

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

PAUL ALAN REILLY,
Petitioner.

No. 2 CA-CR 2022-0159-PR
Filed January 26, 2023

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NOT FOR PUBLICATION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 Mohave County
No. S8015CR202100605
The Honorable Rick Lambert, Judge

REVIEW GRANTED; RELIEF GRANTED

Paul A. Reilly, Yuma
In Propria Persona

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MEMORANDUM DECISION

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

BREARCLIFFE, Judge:

¶1 Paul Reilly seeks review of the trial court’s order summarily dismissing his notice of post-conviction relief filed pursuant to Rule 33, Ariz. R. Crim. P. No response to the petition was filed. We grant review and relief.

¶2 Reilly pleaded guilty to possession of dangerous drugs for sale and possession of narcotic drugs for sale. The trial court sentenced him to consecutive prison terms totaling seventeen years. About one month later, Reilly filed a notice of post-conviction relief stating he was raising a claim under Rule 33.1(a), declaring he was indigent, and requesting that the court appoint counsel. Citing Rule 32.11, Ariz. R. Crim. P.,¹ the court summarily dismissed Reilly’s notice, stating he had “fail[ed] to state a post-conviction claim.” This petition for review followed.

¶3 On review, Reilly argues the trial court erred by summarily dismissing his notice and disregarding his request for counsel. We agree. The content of a notice of post-conviction relief is governed by Rule 33.4(b)(2), which includes no general requirement that a defendant identify underlying claims. A notice is sufficient if it contains “all information shown in Rule 41, Form 24(b),” as Reilly’s does here. Ariz. R. Crim. P. 33.4(b)(2). Rule 33.4 does not provide for the summary dismissal of a timely notice like Reilly’s. Nor does Rule 33.11. Rule 33.11 allows a trial court to summarily dismiss a *petition* for post-conviction relief if it contains no “claim present[ing] a material issue of fact or law that would entitle the defendant to relief.” Ariz. R. Crim. P. 33.11(a). Although Rule 33.2(b) allows a court to summarily dismiss an untimely or successive notice if a defendant fails to adequately “explain the reasons for not raising the claim

¹We assume the trial court intended to cite Rule 33.11, which applies to pleading defendants, instead of Rule 32.11, which applies to defendants convicted after a jury trial. See Ariz. R. Crim. P. 32.1, 33.1.

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in a previous notice or petition, or for not raising the claim in a timely manner," that provision does not apply here.

¶4 Additionally, Reilly's notice included a request for counsel and a declaration of indigency. Rule 33.5(a) requires "the presiding judge" to appoint counsel to any defendant who has filed a timely, first notice of post-conviction relief if certain requirements are met: the defendant requested appointed counsel, the defendant is entitled to counsel under Rule 6.1(b), Ariz. R. Crim. P., and the defendant has been found indigent. We direct the trial court to consider on remand whether Reilly is entitled to appointed counsel. We grant review and relief. We vacate the trial court's order summarily dismissing Reilly's notice of post-conviction relief and remand this case to that court for further proceedings.