IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

MARK RYAN STOKES,
Petitioner.

No. 2 CA-CR 2013-0548-PR
Filed April 11, 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NOT FOR PUBLICATION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.

Petition for Review from the Superior Court in Pinal County
No. S1100CR201101759
The Honorable Robert C. Brown, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

M. Lando Voyles, Pinal County Attorney
By Rosemary Gordon Pánuco, Appellate Bureau Chief, Florence
Counsel for Respondent

Mark Stokes, Florence
In Propria Persona

MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

¶1 Petitioner Mark Stokes seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., and subsequent motion for reconsideration. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Stokes has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Stokes was convicted of two counts of attempted child molestation. The trial court suspended the imposition of sentence on both counts and placed Stokes on concurrent, lifetime terms of probation. Stokes thereafter admitted having violated a term of his probation, and the court imposed a five-year prison sentence on one count and returned Stokes to lifetime probation on the other. Stokes then initiated a proceeding for post-conviction relief, arguing in his petition that his presentence incarceration had been improperly calculated. The state conceded error, and the court corrected the calculation to give Stokes 387 days of presentence incarceration credit.

¶3 In August 2013, Stokes filed a notice of post-conviction relief in which he argued he had received ineffective assistance of trial counsel based on counsel's having asked that Stokes receive a minimum sentence instead of probation with a jail term as a condition because he had nowhere to live and having told Stokes to "keep his mouth closed" at sentencing. He also checked the boxes on the form he filed indicating that his failure to timely file was through no fault of his own and that newly discovered evidence entitled him to relief. The trial court apparently deemed the notice a

combined notice of and petition for post-conviction and denied relief, stating the petition "disclose[d] no newly discovered evidence and there is no credible evidence of ineffective assistance of counsel."

¶4 Stokes thereafter filed a motion for reconsideration. In that motion he expanded on his original claim of ineffective assistance of counsel and explained for the first time that he had "discovered on July 2013" that counsel had decided against calling certain witnesses at his sentencing hearing and that witnesses he had not known about "would testify on his behalf." He also for the first time expanded on his assertion that he was without fault in regard to his failure to timely file his notice. The trial court denied the motion for reconsideration.

¶5 On review, Stokes lists as an issue for review whether his Rule 32 notice complied with Rule 32.1(e) and (f), but presents no argument on the point. We therefore do not address that claim, nor do we address Stokes's claim of newly discovered evidence, which he does not address at all on review. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review shall contain "the reasons why the petition should be granted" and "specific references to the record"); *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); *see also State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) ("Failure to argue a claim on appeal constitutes waiver of that claim.").

¶6 As to Stokes's claim of ineffective assistance of counsel, we cannot say the trial court abused its discretion in summarily rejecting it. Stokes's August 2013 proceeding was untimely and was a second proceeding for post-conviction relief. *See* Ariz. R. Crim. P. 32.4(a). A claim of ineffective assistance of trial counsel—a claim that a sentence was unconstitutional under Rule 32.1(a)—cannot be raised in an untimely proceeding, Ariz. R. Crim. P. 32.4(a), and is precluded in a successive proceeding, Ariz. R. Crim. P. 32.2(a)(3). The court therefore properly denied relief on that claim and dismissed the petition. *Cf. State v. Perez*, 141 Ariz. 459, 464, 687 P.2d

1214, 1219 (1984) (appellate court will affirm trial court's ruling if result legally correct for any reason).

¶7 Although we grant the petition for review, we deny relief.