

Michael Blas Rivera (indigent, Pro Per)

A.D.C.R.R # 245473

A.S.P.C. Yuma / Cibola Unit

P.O. Box 8909

San Luis, AZ. 85349

IN THE SUPREME COURT  
OF THE UNITED STATES

Michael Blas Rivera  
Petitioner,

No.

No. CR-20-0346-PR

v.

STATE OF ARIZONA, et al.,  
Respondent

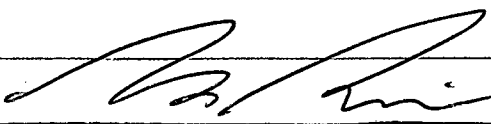
MOTION TO FILE  
OUT OF TIME

The Petitioner Michael Blas Rivera, in  
Propria Persona; here, asks leave of the  
Supreme Court of the United States, to:  
file his 28 USC § 1257 petition, out  
of time.

ORIGINAL

The Petitioner Michael Blas Rivera submitted his 28 USC § 1257 petition to this Court, on September 1, 2021. And as per the Court's notice dated September 24, 2021 see Attachment A. (attached); the Petitioner was past the filing date, which was due on or before August 16, 2021. Previously however, the Petitioner was unaware of the appellate provision granted by 28 USC § 1257, and thus filed a prior action. This was then met with notice from the Court, that the additional time allotted was due to COVID 19 concerns. And as such, the Petitioner had then mailed the current submission. Which given the brief amount of time in order to prepare; the Petitioner requests that this Court take jurisdiction, and accept his resubmitted petition. For between August 16, 2021, and the Court's reception date of September 24, 2021; the Petitioner is respectably within the periphery of the filing mandate referenced in Attachment A.

Thank you for your time.

Sincerely By: 

Michael Blas Rivera

A.D.C.R.R. # 245473

A.S.P.C Yuma / Cibola Unit

P.O. Box 8909

San Luis, AZ. 85349

## Certificate of Service

Mailed this 4<sup>th</sup> day of  
October 2021 To:

Scott S. Harris:

Clerk (esteemed) of;

Supreme Court of the United States

1 First Street, N.E.

Washington, D.C. 20543

NOTARY

Date: October 4<sup>th</sup>, 2021

By: [Signature]

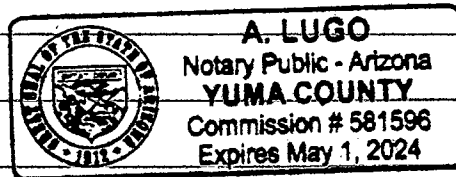
State of Arizona )

) ss.

County of Yuma )

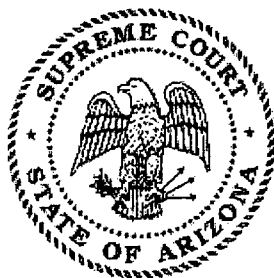
Subscribed and sworn before me  
this 4<sup>th</sup> day of October, 2021

NOTARY SEAL:



[Signature]  
NOTARY PUBLIC

Appendix A.



## Supreme Court

STATE OF ARIZONA

ROBERT BRUTINEL  
Chief Justice

ARIZONA STATE COURTS BUILDING  
1501 WEST WASHINGTON STREET, SUITE 402  
PHOENIX, ARIZONA 85007  
TELEPHONE: (602) 452-3396

TRACIE K. LINDEMAN  
Clerk of the Court

March 19, 2021

RE: STATE OF ARIZONA v MICHAEL BLAS RIVERA  
Arizona Supreme Court No. CR-20-0346-PR  
Court of Appeals, Division Two No. 2 CA-CR 20-0166 PRPC  
Maricopa County Superior Court Nos. CR2006-168151-001  
CR2007-006174-001

### GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on March 19, 2021, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

Justice Montgomery did not participate in the determination of this matter.

Tracie K. Lindeman, Clerk

TO:

Linley Wilson

Amanda M Parker

Michael Blas Rivera, ADOC 245473, Arizona State Prison, Yuma  
Cibola Unit

Jeffrey P Handler

kj

Appendix B.

IN THE  
ARIZONA COURT OF APPEALS  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

MICHAEL BLAS RIVERA,  
*Petitioner.*

No. 2 CA-CR 2020-0166-PR  
Filed October 2, 2020

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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. 31.19(e).

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Petition for Review from the Superior Court in Maricopa County  
Nos. CR2006168151001DT and CR2007006174001DT  
The Honorable Susanna C. Pineda, Judge

REVIEW GRANTED IN PART AND DENIED IN PART;  
RELIEF DENIED

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Michael Blas Rivera, San Luis  
*In Propria Persona*

STATE v. RIVERA  
Decision of the Court

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MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Chief Judge Vásquez and Judge Brearcliffe concurred.

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ST A R I N G, Presiding Judge:

¶1 Michael Rivera seeks review of the trial court's ruling summarily dismissing his notice of post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.<sup>1</sup> We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Rivera has not shown such abuse here.

¶2 After a jury trial, Rivera was convicted of four counts of aggravated assault and two counts each of attempted second-degree murder and endangerment. He was sentenced to consecutive and concurrent prison terms totaling thirty-six years. We affirmed his convictions and sentences on appeal. *State v. Rivera*, No. 1 CA-CR 09-0630 (Ariz. App. Mar. 31, 2011) (mem. decision).

