NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. JOHN JOSEPH ESTRADA, Petitioner.	2 CA-CR 2010-0315-PR DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20092068001

Honorable Richard D. Nichols, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines — Tucson
Attorneys for Respondent

John J. Estrada — Florence
In Propria Persona

E C K E R S T R O M, Judge.

¶1 Petitioner John Estrada challenges the trial court's summary dismissal of his pro per petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. Estrada was convicted pursuant to a plea agreement of two counts of attempted child

molestation, dangerous crimes against children in the second degree. *See* A.R.S. § 13-705(D), (J). The court sentenced him to a presumptive, ten-year prison term on the first count, to be followed by a suspended sentence and ten-year term of probation on the second count.

¶2 In his petition for post-conviction relief, Estrada challenged the trial court's imposition of sentence for the second count of attempted molestation. He alleged the two counts of molestation charged in the indictment against him, and amended in his plea agreement, were multiplicitous and resulted in "multiple sentences violating the Double Jeopardy Clause." Relying on Rule 13.3, Ariz. R. Crim. P., Estrada appears to have argued the court was precluded from imposing consecutive punishments because his offenses were joined in a single indictment, but he cited no authority supporting this proposition, which is without merit. *See* Ariz. R. Crim. P. 13.3(a)(1) ("Provided that each is stated in a separate count, [two] or more offenses may be joined in an indictment, information, or complaint, if they . . . [a]re of the same or similar character . . . ."). Estrada also asserted, in conclusory fashion, that "the State of Arizona's sentencing schemes are unconstitutionally vague [and] complex" and include a "magnitude of constitutional violations that are contrary to Law[] and the Sentencing Reform Act of 1984[, *see generally* Pub. L. No. 98-473]."

¶3 In summarily dismissing Estrada's Rule 32 petition, the trial court wrote,

> [Estrada] states that he should not have received consecutive sentences but does not cite any relevant statutes or case law which support this contention. The counts to which he plead[ed] do involve the same date and the same victim. However, they involve separate acts as to different

> parts of the victim's body and thus resulted in separate harms to the victim. Thus, consecutive sentences were appropriate.
>
> [Estrada] has raised no colorable claim for relief and no purpose would be served by further proceedings.[1]

¶4 In this petition for review that followed, Estrada essentially raises the same arguments he raised below. He does not directly challenge the trial court's finding that his offenses "involve[d] separate acts . . . and . . . resulted in separate harms to the victim." Instead, he appears to suggest that application of federal sentencing guidelines would have resulted in concurrent sentences. But neither federal sentencing statutes nor federal sentencing guidelines are relevant to Estrada's convictions and sentences for these state law offenses. The trial court correctly applied Arizona law in concluding consecutive sentences were constitutionally and statutorily authorized. *See, e.g.*, *State v. Boldrey*, 176 Ariz. 378, 381-83, 861 P.2d 663, 666-68 (App. 1993) (consecutive sentences authorized for "[m]ultiple sexual acts [against child] that occur during the same sexual attack" where sufficient separate evidence supported multiple convictions and "not 'factually impossible'" for defendant to have committed one offense independent of other).

¶5 We find no abuse of discretion in the trial court's summary denial of post-conviction relief and so have no basis to disturb that ruling. *See State v. Bennett*, 213

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[1]As stated in his plea agreement, Estrada pleaded guilty to amended count one of the indictment, which alleged he "intentionally or knowingly attempt[ed] to engage in sexual contact with [A.W.], a child under fifteen years of age, involving the genitals," and amended count two, which alleged he "intentionally or knowingly attempt[ed] to engage in sexual contact with [A.W.], a child under fifteen years of age, involving the anus."

Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006) (summary denial of Rule 32 claim reviewed for abuse of discretion). Accordingly, although we grant review, we deny relief.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge