

"APPENDIX A"

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

STATE OF ARIZONA, *Respondent*,

v.

JANDIN ANTHONY RAUL MUNOZ, *Petitioner*.

No. 1 CA-CR 22-0042 PRPC
FILED 7-26-2022

Petition for Review from the Superior Court in Maricopa County
No. CR2016-137390-001
The Honorable Laura M. Reckart, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Krista Wood
Counsel for Respondent

Jandin Anthony Raul Munoz, Kingman
Petitioner

STATE v. MUNOZ
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Brian Y. Furuya, Judge Jennifer B. Campbell, and Judge Paul J. McMurdie delivered the following decision.

PER CURIAM:

¶1 Petitioner Jandin Anthony Raul Munoz 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 Munoz's fourth 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 the 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 the petitioner has not established an abuse of discretion.

¶4 We grant review but deny relief.



AMY M. WOOD • Clerk of the Court
FILED: JT

"APPENDIX B"

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2016-137390-001 DT

11/09/2021

HONORABLE LAURA M. RECKART

CLERK OF THE COURT
J. Matlack
Deputy

STATE OF ARIZONA

AMANDA MONCAYO PARKER

v.

JANDIN ANTHONY RAUL MUNOZ (001)

JANDIN ANTHONY RAUL MUNOZ
#286407 ASPC KINGMAN, HUACHACA
UNIT
PO BOX 6639
KINGMAN AZ 86402

COURT ADMIN-CRIMINAL-PCR
JUDGE RECKART

RULE 32: PROCEEDING DISMISSED

Pending before the Court is Defendant's Notice Requesting Post-Conviction Relief filed on September 22, 2021. This is his fifth Rule 32 proceeding. It is successive.

A. Background

A jury found Defendant guilty of criminal damage, a class 1 misdemeanor; assault, a class 3 misdemeanor; unlawful imprisonment, a class 6 felony with one prior felony conviction and a domestic violence offense; assault, a class 1 misdemeanor and a domestic violence offense; and sexual assault, a class 2 felony with a prior felony conviction and a domestic violence offense. On April 4, 2017, the Court entered judgment and sentenced Defendant for the felonies to concurrent 10.5 and 1.75-year terms of imprisonment with 240 days of pre-sentence incarceration credit. As to the misdemeanors, the Court imposed two six-month and one 30-day term, sentencing Defendant to time served for each offense. The Arizona Court of Appeals affirmed the convictions and sentences on direct appeal, issuing the mandate on July 23, 2018. *State v. Munoz*, 1 CA-CR

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17-0270, 1 CA-CR 17-0283 (consol.) (App. June 5, 2018) (mem. filed). His previous Rule 32 proceedings were unsuccessful.

B. Rule 32.4(b)(3)(D) Claim

In his current submission, Defendant claims the untimeliness of this Rule 32 proceeding is without fault on his part. (Notice at 2) This claim arises under Ariz. R. Crim. P. 32.4(b)(3)(D). According to Defendant, he failed to pursue relief earlier because a December 17, 2020 court ruling “misled him to believe” that he had no right to do so. (Notice at 3G) It was not until early September, 2021, that he realized he could seek relief under *Martinez v. Ryan*, 566 U.S. 1 (2012). (*Id.* at 3J) For reasons explained more fully below, *Martinez* fails to support his claim and there was nothing misleading about the Court’s prior order. Defendant thus fails to provide an adequate factual basis. In any event, Defendant cites no legal authority for applying Rule 32.4(b)(3)(D) in a fifth Rule 32 proceeding.

C. Rule 32.1(a) Claims

He also claims his convictions and sentences were obtained in violation of his rights under the Sixth and Fourteenth Amendments to the U.S. Constitution, thereby entitling him to relief under Ariz. R. Crim. P. 32.1(a). (Notice at 2, 3) Specifically, Defendant claims to have received ineffective assistance from Rule 32 counsel. (*Id.* at 3D-3G, 3I) It is settled law, however, that Defendant has no cognizable ineffective assistance claim against prior Rule 32 counsel. *See State v. Mata*, 185 Ariz. 319, 336-37, 916 P.2d 1035, 1052-53 (1996).

