

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

CURTIS WAYNE CURTIS,  
*Petitioner.*

No. 2 CA-CR 2013-0470-PR  
Filed March 27, 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NOT FOR PUBLICATION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. CR2008173384001DT

The Honorable Paul J. McMurdie, Judge  
The Honorable Robert L. Gottsfield, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

William G. Montgomery, Maricopa County Attorney  
By Diane Meloche, Deputy County Attorney, Phoenix  
*Counsel for Respondent*

Curtis W. Curtis, Tucson  
*In Propria Persona*

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MEMORANDUM DECISION

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

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M I L L E R, Judge:

¶1 Curtis Wayne Curtis petitions this court for review of the trial court's order summarily dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Curtis has not met his burden of demonstrating such abuse here.

¶2 Curtis pled guilty to aggravated assault and was sentenced to a 7.5-year prison term. He filed an untimely notice of post-conviction relief, in which he requested that counsel be appointed and indicated he was raising claims of newly discovered material facts, a significant change in the law, and that his failure to seek post-conviction relief timely was without fault on his part. In an accompanying petition for post-conviction relief, he also stated he was raising claims of improper identification at trial and that his plea had been induced unlawfully. Curtis provided no explanation of any of these claims in either his notice or petition. The trial court dismissed the proceeding "without prejudice in the event [he] files a notice with sufficient information to permit a Rule 32 proceeding to proceed."

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<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 the supreme court.

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¶3 Curtis filed another notice of post-conviction relief claiming he was actually innocent, there were newly discovered material facts relevant to his verdict or sentence, and his failure to file a timely notice of post-conviction relief was without fault on his part. He claimed there had been a witness—whom he did not identify—that had not been interviewed. At the same time, Curtis filed a petition for post-conviction relief raising essentially the same claims. He attached to his notice an affidavit in which he claimed he had not hit the victim with his truck—as he had admitted at his change of plea hearing—but had sped away when the victim began hitting his girlfriend through the passenger-side window, and the victim had struck a nearby trash can. Curtis further asserted he had been “threaten[e]d” into entering his plea and had asked his attorney “to file a Rule 32, and he did not.”

¶4 The trial court appointed counsel, who filed a notice stating he had reviewed the record but found no claims to raise in a post-conviction proceeding. Curtis filed a pro se petition for post-conviction relief addressing both this cause number and the sentence imposed for a probation violation in another cause number. He claimed counsel had been ineffective in failing to investigate evidence to support possible mitigating factors for sentencing, specifically his “hyper-active attention deficit disorder and other well documented deficiencies” and to file a motion for a mental-health examination pursuant to Rule 26.5, Ariz. R. Crim. P.

¶5 Curtis included with his petition a “notice and memorandum” referring to two other cause numbers, claiming he only recently had become aware of cases supporting a claim that “appointed trial and appellate counsel” had an “actual irreconcilable conflict of interest” and that preclusion would not apply to his claims because they were of “sufficient constitutional magnitude.” Curtis further requested “specific disclosure” from his appointed attorneys, including “pleadings, legal documents, evidence, discovery, legal research, work product, transcripts, correspondence, drafts and notes” so that he could demonstrate their purported conflict.

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¶6 Curtis later filed a notice seeking to consolidate the three cause numbers and asking the trial court to “suspend” his Rule 32 proceeding. He also made further allegations related to his claims, specifically that his counsel had “promise[d] to abandon [him]” if he rejected the state’s plea offer, apparently because counsel had “guaranteed he would not spend any time or his office’s or county’s resources to present any defense, nor properly object on the record to any intentional misconduct by the prosecutor.” Curtis also repeated his demand that both his appointed attorneys turn over various documents related to his cause.

