

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

FILED BY CLERK

SEP 11 2013

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2013-0274-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
ALEJANDRO MORA ROLON,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR1997008498

Honorable Samuel A. Thumma, Judge  
Honorable Douglas Rayes, Judge

REVIEW GRANTED; RELIEF DENIED

Alejandro Mora Rolon

Florence  
In Propria Persona

MILLER, Judge.

¶1 After a jury trial, petitioner Alejandro Rolon was acquitted of kidnapping a nine-year-old victim but found guilty and convicted of child molestation and sexual conduct with a minor; the trial court sentenced him to consecutive prison terms of thirty-three and thirty-five years, respectively. This court affirmed the convictions and

sentences on appeal. *State v. Rolon*, No. 1 CA-CR 00-0855 (memorandum decision filed June 13, 2002). This petition for review follows the trial court's orders dismissing what appears to have been Rolon's third notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P.,<sup>1</sup> in which Rolon stated he intended to raise claims of ineffective assistance of counsel and actual innocence, and denying his motion for rehearing as untimely filed. *See* Ariz. R. Crim. P. 32.1(a), (h); *see also State v. Petty*, 225 Ariz. 369, ¶ 11, 238 P.3d 637, 641 (App. 2010) (ineffective assistance of counsel "cognizable under Rule 32.1(a)").

¶2 We will not disturb the trial court's ruling unless the court clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We see no such abuse here. The court dismissed Rolon's notice after it identified and properly characterized the claims Rolon had stated he wished to assert in this successive proceeding, concluding correctly Rolon had "failed to state a claim for which relief can be granted in an untimely Rule 32 proceeding." Ariz. R. Crim. P. 32.4(a). We need not restate the court's ruling in its entirety here. Rather, we adopt the court's ruling because

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<sup>1</sup>Rolon called the document he filed a notice of post-conviction relief. Although the trial court referred to it as a petition for post-conviction relief, the court appears to have been aware that it was a notice, evaluating it under Rule 32.4(a), Ariz. R. Crim. P., which pertains to the filing of a notice of post-conviction relief and the related time limits to commence a post-conviction proceeding.

the record, the rules, and the applicable case law support it.<sup>2</sup> *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Rolon has not sustained his burden of establishing on review that the court abused its discretion by summarily dismissing the notice of post-conviction relief. *See Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d at 948.

¶3 The petition for review is granted, but the request for relief on review is denied.

/s/ Michael Miller

MICHAEL MILLER, Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

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<sup>2</sup>We note that Rolon refers to and provides the court with the June 7, 2012 Minute Entry by Judge Rayes that denied his motion for rehearing. As Judge Rayes correctly noted, the dispositive ruling that was made by Judge Thumma on April 18, 2012, summarily dismissed the petition for post-conviction relief. Assuming Rolon claims the trial court erred in denying his motion for rehearing, we find no error.