Alternatively, Defendant relies upon *Martinez v. Ryan*, 566 U.S. 1 (2012). (Notice at 3A-3B) His reliance upon this authority is misplaced. In *Martinez*, the United States Supreme Court held that ineffective assistance of trial counsel claims must be raised during the first Rule 32 proceeding. *Id.* at 10-11. Although *Martinez* outlines exceptions in a federal habeas corpus action, none of them applies here. *Id.* at 16-17. *Martinez* may permit Defendant to seek relief in federal court concerning his trial counsel but does not entitle him to raise state court claims in an untimely fashion. *See State v. Escareno-Meraz*, 232 Ariz. 586, 587, ¶¶ 5-6, 307 P.3d 1 013, 1014 (App. 2013) (affirming summary dismissal of Rule 32 proceeding and declining to recognize a state law remedy due to the “limited” nature of federal habeas review). In any case, relief with respect to trial counsel is precluded because Defendant already litigated that ineffective assistance claim in previous Rule 32 proceedings. *See Ariz. R. Crim. P. 32.2(a)(2)*. To the extent that he is raising new Rule 32.1(a) claims regarding trial counsel, relief is still precluded. *See Ariz. R. Crim. P.*

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32.2(a)(3); *State v. Spreitz*, 202 Ariz. 1, 2, ¶ 4, 39 P.3d 525, 526 (2002) (“Our basic rule is that where ineffective assistance of counsel claims are raised, or could have been raised, in a ... post-conviction relief proceeding, subsequent claims of ineffective assistance will be deemed waived and precluded.”) (emphasis in original).

In sum, Defendant fails to state a claim for which relief can be granted in a successive Rule 32 proceeding. Defendant must assert substantive claims and adequately explain the reasons for their untimely assertion. Ariz. R. Crim. P. 32.2(b). He has failed to meet this standard.

IT IS THEREFORE ORDERED dismissing Defendant’s Notice Requesting Post-Conviction Relief pursuant to Ariz. R. Crim. P. 32.2(b) and Ariz. R. Crim. P. 32.11(a).

IT IS FURTHER ORDERED denying the request for appointment of counsel.

"APPENDIX C"



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

January 6, 2023

RE: STATE OF ARIZONA v JANDIN MUNOZ

Arizona Supreme Court No. CR-22-0221-PR
Court of Appeals, Division One No. 1 CA-CR 22-0042 PRPC
Maricopa County Superior Court No. CR2016-137390-001

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on January 5, 2023, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

A panel composed of Justice Bolick, Justice Lopez, Justice Beene and Justice King participated in the determination of this matter.

Tracie K. Lindeman, Clerk

TO:

Alice Jones

Krista Wood

Jandin Anthony Raul Munoz, ADOC 286407, Arizona State Prison,
Kingman - Huachuca Unit

Amy M Wood

jd

"APPENDIX D"

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2016-137390-001 DT
CR2015-121642-001 DT

12/17/2020

HONORABLE KATHERINE COOPER

CLERK OF THE COURT
J. Encizo
Deputy

STATE OF ARIZONA

JEFFREY R DUVENDACK

v.

JANDIN ANTHONY RAUL MUNOZ (001)

JANDIN ANTHONY RAUL MUNOZ
286407 ASPC EYMAN MEADOWS
UNIT
PO BOX 3300
FLORENCE ARIZONA 85132

COURT ADMIN-CRIMINAL-PCR
JUDGE COOPER

RULE 32 PROCEEDING DISMISSED

Pending before the Court is Defendant's Notice of Post-Conviction Relief filed July 20, 2020. This is Defendant's second post-conviction proceeding.