¶7 The trial court denied Curtis’s motion to suspend the proceedings and his request to consolidate the cause numbers. It also denied his request for discovery, stating it was not “reasonable . . . on the part of [Curtis] in order to resolve any post-conviction relief issues that have been raised.” In its ruling addressing his petition for post-conviction relief, the court listed the majority of the claims raised in Curtis’s various petitions, concluding the claims were not “procedurally precluded” because his first Rule 32 petition “was dismissed without prejudice.”<sup>2</sup> The court concluded, however, that none of his claims warranted an evidentiary hearing and summarily dismissed Curtis’s post-conviction relief proceeding. This petition for review followed the court’s denial of Curtis’s motion for rehearing.<sup>3</sup>

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<sup>2</sup>The trial court did not address expressly Curtis’s claim pursuant to Rule 32.1(f) that his failure to seek relief timely was without fault on his part. Because Curtis’s claims do not warrant relief, we need not decide whether his Rule 32.1(f) claim was colorable or whether Curtis’s claims may be raised in an untimely proceeding. We additionally note the court did not refer to Curtis’s claim of actual innocence, but Curtis does not raise this claim on review. *See State v. Rodriguez*, 227 Ariz. 58, n.4, 251 P.3d 1045, 1048 n.4 (App. 2010) (declining to address argument not raised in petition for review).

<sup>3</sup>Curtis’s petition for review lists the three cause numbers he referred to in his filings below. Because the trial court denied his

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¶8 On review, Curtis claims the trial court erred in rejecting his request that his appointed attorneys turn over various documents related to their representation of him. He asserts these documents would aid him in demonstrating trial counsel had an “irreconcilable conflict of interest” that caused counsel to coerce him into pleading guilty.

¶9 A petitioner may be entitled to discovery in a Rule 32 proceeding upon a showing of good cause made in the petition for post-conviction relief. *See Canion v. Cole*, 210 Ariz. 598, ¶¶ 9-11, 115 P.3d 1261, 1262-63 (2005). Curtis has made no such showing here. Curtis seems to suggest counsel had a conflict because Curtis is indigent and required appointed counsel. First, he has cited no authority, and we find none, suggesting a conflict of interest for his appointed attorney occurs because public funds ultimately paid for Curtis’s representation. *Cf.* ER 1.8(f), Ariz. R. Prof’l Conduct, Ariz. R. Sup. Ct. 42 (permitting lawyer to accept compensation from third party if “there is no interference with the lawyer’s independence of professional judgment or with the client-lawyer relationship”). Indeed, to find such a conflict would be absurd in light of the fact that indigent defendants are entitled to counsel at county expense. *See generally* A.R.S. §§ 11-584, 13-4013; *Gideon v. Wainwright*, 372 U.S. 335 (1963).

¶10 And Curtis must show any conflict affected counsel’s performance. *Mickens v. Taylor*, 535 U.S. 162, 171 (2002). He has not done so. He has offered no evidence supporting his claim that counsel coerced him into entering the plea, and only speculates that counsel allegedly did so because of pressure from the state for a non-trial disposition of his case. And finally, even assuming there was some conflict that adversely affected counsel’s performance, Curtis again speculates that the materials he requested from his counsel would support that argument.

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motion to consolidate, we address the claims he raises only with respect to Maricopa Cause Number CR2008173384001DT.

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¶11 Curtis asserts, however, that he has a right pursuant to ER 1.16(d), Ariz. R. Prof'l Conduct, Ariz. R. Sup. Ct. 42, to "all documents reflecting work performed for the client." That provision requires an attorney to provide his or her client with such documents upon the clients' request. *Id.* But Curtis's rights under ER 1.16(d) are not relevant here. The pertinent question is whether the trial court was required to compel counsel to provide documents as part of Curtis's post-conviction relief proceeding. As we have explained, however, Curtis failed to demonstrate any need for those documents to support his claims. Any other right Curtis may have with respect to his counsel's work product is not cognizable in a Rule 32 proceeding because it does not address the propriety of his conviction or sentence. *See* Ariz. R. Crim. P. 32.1.

¶12 The bulk of the remaining issues Curtis raises in his petition for review depend on his claim that trial counsel had a conflict of interest. As we have explained, Curtis has not identified a cognizable conflict nor supported a claim that any asserted conflict affected counsel's performance. Thus, we need not address these related issues. And we do not address the remainder of the issues Curtis identifies because, to the extent they are cognizable legal arguments, they are not adequately supported by citations to the record or to relevant authority. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (failure to develop legal argument waives argument on review).

¶13 For the reasons stated, we grant review but deny relief.