

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ARTHUR SCOTT WOLFE,  
*Petitioner.*

No. 2 CA-CR 2022-0146-PR  
Filed November 9, 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NOT FOR PUBLICATION  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. CR1998093400  
The Honorable Roy C. Whitehead, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Arthur Scott Wolfe, Eloy  
*In Propria Persona*

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**MEMORANDUM DECISION**

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

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ECKERSTROM, Presiding Judge:

¶1 Arthur Wolfe seeks review of the trial court’s order summarily dismissing his successive and untimely 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. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Wolfe has not met his burden of establishing such abuse here.

¶2 Wolfe was convicted after a jury trial of first-degree murder and sentenced to life in prison with, according to the trial court, eligibility “for parole or other kind of release at 25 calendar years.” We affirmed his conviction and sentence on appeal. *State v. Wolfe*, No. 1 CA-CR 00-0546 (Ariz. App. May 10, 2001) (mem. decision). Wolfe has previously sought and been denied post-conviction relief at least four times.

¶3 In a notice of post-conviction relief filed in December 2021, Wolfe identified two claims. He asserted that his trial counsel had “improperly advised him that the State could not amend the charge as threatened in a plea offer” and “even if they could[, he] would only face an additional three years.” He argued the claim was not precluded because he “never personally, knowingly waived” it, citing *Stewart v. Smith*, 202 Ariz. 446 (2002), and because his failure to raise it earlier was “through no fault of his own,” citing Rule 32.1(f).

¶4 Wolfe further asserted he was raising the claim not only as a constitutional claim under Rule 32.1(a), but as a claim of newly discovered material facts under Rule 32.1(e). In support of the latter argument, he contended that he only learned of his claim of ineffective assistance upon reading a 2021 letter drafted by Arizona Justice Project stating some inmates might be eligible for post-conviction relief if they had rejected a plea offer because they had been promised parole eligibility despite parole having been abolished except for crimes committed before January 1, 1994.

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¶5 Last, Wolfe asserted a claim of actual innocence under Rule 32.1(h), claiming his conviction was based on the prosecutor’s knowing presentation of “false evidence.” The trial court summarily dismissed the notice.<sup>1</sup> However, the court additionally ordered the Arizona Department of Corrections to “certify [Wolfe] for parole as soon as he serves 25 years as A.R.S. § 41-1604.09 permits.” This petition for review followed.

¶6 On review, Wolfe first reasserts his claim of ineffective assistance of counsel, this time asserting that his attorney had advised him he would only face a sentence of twenty-five years if convicted of first-degree murder, causing him to reject a plea offer of second-degree murder. He again characterizes this claim as not subject to preclusion under *Stewart* and Rule 32.1(f), and as a claim of newly discovered evidence under Rule 32.1(e).

¶7 But, as the trial court explained in its ruling, *Stewart* does not apply to untimely claims like this one. A claim under Rule 32.1(a) cannot be raised in an untimely proceeding, irrespective whether the defendant had knowingly waived the claim. *State v. Lopez*, 234 Ariz. 513, ¶ 8 (App. 2014). Nor does Rule 32.1(f) apply to a notice of post-conviction relief—it applies only to the failure to timely file a notice of appeal. Finally, Rule 32.1(e) does not contemplate a claim of newly discovered ineffective assistance of counsel, and is instead restricted to “newly discovered” material facts that “probably would . . . change[] the judgment or sentence.” *See State v. Serna*, 167 Ariz. 373, 374 (1991) (describing five elements of cognizable newly discovered evidence claim).

¶8 Wolfe also argues the trial court erred in rejecting his claim of actual innocence under Rule 32.1(h). In his petition for review, he asserts he was convicted based on perjured testimony because a witness’s trial testimony was inconsistent with that witness’s testimony at a previous hearing. Even if this assertion could support a claim under Rule 32.1(h), Wolfe has not complied with Rule 32.2(b) by explaining his failure to raise it for more than twenty years after his conviction.

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<sup>1</sup>Wolfe filed with his notice a motion to extend the time to file a petition for post-conviction relief. He filed a petition on January 28, 2022. But, on February 4, the trial court dismissed Wolfe’s notice and denied his motion to extend without addressing Wolfe’s petition. Wolfe does not argue on review that the court erred by disregarding his petition.

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¶9 Wolfe has not shown the trial court erred in dismissing his successive and untimely notice of post-conviction relief. Accordingly, although we grant review, we deny relief.