

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2011-113980-001 SE

01/31/2012

HONORABLE PAUL J. MCMURDIE

CLERK OF THE COURT
H. O'Shaughnessy
Deputy

STATE OF ARIZONA

DIANE M MELOCHE

v.

OTTO L MUNSTER (001)

OTTO L MUNSTER
#266474
PO BOX 8200
FLORENCE AZ 85132
APPEALS PUBLIC DEFENDER

COURT ADMIN-CRIMINAL-PCR
VICTIM SERVICES DIV-CA-SE

RULE 32 PCR

The Court has reviewed the defendant's letter and Notice of Rights of Review After Conviction and Procedure, both filed on January 5, 2012. For the reasons stated below, the Court is treating the defendant's letter as a notice of post-conviction relief.

The defendant pled guilty on August 31, 2011, to one count of Armed Robbery, a Class 2 Felony. The Court sentenced the defendant on September 28, 2011, to a term of imprisonment. This is the defendant's first Rule 32 proceeding and it has been brought before the Court in an untimely manner.

Pursuant to Rule 32.4(a) of the Arizona Rules of Criminal Procedure, the Notice of Post-Conviction Relief must be filed within 90 days of the entry of judgment and sentencing or within 30 days of the issuance of the final order or mandate from the appellate court. The defendant was sentenced on September 28, 2011, which means that his notice of post-conviction relief was due no later than December 28, 2011.

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Defendant claims, pursuant to Ariz. R. Crim. P. 32.1(f), that his untimely filing was not his fault. First, the Court notes that the defendant's filing of this notice is only seven days beyond the ninety day deadline imposed by Ariz. R. Crim. P. 32.4(a). As for the defendant's claim, the defendant attempted to contact the clerk's office for the Superior Court of Arizona in Pima County to get the required forms for submitted a notice of post-conviction relief. The clerk's office referred the defendant back to this Court but by the time the defendant filed the paperwork here, the time limits has expired. It is unclear as to why the defendant chose to contact the clerk's office in Pima County but it is clear from the record that the defendant has tried to pursue his post-conviction relief rights.

The Court finds that defendant has sufficiently raised a colorable claim to permit this Rule 32 proceeding to move forward.

IT IS ORDERED as follows:

- 1) Allowing this Rule 32 matter to proceed. This allowance does not constitute any expression of opinion on the merits of any of defendant's substantive claims, or that any claims raised in the petition are not procedurally precluded.
- 2) A copy of all pleadings filed in this matter shall be served only upon the Criminal Presiding Judge/Rule 32 Management Unit until this matter is assigned to a judge for ruling.
- 3) Appointing the Office of Public Defender to represent defendant in this Rule 32 proceeding.
- 4) Appointed counsel shall investigate the potential claims that may entitle defendant to post-conviction relief. Within 60 days, counsel shall either file a petition for post-conviction relief or, in the absence of any colorable claims, counsel shall file a notice of completion. If counsel files a notice of completion, then defendant may file a pro per petition for post-conviction relief.
- 5) The state shall file a response within 45 days after the petition is filed.
- 6) The defendant may file a reply within 15 days after the response is filed.
- 7) When all pleadings have been filed, the assigned judge will decide whether to dismiss the petition summarily, set it for an informal conference, or set an evidentiary hearing. Ariz.R.Crim.P. 32.6(c), 32.7, 32.8.

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This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>.
Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine
their mandatory participation in eFiling through AZTurboCourt.