

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

GILBERT RUIZ PERALTA,  
*Petitioner.*

No. 2 CA-CR 2016-0208-PR  
Filed October 4, 2016

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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NOT FOR PUBLICATION  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. 31.24.*

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Petition for Review from the Superior Court in Pima County  
No. CR018309  
The Honorable D. Douglas Metcalf, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines, Deputy County Attorney, Tucson  
*Counsel for Respondent*

Gilbert Ruiz Peralta, Kingman  
*In Propria Persona*

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**MEMORANDUM DECISION**

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

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V Á S Q U E Z, Presiding Judge:

¶1 Gilbert Peralta seeks review of the trial court’s order denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Peralta has not met his burden of demonstrating such abuse here.

¶2 In 1986, Peralta pled guilty to sexual conduct with a minor. The trial court designated the offense a class one misdemeanor and ordered that Peralta serve a six-month jail term. The plea agreement did not discuss whether Peralta was required to register as a sex offender. In 2014, Peralta filed a “petition” asking that the court “terminate [his] requirement to register,” asserting he had been a minor at the time of his offense and thus, pursuant to A.R.S. § 13-3821(D), his registration requirement ended when he was twenty-five years old.<sup>1</sup> The court denied the petition, concluding § 13-3821(D) did not apply because Peralta had been “eighteen when he committed the offense” and “not adjudicated delinquent, but charged and convicted as an adult.”

¶3 In April 2015, Peralta filed another “petition,” this time requesting a hearing so he could “show why registration was not required,” again asserting he was not required to register because he had been a juvenile at the time of his offense and contending that,

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<sup>1</sup>Peralta’s date of birth is listed as May 5, 1968, in court records. The plea agreement stated he had committed the offense “on or about May 16, 1986.”

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before he could be required to register, he was entitled to a jury trial. The trial court ordered a response; after that response was filed, the court construed Peralta's petition as a notice of post-conviction relief and appointed counsel.

¶4 Peralta nonetheless filed a pro se petition for post-conviction relief, arguing: (1) his appointed Rule 32 counsel had committed "malpractice" by failing to raise various arguments related to the registration requirement; (2) the state had committed misconduct by, inter alia, seeking enforcement of the registration requirement; and (3) the state had breached the agreement by enforcing the registration requirement. He further suggested he would not have pled guilty had he known he would be required to register as a sex offender. The court held Peralta's pro se petition in abeyance, granting counsel additional time to file a petition.

¶5 Counsel ultimately filed a notice stating he had reviewed the record but found no claims to raise pursuant to Rule 32, after which the court ordered the state to respond to Peralta's pro se petition. After considering that petition, the state's response, and Peralta's reply, the trial court summarily denied relief. This petition for review followed.

¶6 We first observe that the time limits contained in Rule 32.4(a) are inapplicable to Peralta because he was sentenced before September 30, 1992, and this is his first Rule 32 proceeding.<sup>2</sup> 171 Ariz. XLIV; *see also Moreno v. Gonzalez*, 192 Ariz. 131, ¶ 22, 962 P.2d 205, 209 (1998). On review, Peralta first asserts the trial court had discretion, at the time of his sentencing, whether to require him to register as a sex offender. Thus, he suggests, because it did not include that requirement, he is not required to register. Peralta is incorrect that the court had such discretion. At the time of his offense, as it does now, § 13-3821(A) mandated registration for any

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<sup>2</sup>The trial court did not construe Peralta's 2014 filing as seeking relief pursuant to Rule 32. Had it done so, he would have been entitled to appointed counsel. Ariz. R. Crim. P. 32.4(c)(2).

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person convicted of sexual conduct with a minor.<sup>3</sup> 1985 Ariz. Sess. Laws, ch. 364, §§ 18, 32.

¶7 Peralta also complains that he was not notified of the registration requirement. But he has cited no authority suggesting he was entitled to notice, and we therefore do not address this argument further. *See State v. Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d 679, 683 (App. 2013) (insufficient argument waives claim on review); *see also State v. Morse*, 127 Ariz. 25, 31, 617 P.2d 1141, 1147 (1980) (“It is generally accepted that ignorance, or lack of knowledge, of the law which forbids the conduct with which one is charged is no defense.”). Similarly, to the extent Peralta reasserts his claim that he would not have pled guilty had he known he would have been required to register as a sex offender, he does not develop this claim in any meaningful way, and we do not address it. *See Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d at 683.

¶8 Peralta also argues that requiring him to register constitutes a breach of his plea agreement because that agreement did not expressly require that he register. As we have explained, however, the registration requirement arose automatically by virtue of Peralta’s conviction. Its inclusion in the plea agreement was unnecessary.

¶9 Peralta again asserts that his appointed counsel in this Rule 32 proceeding was ineffective. As an of-right petitioner, Peralta is entitled to the effective assistance of Rule 32 counsel in his first proceeding; however, that claim must be raised in a second proceeding. *See State v. Petty*, 225 Ariz. 369, ¶ 9, 238 P.3d 637, 640 (App. 2010) (pleading defendant constitutionally entitled to effective

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<sup>3</sup>Much of Peralta’s confusion seems to stem from § 13-3821(C), which gives a trial court discretion to require registration “for any violation of chapter 14 or 35.1 of this title or for an offense for which there was a finding of sexual motivation.” That is, the court can in certain circumstances require registration for offenses not enumerated in § 13-3821(A). That subsection is not relevant in light of Peralta’s conviction for sexual conduct with a minor.

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assistance of counsel in first, of-right Rule 32 proceeding, and may challenge that counsel's performance in timely filed second Rule 32 proceeding); *see also* Ariz. R. Crim. P. 32.1 (defining Rule 32 of-right proceeding); Ariz. R. Crim. P. 32.4 2000 amend. cmt. (rule amended "to allow the pleading defendant thirty days within which to file a second notice if the defendant seeks to challenge counsel's effectiveness in the [first] Rule 32 of-right proceeding"). We therefore do not address this claim further.

¶10 Peralta further claims, as he did below, that he is entitled to a copy of the police report in his case. The trial court denied that request, concluding "Rule 32 does not allow for discovery in post-conviction relief proceedings," citing *Canion v. Cole*, 210 Ariz. 598, 115 P.3d 1261 (2005). Although the court is correct that "Rule 32 itself does not provide a process for obtaining discovery," our supreme court observed in *Canion* that "trial judges have inherent authority to grant discovery requests in PCR Proceedings upon a showing of good cause." *Id.* ¶¶ 7, 10.

¶11 Peralta asserts the police report would show he was, in fact, seventeen at the time of the offense and thus that his registration requirement should have ended when he was twenty-five years old, pursuant to § 13-3821(D). That section provides, in pertinent part, that a court "may require a person who has been adjudicated delinquent for an act that would constitute an offense specified in subsection A or C of this section to register pursuant to this section. Any duty to register under this subsection shall terminate when the person reaches twenty-five years of age." Irrespective of Peralta's age at the time of his offense, he was not adjudicated delinquent but instead pled guilty and was treated as an adult offender. Thus, § 13-3821(D) does not apply to Peralta, and he has not demonstrated good cause for discovery of the police report.

¶12 We grant review but deny relief.