition for review as untimely. In that order, we referred to Ortiz's November 29, 2018 filing as a petition for review; noted we had not received his August 2018 request for an extension of time to file his petition for review from the trial court; and further pointed out that such motions must be filed with the trial court, noting that it is within that court's discretion to grant such an extension. On December 27, 2018, Ortiz filed a successive Rule 32 petition. In a May 30, 2019 order, the court summarily dismissed that pleading. And, in response to Ortiz's inquiry about the status of his August 2018 request for an extension of time to file the petition for review, the court stated it had "review[ed] the Motion [for a continuance] and denie[d] relief."

¶5 On August 26, 2019, however, the trial court nonetheless granted Ortiz's request for a sixty-day continuance "to file a petition for review." But, Ortiz apparently did not file a petition for review at that time. In this court's order filed on September 30, 2019, we noted that the trial court had granted what was by that time a motion to file a delayed petition for review, the time for filing it having long passed, and thus reinstated this matter and ordered that "any response by the State be filed on or before October 30, 2019."

¶6 Viewing the entire record, it does not appear that Ortiz has filed a compliant petition for review in regard to his first Rule 32

⁴On October 1, 2020, this matter was transferred from Division One to Division Two of the Arizona Court of Appeals.

STATE v. ORTIZ
Decision of the Court

proceeding.⁵ *See* Ariz. R. Crim. P. 32.16(c)(2)(B), (D) (petition for review must contain “a statement of issues the trial court decided that the defendant is presenting for appellate review” and “reasons why the appellate court should grant the petition”). Moreover, based on the confusing and protracted procedural history in this matter, it does not appear that Ortiz ever filed a pleading that purports to be a petition for review related to his first Rule 32 proceeding. Accordingly, we dismiss this proceeding without prejudice to Ortiz to file a motion in the trial court seeking leave to file a delayed petition for review in this matter. *See* Ariz. R. Crim. P. 32.16(k) (appellate court’s review of trial court’s actions in Rule 32 proceedings discretionary).

¶7 Accordingly, we dismiss this matter.

⁵Nor does Ortiz’s November 29, 2018 notice of appeal, which may have been viewed as a petition for review, comply with Rule 32.16(c)(2).