

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

PABLO GUADALUPE ARELLANO,
Petitioner.

No. 2 CA-CR 2014-0385-PR
Filed November 28, 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NOT FOR PUBLICATION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. CR2006116977001DT

The Honorable A. Craig Blakey II, Judge

REVIEW GRANTED; RELIEF DENIED

Pablo Guadalupe Arellano, Florence
In Propria Persona

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Chief Judge Eckerstrom and Presiding Judge Miller concurred.

ESPINOSA, Judge:

¶1 Pablo Arellano seeks review of the trial court's order summarily dismissing his successive and untimely notice of 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). Arellano has not met his burden of establishing such abuse here.

¶2 In 2006, Arellano pled guilty to sexual conduct with a minor, attempted sexual conduct with a minor, and attempted child molestation. The trial court sentenced him to a twenty-two year prison term for sexual conduct and imposed lifetime probation on the remaining counts. Arellano first sought post-conviction relief in 2009, stating in his notice that there were newly discovered material facts and that his failure to timely file a notice of post-conviction relief was without fault on his part. The court dismissed the notice as untimely, observing that Arellano had been advised of his right to file a notice within ninety days after entry of judgment and sentencing. Arellano did not seek review after the court denied his motion for reconsideration.

¶3 In March 2013, Arellano filed another notice of post-conviction relief, claiming there were newly discovered material facts, specifically that the Arizona Department of Corrections had advised him "an error may be present" in his sentence. He argued: (1) his consecutive probation terms are unlawful; (2) the court was not permitted to impose an aggravated sentence because he was a first-time offender; (3) the court failed to articulate its reasons for imposing an aggravated sentence; (4) the reference to A.R.S. § 13-

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701.01 should be stricken from his plea agreement because the statute was repealed in 2008; and (5) his sentence was improperly designated as flat-time and counsel was ineffective in failing to correct that designation at sentencing. The trial court summarily dismissed the notice, stating Arellano had not identified any newly discovered evidence or a change in the law and had not identified any other claims raisable in an untimely proceeding. The court also denied Arellano's subsequent motion for reconsideration.

¶4 On review, Arellano repeats his claims that his aggravated sentence was improper and that the trial court improperly imposed a flat-time sentence. He does not, however, identify any error in the trial court's summary dismissal of his notice. Nor does he identify any claim that may be raised in an untimely post-conviction proceeding like this one. *See* Ariz. R. Crim. P. 32.4(a).

¶5 Although we grant review, relief is denied.