Following a trial in CR2016-137390-001, a jury convicted Defendant Jandin Munoz on Count 1: Criminal Damage, a class 1 misdemeanor; Count 2: Assault, a class 3 misdemeanor; Count 3: Unlawful Imprisonment, a class 6 felony and domestic violence offense, with one prior felony conviction; Count 4: Assault, a class 1 misdemeanor and domestic violence offense; and Count 5: Sex Assault, a class 2 felony and domestic violence offense, with one prior felony conviction.

With the conviction in CR2016-137390-001, the Court found Defendant in automatic violation of his probation in CR2015-121642-001. He was on probation on Count 1: Stalking, a class 5 felony and domestic violence offense.

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The trial court presided over a bench trial on the priors, sentencing, and disposition on April 4, 2017. In the CR2016-137390-001 matter, the Court imposed jail sentences with time served on each of the misdemeanor counts (Counts 1, 2, and 4). The Court sentenced the Defendant to the presumptive sentences on the remaining counts, i.e., 1.75 years in prison on count 3, concurrent with 10.5 calendar years (flat time) on count 5. He received 240 days of presentence credit on each count.

With respect to the probation disposition in CR2015-121642-001, the Court revoked Defendant's probation pursuant to A.R.S. 13-708(E). Defendant received a consecutive/mitigated sentence of on (1) year in the Department of Corrections and no presentence credit.

The Court of Appeals upheld Defendant's conviction and sentences. His first post-conviction relief action was dismissed on January 22, 2020.

I. Rule 32.1(a) Claims

Defendant claims his counsel in his first post-conviction claim was ineffective. Defendant is not entitled to raise this claim. Claims of ineffective assistance of post-conviction counsel arise under Rule 33. This rule applies when a "Defendant pled guilty or no contest to a criminal offense, admitted a probation violation, or had an automatic probation violation based on a plea of guilty or no contest." Ariz. R. Crim. P. 33.1. In CR2016-137390, Here, Defendant was convicted after trial. His probation in CR2015-121642 was revoked automatically after he was convicted at trial, not after a plea of guilty or no contest. Therefore, any post-conviction relief is governed by Rule 32, and Defendant does not have the right to bring a successive claim for ineffective assistance of post-conviction counsel.

Further, Defendant had the right to appeal (and did appeal) both his conviction and automatic revocation of probation. *See State v. Munoz*, 1 CA-CR 17-0270, 1 CA-CR 0283 (Consolidated) (App., order filed 6/5/18). The Court of Appeals confirmed Defendant had the right to appeal his automatic revocation proceeding. *Id.* at 3. As a result, Defendant did not have the right to effective assistance of counsel in his first post-conviction proceeding. *Osterkamp v. Browning*, 226 Ariz. 485, 490, ¶ 18 (App. 2011).

II. Rule 32.1(b), (e), (f), and (g) Claims

Defendant's remaining claims arise under Rules 32.1(b), (e), (f), and (g). Claims under these rules are "not subject to preclusion under Rule 33.2(a)(3)." Ariz. R. Crim. P. 32.2(b)(1). However, these claims must be filed "within a reasonable time after discovering the basis for the claim." Ariz. R. Crim. P. 32.4(b)(3)(B). Under Rule 32.2(b)(1) "the defendant must explain the

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reasons . . . for not raising the claim in a timely manner.” “If the notice does not provide sufficient reasons why the defendant did not raise the claim in a previous notice or petition, or in a timely manner, the court may summarily dismiss the notice.” *Id.* Defendant has not stated when he discovered his claims, nor why they could not have been brought in his previous post-conviction proceeding.

In sum, Defendant has failed to state a claim for which relief can be granted in an untimely Rule 32 proceeding. Defendant must assert substantive claims and adequately explain the reasons for their untimely assertion. Ariz. R. Crim. P. 32.2(b)(1). He has failed to meet this standard.

IT IS THEREFORE ORDERED dismissing Defendant’s Notice of Post-Conviction Relief and Petition for Post-Conviction Relief pursuant to Ariz. R. Crim. P. 32.2(b)(1).

IT IS FURTHER ORDERED denying the request for appointment of counsel.