

20-6630

## APPENDIX

A

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

SEP 14 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ALEJANDRO S. ESTRADA,

Petitioner-Appellant,

v.

ATTORNEY GENERAL FOR THE STATE  
OF ARIZONA; DAVID SHINN, Director,  
Arizona Department of Corrections,

Respondents-Appellees.

No. 20-15393

D.C. No. 3:18-cv-08360-MTL  
District of Arizona,  
Prescott

ORDER

Before: RAWLINSON and BRESS, Circuit Judges.

Appellant's motion for reconsideration en banc (Docket Entry No. 5) is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

AUG 18 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ALEJANDRO S. ESTRADA,

Petitioner-Appellant,

v.

ATTORNEY GENERAL FOR THE STATE  
OF ARIZONA; DAVID SHINN, Director,  
Arizona Department of Corrections,

Respondents-Appellees.

No. 20-15393

D.C. No. 3:18-cv-08360-MTL  
District of Arizona,  
Prescott

ORDER

Before: SCHROEDER and GRABER, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

**DENIED.**

## **APPENDIX**

**13**

1        **V.      Certificate of Appealability**

2        Petitioner alternatively asks the Court (Doc. 19 at 9) to issue a certificate of  
3        appealability. Petitioner must obtain a certificate of appealability before he may appeal  
4        this Court's judgment. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b)(1); Rule 11(a) of the  
5        Rules Governing Section 2254 Cases. This Court must issue or deny a certificate of  
6        appealability when it enters a final order adverse to the applicant. Rule 11(a) of the Rules  
7        Governing Section 2254 Cases. A certificate of appealability may only issue when the  
8        petitioner "has made a substantial showing of the denial of a constitutional right." 28  
9        U.S.C. § 2253(c)(2). Petitioner has not made a substantial showing that denying the  
10      petition as untimely under these facts would deny him a constitutional right. The request  
11      for a certificate of appealability is denied.

12        **VI.      Conclusion**

13        Accordingly, having reviewed Petitioner's objections,

14        **IT IS ORDERED** that the Report and Recommendation (Doc. 17) is accepted.

15        **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus (Doc.  
16      1) is denied and dismissed with prejudice.

17        **IT IS FURTHER ORDERED** denying Petitioner's request for a Certificate of  
18      Appealability (Doc. 19.)

19        Dated this 20th day of February, 2020.

20        Michael T. Liburdi

21        Michael T. Liburdi  
22        United States District Judge

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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Alejandro S Estrada,

10 Petitioner,

11 v.

12 Charles L Ryan, et al.,

13 Respondents.

NO. CV-18-08360-PCT-MTL

JUDGMENT IN A CIVIL CASE

15 **Decision by Court.** This action came for consideration before the Court. The  
16 issues have been considered and a decision has been rendered.

17 IT IS ORDERED AND ADJUDGED adopting the Report and Recommendation  
18 of the Magistrate Judge as the order of this Court. Petitioner's Petition for Writ of  
19 Habeas Corpus pursuant to 28 U. S. C. § 2254 is denied and this action is hereby  
20 dismissed with prejudice.

21 Debra D. Lucas  
22 Acting District Court Executive/Clerk of Court

23 February 21, 2020

24 By s/ E. Aragon  
25 Deputy Clerk

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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8  
9 Alejandro S Estrada, ) CV 18-08360-PCT-MTL (MHB)  
10 Petitioner, )  
11 vs. )  
12 David Shinn, et al., )  
13 Respondents. )  
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15 TO THE HONORABLE MICHAEL T. LIBURDI, UNITED STATES DISTRICT COURT:

16 On December 26, 2018, Petitioner Alejandro S. Estrada, who is confined in the  
17 Arizona State Prison Complex, filed a pro se Petition for Writ of Habeas Corpus pursuant to  
18 28 U.S.C. § 2254 (Doc. 1). Respondents filed an Answer (Doc. 12), and Petitioner filed a  
19 Reply (Doc. 15).

20 **BACKGROUND**

21 Pursuant to a plea agreement, Petitioner was convicted in Coconino County Superior  
22 Court, case #CR 2008-0671, of sexual conduct with a minor and was sentenced to a 25-year  
23 term of imprisonment on February 19, 2010. (Exhs. B, C, E.)

