

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JAMES GERMAINE BOLDEN,
Petitioner.

No. 2 CA-CR 2016-0240-PR
Filed August 11, 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NOT FOR PUBLICATION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. CR2002005449
The Honorable Rosa Mroz, Judge

REVIEW GRANTED; RELIEF DENIED

James Germaine Bolden, 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 Petitioner James Bolden seeks review of the trial court’s orders dismissing his successive notice of post-conviction relief and denying his motion for rehearing, filed pursuant to Rule 32, Ariz. R. Crim. P. “We review a trial court’s denial of post-conviction relief for abuse of discretion.” *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). We find no such abuse here.

¶2 Following a jury trial in 2002, Bolden was convicted of armed robbery and sentenced to a presumptive, 15.75-year prison term. We affirmed Bolden’s conviction and sentence on appeal, *State v. Bolden*, No. 1 CA-CR 03-0030 (Ariz. App. Dec. 23, 2003) (mem. decision), and denied review of his petition for review from the trial court’s dismissal of his first petition for post-conviction relief, *State v. Bolden*, No. 1 CA-CR 05-0920 PRPC (Ariz. App. July 21, 2006) (order).

¶3 Bolden filed a successive notice of post-conviction relief in 2013, asserting a claim of actual innocence under Rule 32.1(h), and although he indicated on the form notice he was not raising a claim of ineffective assistance of counsel, he nonetheless stated Rule 32 counsel had been ineffective. Bolden did not provide any explanation for his untimely filing. The trial court dismissed Bolden’s notice in October 2013, finding he had not presented “new facts” supporting a claim of actual innocence, and that he did not have a constitutional right to post-conviction counsel. Bolden filed a

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motion for rehearing, which the court also denied. This petition for review followed.¹

¶4 On review, Bolden essentially argues that he is entitled to relief because he is innocent.² Bolden's notice was untimely under Rule 32.4(a). Rule 32.2(b) states that when a defendant files a successive or untimely notice of post-conviction relief and wants to raise a claim excepted from the general rule of preclusion,

the notice of post-conviction relief must set forth the substance of the specific exception and the reasons for not raising the claim in the previous petition or in a timely manner. If the specific exception and meritorious reasons do not appear substantiating the claim and indicating why the claim was not stated in the previous petition or in a timely manner, the notice shall be summarily dismissed.

¶5 Although Bolden filed a notice based on an exception to preclusion, to wit, actual innocence, he did not offer, much less

¹On September 17, 2014, the trial court found Bolden's motion for rehearing timely filed, despite its previous ruling to the contrary. Accordingly, on September 26, 2014, we deemed Bolden's petition for review timely filed as well. It appears Bolden has filed two petitions for review from the trial court's denial of his motion for rehearing, which we treat as a single petition on review. We also note that Bolden filed a "Writ of Coram Nobis - Writ of Error" on July 11, 2014, which the court dismissed by an order dated July 21, 2014; we are unaware whether Bolden has sought review of that ruling, nor is it before us on review.

²Although Bolden states he is petitioning only from the trial court's order denying his motion for rehearing, because of the sequence of the rulings by both the trial court and this court, we treat his petition as if he were requesting relief from the court's dismissal of the underlying notice of post-conviction relief as well.

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establish, a reason for his untimely filing, as Rule 32.2(b) requires. Additionally, Bolden's claim of ineffective assistance of Rule 32 counsel falls under Rule 32.1(a). *See State v. Petty*, 225 Ariz. 369, ¶ 11, 238 P.3d 637, 641 (App. 2010). Consequently, he was barred from raising this claim in an untimely post-conviction proceeding. *See Ariz. R. Crim. P. 32.4(a)* ("Any notice not timely filed may only raise claims pursuant to Rule 32.1(d), (e), (f), (g) or (h)."). Moreover, a nonpleading defendant like Bolden has "no constitutional right to counsel or effective assistance in post-conviction proceedings." *State v. Krum*, 183 Ariz. 288, 292 n.5, 903 P.2d 596, 600 n.5 (1995).

¶6 Nothing in Bolden's petition suggests the trial court abused its discretion in dismissing his successive and untimely post-conviction notice, or in denying his motion for rehearing from that dismissal. Accordingly, although we grant review, we deny relief.