

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

RAMON JUAN ESCARENO-MERAZ,  
*Petitioner.*

No. 2 CA-CR 2016-0014-PR  
Filed May 17, 2016

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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NOT FOR PUBLICATION  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. CR061723  
The Honorable Kathleen Quigley, 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*

Ramon Juan Escareno-Meraz, Tucson  
*In Propria Persona*

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**MEMORANDUM DECISION**

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

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ECKERSTROM, Chief Judge:

¶1 Petitioner Ramon Escareno-Meraz seeks review of the trial court's order dismissing his notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb the court's ruling absent a clear abuse of discretion. *See State v. Harden*, 228 Ariz. 131, ¶ 3, 263 P.3d 680, 681 (App. 2011). Escareno-Meraz has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Escareno-Meraz was convicted of various offenses related to his participation in a drug-trafficking operation and was sentenced to aggravated prison terms, including three consecutive 18.5-year terms. We affirmed his convictions and sentences on appeal. *State v. Escareno-Meraz*, No. 2 CA-CR 99-0186 (memorandum decision filed Mar. 29, 2001). Escareno-Meraz sought post-conviction relief on at least three occasions; the trial court denied relief, and this court denied review or relief on review. *See State v. Escareno-Meraz*, 232 Ariz. 586, ¶ 1, 307 P.3d 1013, 1013 (App. 2013); *State v. Escareno-Meraz*, No. 2 CA-CR 2014-0173-PR (memorandum decision filed Nov. 12, 2014); *State v. Escareno-Meraz*, No. 2 CA-CR 2002-0450-PR (decision order filed July 30, 2004).

¶3 In November 2015, Escareno-Meraz filed another notice of post-conviction relief, this time asserting he had been denied "his Constitutionally recognized right to personally decide whether to plead guilty or not." He contended his claim was of "sufficient constitutional magnitude" to be exempt from preclusion. *See Stewart v. Smith*, 202 Ariz. 446, 46 P.3d 1067 (2002); *see also Stewart v. Smith*, 536 U.S. 856 (2002). The trial court summarily dismissed the notice, concluding that Escareno-Meraz had failed to explain why his claim had not been raised in a timely proceeding, as required by Rule 32.4(a). The court also denied his subsequent motion for rehearing.

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¶4 On review Escareno-Meraz again asserts that his plea-agreement claim is not subject to preclusion because he did not personally waive it and contends the trial court erred in dismissing his notice. Pursuant to Rule 32.4(a), however, the only claims that may be raised in this untimely proceeding are those arising under Rule 32.1(d), (e), (f), (g), or (h). Escareno-Meraz affirmatively states, as he did in his notice, that he is not raising such a claim. Rather, he contends his claim under Rule 32.1(a) is raisable because it is not precluded under the rule set forth in *Stewart*. “But the court’s reasoning in *Stewart* was limited to the application of waiver in determining whether a claim is precluded under Rule 32.2(a)(3). The court did not address the failure to file a timely notice pursuant to Rule 32.4(a) for claims outside of Rule 32.1(d) through (h).” *State v. Lopez*, 234 Ariz. 513, ¶ 8, 323 P.3d 1164, 1166 (App. 2014), *review denied* (Ariz. Jan. 6, 2015). In this untimely proceeding, *Stewart*’s reasoning does not apply. *See id.* The trial court, therefore, properly dismissed the notice. *See* Ariz. R. Crim. P. 32.2(b).

¶5 Thus, although we grant the petition for review, we deny relief.