

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

KENNETH JOSEPH REED,  
*Petitioner.*

No. 2 CA-CR 2015-0171-PR  
Filed August 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NOT FOR PUBLICATION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. CR20041788

The Honorable Christopher Browning, 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*

Kenneth Joseph Reed, 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.

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ESPINOSA, Judge:

¶1 Kenneth Reed seeks review of the trial court's order denying his "Motion to Correct Sentencing Error." Pursuant to Rule 32.9(c), Ariz. R. Crim. P., we grant review but deny relief.<sup>1</sup>

¶2 After a jury trial, Reed was convicted of aggravated assault with a deadly weapon or dangerous instrument, aggravated assault causing serious physical injury, and possession of a deadly weapon by a prohibited possessor. The trial court sentenced him to concurrent, fifteen-year prison terms for aggravated assault, followed by a six-year prison term for weapon possession. We affirmed his convictions and sentences on appeal. *State v. Reed*, No. 2 CA-CR 2005-0232 (memorandum decision filed Oct. 13, 2006). Reed sought post-conviction relief in 2010, raising a claim of newly discovered evidence relevant to sentencing. The court denied relief, and Reed did not seek review of that ruling.

¶3 In 2015, Reed filed a "Motion To Correct Sentencing Error," asserting he was entitled to presentence incarceration credit on his consecutive sentence for weapon possession. The trial court denied that motion and Reed's subsequent "petition for review,"

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<sup>1</sup>Although Reed characterizes his filing in this court as an effort to "appeal" the trial court's ruling, as we explain below, his claim is properly characterized as seeking post-conviction relief pursuant to Rule 32.

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which the court treated as a motion for reconsideration. This petition for review followed.

¶4 Pursuant to Rule 32.3, Reed’s motion below is properly characterized as seeking relief pursuant to Rule 32.1(c). We will not disturb the trial court’s ruling in a Rule 32 proceeding unless the court abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). The court did not abuse its discretion here. Reed’s claim is patently untimely and, thus, the court was required to summarily reject it. Ariz. R. Crim. P. 32.4(a); *see also* Ariz. R. Crim. P. 32.2. And, in any event, the law is clear that he is not entitled to additional presentence incarceration credit on his consecutive sentence. *See State v. McClure*, 189 Ariz. 55, 57, 938 P.2d 104, 106 (App. 1997) (“When consecutive sentences are imposed, a defendant is not entitled to presentence incarceration credit on more than one of those sentences.”).

¶5 Although we grant review, relief is denied.