24 On April 8, 2010, Petitioner filed a notice of post-conviction relief ("PCR"). (Exh. G.)  
25 In his PCR petition filed on November 4, 2010, Petitioner alleged: (1) his plea was  
26 involuntary because he was not told he had a right to a jury to determine the aggravating  
27 factors; (2) his sentence was unconstitutional because the trial court based its decision on  
28 facts that Petitioner did not understand and the jury should have decided the aggravating

1 factors under Blakely v. Washington; and (3) his trial counsel was ineffective. (Exhs. H, I.)  
 2 The trial court summarily denied Petitioner's PCR petition on April 22, 2011. (Exh. J.)  
 3 Petitioner did not file a petition for review in the Arizona Court of Appeals.

4 Instead, over five years later, Petitioner filed a second PCR notice on September 12,  
 5 2016. (Exh. K.) In his petition, Petitioner raised the following claims: (1) his attorney was  
 6 ineffective for failing to explain Blakely v. Washington before he was sentenced; (2) his  
 7 attorney was ineffective for failing to move to have the victim submit a mental competency  
 8 assessment; (3) his 25-year prison term was a violation of his Eighth Amendment rights; (4)  
 9 he had a right to effective counsel; (5) his attorney was ineffective for failing to present  
 10 mitigating evidence of his drug and alcohol addiction, mental health records, physical  
 11 records, work records, counseling records, and socioeconomic records; (6) his attorney was  
 12 ineffective for failing to ask the court for a mental and physical report of the victim to  
 13 determine the harm done to her; (7) he had a constitutional right to have his plea agreement  
 14 amended so he would not be subject to a greater sentence; and (8) he had a right to set up a  
 15 trust account for the victim to pay for counseling and education. (Exh. K.)

16 The court denied the second PCR petition on May 1, 2017, explaining:

17 The Defendant filed a Pro-Se Rule 32 Petition for Post-Conviction Relief on  
 18 December 13, 2016. Previously, the Defendant filed for post-conviction relief  
 19 pursuant to Rule 32 on November 9, 2010. The Defendant argued then, much  
 20 as he does now, that his counsel was ineffective because he failed to explain  
 21 to him the effect of *Blakely v. Washington* when entering into a plea  
 22 agreement, failed to have the victim submit to a mental competency hearing,  
 23 failed to effectively assist the Defendant, failed to present mitigating evidence  
 24 at his sentencing, failed to have his plea modified to allow the Defendant a  
 25 lesser sentence, and failed to have the prosecutor set up a trust account for the  
 26 victim's counseling.

27 The Defendant also argued that the sentencing Judge abused her discretion in  
 28 sentencing the Defendant to 25 years in the Department of Corrections. This  
 29 is not a proper argument for a Rule 32 Petition. Further, the plea was stipulated  
 30 to by the parties.

31 With respect to the other arguments made by the Defendant, this Court finds  
 32 no colorable claim.

33 (Exh. N.)

1 Petitioner then filed a motion for reconsideration of the court's order. (Exh. O.) The  
2 court summarily denied the motion. (Exh. P.) According to the record, Petitioner did not file  
3 a petition for review in the Arizona Court of Appeals.

4 The record reflects that Petitioner filed a third PCR notice and petition on November  
5 12, 2017. (Exhs. Q, R.) Petitioner argued (1) that his sentence was illegal and  
6 unconstitutional because it was aggravated under a "void and obsolete statute," A.R.S. §  
7 13-604.01; (2) that the trial court had no subject-matter jurisdiction to impose his aggravated  
8 sentence under A.R.S. § 13-604.01; (3) that his PCR counsel was ineffective for failing to  
9 present a trial IAC claim that his trial counsel was ineffective for "colluding" with the  
10 prosecutor and court to sentence him under an invalid statute, A.R.S. § 13-604.01; and (4)  
11 newly discovered facts, significant change in the law, cause and prejudice, and fundamental  
12 miscarriage of justice. (Exhs. R, S.)

13 On April 18, 2018, the court denied Petitioner's petition, stating, "[t]he Defendant  
14 alleged in 2011 that his plea was not voluntary or intelligent that his sentence was  
15 unconstitutional and that his trial counsel was ineffective. Those same issues are alleged in  
16 the latest petition, with additional claims. The claims are not only untimely, they are also  
17 precluded under Rules 32.2(a)(2) and 32.4." (Exh. U.)

18 Thereafter, the record reflects that Petitioner filed a petition for review in the Arizona  
19 Court of Appeals, based on the trial court's denial of his third PCR petition. (Exhs. V, W.)  
20 The appellate court summarily denied relief, finding Petitioner did not establish that the trial  
21 court abused its discretion by denying his PCR petition. (Exh. X.)

