

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

JAMES DEMPSEY,  
*Petitioner.*

No. 2 CA-CR 2021-0038-PR  
Filed September 17, 2021

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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NOT FOR PUBLICATION  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. CR20032800001  
The Honorable Casey F. McGinley, Judge

**REVIEW DENIED**

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COUNSEL

Laura Conover, Pima County Attorney  
By Myles Austin Braccio, Deputy County Attorney, Tucson  
*Counsel for Respondent*

James Dempsey, Florence  
*In Propria Persona*

**MEMORANDUM DECISION**

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

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V Á S Q U E Z, Chief Judge:

¶1 Petitioner James Dempsey seeks review of the trial court’s order summarily dismissing his notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. For the following reasons, we deny review.

¶2 After a jury trial, Dempsey was convicted of sexual conduct with a minor under fifteen, continuous sexual abuse of a child, and involving or using minors under fifteen in drug offenses. The trial court sentenced him to consecutive, partially mitigated prison terms totaling fifty-one years. We affirmed Dempsey’s convictions and sentences on appeal. *State v. Dempsey*, No. 2 CA-CR 2006-0003 (Ariz. App. Dec. 26, 2007) (mem. decision). The trial court denied Dempsey’s first petition for post-conviction relief in 2010.

¶3 In February 2021, more than fifteen years after he was convicted, Dempsey filed in the trial court a “Motion . . . to Notify this Court of Notification of a Post Conviction Relief under Newly Discovered Evidence after Trial.” Noting that Dempsey had not “indicate[d] what newly discovered evidence he contend[ed] exist[ed], or when it was discovered,” the court found he had failed to establish that his notice was timely filed. *See* Ariz. R. Crim. P. 32.1(e), 32.2(b), 32.4(b)(3)(B). The court thus summarily dismissed the notice, permitting Dempsey to file a new notice in compliance with the rules.<sup>1</sup>

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<sup>1</sup>Although claims for relief based on Rule 32.1(b) through (h) are not subject to preclusion under Rule 32.2(a)(3), Rule 32.2(b) provides, “[W]hen a defendant raises a claim that falls under Rule 32.1(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.” The rule further provides, “If the notice does not provide sufficient reasons why the defendant did not raise

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¶4 The following week, Dempsey filed in the trial court a document partially entitled, “Re: To Provide this Court with a Rule 32 Post Conviction Relief under Newly Discovered Evidence,” stating that claims of newly discovered evidence are no longer subject to any time limits. The court summarily dismissed Dempsey’s notice as untimely, finding that he had failed to explain when he became aware of the evidence he claimed was newly discovered and that he did not “articulate why he did not raise these issues before” or “why he did not raise them in a timely manner.” *See* Ariz. R. Crim. P. 32.2(b), 32.4(b)(3)(B). The court also concluded the incidents listed in Dempsey’s notice had occurred either before or during trial and are described “in a manner that makes the Court conclude that [Dempsey] was acutely aware of their occurrence” at that time. This petition for review followed.

¶5 In his single-sentence petition for review, Dempsey “respectfully moves this court to acknowledge and accept this motion as a ‘Petition for Review’ with good cause showing and demonstrated in the Petitioner[’]s Rule 32 Petition with Points and Authorities also including a proper remedy for reversal and remand to the superior court to obtain an evidentiary hearing.” Dempsey’s petition does not meaningfully comply with Rule 32.16(c)(2)(C), in that he fails to include a “statement of material facts concerning the issues presented for review” with citations to the record. Nor does he include any argument with “citations to supporting legal authority.” *See* Ariz. R. Crim. P. 32.16(c)(2)(D). Additionally, insofar as Dempsey attempts to incorporate by reference his filings below, this procedure does not comply with our rules. *See* Ariz. R. Crim. P. 32.16(d) (petition for review “must not incorporate any document by reference, except the appendix”). Accordingly, summary denial of review is justified. *See* Ariz. R. Crim. P. 32.16(k) (appellate review under Rule 32.16 discretionary); *State v. French*, 198 Ariz. 119, ¶ 9 (App. 2000) (summarily rejecting claims not complying with rules governing form and content of petitions for review), *disapproved on other grounds by Stewart v. Smith*, 202 Ariz. 446, ¶ 10 (2002).

¶6 Therefore, we deny review.

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the claim in a previous notice or petition, or in a timely manner, the court may summarily dismiss the notice.” Ariz. R. Crim. P. 32.2(b).