

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

OMAR JESUS JIMENEZ,
Petitioner.

No. 2 CA-CR 2013-0454-PR
Filed April 18, 2014

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NOT FOR PUBLICATION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); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County
No. CR20092136004
The Honorable Jane L. Eikleberry, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Omar J. Jimenez, Florence
In Propria Persona

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Howard and Judge Miller concurred.

VÁSQUEZ, Presiding Judge:

¶1 Petitioner Omar Jimenez seeks review of the trial court’s summary denial of his petition for a writ of habeas corpus, which the court properly construed as a successive petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. See Ariz. R. Crim. P. 32.3. For the following reasons, we grant review but deny relief.

¶2 Pursuant to a plea agreement, Jimenez was convicted of one count of first-degree burglary and five counts of aggravated assault. The trial court sentenced him to a combination of concurrent and consecutive, presumptive terms of imprisonment, for a total of 17.5 years.

¶3 In what appears to be Jimenez’s third Rule 32 proceeding, he claimed the trial court’s imposition of consecutive sentences violated A.R.S. § 13-116, which requires concurrent sentences for a single act. Relying on *State v. Anzivino*, 148 Ariz. 593, 716 P.2d 50 (App. 1985), and other cases, he also argued the court “failed to comply with statutory requirements of stating the reason for imposing consecutive sentences.”

¶4 The trial court denied relief, finding Jimenez’s claims of sentencing error untimely, pursuant to Rule 32.4(a), and precluded by waiver, pursuant to Rule 32.2(a)(3). Although the court was not required to do so, it also noted Jimenez’s claim of error pursuant to § 13-116 “has no merit,” because each count for which a consecutive sentence was imposed had “involved a separate victim.” This petition for review followed.

¶5 On review, Jimenez contends the trial court “ignored [his] argument” that the court must state its reasons for imposing a

consecutive sentence on the record.¹ We review a 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.

¶6 Jimenez does not challenge the trial court’s primary ruling that his claims were untimely and precluded by waiver. As the court stated in its order, it had no obligation to address the merits of claims it clearly and correctly found precluded.² Thus, the court did not “ignore[]” Jimenez’s argument that it had erred by failing to state its reasons for imposing consecutive sentences; that claim, like his other claim of sentencing error, is not cognizable in an untimely, successive Rule 32 proceeding. *See* Ariz. R. Crim. P. 32.2(b) and 32.4(a). The court was not required to address the merits of Jimenez’s precluded claims.³ *See* Ariz. R. Crim. P. 32.6(c).

¹Jimenez suggests other reasons to remand the case for resentencing, including his remorse for his crimes, his need for more immediate attention for medical conditions, and his interest in “mov[ing] forward” with his life. But 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, *see State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980).

²The court nonetheless explained why consecutive sentences were appropriate and, therefore, why Jimenez’s challenge to those sentences was also without merit. *See State v. Hampton*, 213 Ariz. 167, ¶¶ 64-65, 140 P.3d 950, 965 (2006) (single act that harms multiple victims may be punished by consecutive sentences).

³Had the court addressed this claim, it properly could have found it without merit as well. *Anzivino* and the other cases Jimenez cited in support of this argument have been superseded by statute. *See* A.R.S. § 13-711(A) (multiple “sentences imposed by the court shall run *consecutively* unless the court expressly directs otherwise, in which case the court shall set forth on the record the reason for its sentence”) (emphasis added); *see also* 1986 Ariz. Sess. Laws, ch. 300, § 1 (effecting change to former A.R.S. § 13-708).

¶7 The trial court clearly identified, thoroughly analyzed, and correctly resolved the issues properly raised by Jimenez's successive petition for post-conviction relief, and we adopt its order. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Accordingly, although we grant review, we deny relief.