22 In his habeas petition, Petitioner raises three grounds for relief. In Ground One,  
23 Petitioner alleges a violation of his Fifth and Sixth Amendment rights. In Ground Two, he  
24 alleges the trial court lacked subject matter jurisdiction to impose a sentence pursuant to a  
25 non-existent statute in violation of his Fifth and Sixth Amendment rights. In Ground Three,  
26 Petitioner alleges that he received the ineffective assistance of appellate counsel.

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## DISCUSSION

In their Answer, Respondents contend that Petitioner's habeas petition is untimely and, as such, must be denied and dismissed.

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") imposes a statute of limitations on federal petitions for writ of habeas corpus filed by state prisoners. See 28 U.S.C. § 2244(d)(1). The statute provides:

A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of –

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

An "of-right" petition for post-conviction review under Arizona Rule of Criminal Procedure 32, which is available to criminal defendants who plead guilty, is a form of "direct review" within the meaning of 28 U.S.C. § 2244(d)(1)(A). See Summers v. Schriro, 481 F.3d 710, 711 (9<sup>th</sup> Cir. 2007). Therefore, the judgment of conviction becomes final upon the conclusion of the Rule 32 of-right proceeding, or upon the expiration of the time for seeking such review. See id.

Additionally, "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward" the limitations period. 28 U.S.C. § 2244(d)(2); see Lott v. Mueller, 304 F.3d 918, 921 (9<sup>th</sup> Cir. 2002). A post-conviction petition is "clearly pending after it is filed with a state court, but before that court grants or denies the petition." Chavis v. Lemarque, 382 F.3d 921, 925 (9<sup>th</sup> Cir. 2004). A state petition that is not filed, however, within the state's required time limit is not "properly filed" and, therefore, the petitioner is

1 not entitled to statutory tolling. See Pace v. DiGuglielmo, 544 U.S. 408, 413 (2005). “When  
 2 a postconviction petition is untimely under state law, ‘that [is] the end of the matter’ for  
 3 purposes of § 2244(d)(2).” Id. at 414.

4 In Arizona, post-conviction review is pending once a notice of post-conviction relief  
 5 is filed even though the petition is not filed until later. See Isley v. Arizona Department of  
 6 Corrections, 383 F.3d 1054, 1056 (9<sup>th</sup> Cir. 2004). An application for post-conviction relief  
 7 is also pending during the intervals between a lower court decision and a review by a higher  
 8 court. See Biggs v. Duncan, 339 F.3d 1045, 1048 (9<sup>th</sup> Cir. 2003) (citing Carey v. Saffold, 536  
 9 U.S. 214, 223 (2002)). However, the time between a first and second application for post-  
 10 conviction relief is not tolled because no application is “pending” during that period. See id.  
 11 Moreover, filing a new petition for post-conviction relief does not reinitiate a limitations  
 12 period that ended before the new petition was filed. See Ferguson v. Palmateer, 321 F.3d  
 13 820, 823 (9<sup>th</sup> Cir. 2003).

14 The statute of limitations under the AEDPA is subject to equitable tolling in  
 15 appropriate cases. See Holland v. Florida, 560 U.S. 631, 645-46 (2010). However, for  
 16 equitable tolling to apply, a petitioner must show ““(1) that he has been pursuing his rights  
 17 diligently and (2) that some extraordinary circumstances stood in his way”” and prevented  
 18 him from filing a timely petition. Id. at 2562 (quoting Pace, 544 U.S. at 418).

19 The Court finds that Petitioner’s Petition for Writ of Habeas Corpus is untimely. On  
 20 February 19, 2010, the trial court sentenced Petitioner pursuant to the terms set forth in the  
 21 plea agreement. By pleading guilty, Petitioner waived his right to a direct appeal, and had 90  
 22 days to file an “of-right” petition for post-conviction relief under Rule 32 of the Arizona  
 23 Rules of Criminal Procedure. Petitioner filed his timely PCR petition on April 8, 2010, and  
 24 the trial court summarily denied the petition on April 22, 2011. Petitioner then had 30 days  
 25 to file a petition for review to the Arizona Court of Appeals – which he failed to do.

