

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

RICHARD MICHAEL MCBRIDE,  
*Petitioner.*

No. 2 CA-CR 2022-0017-PR  
Filed April 14, 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NOT FOR PUBLICATION  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. CR023598001  
The Honorable Javier Chon-Lopez, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Richard M. McBride, Buckeye  
*In Propria Persona*

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**MEMORANDUM DECISION**

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

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STARING, Vice Chief Judge:

¶1 Richard McBride seeks review of the trial court’s ruling summarily dismissing his notice of 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). McBride has not met his burden of establishing such abuse here.

¶2 After a 1989 jury trial, McBride was convicted of seventeen counts, including burglary, theft, armed robbery, and kidnapping. The trial court sentenced him to a combination of concurrent and consecutive, presumptive prison terms totaling sixty years. This court affirmed McBride’s convictions and sentences on appeal. *State v. McBride*, Nos. 2 CA-CR 1989-0666, 2 CA-CR 1989-0667, 2 CA-CR 1989-0668 (Ariz. App. Mar. 21, 1991) (consol. mem. decision). McBride has previously sought and been denied post-conviction relief. *State v. McBride*, No. 2 CA-CR 2005-0160-PR (Ariz. App. June 30, 2006) (mem. decision).

¶3 In June 2021, McBride filed a notice of post-conviction relief. The trial court summarily dismissed the notice because McBride had failed to provide “any reasons, much less sufficient reasons, why the untimely filing is not his fault” or “why he did not raise the claims in a previous notice or petition or in a timely manner.” Thereafter, McBride filed a motion for reconsideration, arguing that “there is no place to explain why a pleading is late” on the standardized Rule 32 notice. He maintained that “[t]he only space” for such an explanation is on the petition for post-conviction relief, which he filed simultaneously with his motion. In that petition, McBride asserted a Rule 32.1(c) claim that his consecutive sentences were not authorized by law, as well as a Rule 32.1(a) claim that his trial counsel had been ineffective in failing to raise the sentencing issue. He argued that the proceeding was timely because *State v. Espinosa*, 200 Ariz. 503 (App. 2001), “allows for late filings” if the defendant previously had no knowledge of the claim.

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¶4 In December 2021, the trial court denied McBride’s motion for reconsideration and summarily dismissed his attached petition, which it treated as a notice. The court explained, “[T]he illegality of consecutive sentences was an issue for appeal and it is now waived,” and “[T]he ineffective assistance of trial and appellate counsel is also waived” in this successive proceeding. This petition for review followed.

¶5 On review, McBride repeats his claims that his consecutive sentences are illegal and that his counsel rendered ineffective assistance by failing to raise that issue. He maintains the trial court erred in dismissing his notice because “[s]ome issues cannot be waived,” including an illegal sentence. He again cites *Espinosa* and argues he is permitted to initiate an untimely Rule 32 proceeding if the claims were outside of his knowledge.

¶6 “A defendant is precluded from relief under Rule 32.1(a) based on any ground . . . waived at trial or on appeal, or in a previous post-conviction proceeding . . . .” Ariz. R. Crim. P. 32.2(a)(3). Although claims for relief based on Rule 32.1(c) are not subject to preclusion on that basis, when a defendant raises such a claim “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.” Ariz. R. Crim. P. 32.2(b). “If the notice does not provide sufficient reasons why the defendant did not raise the claim in a previous notice or petition, or in a timely manner, the court may summarily dismiss the notice.” *Id.*

¶7 McBride’s ineffective assistance of counsel claim falls under Rule 32.1(a) and is therefore precluded in this successive proceeding, as the trial court found. *See* Ariz. R. Crim. P. 32.2(a)(3); *see also* *State v. Spreitz*, 202 Ariz. 1, ¶ 4 (2002) (“Our basic rule is that where ineffective assistance of counsel claims are raised, or could have been raised, in a Rule 32 post-conviction relief proceeding, subsequent claims of ineffective assistance will be deemed waived and precluded.”). Although McBride’s claim of an unauthorized sentence pursuant to Rule 32.1(c) is not precluded under Rule 32.2(a)(3), he was required to provide sufficient reasons why he had not raised the claim sooner or in a timely fashion. *See* Ariz. R. Crim. P. 32.2(b). As the court found, he failed to do so. *See* *State v. Peek*, 219 Ariz. 182, ¶¶ 3-4 (2008) (claim of illegal sentence should be timely presented).

¶8 McBride’s reliance on *Espinosa* is unavailing. In that case, this court explained that preclusion does not apply to Rule 32.1(a) claims “involving certain constitutional rights unless the record shows that the defendant knowingly, voluntarily, and intelligently waived the right,” for

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example, the right to counsel, to a jury trial, or to be tried by a twelve-person jury. *Espinosa*, 200 Ariz. 503, ¶ 7. Contrary to McBride’s assertion, *Espinosa* does not suggest that a defendant can file an untimely notice for “claims outside [his] knowledge and intelligence.”

¶9 Moreover, *Espinosa* is “limited to the application of waiver in determining whether a claim is precluded under Rule 32.2(a)(3).” *State v. Lopez*, 234 Ariz. 513, ¶ 8 (App. 2014). It does not address the failure to file a timely notice pursuant to Rule 32.4(b)(3)(A). That rule requires a defendant to “file the notice for a claim under Rule 32.1(a) within 90 days after the oral pronouncement of sentence or within 30 days after the issuance of the mandate in the direct appeal, whichever is later.”<sup>1</sup> Ariz. R. Crim. P. 32.4(b)(3)(A). McBride’s notice was filed approximately thirty years after the issuance of the mandate in his direct appeal. And he has not adequately explained why the failure to file a timely notice was not his fault. *See* Ariz. R. Crim. P. 32.4(b)(3)(D). The trial court thus did not abuse its discretion in dismissing McBride’s notice.<sup>2</sup> *See Martinez*, 226 Ariz. 464, ¶ 6.

¶10 Accordingly, we grant review but deny relief.

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<sup>1</sup>A Rule 32.1(c) claim must be filed “within a reasonable time after discovering the basis of the claim.” Ariz. R. Crim. P. 32.4(b)(3)(B). McBride has failed to identify when he discovered his sentencing claim. But he was sentenced more than thirty years ago, and he acknowledges that the statute upon which he relies to argue that his consecutive sentences are illegal, A.R.S. § 13-116, existed at the time of his sentencing. *See* 1977 Ariz. Sess. Laws, ch. 142, § 41.

<sup>2</sup>To the extent McBride raises new claims in his petition for review, we do not address 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).