

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ALEX NARANJO,
Petitioner.

No. 2 CA-CR 2023-0107-PR
Filed June 12, 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NOT FOR PUBLICATION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 Maricopa County
No. CR2010152194001DT
The Honorable Michael W. Kemp, Judge

REVIEW GRANTED; RELIEF DENIED

Alex Naranjo, Eloy
In Propria Persona

MEMORANDUM DECISION

Judge Gard authored the decision of the Court, in which Presiding Judge Eppich and Chief Judge Vásquez concurred.

G A R D, Judge:

¶1 Petitioner Alex Naranjo seeks review of the trial court’s order summarily dismissing his notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Ainsworth*, 250 Ariz. 457, ¶ 1 (App. 2021) (quoting *State v. Swoopes*, 216 Ariz. 390, ¶ 4 (App. 2007)). Naranjo has not sustained his burden of establishing such abuse here.

¶2 After a jury trial in 2011, Naranjo was convicted of two counts of second-degree murder, two counts of felony endangerment, and three counts of misdemeanor endangerment. The trial court imposed concurrent and consecutive prison sentences totaling thirty-four years. This court affirmed his convictions and sentences on appeal. *State v. Naranjo*, No. 1 CA-CR 11-0446 (Ariz. App. Mar. 22, 2012) (mem. decision).

¶3 In October 2022, Naranjo filed a notice of post-conviction relief, indicating he was raising claims under Rule 32.1(e) and (f). To explain his failure to raise the claims earlier, he stated, “The previous PCR (Rule 31) Attorney did not raise[] the above-selected claim(s).”¹ Determining Naranjo had failed “to adequately explain a filing delay in excess of 10 years,” the trial court dismissed the notice.

¶4 On review, Naranjo argues the trial court abused its discretion by dismissing his notice without appointing counsel, allowing a petition, or granting an evidentiary hearing. As the court pointed out, however, Naranjo’s notice of post-conviction relief was untimely. When a defendant files an untimely notice, the court has discretion to appoint counsel but is not required to do so. Ariz. R. Crim. P. 32.5(a). We cannot say the court erred in declining to appoint counsel because Naranjo’s notice was “facially

¹Although Naranjo referred to a “Post-Conviction Relief” proceeding under Rule 31, Ariz. R. Crim. P., and does again on review, it is clear from context that he is referring to his appeal.

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non-meritorious.” *State v. Harden*, 228 Ariz. 131, ¶ 11 (App. 2011); Ariz. R. Crim. P. 32.4(b)(3)(D); *see also* Ariz. R. Crim. P. 32.2(b).

¶5 Likewise, the trial court did not abuse its discretion by dismissing Naranjo’s untimely notice. A court “must excuse an untimely notice” raising claims under Rule 32.1(a), including claims of ineffective assistance of counsel such as those Naranjo describes on review, “if the defendant adequately explains why the failure to timely file a notice was not the defendant’s fault.” Ariz. R. Crim. P. 32.4(b)(3)(D); *see also* Ariz. R. Crim. P. 32.2(b). In his notice, Naranjo merely stated that previous counsel had not raised the claims. We agree with the court that this bare statement was insufficient to explain the ten-year delay in his filing of the notice.

¶6 This is particularly so in view of Naranjo’s claims, which he outlines on review. The claims arise from conduct by counsel at trial or sentencing, all of which have been known to Naranjo since those proceedings occurred more than a decade ago. To the extent Naranjo suggests these claims entitle him to relief under Rule 32.1(e), he is incorrect. That rule 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.” Ariz. R. Crim. P. 32.1(e); *see State v. Serna*, 167 Ariz. 373, 374 (1991) (describing five elements of cognizable newly discovered evidence claim).

¶7 Accordingly, because the trial court properly dismissed Naranjo’s notice of post-conviction relief, it did not abuse its discretion by failing to hold an evidentiary hearing. Such a hearing is not required when, as in this case, a court determines all claims are untimely. *See* Ariz. R. Crim. P. 32.2(b); Ariz. R. Crim. P. 32.11(b) (requiring court to set hearing if it does not summarily dismiss proceeding).

¶8 We grant the petition for review, but deny relief.