

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

MANUEL LEON-SANCHEZ,
Petitioner.

No. 2 CA-CR 2016-0098-PR
Filed June 17, 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NOT FOR PUBLICATION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
No. CR20021890
The Honorable D. Douglas Metcalf, Judge

REVIEW GRANTED; RELIEF DENIED

Manuel Leon-Sanchez, Florence
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.

ECKERSTROM, Chief Judge:

¶1 Manuel Leon-Sanchez seeks review of the trial court's order summarily dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Leon-Sanchez has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Leon-Sanchez was convicted of sexual conduct with a minor, sexual assault, aggravated assault causing serious physical injury, and kidnapping. The trial court sentenced him to consecutive terms of life imprisonment for sexual conduct and sexual assault, to be followed by consecutive twenty-four-year prison terms for aggravated assault and kidnapping. On appeal, we affirmed his convictions and sentences as modified, concluding the life prison terms must be served concurrently. *State v. Sanchez*, No. 2 CA-CR 2002-0444 (memorandum decision filed Feb. 26, 2004).

¶3 While his appeal was pending, Leon-Sanchez filed a notice of post-conviction relief. That proceeding was stayed pending the outcome of his appeal and, after our decision issued, appointed counsel filed a notice stating she had reviewed the record but had found no claims to raise in a Rule 32 proceeding. Although the trial court gave Leon-Sanchez leave to file a pro se petition, he did not do so within the time allotted. Our appellate mandate issued on April 20, 2004.

¶4 In September 2004, Leon-Sanchez filed what he labeled a "delayed" notice of post-conviction relief, claiming his appellate counsel had not informed him he could file a post-conviction notice after his appeal. The trial court set a status conference to address

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that notice. After discussions and briefing related to whether *Blakely* applied to Leon-Sanchez's sentences and whether he was entitled to a trial on aggravating factors, on August 9, 2005, the court ordered Leon-Sanchez's sentences for sexual conduct and sexual assault convictions to run concurrently. The state, defense counsel, and the court agreed Leon-Sanchez "is not entitled to any further relief."

¶5 In June 2015, Leon-Sanchez filed a notice of and petition for post-conviction relief in which he raised various claims, including that his failure to timely seek post-conviction relief was without fault on his part, that there has been a significant change in the law, and that he is actually innocent. He also filed a motion arguing his claims could be reviewed despite being "raised in an untimely manner and/or procedurally defaulted," asserting inter alia that he could raise claims of ineffective assistance of trial and appellate counsel pursuant to *Martinez v. Ryan*, ___ U.S. ___, 132 S. Ct. 1309 (2012).

¶6 The trial court summarily dismissed the petition, concluding the bulk of Leon-Sanchez's claims were untimely and his untimely filing was not excused. The court further noted, in any event, Leon-Sanchez had not complied with Rule 32.2(b) and that most of his claims were without merit. The court denied Leon-Sanchez's subsequent motion for rehearing, and this petition for review followed.

¶7 On review, Leon-Sanchez argues he has complied with Rule 32.2(b) and, thus, the trial court erred in denying relief on that basis for his claims raised pursuant to Rule 32.1(d) through (h). Pursuant to Rule 32.4, only those claims falling within Rule 32.1(d) through (h) may be raised in an untimely proceeding like this one. Pursuant to Rule 32.2(b), however, before a defendant may raise such a claim, he must provide "meritorious reasons . . . indicating why the claim was not stated in the previous petition or in a timely manner."

¶8 Leon-Sanchez asserts that, because the court and parties had agreed in 2005 he was not entitled to further relief, he was unaware he could file a petition raising additional claims. Thus, he concludes, he has complied with Rule 32.2(b). Leon-Sanchez has

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identified three claims that he contends fall within Rule 32.1(d) through (h): (1) pursuant to Rule 32.1(h), that his convictions of aggravated assault and dangerous crimes against children were based on insufficient evidence; (2) that *Blakely v. Washington*, 542 U.S. 296 (2004), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), constitute a significant change in the law applicable to his case pursuant to Rule 32.1(g); and (3) pursuant to Rule 32.1(f), that his failure to timely seek post-conviction relief was without fault on his part.

¶9 None of these claims entitle Leon-Sanchez to relief. Rule 32.1(f) does not apply to his untimely notice of post-conviction relief because he was convicted after a jury trial. Thus, Rule 32.1(f) would have applied only if he had failed to timely file a notice of appeal; the rule does not apply to untimely notices of post-conviction relief filed by non-pleading defendants. See Rule 32.1 (defining “Rule 32 of-right proceeding”); Rule 32.1(f) (application limited to “of-right” notice of post-conviction relief). Leon-Sanchez’s claims based on Rule 32.4(h) could have been raised in his first post-conviction proceeding; he has not explained his failure to file a petition in that proceeding and thus has not complied with Rule 32.2(b).

¶10 Last, Leon-Sanchez’s convictions and sentences were final when *Blakely* was decided and, therefore, its holding does not apply to him.¹ See *State v. Cleere*, 213 Ariz. 54, n.2, 138 P.3d 1181, 1184 n.2 (App. 2006) (“*Blakely* applies to cases pending on direct review when *Blakely* was decided.”). A conviction is final when “the availability of appeal [is] exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied.” *State v. Towerly*, 204 Ariz. 386, ¶ 8, 64 P.3d 828, 832 (2003), quoting *Griffith v. Kentucky*, 479 U.S. 314, 321 n. 6 (1987). Our mandate issued more than two months before *Blakely* was decided.

¹We recognize that, after our mandate issued, the trial court nonetheless “ordered” that Sanchez’s life terms should run concurrently. However, we had already modified Sanchez’s sentence to that effect in our decision on appeal.

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¶11 Leon-Sanchez also asserts that he may raise claims pursuant to Rule 32.1(a) through (c) because the time limits of Rule 32.4(a) are “excusable.” Nothing in Rule 32.4 supports this argument—the rule unambiguously bars all untimely claims save those falling within Rule 32.1(d) through (h). His reliance on *Martinez* is also misplaced. In *Martinez*, the Supreme Court determined that, as a matter of equity, a non-pleading defendant may be able to obtain federal habeas review of a claim that is procedurally barred if he can show ineffective assistance of his first post-conviction counsel. ___ U.S. at ___, 132 S. Ct. at 1319-20. As we explained in *State v. Escareno-Meraz*, that holding does not apply to Arizona post-conviction proceedings and thus would not permit Leon-Sanchez to overcome the time limits of Rule 32.4(a). 232 Ariz. 586, ¶¶ 4-6, 307 P.3d 1013, 1014 (App. 2013).

¶12 Although we grant review, we deny relief.