

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

---

THE STATE OF ARIZONA,  
*Respondent,*

*v.*

HAI VAN LE,  
*Petitioner.*

No. 2 CA-CR 2016-0118-PR  
Filed May 26, 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NOT FOR PUBLICATION  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. CR2001015185  
The Honorable John R. Ditsworth, Judge

**REVIEW GRANTED; RELIEF DENIED**

---

Hai Van Le, Buckeye  
*In Propria Persona*

STATE v. LE  
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 Hai Le seeks review of the trial court’s order summarily dismissing his successive and untimely notice of 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). Le has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Le was convicted of first-degree murder and sentenced to a term of life imprisonment without the possibility of release for twenty-five years. His conviction and sentence were affirmed on appeal. *State v. Le*, No. 1 CA-CR 02-0443 (memorandum decision filed Sept. 4, 2003). In 2004, Le timely sought post-conviction relief, claiming his trial counsel had been ineffective. The trial court summarily denied relief, and Le did not seek review of that decision. Le since sought and was denied post-conviction relief on three other occasions before this proceeding.

¶3 In May 2014, Le filed a notice of post-conviction relief claiming his post-conviction counsel had been ineffective because she also had represented him on appeal. He argued he was entitled to raise the claim in an untimely proceeding like this one pursuant to *Martinez v. Ryan*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1309 (2012), and Rule 32.1(g). Citing Rule 32.1(e), Le also suggested there was newly discovered evidence that his trial counsel had failed to advise him of a plea offer by the state. The trial court summarily dismissed the notice, and this petition for review followed.

¶4 On review, Le repeats his argument that, pursuant to *Martinez*, he is entitled to raise a claim of ineffective assistance of

STATE v. LE  
Decision of the Court

Rule 32 counsel, specifically that counsel had a conflict of interest. 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. 232 Ariz. 586, ¶¶ 4-6, 307 P.3d 1013, 1014 (App. 2013). Non-pleading defendants like Le “have no constitutional right to counsel in post-conviction proceedings,” and his claim is therefore not cognizable under Rule 32. *Id.* ¶ 4.

¶5 Le is correct that post-conviction counsel cannot identify and argue his or her own ineffectiveness on appeal. A defendant therefore is not precluded from raising such a claim in a second Rule 32 proceeding. *State v. Bennett*, 213 Ariz. 562, ¶¶ 11, 14-15, 146 P.3d 63, 67 (2006). But that principle does not suggest that *Martinez* affects the holding in *Escareno-Meraz*. Moreover, Le does not raise a claim of ineffective assistance of appellate counsel, and the time to do so has long passed.<sup>1</sup> See Ariz. R. Crim. P. 32.2(a). The trial court did not err in summarily dismissing Le’s most recent notice of post-conviction relief.

¶6 We grant review but deny relief.

---

<sup>1</sup>Le has abandoned on review his claim of newly discovered evidence; accordingly, we do not address that issue. Ariz. R. Crim. P. 32.9(c)(1) (petition for review shall contain “the reasons why the petition should be granted” and “specific references to the record”); *State v. Rodriguez*, 227 Ariz. 58, n.4, 251 P.3d 1045, 1048 n.4 (App. 2010) (declining to address argument not raised in petition for review).