IN THE

# ARIZONA COURT OF APPEALS

DIVISION TWO

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THE STATE OF ARIZONA,
*Respondent*,

*v.*

GREGORY NIDEZ VALENCIA JR.,
*Petitioner*.

No. 2 CA-CR 2022-0003-PR
Filed March 23, 2022

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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NOT FOR PUBLICATION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. CR051447
The Honorable Catherine M. Woods, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Gregory N. Valencia Jr., Buckeye
*In Propria Persona*

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**MEMORANDUM DECISION**

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

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E P P I C H, Presiding Judge:

**¶1** Gregory Valencia seeks review of the trial court's ruling summarily dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court abused its discretion. *See State v. Martinez*, 226 Ariz. 464, ¶ 6 (App. 2011). Valencia has not met his burden of establishing such abuse here.

**¶2** After a 1996 jury trial, Valencia was convicted of first-degree murder and two counts of first-degree burglary. The trial court sentenced him to imprisonment for natural life without the possibility of release for murder and to concurrent, 7.5-year prison terms for the burglary offenses. On appeal, this court vacated one of the burglary convictions but otherwise affirmed Valencia's convictions and sentences. *State v. Valencia*, No. 2 CA-CR 96-0652 (Ariz. App. Apr. 30, 1998) (mem. decision).

**¶3** Valencia has sought, and been denied, post-conviction relief on numerous occasions. *See, e.g.*, *State v. Valencia*, No. 2 CA-CR 2009-0317-PR, ¶¶ 1-2 (Ariz. App. Mar. 24, 2010) (mem. decision) (challenging dismissal of eighth petition for post-conviction relief). In 2016, however, this court granted relief on Valencia's sentencing claim based on *Miller v. Alabama*, 567 U.S. 460 (2012), and our supreme court remanded the case for further proceedings. *State v. Valencia*, 241 Ariz. 206, ¶¶ 7, 20 (2016). Thereafter, Valencia was resentenced to life with the possibility of parole after twenty-five years. This court affirmed that sentence on appeal. *State v. Valencia*, No. 2 CA-CR 2019-0207 (Ariz. App. Aug. 14, 2020) (mem. decision).

**¶4** Valencia filed a notice of post-conviction relief in March 2021, and the trial court appointed counsel. Counsel thereafter filed a notice avowing that he had reviewed the record but "could not find any legitimate basis for relief under Rule 32." The court gave Valencia leave to file a pro se petition, which he did in September 2021. Valencia argued that the court should adopt a "new rule" that "juveniles be mandatorily appointed counsel, whether they request one or not, prior to any police questioning

and any statements made previous to such be inadmissible even if *Mirandized*."[1] He further reasoned that his statements to detectives in 1995, made without counsel, should not have been admitted at his trial.

**¶5** In December 2021, the trial court summarily dismissed Valencia's petition. The court determined that Valencia had "failed to state a claim that falls within the scope of Rule 32.1." It further explained that Valencia had "failed to cite any statute, rule, or caselaw that offers any legal authority for [it] to create a new law in the course of a Rule 32 proceeding." This petition for review followed.

**¶6** On review, Valencia asks this court to "find that interrogating juveniles, *Mirandized* or not, without first mandatorily providing them counsel is unconstitutional under both state and federal constitutions."[2] He contends that juveniles are "a special class of persons due to their lack of mental development," citing *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller*, 567 U.S. 460. In addition, he maintains that the trial court abused its discretion by summarily dismissing his petition without an evidentiary hearing.

**¶7** To the extent Valencia's claim can be construed as one for post-conviction relief, it appears to be constitutional in nature and therefore falls under Rule 32.1(a). However, any such claim is untimely and precluded.[3] *See* Ariz. R. Crim. P. 32.2(a)(3), 32.4(b)(3)(A); *see also State v. Rosales*, 205 Ariz. 86, ¶ 12 (App. 2003) (preclusion rule requires defendant

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[1] *Miranda v. Arizona*, 384 U.S. 436, 471 (1966), provides that "an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation."

[2] To the extent Valencia is asserting new claims, such as ineffective assistance of counsel, for the first time on review, we do not consider them. *See* Ariz. R. Crim. P. 32.16(c)(2)(B) (appellate court reviews issues presented to trial court); *State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980) (appellate court will not address arguments asserted for first time in petition for review).

[3] Although Valencia filed his notice within thirty days of the issuance of the mandate in the direct appeal of his resentencing, *see* Ariz. R. Crim. P. 32.4(b)(3)(A), the claim raised in his petition relates to his 1996 trial not his resentencing. The claim is therefore untimely.

to raise all known claims for relief in single petition, thereby avoiding piecemeal litigation and fostering judicial efficiency).

**¶8** Valencia nevertheless suggests that his claim "is cognizable" as a "significant change in the law" under Rule 32.1(g) and is, therefore, "not subject to the rule of preclusion." But when a defendant raises a claim under Rule 32.1(g) in a successive or untimely post-conviction proceeding, "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." Ariz. R. Crim. P. 32.2(b). And the court may summarily dismiss the proceeding if the defendant "does not provide sufficient reasons why [he] did not raise the claim in a previous notice or petition, or in a timely manner." *Id.*

**¶9** Valencia has failed to adequately explain why he did not raise his claim sooner. Although he maintains that "it [was] impossible for [him] to have been aware of this claim" until "[t]he scientific studies and data . . . began coming out after [his] case was finalized," the cases upon which he relies—including *Roper*, *Graham*, and *Miller*—were decided several years ago. Indeed, *Miller* was the basis of his previous post-conviction proceeding. *See Valencia*, 241 Ariz. 206, ¶¶ 4, 15. The trial court therefore did not abuse its discretion in dismissing Valencia's petition for post-conviction relief. *See Martinez*, 226 Ariz. 464, ¶ 6; *see also State v. Perez*, 141 Ariz. 459, 464 (1984) ("We are obliged to affirm the trial court's ruling if the result was legally correct for any reason.").

**¶10** Accordingly, we grant review but deny relief.