

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

DAVID LOPEZ GONZALES,  
*Petitioner.*

No. 2 CA-CR 2022-0145-PR  
Filed November 17, 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NOT FOR PUBLICATION  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 Maricopa County  
No. CR2012124110001  
The Honorable Justin Beresky, Judge

**REVIEW GRANTED; RELIEF DENIED**

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David Lopez Gonzales, Florence  
*In Propria Persona*

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## MEMORANDUM DECISION

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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 David Gonzales seeks review of the trial court's orders summarily dismissing his successive notice of post-conviction relief and denying his motion for reconsideration filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb those rulings unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Gonzales has not met his burden of establishing such abuse here.

¶2 After a jury trial, Gonzales was convicted of seven counts of sexual abuse of a minor, two counts of sexual conduct with a minor, and one count of child molestation. The trial court sentenced him to consecutive prison terms totaling ninety-two years. On appeal, we vacated the conviction and sentence for one count of sexual conduct with a minor but otherwise affirmed his convictions and sentences. *State v. Gonzales*, No. 1 CA-CR 13-0675 (Ariz. App. June 16, 2015) (mem. decision). Gonzales has previously sought and been denied post-conviction relief at least four times.

¶3 In January 2022, Gonzales filed a notice of post-conviction relief stating he was raising claims under Rule 32.1(a), (e), and (g). He asserted he was entitled to raise these claims in a successive proceeding pursuant to Rule 32.2(a)(3) because he had not "knowingly, voluntarily[,] or personally waive[d]" his "right to a fair trial" and he had "exercised due diligence" in raising "newly discovered material facts that [his] trial was fundamentally unfair." The trial court summarily dismissed the notice. It noted that Gonzales could not raise claims under Rule 32.1(a) in an untimely proceeding irrespective of waiver and that he had not identified any newly discovered facts or significant change in the law.

¶4 Gonzales then filed a motion for reconsideration in which he asserted he had requested, but not yet received, "CPS records" of one of the victims and those records would contain "exculpatory and impeachment evidence." He also claimed to have additional "new evidence" that a witness had "lied about a material issue." The trial court denied the motion, noting Gonzales "ha[d] provided no actual evidence of anything." This petition for review followed.

¶5 Gonzales first repeats his argument that he is entitled to raise constitutional claims under Rule 32.1(a) pursuant to Rule 32.2(a)(3). Rule 32.2(a)(3) precludes relief for waived claims except those grounded in “a constitutional right that can only be waived knowingly, voluntarily, and personally by the defendant.” But nothing in Rule 32.2(a)(3) allows claims that are untimely under Rule 32.4(b)(3)(A), like Gonzales’s constitutional claims here. Untimely constitutional claims are barred irrespective of waiver. *See State v. Lopez*, 234 Ariz. 513, ¶¶ 8-9 (App. 2014).

¶6 Gonzales also asserts that he was not required to provide any basis for his claims in his notice because he is not required to support his claims with argument and evidence until he files his petition. We agree insofar as Rules 32.2 and 32.4 do not expressly require a defendant to explain or support claims for post-conviction relief. And claims under Rule 32.1(e) and (g) are not subject to the timeliness requirement of Rule 32.4(b)(3)(A) and need only be filed “within a reasonable time after discover[y].” Ariz. R. Crim. P. 32.4(b)(3)(B). Rule 32.2(b), however, requires a defendant raising such claims “in a successive or untimely post-conviction notice” to “explain the reasons for not raising the claim in a previous notice or petition, or for not raising the claim in a timely manner.” To meet this requirement in most circumstances, a defendant will need to identify the basis of the claim so that the reasons for the delay in raising it may be fully explained.

¶7 As to his Rule 32.1(g) claim, Gonzales provided no explanation. As to his Rule 32.1(e) claim, he stated only that “[s]ince [he] obtained this newly discovered material fact that will support [his] claim while pursuing [his] federal habeas [claim, he] could not have presented it in a previous petition or notice.” But this bare statement does not explain why Gonzales could not have earlier discovered the evidence and raised the claim. Thus, the trial court did not err in summarily dismissing his notice. *See State v. Banda*, 232 Ariz. 582, n.2 (App. 2013) (“We can affirm the trial court’s ruling for any reason supported by the record.”).

¶8 Gonzales further argues the trial court was required to return his filing and “explain[] how [he] failed to meet the standard,” citing Rule 32.7(f). That provision allows an opportunity for a defendant to correct a petition that does not comply with the requirements of Rule 32.7(a)-(e). It does not apply to a deficient notice. *See Ariz. R. Crim. P. 32.7(f)*. Nor do we agree with Gonzales that the court was required to wait, pursuant to Rule 32.11, until the petition, response, and reply had been filed before it could summarily dismiss the proceeding. Again, that rule applies to petitions, not insufficient notices, which are subject to summary dismissal under Rule 32.2.

We grant review but deny relief.