

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ANGEL MARCELO DEL CUETO HUERTA,  
*Petitioner.*

No. 2 CA-CR 2020-0228-PR  
Filed December 14, 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NOT FOR PUBLICATION  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. CR2015138754001DT  
The Honorable Warren J. Granville, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Angel Marcelo Del Cueto Huerta, Florence  
*In Propria Persona*

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## MEMORANDUM DECISION

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

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V Á S Q U E Z, Chief Judge:

¶1 Angel Del Cueto Huerta seeks review of the trial court’s order dismissing his notice of post-conviction relief filed pursuant to Rule 33, Ariz. R. Crim. P.<sup>1</sup> We will not disturb that order unless the court abused its discretion. *See State v. Gutierrez*, 229 Ariz. 573, ¶ 19 (2012). Del Cueto Huerta has not met his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Del Cueto Huerta was convicted of four counts of attempted sexual conduct with a minor. The trial court sentenced him to fifteen years’ imprisonment, followed by lifetime probation. Del Cueto Huerta filed a notice of post-conviction relief, and the court appointed counsel. Counsel subsequently filed a notice stating she had reviewed the record and was “unable to find any claims for relief to raise in a post-conviction relief proceeding.” Del Cueto Huerta filed a pro se petition, which the court summarily dismissed on September 9, 2019.

¶3 On October 10, 2019, Del Cueto Huerta filed a “Motion for: An Independent Review of the Rule 32 Post-Conviction Relief.” He argued that his “sentencing counsel did not comply with the standard representation,” under the Arizona Rules of Professional Conduct and *Strickland v. Washington*, 466 U.S. 668 (1984). He also asserted constitutional arguments under the due process and equal protection clauses. Based on

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<sup>1</sup> Our supreme court amended the post-conviction relief rules, effective January 1, 2020. 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.’” *State v. Mendoza*, 249 Ariz. 180, n.1 (App. 2020) (quoting Ariz. Sup. Ct. Order R-19-0012). “Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.” *Id.*

those claims, he requested a reduction in his sentence. In addition, he requested the appointment of counsel.

¶4 The trial court treated the motion as a notice of post-conviction relief and dismissed it. The court first observed that his notice appeared to be untimely as to any claim of ineffective assistance of Rule 33 counsel because it was filed more than thirty days after its ruling in the first post-conviction proceeding. However, the court explained that it “could be timely” if the prisoner mailbox rule applied because Del Cueto Huerta had signed the document on October 4, 2019. But, in any event, the court noted that Del Cueto Huerta had not asserted a claim of ineffective assistance of Rule 33 counsel. The court then addressed his claims, reasoning that ineffective assistance of trial and sentencing counsel claims, as well as his constitutional claims, all of which fell under Rule 33.1(a), were precluded in this successive proceeding. Accordingly, the court concluded that Del Cueto Huerta had failed to state a claim for post-conviction relief. This petition for review followed.<sup>2</sup>

¶5 On review, Del Cueto Huerta contends that the trial court improperly denied his notice “because of a ‘1 day delay.’” He reasons that he “sent out [the notice] on October 4, 2019” and that it was “out of [his] control” once he gave the notice to the Arizona Department of Corrections (ADOC). He also reasserts his claim of ineffective assistance of sentencing counsel.

¶6 First, the trial court did not deny Del Cueto Huerta’s notice as late. Instead, the court recognized that it was not sure whether his notice was timely because it was signed and dated October 4, 2019. *See State v. Rosario*, 195 Ariz. 264, ¶¶ 9-10 (App. 1999) (if defendant timely gave notice of post-conviction relief to ADOC for mailing, notice must be considered timely filed). In any event, as the court pointed out, the thirty-day time limit did not apply because Del Cueto Huerta had not asserted a claim of ineffective assistance of Rule 33 counsel. *See Ariz. R. Crim. P. 33.4(b)(3)(C)* (“A defendant may raise a claim of ineffective assistance of Rule 33 counsel in a successive Rule 33 proceeding if the defendant files a notice no later

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<sup>2</sup>Del Cueto Huerta’s filing with this court was entitled, “Motion for: Direct Appeal with Good Cause Appearing as the Defendant[’]s Rights Were Impeded on by the Sentencing Defense Attorney that Represented the Defendant Prior to and at Sentencing.” *See Ariz. R. Crim. P. 33.16(a)(1)* (defendant may file petition for review from trial court’s final decision on dismissal of notice of post-conviction relief within thirty days).

than 30 days after the trial court's final order in the first post-conviction proceeding . . .").

¶7 Second, the trial court properly concluded that Del Cueto Huerta's claim of ineffective assistance of trial and sentencing counsel was precluded in this successive proceeding. *See* Ariz. R. Crim. P. 33.2(a)(3) (defendant precluded from relief under Rule 33.1(a) based on ground waived in previous post-conviction proceeding); *see also State v. Petty*, 225 Ariz. 369, ¶ 11 (App. 2010) (ineffective assistance of counsel claim cognizable under Rule 32.1(a)). Simply put, "the preclusion rule . . . requires a defendant to raise all known claims for relief in a single petition to the trial court, thereby avoiding piecemeal litigation and fostering judicial efficiency." *State v. Rosales*, 205 Ariz. 86, ¶ 12 (App. 2003).

¶8 Accordingly, we grant review but deny relief.