

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2013-0252-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
JAIME CABRALES,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF YAVAPAI COUNTY

Cause No. P1300CR201001121

Honorable Celé Hancock, Judge

REVIEW GRANTED; RELIEF DENIED

Jaime Cabrales

Safford  
In Propria Persona

H O W A R D, Chief Judge.

¶1 Pursuant to a plea agreement, petitioner Jaime Cabrales was convicted of transportation of a dangerous drug for sale (methamphetamine). Cabrales filed a notice of and petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., raising a claim of ineffective assistance of trial counsel. The trial court denied relief without an evidentiary hearing and denied his subsequent motion, which was essentially a motion for reconsideration. This petition for review followed. We will not disturb the trial court’s ruling unless it clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Cabrales has not met his burden of establishing such abuse here.

¶2 Cabrales was sentenced on February 3, 2011. On June 7, 2012, he filed a petition for post-conviction relief that was dated June 4, 2012, and on June 27, 2012, he filed an untimely notice of post-conviction relief dated June 4, 2012.<sup>1</sup> *See* Ariz. R. Crim. P. 32.4(a) (in “of-right” proceeding, notice of post-conviction must be filed within ninety days of entry of sentencing judgment). In his petition for post-conviction relief, Cabrales argued trial counsel had been ineffective for failing to file a motion to suppress evidence seized after an allegedly unlawful search of his vehicle. He claimed counsel had informed him “the evidence found would outweigh the fact that [his] car was illegally searched.” In the portion of the form petition Cabrales used, requiring him to explain why the claim had not been raised before, Cabrales stated, “Defendant was unaware of valid issues to be raised until his recent access to legal aide at his new prison facility.”

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<sup>1</sup>Presumably, Cabrales had intended to file the notice and petition simultaneously.

And in the form he used for his notice of post-conviction relief, he checked the space in front of the statement, “The defendant’s failure to file a timely notice of post-conviction relief or notice of appeal was without fault on the defendant’s part.” In specifying the facts upon which he based his contention that his failure to file a timely notice was not his fault, Cabrales stated that counsel had told him that, in his view, there were no issues to raise in a post-conviction proceeding.

¶3 Summarily dismissing the petition, the trial court found the notice of post-conviction relief was untimely filed. The court noted, and the record shows, that it had informed Cabrales at sentencing that he had the right to seek review of the conviction and sentence pursuant to Rule 32 and advised him of the time within which he was required to do so; Cabrales was given written notice advising him of this right and the time limit, which he signed. The court also found that “the reasons offered by the Defendant as to why he did not file his Notice of Post-Conviction Relief in a timely manner are not sufficient for the Court to accept a late filing.” Cabrales filed a “Motion to Extend 90-day period to file Notice of Post-Conviction Relief,” which was essentially a motion for reconsideration, restating portions of the petition and adding that he had not understood he could file a notice of post-conviction relief on his own. The court denied the motion as well.

¶4 In his petition for review, Cabrales asserts again he relied on trial counsel and did file a notice of post-conviction relief because counsel had told him there was no basis for seeking relief. He maintains he established his failure to seek review in a timely manner was without fault on his part, requesting that this court give him “permission to

proceed with his Rule 32 application despite [the] untimely filing” of his petition, in which he insists he raised a colorable claim for relief.

¶5 Cabrales has not sustained his burden of establishing the trial court abused its discretion in dismissing his untimely petition. A defendant who files an untimely notice of post-conviction relief is not only limited to raising those claims that fall within Rule 32.1(d), (e), (f), (g) or (h), *see* Ariz. R. Crim. P. 32.4(a),<sup>2</sup> claims that are excepted from preclusive effect of Rule 32.2, the defendant must also provide “meritorious reasons . . . substantiating the claim and indicating why the claim was not stated . . . in a timely manner,” Ariz. R. Crim. P. 32.2(b). As we stated, the record supports the court’s finding that Cabrales had been informed of his right to seek post-conviction relief and the time for doing so. Based on his record, the court reasonably could have rejected as a ground for excusing the untimely filing his claim that he did not realize he could file the notice on his own, given that nothing in the form he signed stated he had to seek relief through counsel. Additionally, he has not established the court erred by rejecting his claim that he only recently had realized he had a potential claim to raise. *See State v. Poblete*, 227 Ariz. 537, ¶ 7, 260 P.3d 1102, 1104-05 (App. 2011) (rejecting claim Rule

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<sup>2</sup>Claims of ineffective assistance of counsel fall under Rule 32.1(a). *State v. Petty*, 225 Ariz. 369, ¶ 11, 238 P.3d 637, 641 (App. 2010); *see also* Ariz. R. Crim. P. 32.1(a) 2007 amend. cmt. But even if we construe his petition and his motion to extend the ninety-day time limit together as a request to file a delayed notice and petition for post-conviction relief pursuant to Rule 32.1(f), for the reasons explained below the trial court did not err in denying relief summarily. The court seems to have ruled on that request in its order dismissing the proceeding as untimely filed and in its order denying Cabrales’s motion to extend the ninety-day time period and stating it would take “no action” on the notice of post-conviction relief dated June 4, 2012.

32.1(f) permits untimely petition on basis defendant only recently learned plea had immigration consequences).

¶6 Moreover, the trial court's ruling is sustainable for an additional reason. See *State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984) (appellate court will sustain trial court if "correct for any reason"). By entering the plea, Cabrales waived all nonjurisdictional defenses, errors, and defects that occurred prior to the plea proceedings. *State v. Canaday*, 116 Ariz. 296, 296, 569 P.2d 238, 238 (1977); see also *Tollett v. Henderson*, 411 U.S. 258, 267 (1973) ("When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea."); *State v. Hostler*, 109 Ariz. 212, 214, 507 P.2d 974, 976 (1973) (defendant waives issues related to potential insanity defense by entering guilty plea); *State v. Alford*, 98 Ariz. 124, 128, 402 P.2d 551, 554 (1965) (defendant waives challenge to voluntariness and admissibility of confessions by guilty plea); *State v. Lopez*, 99 Ariz. 11, 13, 405 P.2d 892, 893 (1965) (by entering guilty plea defendant waives challenges to legality of search and seizure of evidence). This principle applies to claims of ineffective assistance of counsel, except those that relate to the validity of the plea. *State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993). Cabrales has not challenged the validity of the plea, never claiming he did not enter a knowing, voluntary and intelligent plea. Rather, he has maintained trial counsel had been ineffective in failing to file a motion to suppress evidence. That claim was waived by the entry of the plea. Thus, contrary to Cabrales's contention, he did not raise

a colorable claim, therefore the court did not abuse its discretion by dismissing summarily his petition for post-conviction relief.

¶7 We grant the petition for review but deny relief for the reasons stated.

*/s/ Joseph W. Howard*  
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JOSEPH W. HOWARD, Chief Judge

CONCURRING:

*/s/ Garye L. Vásquez*  
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GARYE L. VÁSQUEZ, Presiding Judge

*/s/ Michael Miller*  
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MICHAEL MILLER, Judge