

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

MICHAEL N. BIEL,
Petitioner.

No. 2 CA-CR 2016-0034-PR
Filed March 10, 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NOT FOR PUBLICATION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 Maricopa County
No. CR2007169832001DT
The Honorable Connie Contes, Judge

REVIEW GRANTED; RELIEF DENIED

Michael N. Biel, Florence
In Propria Persona

STATE v. BIEL
Decision of the Court

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 Michael Biel seeks review of the trial court’s order dismissing his untimely notice of post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., and his subsequent motion for rehearing.¹ “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). We find no such abuse here.

¶2 Pursuant to a plea agreement in 2010, Biel pled no contest to and was convicted of sexual abuse and attempted molestation of a child, both classified as dangerous crimes against children. In April 2011, the trial court sentenced Biel to consecutive, presumptive, five-year prison terms with 1,258 days of presentence incarceration credit. In December 2013, Biel filed his first, untimely, notice of post-conviction relief.² In the form notice, Biel stated he was raising a claim of ineffective assistance of counsel, and checked spaces indicating he was seeking relief based on newly discovered evidence, a significant change in the law, and actual innocence,

¹Although Biel initially states that he seeks review only from the trial court’s denial of his motion for rehearing, it is clear he is asking us to review both the court’s dismissal of his notice of post-conviction relief and its denial of his motion for rehearing.

²In October 2009, the trial court granted post-conviction relief and vacated Biel’s convictions and sentences arising from a prior no contest plea in this matter. However, this is the first post-conviction relief proceeding arising from Biel’s subsequent convictions and sentences.

STATE v. BIEL
Decision of the Court

based on Rule 32.1(e), (g), and (h). Biel also included a request for the appointment of counsel and attached a “statement of facts that support the claim and the reasons for not raising the claim in the previous petition or in a timely manner.”

¶3 In January 2014, the trial court dismissed the notice as untimely, concluding Biel had not met his burden of substantiating claims based on actual innocence or a significant change in the law, and thus found the notice to be procedurally precluded as to those claims. *See* Ariz. R. Crim. P. 32.2(b) (“[N]otice of post-conviction relief must set forth the substance of the specific exception [to preclusion] and the reasons for not raising the claim in . . . a timely manner.”). The court, however, did not expressly address Biel’s claim based on newly discovered evidence, but instead determined he had not sustained a claim that his notice was untimely based on no fault of his own, *see* Rule 32.1(f), a claim Biel had not, in fact, raised. The court also dismissed the other claims Biel had raised pursuant to Rule 32.1(a), including those based on ineffective assistance of counsel, noting he was precluded from raising such claims in an untimely petition. *See* Ariz. R. Crim. P. 32.4(a) (only claims pursuant to Rule 32.1(d), (e), (f), (g), or (h) may be raised in untimely post-conviction proceeding).

¶4 On review, Biel contends the trial court erred by dismissing his Rule 32 notice as untimely and by denying his motion for rehearing, directing us to those pleadings for his arguments. Notably, Biel does not address the court’s conclusion that he failed to provide meritorious reasons to support his claims or to explain why they were not raised timely, nor does he explain why his claims based on ineffective assistance are not precluded. *See* Ariz. R. Crim. P. 32.9(c)(1)(iv) (petition for review shall contain “reasons why the petition should be granted”).

¶5 Although the trial court did not expressly address Biel’s claim of newly discovered evidence, because Biel failed to provide “meritorious reasons . . . substantiating” *any* of his claims, including newly discovered evidence, or indicate why they were not stated in

STATE v. BIEL
Decision of the Court

a timely manner,³ we find no abuse of discretion in the court's summary dismissal of his notice. Ariz. R. Crim. P. 32.2(b); *cf. State v. Oakley*, 180 Ariz. 34, 36, 881 P.2d 366, 368 (App. 1994) ("We will affirm the trial court when it reaches the correct result even though it does so for the wrong reasons."). Additionally, because Biel was not permitted to bring a claim of ineffective assistance of counsel in an untimely notice, we also find the court correctly dismissed that claim. *See* Ariz. R. Crim. P. 32.4(a).

¶6 Finally, although Biel's notice included a request that counsel be appointed to represent him, *see* Ariz. R. Crim. P. 32.4(c)(2), the trial court did not err by inferentially rejecting this request. Because Rule 32.2(b) does not require a trial court to appoint counsel when a notice of post-conviction relief is "facially non-meritorious," *see State v. Harden*, 228 Ariz. 131, ¶ 11, 263 P.3d 680, 682-83 (App. 2011), a finding this record would support, we find no error. We note, moreover, that Biel did not reassert his request for counsel in his motion for rehearing or in his petition for review.

¶7 Although we grant review, we deny relief.

³In his motion for rehearing, Biel improperly mentioned for the first time in the Rule 32 proceeding that his claims were untimely because he does not understand English and is unable to "comprehend . . . the laws of this country." *See* Ariz. R. Crim. P. 32.9(a) (party aggrieved by final decision of trial court may file motion for rehearing "setting forth in detail the grounds wherein it is believed the court erred"). The trial court could not be asked to reconsider a ruling it had never made on a claim Biel had not presented. Moreover, the record shows Biel was provided with an interpreter at the change-of-plea hearing and at sentencing, which occurred on the same day he signed the document advising him of the due date for filing a notice of post-conviction relief.