

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DANIEL MANUEL MORALES,
Petitioner.

No. 2 CA-CR 2014-0078-PR
Filed May 12, 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NOT FOR PUBLICATION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 Maricopa County

No. CR2008141901001DT

The Honorable Sally Schneider Duncan, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Daniel Morales, Goodyear
In Propria Persona

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MEMORANDUM DECISION

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

H O W A R D, Chief Judge:

¶1 Pursuant to a plea agreement, petitioner Daniel Morales was convicted of three counts of attempted child molestation. The trial court sentenced Morales to a six-year prison term, to be followed by two consecutive terms of lifetime probation. In December 2011, more than two years after he had been sentenced, Morales filed a notice of and petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., which the court dismissed as untimely on January 9, 2012. *See* Ariz. R. Crim. P. 32.4(a) (notice in of-right Rule 32 proceeding must be filed within ninety days after entry of judgment and sentence).

¶2 Morales subsequently filed four pro se motions: (1) “motion seeking leave to file delayed petition for review,” filed on June 8, 2012; (2) “motion for rehearing/reconsideration (delayed due to no fault of this petitioner),” filed on June 8, 2012; (3) “motion requesting status of motion before court for rehearing/reconsideration,” filed on November 29, 2012; and, (4) “permission to file delayed/untimely post-conviction relief,” filed on December 31, 2012. The trial court denied all four motions on January 16, 2013. Morales then filed this petition for review, in which he solely challenges the court’s denial of his requests to file a delayed motion for rehearing and petition for review. We will not disturb the court’s ruling unless it clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Morales has not met his burden of demonstrating such abuse here.

¶3 On review, Morales argues the trial court committed fundamental error by denying his requests to file a delayed motion for rehearing and petition for review. Asserting he never received

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notice of the court's January 2012 ruling dismissing his Rule 32 petition, he maintains his failure to challenge that ruling in a timely manner was not his fault. *See* Ariz. R. Crim. P. 32.9(a) (motion for rehearing must be filed "within fifteen days after the ruling of the court"); Ariz. R. Crim. P. 32.9(c) (petition for review must be filed within thirty days after court's final decision on petition for post-conviction relief).

¶4 The trial court may, "after being presented with proper evidence, allow a late filing" if it finds that a petitioner has presented a valid reason justifying an untimely filing under Rule 32.9. *State v. Pope*, 130 Ariz. 253, 255, 635 P.2d 846, 848 (1981); *see also* Ariz. R. Crim. P. 32.9(c) ("Motions for extensions of time to file petitions [for review] . . . shall be filed in and ruled upon by the trial court."). Here, the court considered and denied Morales's request for leave to file a delayed motion for rehearing and petition for review to challenge the dismissal of his Rule 32 petition, which had been untimely in the first instance.¹ Notably, Morales did not provide the court with any support for his claim that he did not learn about its January 2012 ruling dismissing his Rule 32 petition until June 2012, nor has he explained on review how the court abused its discretion by denying his motions below. Thus, we cannot conclude the court abused its discretion in denying Morales's requests for leave to file a delayed motion for rehearing and petition for review.

¶5 Accordingly, although we grant review, we deny relief.

¹Although Morales stated in his notice of post-conviction relief that he would explain the reasons for his untimely filing in his Rule 32 petition, he did not do so.