

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

FILED BY CLERK

JUN 17 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0160-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
CARLTON L. BODDIE,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR1993010076

Honorable Susanna C. Pineda, Judge

REVIEW GRANTED; RELIEF DENIED

Carlton L. Boddie

Florence
In Propria Persona

H O W A R D, Chief Judge.

¶1 Petitioner Carlton Boddie seeks review of the trial court's summary dismissal of his successive proceeding for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We grant review, but we deny relief.

¶2 Pursuant to a 1995 plea agreement, Boddie was convicted of first-degree burglary, kidnapping, sexual assault, and sexual abuse. The trial court sentenced him to

concurrent, twenty-one year terms of imprisonment for the burglary, kidnapping, and sexual assault, followed by a consecutive, four-year term for the sexual abuse. Boddie has initiated multiple Rule 32 proceedings since his conviction and sentence. In this most recent notice and petition for post-conviction relief, he alleged (1) the court had lacked jurisdiction to impose a consecutive sentence for his sexual abuse conviction because it violated the prohibition against double punishment in A.R.S. § 13-116, (2) counsel had been ineffective in failing to raise the claim previously, and (3) his failure to file a timely notice of post-conviction relief or notice of appeal was without fault on his part.

¶3 The trial court correctly identified Boddie’s notice and petition as both untimely and successive and found he “failed to submit a claim for post-conviction relief that can be considered in an untimely or successive petition for post-conviction relief.” This pro se petition for review followed.

¶4 On review, Boddie appears to argue that (1) his due process rights were violated because “the state used multiplicitous/dupli[ci]tous counts” in his indictment, (2) “once due process has been denied the court loses jurisdiction,” and (3) “jurisdictional issues are not precluded or waived and may be brought forth at any time.” He maintains the trial court “failed . . . to apply the correct legal standards” in denying relief and dismissing his Rule 32 proceeding.

¶5 In his notice and petition below, Boddie did not allege his due process rights had been violated or challenge the indictment against him as defective. Our review is limited to those “issues . . . decided by the trial court,” Ariz. R. Crim. P. 32.9(c)(1)(ii), and we do not consider issues raised for the first time on review. *State v. Ramirez*, 126

Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980). Accordingly, we do not address these arguments.

¶6 Boddie did maintain below that his illegal sentence claim is not subject to preclusion because it is “jurisdictional” in nature, citing *State v. Vargas-Burgos*, 162 Ariz. 325, 783 P.2d 264 (App. 1989). In that case, we suggested a court had “exceeded its jurisdiction” when it failed to apply a mandatory sentencing statute. *Id.* at 326, 783 P.2d at 265. But in *State v. Bryant*, we explained that subject matter jurisdiction is nothing more than “the power of a court to hear and determine a controversy.” 219 Ariz. 514, ¶ 14, 200 P.3d 1011, 1014 (App. 2008), quoting *Marks v. LaBerge*, 146 Ariz. 12, 15, 703 P.2d 559, 562 (App. 1985). We “conclude[d] that we used the word ‘jurisdiction’ imprecisely” in *Vargas-Burgos* and clarified that “when the trial court has jurisdiction over the subject matter and parties,” its judgment, “even if voidable and erroneous, [can] only be modified on appeal or by proper and timely post-judgment motion.” *Id.* ¶¶ 13, 15, 17; see also *State v. Maldonado*, 223 Ariz. 309, ¶¶ 14-18, 223 P.3d 653, 655-56 (2010) (state’s failure to file criminal information pursuant to Ariz. R. Crim. P. 13.1 does not deprive court of subject matter jurisdiction). The sentencing court thus had jurisdiction to sentence Boddie, see *id.* ¶ 17, and he has forfeited any challenge to the legality of that sentence by failing to raise it in a timely Rule 32 proceeding. See Ariz. R. Crim. P. 32.2(b), 32.4(a); cf. *State v. Shrum*, 220 Ariz. 115, ¶¶ 6-7, 23, 203 P.3d 1175, 1177, 1180 (2009) (claim of illegal sentence subject to preclusion under Rule 32.2(a)(3)).

¶7 We review a trial court’s summary denial of post-conviction relief for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find none here. The court clearly identified, thoroughly analyzed, and correctly resolved the issues Boddie presented below and preserved for review,¹ and we need not restate that analysis. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App.1993). Moreover, because the court correctly ruled on the issues Boddie raised “in a fashion that will allow any court in the future to understand the[ir] resolution,” *id.*, we adopt its order. Accordingly, although we grant review, we deny relief.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Michael Miller
MICHAEL MILLER, Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed December 12, 2012.

¹Although the trial court did not separately address Boddie’s claims of ineffective assistance of counsel, the court’s correct preclusion analysis is applicable to that claim as well as his claim of an illegal sentence. *See State v. Petty*, 225 Ariz. 369, ¶ 11, 238 P.3d 637, 641 (App. 2010) (ineffective assistance of counsel “cognizable under Rule 32.1(a)”). Moreover, Boddie did not seek review of the court’s ruling as applied to those allegations. *See Ariz. R. Crim. P. 32.9(c)(1)* (“Failure to raise any issue that could be raised in the petition . . . for review shall constitute waiver of appellate review of that issue.”).