26 Thus, Petitioner’s case became final and the statute of limitations began running on  
 27 May 22, 2011. Petitioner was required to initiate habeas proceedings on or before May 22,  
 28 2012. Petitioner filed his habeas petition on December 26, 2018. Absent any tolling, his

1 habeas petition untimely. See United States v. Marcello, 212 F.3d 1005, 1010 (7th Cir. 2000)  
2 (federal habeas petition submitted one day late was properly dismissed as untimely under  
3 AEDPA, noting that a “missed” deadline “is not grounds for equitable tolling”); Hartz v.  
4 United States, 419 Fed.Appx. 782, 783 (9th Cir. 2011) (unpublished) (affirming dismissal  
5 of federal habeas petition where petitioner “simply missed the statute of limitations deadline  
6 by one day”).

7 Petitioner’s commencement of his second and third successive PCR proceedings on  
8 September 12, 2016 and November 12, 2017, respectively, did not toll the limitations period.  
9 The proceedings were filed after the limitations period had expired, and, therefore, did not  
10 toll the limitations period. See Ferguson, 321 F.3d at 823 (“[S]ection 2244(d) does not permit  
11 the re-initiation of the [federal 1-year] limitations period that has ended before the state  
12 petition was filed.”). Furthermore, it appears that these PCR proceedings were successive and  
13 untimely and, as such, were not “properly filed.” See Pace, 544 U.S. at 413-14.

14 The Ninth Circuit recognizes that the AEDPA’s limitations period may be equitably  
15 tolled because it is a statute of limitations, not a jurisdictional bar. See Calderon v. United  
16 States Dist. Ct. (Beeler), 128 F.3d 1283, 1288 (9<sup>th</sup> Cir. 1997), overruled in part on other  
17 grounds by Calderon v. United States Dist. Ct. (Kelly), 163 F.3d 530, 540 (9<sup>th</sup> Cir. 1998).  
18 Tolling is appropriate when “‘extraordinary circumstances’ beyond a [petitioner’s] control  
19 make it impossible to file a petition on time.” Id.; see Miranda v. Castro, 292 F.3d 1063,  
20 1066 (9<sup>th</sup> Cir. 2002) (stating that “the threshold necessary to trigger equitable tolling [under  
21 AEDPA] is very high, lest the exceptions swallow the rule”) (citations omitted). “When  
22 external forces, rather than a petitioner’s lack of diligence, account for the failure to file a  
23 timely claim, equitable tolling of the statute of limitations may be appropriate.” Miles v.  
24 Prunty, 187 F.3d 1104, 1107 (9<sup>th</sup> Cir. 1999). A petitioner seeking equitable tolling must  
25 establish two elements: “(1) that he has been pursuing his rights diligently, and (2) that some  
26 extraordinary circumstance stood in his way.” Pace, 544 U.S. at 418. Petitioner must also  
27 establish a “causal connection” between the extraordinary circumstance and his failure to file  
28

1 a timely petition. See Bryant v. Arizona Attorney General, 499 F.3d 1056, 1060 (9<sup>th</sup> Cir.  
2 2007).

3 Petitioner attempts to explain his untimeliness by summarily stating the following:

4 The untimeliness of the petition is caused by: 1) ineffective assistance of trial  
5 counsel []; 2) ineffective assistance of appellate counsel []; 3) significant  
6 change in the law or a new rule of constitutional law; 4) newly discovered  
7 material fact [].

8 In addition “cause and prejudice” and “fundamental miscarriage of justice”  
9 excused any procedural default.

10 Furthermore, the state court reached the merit of Estrada’s claims and denied  
11 him relief.

12 (Doc. 1.) Moreover, in his reply, Petitioner addresses the merits of his claims and responds  
13 to Respondents’ argument that Petitioner’s claims are procedurally defaulted.

14 The Court finds that Petitioner’s conclusory, one-sentence excuses for his  
15 untimeliness fail to demonstrate that he has been pursuing his rights diligently, and that some  
16 extraordinary circumstance stood in his way. Indeed, Petitioner provides nothing to explain  
17 why he failed to file a petition for review to the Arizona Court of Appeals after the denial of  
18 his first PCR petition; waited over five years to file his successive, untimely second PCR  
19 petition; waited almost four months before filing his third untimely PCR petition; and then  
20 filed his habeas petition over six years too late.

21 Furthermore, a petitioner’s *pro se* status, indigence, limited legal resources, ignorance  
22 of the law, or lack of representation during the applicable filing period do not constitute  
23 extraordinary circumstances justifying equitable tolling. See, e.g., Rasberry v. Garcia, 448  
24 F.3d 1150, 1154 (9<sup>th</sup> Cir. 2006) (“[A] *pro se* petitioner’s lack of legal sophistication is not,  
25 by itself, an extraordinary circumstance warranting equitable tolling.”).

