

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

JOSHUA WAYNE REDZINAK,  
*Petitioner.*

No. 2 CA-CR 2015-0063-PR  
Filed May 13, 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NOT FOR PUBLICATION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

No. CR20121217001

The Honorable Deborah Bernini, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines, Deputy County Attorney, Tucson  
*Counsel for Respondent*

Joshua W. Redzinak, Tucson  
*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.

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ESPINOSA, Judge:

¶1 Joshua Redzinak seeks review of the trial court’s order summarily denying as untimely his notice of and 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). Redzinak has not met his burden of demonstrating such abuse here.

¶2 Following Redzinak’s guilty pleas in 2012, the trial court sentenced him to a 3.5-year prison term for attempted sexual assault and suspended the imposition of sentence for kidnapping, placing Redzinak on a seven-year term of probation “consecutive to the sentence of imprisonment imposed” for attempted sexual assault. In 2014, Redzinak filed a pro se motion to modify his sentence, asserting the court was not permitted to impose a consecutive term of probation. The court denied that motion, and Redzinak filed a notice of appeal from that denial. We dismissed the appeal pursuant to Rule 17.1(e), Ariz. R. Crim. P.

¶3 Redzinak also filed a petition for review pursuant to Rule 32.9(c), seeking review of the denial of his motion to modify his sentence. We ordered him to submit the ruling on that motion, as required by Rule 32.9(c)(1)(i), and, in February 2015, we dismissed the petition for review when he failed to comply with that order within the time allotted. While that proceeding was pending in this court, Redzinak filed in the trial court a notice of and petition for post-conviction relief raising the same argument. The court dismissed both as untimely filed, and this petition for review followed.

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¶4 Redzinak was required to file a notice of post-conviction relief within ninety days of his sentencing. *See* Ariz. R. Crim. P. 32.4(a). His notice, filed in January 2015, was thus patently untimely. Accordingly, he was only permitted to raise claims falling within Rule 32.1(d) through (h). *See id.* His claim that his sentence was improper does not fall within those provisions. *See generally* Ariz. R. Crim. P. 32.1. Redzinak nonetheless argues that he is permitted to raise this claim because he only recently learned of it and because the sentence is void and constitutes fundamental error.

¶5 But a defendant's later realization that he may have had a viable post-conviction claim does not permit him to raise it in an untimely proceeding—no such exception to the timeliness requirement is described in Rule 32. *Cf. State v. Poblete*, 227 Ariz. 537, ¶ 7, 260 P.3d 1102, 1104-05 (App. 2011). And, even if Redzinak were correct that his sentence is illegal, that fact would not create a jurisdictional defect that may be raised in an untimely proceeding. *See State v. Bryant*, 219 Ariz. 514, ¶ 17, 200 P.3d 1011, 1015 (App. 2008); *see also State v. Shrum*, 220 Ariz. 115, ¶¶ 6-7, 23, 203 P.3d 1175, 1177, 1180 (2009) (claim of illegal sentence subject to preclusion pursuant to Rule 32.2(a)). Nor is a claim of fundamental error exempt from preclusion or the timeliness requirement of Rule 32.4(a). *Cf. Swoopes*, 216 Ariz. 390, ¶¶ 41-42, 166 P.3d at 958 (fundamental error subject to preclusion pursuant to Rule 32.2). Accordingly, the trial court did not err in dismissing Redzinak's notice and petition as untimely.

¶6 Although we grant review, relief is denied.