

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

SEVERO A. TORRES,
Petitioner.

No. 2 CA-CR 2016-0332-PR
Filed November 28, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED FOR PERSUASIVE AUTHORITY.

See Ariz. R. Sup. Ct. 111(a)(3), (c);
Ariz. R. Crim. P. 31.17(b), (e), 31.24.

Petition for Review from the Superior Court in Cochise County
No. CR201200116
The Honorable James L. Conlogue, Judge

PETITION FOR REVIEW DISMISSED

COUNSEL

Brian McIntyre, Cochise County Attorney
By Roger H. Contreras, Deputy County Attorney, Bisbee
Counsel for Respondent

Neal W. Bassett, Phoenix
Counsel for Petitioner

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DECISION ORDER

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

ECKERSTROM, Chief Judge:

¶1 It having appeared to this court that petitioner Severo A. Torres's petition for review of the trial court's order denying his petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., was untimely filed, we issued an order on October 25, 2016, providing Torres with the opportunity to establish why the petition should not be dismissed. Because Torres has not sustained that burden, we must dismiss the petition.

¶2 The trial court denied Torres's Rule 32 petition on July 12, 2016. It then granted his request for two extensions of the thirty-day period to file a petition for review, Ariz. R. Crim. P. 32.9(c), setting a final deadline of October 7, 2016. Torres's counsel, Neal Bassett, contends confusion about the electronic filing requirements in this court delayed his filing of the petition until the day it was due.¹ He concedes this court rejected the petition when he attempted to file it on October 7 because the case number did not appear on the front of the petition, but he insists it was timely nevertheless. Relying on Rule 31.19, Ariz. R. Crim. P., he argues the

¹Bassett complains that, based on this court's website, he erroneously believed he was required to provide electronic links to the record on appeal. The website states that such links are required pursuant to Rule 13.1(a), Ariz. R. Civ. App. P. These are civil appellate rules and do not apply to a petition for review filed pursuant to Rule 32.9, Ariz. R. Crim. P., which should have been apparent to Bassett. On the other hand, we recognize that the website's text itself suggests the requirement applies to all cases. In any event, any delay caused by this misunderstanding seems to have occurred before October 7, and does not explain his failure to file a compliant petition until October 20.

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petition was substantially compliant with the rule and he had thirty days to cure the defect and did so when he filed a proper petition on October 20.

¶3 Rule 31.19 does not apply here. “Rule 31 governs the procedure for appeals from the Superior Court of Arizona to the Arizona Supreme Court or Court of Appeals” Ariz. R. Crim. P. 31.1. Rule 32.9 governs petitions for review of the denial of post-conviction relief. It does not contain a provision similar to Rule 31.19.

¶4 In addition to the fact that the rule requires the case number to appear on the petition, *see* Ariz. R. Crim. P. 32.9(c)(1), it has been the policy of this court for the decade and a half that e-filing has been available to require that the number appear on the document because it assures that an electronically filed document cannot be lost. When such a document is received by the court, a deputy clerk will review the document to make certain that the case in which it has been filed is the correct case; the number on the document and the case number selected electronically in the electronic filing system must be the same. Contrary to Bassett’s claim that he was targeted by the clerk of this court, this policy applies equally to all parties and their lawyers, without exception.²

²Bassett’s accusations against the clerk of this court and other court personnel to the contrary, including his allegation that the clerk “has injected himself into” this and other cases “in attempt to sabotage” Bassett, are not only baseless, they are wholly unprofessional, as is much of the rest of the “Response to [the Clerk of the Court’s] Threat to Dismiss Petition for Review.” Bassett is admonished to refrain from making such reckless accusations and using unprofessional language in future filings in this or any other court. *See* Ariz. R. Sup. Ct. 42, Preamble, A Lawyer’s Responsibilities [5] (“lawyer should demonstrate respect for the legal system and for those who serve it”); *see generally* ER 8.2(a) (lawyer shall not make statement he knows is false or “with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a . . . public legal officer”). The offensive nature of

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¶5 There could be no confusion in this case about the insufficiency of the petition and the fact that it was not filed when Bassett submitted it on October 7. First, when Bassett contacted the clerk's office that day, the deputy clerk who gave him the case number told him he needed to put that number on the petition. Second, the deputy immediately left a message for Bassett when she reviewed the attempted filing, informing him the petition had not been accepted because there was no case number on the document. Third, on the court's website, the "Electronic Filing Instructions" plainly state:

When you file a document, it is not automatically docketed, nor added to the case record. It will remain in a "pending" status until it is reviewed by the Clerk of the Court. If your filing is approved, you will receive a digitally-signed e-mail from the clerk, which serves as your proof of filing.

Bassett did not receive a confirming e-mail and therefore knew the petition had not been filed. Nevertheless, he did not file a corrected petition until October 20, after he received another courtesy telephone call from a deputy clerk on October 18, informing him the court had not received a petition.

¶6 Rule 32.9 provides that extensions of the time for filing a petition for review "shall be filed in and ruled upon by the trial court." Ariz. R. Crim. P. 32.9(c). This includes the authority and discretion to "allow a late filing of the papers." *State v. Pope*, 130 Ariz. 253, 255, 635 P.2d 846, 848 (1981). Although the time limits in Rule 32.9 are not jurisdictional, *id.* at 256, 635 P.2d at 849, we lack the authority to permit Torres to file a delayed petition for review. Even assuming *arguendo* we could excuse the untimeliness of the petition, we would not do so here. Bassett knew or should have known the petition had not been filed. He could have cured the

counsel's statements is not a factor in this court's determination that the petition for review must be dismissed as untimely.

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defect by resubmitting a corrected petition by midnight on October 7. Bassett did not file the corrected petition until October 20. He offers no explanation for this significant delay.

¶7 The petition for review is dismissed, without prejudice to Torres to seek leave in the trial court to file a delayed petition for review.