

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RICHARD MARTINEZ,
Petitioner.

No. 2 CA-CR 2021-0070-PR
Filed October 6, 2021

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NOT FOR PUBLICATION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. CR20080065001
The Honorable Wayne E. Yehling, Judge

REVIEW GRANTED; RELIEF DENIED

Richard Martinez, Florence
In Propria Persona

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MEMORANDUM DECISION

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

BREARCLIFFE, Judge:

¶1 Richard Martinez seeks review of the trial court’s ruling summarily dismissing his successive notice of post-conviction relief filed pursuant to Rule 33, Ariz. R. Crim. P. We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Martinez has not shown such abuse here.

¶2 In 2008, Martinez pleaded guilty to four counts of armed robbery, seven counts of aggravated assault, and two counts of weapons misconduct. The trial court sentenced him to concurrent and consecutive prison terms totaling twenty-one years. He was later resentenced to an identical term because the state had violated his plea agreement by recommending consecutive sentences. He has sought and been denied post-conviction relief numerous times, as we have explained in a previous decision and need not repeat here. *See State v. Martinez*, No. 2 CA-CR 2020-0191-PR, ¶ 2 (Ariz. App. Jan. 8, 2021) (mem. decision).

¶3 In May 2021, Martinez filed a notice of post-conviction relief indicating he was raising a claim under Rule 33.1(d), and asserting he had recently discovered that, at his resentencing, the trial court had “failed to credit him for 332 days jail credits” for the time spent in jail before his original sentencing. He claimed he had learned of this issue in March 2021 when the Arizona Department of Corrections “re-audited and updated his sentence time computation.”

¶4 The trial court summarily dismissed Martinez’s notice. It concluded Martinez had not adequately explained his failure to raise the issue sooner and, in any event, the resentencing commitment order “explicitly credits [Martinez] 332 days, time served.”¹ This petition for review followed.

¹Martinez attempted to raise this issue in a previous notice filed in April 2021. The trial court dismissed that notice “without prejudice,”

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¶5 On review, Martinez again asserts he was not given credit for 332 days of presentence incarceration credit and argues he raised the claim within a reasonable time after learning of it, as required by Rule 33.4(b)(3)(B). We agree with the trial court that Martinez’s notice warranted summary dismissal.

¶6 There is no definite time limit for a defendant to raise a claim under Rule 33.1(d). Rule 33.4(b)(3)(B) requires only that the claim be raised “within a reasonable time after discovering the basis for the claim.” And such claims are exempt from preclusion on waiver grounds under Rule 33.2. Nonetheless, a 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.” Ariz. R. Crim. P. 33.2(b)(1). Martinez has not explained why his claim, as he describes it, was not evident at the time of his 2011 resentencing. Thus, the trial court did not err in concluding he did not satisfy Rule 33.2(b)(1).

¶7 We grant review but deny relief.

noting Martinez had “failed to provide any reasons or explanations as to why the claim was not raised” previously. In its order dismissing Martinez’s most-recent notice, the court ordered that Martinez be precluded from raising the issue in a subsequent proceeding. We additionally note the commitment order awards Martinez 322 days of presentence incarceration credit, not 332.