

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ARMIN CALBO VELASCO,  
*Petitioner.*

No. 2 CA-CR 2013-0448-PR  
Filed January 29, 2014

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NOT FOR PUBLICATION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

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Petition for Review from the Superior Court in Maricopa County

No. CR2003019070001DT

The Honorable Joseph Kreamer, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Armin Calbo Velasco, Florence  
*In Propria Persona*

STATE v. VELASCO  
Decision of the Court

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**MEMORANDUM DECISION**

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

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M I L L E R, Judge:

¶1 Petitioner Armin Velasco was convicted after a jury trial of child molestation, sexual conduct with a minor under the age of twelve, kidnapping, and burglary. His convictions and sentences were affirmed on appeal after appointed counsel filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). *State v. Velasco*, 1 CA-CR 04-0347 (memorandum decision filed Aug. 11, 2005). In this petition for review, Velasco challenges the trial court's dismissal of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb the court's ruling unless the court clearly has abused its discretion. See *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Velasco has not met his burden of establishing such abuse here.

¶2 In this post-conviction proceeding, Velasco raised three claims that were cognizable under Rule 32.1(a): the state had failed to disclose evidence of deoxyribonucleic acid (DNA) before trial, trial counsel had been ineffective, and the sentence was excessive and disproportionate to the offenses committed. The court rejected the claims summarily, finding Velasco had "fail[ed] to state a claim for which relief [could] be granted in an untimely or successive Rule 32 proceeding," citing Rule 32.4(a). As the court pointed out, this is Velasco's third post-conviction proceeding. The court previously had denied relief in August 2004 and April 2006.

¶3 A defendant who files an untimely or successive notice and petition for post-conviction relief is precluded from raising claims other than those that fall within Rule 32.1(d), (e), (f), (g) or (h). Ariz. R. Crim. P. 32.4(a). Velasco's first post-conviction proceeding

STATE v. VELASCO  
Decision of the Court

was dismissed in August 2004 after he sought to withdraw it, explaining he wished to seek post-conviction relief pursuant to Rule 32 after his direct appeal was concluded. Velasco filed his second notice of post-conviction relief in October 2005. Counsel filed a notice stating he had reviewed the record and found no claims to raise in the post-conviction proceeding, requesting that Velasco be given the opportunity to file a pro se petition. The court granted that request, but no petition was filed and the proceeding was dismissed.

¶4 Velasco commenced this proceeding in July 2012. Even assuming the first proceeding was a nullity, given the fact that it was withdrawn, this is nevertheless a successive proceeding, given the second proceeding. The trial court correctly characterized the claims Velasco raised. None fell within the subsections of Rule 32.1 that may be raised in a successive post-conviction proceeding. Velasco has not persuaded us otherwise in his petition for review.

¶5 We grant the petition for review but, because the trial court did not abuse its discretion in dismissing the most recent petition for post-conviction relief, we deny relief.