

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ORLANDO FRANCISCO VARELA,  
*Petitioner.*

No. 2 CA-CR 2014-0417-PR  
Filed March 2, 2015

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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NOT FOR PUBLICATION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)(1); Ariz. R. Crim. P. 31.24.*

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Petition for Review from the Superior Court in Pima County  
Nos. CR20122043001 and CR20131117001  
The Honorable Jane L. Eikleberry, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Orlando Francisco Varela, Florence  
*In Propria Persona*

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**MEMORANDUM DECISION**

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

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M I L L E R, Presiding Judge:

¶1 Orlando Varela seeks review of the trial court's order denying his petition for writ of habeas corpus, which the trial court treated as a petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Varela has not met his burden of demonstrating such abuse here.

¶2 In 2013, Varela pled guilty in separate cause numbers to disorderly conduct and possession of a deadly weapon by a prohibited possessor. He also admitted having violated the terms of probation imposed for a previous conviction. The trial court revoked Varela's probation and sentenced him to consecutive prison terms totaling five years. Varela filed a notice of post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but had found "no issues for review." The court ordered that Varela had until November 12, 2013, to file a pro se petition for post-conviction relief. In December 2013, the court dismissed the proceeding because Varela had not filed a petition nor requested an extension of time in which do to so.

¶3 In September 2014, Varela filed a petition for writ of habeas corpus, in which he argued the trial court failed to consider his "addiction" as a mitigating factor, he was entitled to a hearing at sentencing pursuant to *Blakely v. Washington*, 542 U.S. 296 (2004), and his trial counsel was ineffective for failing to seek an evaluation pursuant to Rule 11, Ariz. R. Crim. P., or obtain an expert to testify regarding his "doctor created addiction to prescribed narcotic medications." The court, treating Varela's petition as a petition for

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post-conviction relief, summarily denied relief, concluding Varela's claims were precluded by Rule 32.2(a). This petition for review followed.

¶4 On review, Varela first asserts that Rule 32 unconstitutionally limits his right to seek habeas corpus relief. Pursuant to Rule 32.3, when a defendant "applies for a writ of habeas corpus . . . attacking the validity of his or her conviction or sentence," the trial court "shall treat it as a petition for relief under this rule and the procedures of this rule shall govern." Varela has not identified any improper limit on his right to seek relief. For example, claims in a federal habeas petition may be precluded by the failure to raise them in a timely manner, *see* 28 U.S.C. § 2244, as they are in a Rule 32 proceeding, Ariz. R. Crim. P. 32.2(a), 32.4(a). And Varela has cited no authority suggesting those time limits are unconstitutional. Thus, we do not address this argument further. *Cf. State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (failure to develop legal argument waives argument on review).

¶5 Varela also asserts his claims are not subject to preclusion because they are of sufficient constitutional magnitude to require personal waiver, citing *Stewart v. Smith*, 202 Ariz. 446, 46 P.3d 1067 (2002). But, as this court has explained, the waiver principle discussed in *Stewart* does not apply in untimely proceedings. *State v. Lopez*, 234 Ariz. 513, ¶¶ 7-8, 323 P.3d 1164, 1166 (App. 2014). Varela's petition, filed nine months after the trial court dismissed his first proceeding, was untimely; thus, Varela was permitted to seek relief only pursuant to Rule 32.1(d) through (h). Ariz. R. Crim. P. 32.4(a). Varela's claims, however, fall within Rule 32.1(a) and thus cannot be brought in this untimely proceeding.

¶6 Finally, to the extent Varela suggests his Rule 32 counsel was ineffective or his rights have been violated because he does not have access to an adequate law library, he did not raise those arguments below, and we do not address them. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (court of appeals does not address issues raised for first time in petition for review); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review should

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contain “issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review”).

¶7           Although we grant review, we deny relief.