

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RYAN STARR SOUCY,
Petitioner.

No. 2 CA-CR 2015-0354-PR
Filed March 1, 2016

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NOT FOR PUBLICATION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 Pima County
Nos. CR20094029001, CR20101664001, CR20101978001,
CR20103081001

The Honorable Teresa Godoy, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Ryan Soucy, Tucson
In Propria Persona

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MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

¶1 Petitioner Ryan Soucy seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Soucy has not sustained his burden of establishing such abuse here.

¶2 Pursuant to plea agreements entered in four different causes, Soucy was convicted of theft by misrepresentation, aggravated assault of a peace officer, and three counts of possession of a dangerous drug. He also admitted, in each cause, to a historical prior conviction for possession of a dangerous drug. The trial court imposed a combination of enhanced, presumptive and aggravated, concurrent and consecutive sentences, totaling 18.5 years' imprisonment.

¶3 Soucy sought post-conviction relief in February 2011, and appointed counsel filed a notice pursuant to *Montgomery v. Sheldon*, 181 Ariz. 256, 889 P.2d 614 (1995). In his supplemental pro se petition, Soucy raised claims of sentencing error and ineffective assistance of trial counsel. The trial court denied relief in July 2012, and in September 2012, this court dismissed as untimely his petition for review. In October, the trial court denied his request to file a delayed petition for review.

¶4 On March 4, 2013, Soucy filed another notice of post-conviction relief. On May 6, 2013, however, the trial court granted Soucy's motion for a delayed petition for review in his first

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proceeding, after determining it had ruled “in error.” On May 13, Soucy filed a petition for post-conviction relief and an affidavit that included statements about his trial counsel’s ineffectiveness, both of which had been signed before the court granted the motion for a delayed petition for review. In July the court stayed the second proceeding pending this court’s resolution of the petition for review.

¶5 This court granted review, but denied relief on Soucy’s petition for review. *State v. Soucy*, No. 2 CA-CR 2013-0218-PR (memorandum decision filed Sept. 11, 2013). In October 2013, he filed a motion “to withdraw or dismiss his current Rule 32 from current proceedings without prejudice.” The trial court granted the motion, ordering Soucy’s “Petition for Post Conviction Relief filed May 8, 2013 . . . dismissed.” We issued our mandate in the first proceeding on November 4, 2013.

¶6 On April 25, 2014, Soucy filed another notice of post-conviction relief, claiming he had received ineffective assistance of Rule 32 counsel in his first proceeding and citing *Lafler v. Cooper*, ___ U.S. ___, 132 S. Ct. 1376 (2012), and *Missouri v. Frye*, ___ U.S. ___, 132 S. Ct. 1399 (2012), in support of a claim of a significant change in the law. Appointed counsel filed a notice stating she could not find any “colorable claims pursuant to Rule 32.” In a pro se supplemental petition, however, Soucy argued his first Rule 32 counsel had been ineffective in failing to raise claims of ineffective assistance of trial counsel, specifically that counsel failed to file a motion to suppress, to independently test the methamphetamine found by police, to properly negotiate his plea agreement, or to object to the trial court’s finding of aggravating factors. Soucy also claimed the court had erred in relation to the entry of his plea and in sentencing him. He did not develop a claim relating to *Lafler* and *Frye*. The trial court summarily denied relief, noting Soucy had abandoned his claim of a significant change in the law and could not raise his claim of ineffective assistance of Rule 32 counsel in an untimely proceeding.

¶7 Soucy filed a motion for reconsideration, contending the instant proceeding was not untimely. He maintained his April 2014 notice of post-conviction relief was an “Amended Second Notice”

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and his March 2013 notice was therefore the pertinent notice for determining timeliness. According to Soucy, the trial court's having granted his motion to dismiss in the fall of 2013 only dismissed "the Petition in these proceedings," not the proceeding as a whole. He maintained the April 2014 notice had been unnecessary and the court should have treated his petition as part of the previous Rule 32 proceeding. The court denied the motion.

¶8 On review, Soucy essentially repeats the arguments made in his motion for reconsideration and urges us to conclude the trial court erred in concluding his proceeding was untimely. We agree, however, with the trial court's thorough, well-reasoned resolution of the timeliness issue, and therefore adopt its ruling on Soucy's motion for reconsideration.¹ See *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court's correct ruling in a written decision").

¶9 Although we grant the petition for review, we deny relief.

¹We urge trial courts in the future, however, to use caution in granting motions to dismiss "without prejudice" in the context of a Rule 32 proceeding. Although the court arguably has the inherent power to grant such a motion, Rule 32 does not expressly provide for such a dismissal. We agree with the trial court here that a dismissal without prejudice cannot affect the timeliness requirements of Rule 32; but we do not address what impact it could have in regard to preclusion.