

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

---

THE STATE OF ARIZONA,  
*Appellee,*

*v.*

MANUEL RICARDO VASQUEZ,  
*Appellant.*

No. 2 CA-CR 2013-0428-PR  
Filed March 20, 2014

---

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NOT FOR PUBLICATION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); Ariz. R. Crim. P. 31.24.

---

Appeal from the Superior Court in Graham County  
Nos. CR201200286, CR201200287, and CR201300060  
The Honorable R. Douglas Holt, Judge

**APPEAL DISMISSED**

---

COUNSEL

Manuel R. Vasquez, San Luis  
*In Propria Persona*

STATE v. VASQUEZ  
Decision of the Court

---

**MEMORANDUM DECISION**

Judge Miller authored the decision of the Court, in which Chief Judge Howard and Judge Brammer<sup>1</sup> concurred.

---

M I L L E R, Judge:

¶1 Pursuant to a plea agreement, Manuel Vasquez was convicted in three separate cause numbers of manslaughter, trafficking in stolen property, and shoplifting. After he was sentenced in May 2013, he filed a motion to vacate the manslaughter conviction pursuant to Rule 24.2, Ariz. R. Crim. P. Although the trial court regarded the motion as a request for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., Vasquez opposed that conversion of his proceeding, and has filed a notice of appeal from the court's denial of relief under Rule 24.2.

¶2 After receiving Vasquez's June 5, 2013 Rule 24.2 motion, which the trial court described as a notice of post-conviction relief, the court appointed counsel to represent him. Counsel filed a "Notice of Completion" on July 30, 2013, in which she acknowledged she had received the transcripts and stated, "Unless otherwise notified by this court, the due date for the filing of the petition for post-conviction relief is September 27, 2013."

¶3 Vasquez subsequently filed a motion in which he asked that the proceeding be "reconverted" into a Rule 24.2 motion and requested the appointment of "different counsel or to proceed pro se." Counsel filed a motion to withdraw shortly thereafter. In its September 4, 2013 order, the trial court denied the pending motions. In the procedural history portion of its order, the court stated

---

<sup>1</sup>The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty and is assigned to serve on this case pursuant to orders of this court and our supreme court.

STATE v. VASQUEZ  
Decision of the Court

appointed counsel had found no colorable claim to raise and had filed a Notice of Completion on June 30, 2013. Later in its ruling, the court referred to a July 30, 2013 Notice of Completion, stating counsel had stated in that notice “she had determined there are no colorable claims that can be raised on the defendant’s behalf.”

¶4 In the only such notice filed, which was the one filed on July 30, 2013, counsel made no such avowal and did not mention Rule 32.4(c)(2); rather, as we previously stated, she simply confirmed the date on which the petition for post-conviction relief was due after stating she had received transcripts.<sup>2</sup> In any event, the trial court addressed the claim Vasquez had raised in his Rule 24.2 motion, which was that one of the convictions was the result of malicious prosecution and should be dismissed. The court rejected the claim and denied the motion, finding that, like all “motions, defenses, objections, or requests,” the claims Vasquez was raising had been waived by the plea agreement. The court also rejected Vasquez’s argument that it had erred by treating the Rule 24 motion as a notice of post-conviction relief pursuant to Rule 32. Finally, although the court rejected Vasquez’s request for new counsel, noting counsel had been appointed and she had advised the court she had found no colorable claim, it nevertheless appointed different counsel to serve in an advisory capacity and, pursuant to Rule 32.4(c)(2), gave Vasquez until October 18, 2013 to file a pro se petition for post-conviction relief.

¶5 On September 13, 2014, Vasquez filed a notice of appeal in which he stated he was seeking review of the trial court’s September 4 denial of his motion pursuant to Rule 24.2 “to vacate judgment entered in the superior court, Graham County, on September 4, 2013, as to count 1 No. CR-2013-00060.” But a pleading defendant waives the right to appeal. A.R.S. § 13-4033(B); Ariz. R.

---

<sup>2</sup>On January 14, 2014, this court ordered the clerk of Graham County Superior Court to forward to this court any notice of no colorable claim dated June 30, 2013, or July 30, 2013. In February, the clerk filed under a supplemental certificate the only notice apparently filed by counsel: the July 30 notice of completion.

STATE v. VASQUEZ  
Decision of the Court

Crim. P. 17.1(e). Therefore, although the court viewed Vasquez's claims as cognizable under Rule 32.1 and treated the proceeding as one pursuant to that rule, the court did address the Rule 24 motion on the merits and we lack jurisdiction to review that ruling on direct appeal. Nor may we regard the notice of appeal as a petition for review pursuant to Rule 32.9. The trial court gave Vasquez until October 18, 2013, to file a pro se petition for post-conviction relief with the assistance of advisory counsel. It appears he filed the notice of appeal before filing a pro se petition. There is, therefore, nothing before this court to review.

¶6 For the reasons stated, this appeal is dismissed.<sup>3</sup>

---

<sup>3</sup>Although it appeared to this court initially that this appeal was actually a petition for review pursuant to Rule 32.9, and the case was processed accordingly, we conclude the only ruling to which the notice of appeal could apply is the denial of the Rule 24.2 motion; thus, although the case retains the number initially ascribed to the case, it is an appeal, not a petition for review.