¶3 Rivera timely sought post-conviction relief, which the trial court dismissed in December 2012. This court granted Rivera's petition for review but denied relief. *State v. Rivera*, No. 1 CA-CR 13-0078 PRPC (Ariz. App. Apr. 22, 2014) (mem. decision). In 2018, Rivera again sought post-conviction relief, asserting he had recently discovered that throughout his trial, appeal, and first post-conviction proceeding, his attorneys had a conflict of interest—apparently based on their purported “sympathies to the State's position” and refusal to manage the case to his satisfaction. He asserted this conflict essentially deprived him of counsel, constituting structural error. The trial court summarily dismissed the proceeding, and Rivera did not seek review of that decision.

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<sup>1</sup> Effective January 1, 2020, our supreme court amended the post-conviction relief rules. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). The amendments apply to all cases pending on the effective date unless a court determines that “applying the rule or amendment would be infeasible or work an injustice.” *Id.* “Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.” *State v. Mendoza*, 249 Ariz. 180, n.1 (App. 2020).

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¶4 In July 2019, Rivera filed another notice of post-conviction relief in which he raised essentially the same claims he had in his 2018 notice. He additionally argued there has been a significant change in the law, specifically that *McCoy v. Louisiana*, \_\_\_ U.S. \_\_\_, 138 S. Ct. 1500 (2018), altered the standard for evaluating his claims. The trial court again summarily dismissed the notice, and this petition for review followed.

¶5 On review, Rivera seems to argue that his claims of conflicted counsel are not subject to summary dismissal because they are grounded in structural error and are of sufficient constitutional magnitude to avoid preclusion. He also repeats his argument that the claims are grounded in newly discovered evidence and that *McCoy* is a significant change in the law.

¶6 The trial court did not err in summarily dismissing Rivera's notice. First, the bulk of Rivera's claims were raised and rejected in his previous proceeding and he is thus precluded from raising them anew. See Ariz. R. Crim. P. 32.2(a)(2). And, in any event, this proceeding is untimely, and constitutional claims cannot be raised in an untimely proceeding. See Ariz. R. Crim. P. 32.4(b)(3)(A). Although Rivera argues he is nonetheless entitled to raise his constitutional claims pursuant to *Stewart v. Smith*, 202 Ariz. 446 (2002), because they are of sufficient constitutional magnitude to require a knowing waiver, we have explained that such reasoning does not apply to untimely proceedings, *State v. Lopez*, 234 Ariz. 513, ¶¶ 7-8 (App. 2014).<sup>2</sup> Rivera's argument that he may raise this claim under Rule 32.1(e) fails because that provision does not encompass newly discovered legal arguments but is instead limited to "newly discovered material facts" that "probably would have changed the judgment or sentence." See also *State v. Serna*, 167 Ariz. 373, 374 (1991) (describing five elements of a cognizable newly discovered evidence claim).

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<sup>2</sup> Rule 32.4(b)(3)(D) provides that a defendant may raise constitutional claims in an untimely proceeding if "the defendant adequately explains why the failure to timely file a notice was not the defendant's fault." This provision does not apply to Rivera's successive proceeding—he did not raise these claims in his first and only timely post-conviction proceeding. His later discovery of constitutional claims does not change the fact that he has already had a timely post-conviction proceeding, thus making him ineligible for relief under Rule 32.4(b)(3)(D). Cf. *State v. Poblete*, 227 Ariz. 537, ¶ 7 (App. 2011) (concluding that similarly worded Rule 32.1(f) does not excuse an untimely notice based on later discovery of claim).

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Decision of the Court

¶7 Nor has Rivera established that *McCoy* altered the law, much less that it applies to his case. See Ariz. R. Crim. P. 32.1(g). The Supreme Court in *McCoy* determined counsel may not pursue litigation objectives (as opposed to strategies) that are contrary to the defendant's wishes—in that case, by disregarding his client's claim of innocence and admitting at trial that the defendant had killed the victims, apparently in an effort to "gain[] mercy at the sentencing stage." 138 S. Ct. at 1505, 1508. The Court determined that counsel's conduct resulted in structural error because it "block[ed] the defendant's right to make the fundamental choices about his own defense." *Id.* at 1511. First, Rivera has identified no precedent that *McCoy* overrules or calls into question. Indeed, the Supreme Court has long maintained that a reviewing court will presume prejudice when there is a conflict that significantly affects counsel's performance. See *Mickens v. Taylor*, 535 U.S. 162, 173 (2002). And, even if *McCoy* did alter the law, Rivera has not identified any instance of similar conduct by his counsel. He instead baselessly accuses counsel of violating E.R. 1.7, Ariz. R. Sup. Ct. 42,<sup>3</sup> and provides a laundry list of perceived faults in counsel's representation more suited for a claim of ineffective assistance of counsel.

¶8 We additionally note that Rivera listed two cause numbers on his notice below and on his petition for review. As the trial court correctly observed, in the first of those cause numbers—CR2006-168151-001 DT—the charges against Rivera were dismissed without prejudice. His convictions and sentences were under CR2007-006174-001 DT. Because Rivera was not "convicted and sentenced for a criminal offense" in CR2006-168151-001 DT, he is necessarily ineligible for post-conviction relief in that case. Ariz. R. Crim. P. 32.1. Thus, insofar as Rivera has requested such relief, we deny review.

¶9 We grant review in part and deny review in part. We deny relief.

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<sup>3</sup>E.R. 1.7 requires counsel to avoid a concurrent conflict of interest arising from representation of clients with adverse interests or a client with interests adverse to the attorney's interests. Rivera has not identified any specific act by any attorney that violates this rule. Instead, the events Rivera describes show only that counsel was skeptical of his claims of innocence, believed the state had a strong case and he should accept a plea offer, and were unwilling to fruitlessly invest resources in his defense. None of these allegations suggest counsel had an interest adverse to Rivera's.

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