26 Accordingly, Petitioner is not entitled to any tolling and his habeas petition is  
27 untimely.

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## CONCLUSION

Having determined that Petitioner's habeas petition is untimely, the Court will recommend that Petitioner's Petition for Writ of Habeas Corpus be denied and dismissed with prejudice.

**IT IS THEREFORE RECOMMENDED** that Petitioner's Petition for Writ of Habeas Corpus (Doc. 1) **DENIED** and **DISMISSED WITH PREJUDICE**;

**IT IS FURTHER RECOMMENDED** that a Certificate of Appealability and leave to proceed *in forma pauperis* on appeal be **DENIED** because the dismissal of the Petition is justified by a plain procedural bar and jurists of reason would not find the procedural ruling debatable.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment. The parties shall have fourteen days from the date of service of a copy of this recommendation within which to file specific written objections with the Court. See 28 U.S.C. § 636(b)(1); Rules 72, 6(a), 6(b), Federal Rules of Civil Procedure. Thereafter, the parties have fourteen days within which to file a response to the objections. Pursuant to Rule 7.2, Local Rules of Civil Procedure for the United States District Court for the District of Arizona, objections to the Report and Recommendation may not exceed seventeen (17) pages in length. Failure timely to file objections to the Magistrate Judge's Report and Recommendation may result in the acceptance of the Report and Recommendation by the district court without further review. See *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003). Failure timely to file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation. See Rule 72, Federal Rules of Civil Procedure.

DATED this 23<sup>rd</sup> day of December, 2019.

Michelle H. Burns  
Michelle H. Burns  
United States Magistrate Judge

## **APPENDIX**

**C**

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

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

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STATE OF ARIZONA, *Respondent*,

*v.*

ALEJANDRO ESTRADA, *Petitioner*.

No. 1 CA-CR 18-0314 PRPC  
FILED 8-7-2018

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Appeal from the Superior Court in Coconino County  
No. CR2008-0671  
The Honorable Jacqueline Hatch, Judge

**REVIEW GRANTED AND RELIEF DENIED**

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COUNSEL

Coconino County Attorney's Office, Flagstaff  
By William P. Ring  
*Counsel for Respondent*

Alejandro Estrada, Florence  
*Petitioner*

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**MEMORANDUM DECISION**

Presiding Judge Randall M. Howe, Judge Jennifer M. Perkins, and Judge  
Peter B. Swann delivered the decision of the Court.

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STATE v. ESTRADA  
Decision of the Court

**PER CURIAM:**

¶1 Petitioner Alejandro Estrada seeks review of the superior court's order denying his petition for post-conviction relief, filed pursuant to Arizona Rule of Criminal Procedure 32.1. This is petitioner's third, successive petition.

¶2 Absent an abuse of discretion or error of law, this court will not disturb a superior court's ruling on a petition for post-conviction relief. *State v. Gutierrez*, 229 Ariz. 573, 577 ¶ 19 (2012). It is petitioner's burden to show that the superior court abused its discretion by denying the petition for post-conviction relief. *See State v. Poblete*, 227 Ariz. 537, 538 ¶ 1 (App. 2011) (petitioner has burden of establishing abuse of discretion on review).

¶3 We have reviewed the record in this matter, the superior court's order denying the petition for post-conviction relief, and the petition for review. We find that petitioner has not established an abuse of discretion.

¶4 For the foregoing reasons, we grant review and deny relief.

IN . . . SUPERIOR COURT OF THE ST. . . OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

Jacqueline Hatch, Judge

Division 1

Date: April 18, 2018

Vivian Johns, Judicial Assistant

STATE OF ARIZONA,

Plaintiff,

vs.

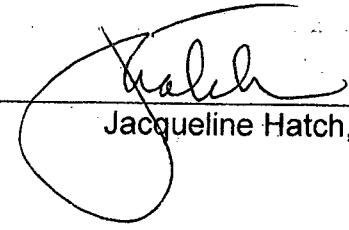
ALEJANDRO ESTRADA,

Defendant.

