

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

PAUL ANTHONY MILONI,
Petitioner.

No. 2 CA-CR 2015-0193-PR
Filed June 26, 2015

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NOT FOR PUBLICATION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.

Petition for Review from the Superior Court in Maricopa County

No. CR1997009666

The Honorable Peter C. Reinstein, Judge

REVIEW GRANTED; RELIEF DENIED

Paul A. Miloni, 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 Paul Miloni seeks review of the trial court's order 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 abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Miloni has not met his burden of demonstrating such abuse here.

¶2 In 1997, Miloni pled guilty to sexual conduct with a minor under the age of fifteen and attempted sexual conduct with a minor under the age of fifteen. The trial court sentenced him to an eighteen-year prison term for the first count, to be followed by lifetime probation on the second. However, the court later reduced the lifetime probation term to a five-year term, apparently pursuant to *State v. Peek*, 219 Ariz. 182, 195 P.3d 641 (2008).

¶3 Since his guilty plea, Miloni has unsuccessfully sought post-conviction relief on several occasions, most recently in October 2013. In his most-recent notice, Miloni claimed that, pursuant to *Solorio v. United States*, 483 U.S. 435 (1987), the state lacked jurisdiction to prosecute him because he was a member of the United States Armed Forces at the time of his offenses. Citing *Martinez v. Ryan*, ___ U.S. ___, 132 S. Ct. 1309 (2012), he asserted his trial counsel and post-conviction counsel had failed to raise the claim. The trial court summarily dismissed the notice, concluding *Solorio* did not apply and *Martinez* did not constitute a significant change in the law,¹ stating “[t]here is no Constitutional right to

¹ Although Miloni indicated his claims arose under Rule 32.1(e) and were based on newly discovered material facts, the trial

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effective assistance of counsel in a state post-conviction relief proceeding.” This petition for review followed.

¶4 On review, Miloni asserts that the trial court erred in determining *Solorio* did not apply to his case and he did not have the right to effective post-conviction counsel. Miloni is correct that, as a pleading defendant, he was entitled to effective counsel in his first post-conviction proceeding. See *State v. Pruett*, 185 Ariz. 128, 131, 912 P.2d 1357, 1360 (App. 1995) (“A pleading defendant . . . must be afforded an opportunity to assert a claim regarding the effectiveness of the attorney representing him on the first petition for post-conviction relief.”). But Miloni’s notice nonetheless warranted summary dismissal. See *State v. Olquin*, 216 Ariz. 250, n.5, 165 P.3d 228, 231 n.5 (App. 2007) (reviewing court may uphold trial court’s ruling if correct for any reason supported by record).

¶5 Miloni’s first post-conviction proceeding ended, at the latest, in 2003 when this court issued the mandate on our order dismissing his petition for review. Thus, Miloni’s most-recent notice of post-conviction relief is patently untimely. See Ariz. R. Crim. P. 32.4(a). A claim of ineffective assistance of counsel cannot be raised in an untimely proceeding. *Id.*; see also *State v. Petty*, 225 Ariz. 369, ¶ 11, 238 P.3d 637, 641 (App. 2010) (ineffective assistance claims fall under Rule 32.1(a)). And, to the extent Miloni asserts he is entitled to relief pursuant to *Solorio* separate from his claim of ineffective assistance, that claim also cannot be raised in an untimely proceeding like this one. See Ariz. R. Crim. P. 32.1(b) and 32.4(a).

¶6 Although review is granted, relief is denied.

court interpreted his notice as asserting *Martinez* constituted a significant change in the law pursuant to Rule 32.1(g).