

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JOHN PIERRE BAKER,
Petitioner.

No. 2 CA-CR 2022-0050-PR
Filed June 13, 2022

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NOT FOR PUBLICATION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. CR057359
The Honorable Casey F. McGinley, Judge

REVIEW GRANTED; RELIEF DENIED

John P. Baker, Buckeye
In Propria Persona

STATE v. BAKER
Decision of the Court

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Eckerstrom and Chief Judge Vásquez concurred.

ESPINOSA, Judge:

¶1 John Baker seeks review of the trial court’s order dismissing his successive notice of post-conviction relief filed pursuant to Rule 32, 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). Baker has not shown such abuse here.

¶2 After a 1999 jury trial, Baker was convicted of conspiracy to commit child abuse, ten counts of child abuse, and two counts of kidnapping a minor under the age of fifteen. The trial court sentenced him to concurrent and consecutive prison terms totaling 86.5 years. We affirmed his convictions and sentences on appeal. *State v. Baker*, No. 2 CA-CR 99-0222 (Ariz. App. Sept. 14, 2000) (mem. decision). Baker has unsuccessfully sought post-conviction relief numerous times.¹ *See State v. Baker*, No. 2 CA-CR 2019-0260-PR, ¶ 2 (Ariz. App. May 4, 2020) (mem. decision).

¶3 In October 2021, Baker filed a notice of post-conviction relief stating he was raising claims that his sentences were not authorized by law under Rule 32.1(c), that he would remain in custody after his sentence expired “if relief is granted,” citing Rule 32.1(d), and there were newly discovered material facts pertaining to his convictions or sentences, citing Rule 32.1(e). He indicated that it was not his fault his notice was untimely because he had “[j]ust learned about new issue.” Baker filed with his notice of post-conviction relief a “Notice to Court” requesting the court “accept the notice” and allow him to file a petition because the form used for his post-conviction notice “does not have enough room or space to fully explain why the notice is not within the 90 day time frame” and he would provide “[a] full explanation” in his petition. The trial court summarily

¹Baker was granted partial relief in 2005 and was resentenced for several counts. *State v. Baker*, Nos. 2 CA-CR 2005-0366-PR, 2 CA-CR 2006-0088-PR, ¶ 2 (Ariz. App. Jan. 25, 2007) (consol. mem. decision).

STATE v. BAKER
Decision of the Court

dismissed Baker's post-conviction notice, concluding Baker had not "adequately explain[ed]," as required by Rule 32.2(b), "how he learned about the alleged issue, what he learned, how [he] was diligent in discovering it, and why the Court should therefore consider his Notice as timely." This petition for review followed.

¶4 On review, Baker maintains that he "followed the rules" by filing his notice and informing the trial court he would fully explain his reasons for raising the claim in a successive proceeding in his petition for post-conviction relief. He also states he is entitled to relief under the rule of lenity due to a conflict between sentencing statutes regarding his consecutive sentences and contends the Arizona Department of Corrections has miscalculated his release date.

¶5 A defendant must raise claims under Rule 32.1(c), (d), and (e) "within a reasonable time after discovering the basis of the claim." Ariz. R. Crim. P. 32.4(b)(3)(B). However, the defendant's notice must include "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 those reasons are not "sufficient," "the court may summarily dismiss the notice." *Id.* Given the dearth of information Baker provided—only that he had "[j]ust learned" of his claim—there was no basis for the court to conclude he acted reasonably in bringing the claim decades after his convictions. And, despite Baker's position that he could instead explain his delay in the petition, nothing in Rule 32.2 allows a defendant to defer the required showing.

¶6 We have previously admonished Baker that conclusory attempts to comply with Rule 32.2(b) are insufficient to avoid dismissal. *Baker*, No. 2 CA-CR 2019-0260-PR, n.2. A defendant "has a heavy burden" in excusing untimely filings. *State v. Pope*, 130 Ariz. 253, 256 (1981) (addressing untimely petition for rehearing); *but see State v. Reed*, 252 Ariz. 236, ¶ 15 (App. 2021) ("mere passage of time" does not constitute unreasonable delay for some post-conviction claims). Here, the trial court did not err in summarily dismissing Baker's notice for failing to comply with Rule 32.2(b).²

¶7 Although we grant review, relief is denied.

²We therefore do not address the merits of Baker's claims.