) Case No. CR2008-0671

The Defendant filed a second Rule 32 Petition for Post-Conviction Relief on November 15, 2017. The State responded and the Defendant replied. This is the Defendant's third petition for relief pursuant to Rule 32. Defendant's first Petition was denied on all grounds on April 22, 2011. The Defendant alleged in 2011 that his plea was not voluntary or intelligent, that his sentence was unconstitutional and that his trial counsel was ineffective. Those same issues are alleged in the latest petition, with additional claims. The claims are not only untimely, they are also precluded under Rules 32.2(a)(2) and 32.4(a).

Therefore, this Court finds no colorable claim and the Defendant's Petition is denied.

  
Jacqueline Hatch, Judge

cc: County Attorney, c/o Courthouse Box  
Public Defender, c/o Courthouse Box  
Alejandro Estrada, #251095, ASPC-Florence South Unit, P.O. Box 8400, Florence, AZ

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

Jacqueline Hatch, Judge

Division 1

Date: May 1, 2017

Vivian Johns, Judicial Assistant

STATE OF ARIZONA,

)

Plaintiff,

)

Case No. CR2008-0671

vs.

)

ALEJANDRO ESTRADA,

)

UNDER ADVISEMENT  
RULING

Defendant.

)

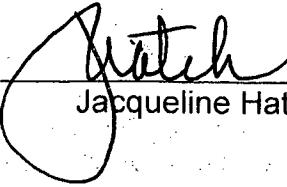
**ACTION: UNDER ADVISEMENT RULING RE:**

The Defendant filed a Pro-Se Rule 32 Petition for Post Conviction Relief on December 13, 2016. Previously, the Defendant filed for post conviction relief pursuant to Rule 32 on November 9, 2010. The Defendant argued then, much as he does now, that his counsel was ineffective because he failed to explain to him the effect of *Blakely v. Washington* when entering into a plea agreement, failed to have the victim submit to a mental competency hearing, failed to effectively assist the Defendant, failed to present mitigating evidence at his sentencing, failed to have his plea modified to allow the Defendant a lesser sentence, and failed to have the prosecutor set up a trust account for the victim's counseling.

The Defendant also argued that the sentencing Judge abused her discretion in sentencing the Defendant to 25 years in the Department of Corrections. This is not a proper argument for a Rule 32 Petition. Further, the plea was stipulated to by the parties.

With respect to the other arguments made by the Defendant, this Court finds no colorable claim.

The Defendant's Petition is, therefore, denied.

  
Jacqueline Hatch, Judge

cc: County Attorney, c/o Courthouse Box

Public Defender, c/o Courthouse Box

 Alejandro Estrada, #251095, ASPC-Florence South Unit, P.O. Box 8400, Florence, AZ

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

Jacqueline Hatch, Judge

Division 1

Date: December 5, 2016

Vivian Johns, Judicial Assistant

STATE OF ARIZONA,

)

Plaintiff,

)

Case No. CR2008-0671

vs.

)

UNDER ADVISEMENT  
RULING

ALEJANDRO ESTRADA,

)

Defendant.

)

**ACTION: UNDER ADVISEMENT RULING RE:**

Defendant filed Notice of Post-Conviction Relief on September 14, 2016. Previously, the Defendant filed for post-conviction relief on November 9, 2010. Defendant was appointed counsel to represent him. This is Defendant's second petition and the Court will not again appoint counsel. Defendant can proceed to file his Petition.



Jacqueline Hatch, Judge

cc: County Attorney, c/o Courthouse Box  
Public Defender, c/o Courthouse Box  
Alejandro Estrada, #251095, ASPC-Florence South Unit, P.O. Box 8400, Florence, AZ

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

Jacqueline Hatch, Judge

Division 1

Date: April 22, 2011

Kathy Sandstrom, Judicial Assistant

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ORDER

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THE STATE OF ARIZONA,

Plaintiff,

v.

ALEJANDRO SOTELO ESTRADA,

Defendant.

) Case No. CR 2008-0671

**ACTION:** Defendant's Petition for Post-Conviction Relief

The Court is in receipt of the following:

1. Defendant's Pro Per Petition for Post-Conviction Relief
2. State's Response to Petition for Post Conviction Relief

**IT IS ORDERED Denying Defendant's Petition for Post Conviction Relief.**

  
Jacqueline Hatch, Judge

cc: County Attorney, c/o Courthouse Box

Alejandro Estrada, #251095, ASPC-Florence South Unit, P. O. Box 8400,  
Florence, AZ 85132

Allen Gerhardt, c/o Public Defender's Office (courtesy copy)  
Docket

**Additional material  
from this filing is  
available in the  
Clerk's Office.**