

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

WILLIAM KENNETH QUALLS,  
*Petitioner.*

No. 2 CA-CR 2014-0010-PR  
Filed April 23, 2014

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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NOT FOR PUBLICATION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.

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Petition for Review from the Superior Court in Maricopa County

No. CR2003007036001DT

The Honorable Jo Lynn Gentry-Lewis, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

William Kenneth Qualls, Florence  
*In Propria Persona*

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MEMORANDUM DECISION

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

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M I L L E R, Judge:

¶1 Petitioner William Qualls was convicted following a jury trial of multiple sexual related offenses involving two minor victims. This court affirmed his convictions and sentences on appeal. *State v. Qualls*, No. 1 CA-CR 03-0959 (memorandum decision filed Dec. 21, 2004). On review, he contends the trial court erred in characterizing his petition for writ of habeas corpus as a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., and dismissing the petition summarily pursuant to Rule 32.6(c). We will not disturb a trial court's ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We see no such abuse here.

¶2 Qualls filed a petition for writ of habeas corpus in August 2012 and related documents, challenging, as we understand his arguments, the trial court's subject matter jurisdiction to hear this case, claiming the Arizona Revised Statutes were not properly promulgated and are of no force or effect. Therefore, he maintained, the indictment based on these statutes was flawed and did not confer jurisdiction on the trial court. He argued that, because the state did not sustain its burden of establishing the trial court had jurisdiction, the court was required by United States Supreme Court and other federal case law to dismiss the indictment.

¶3 It is unclear why, but in October 2012 the trial court entered an order in which it stated Qualls did not have a petition pending, only exhibits, and therefore it took no further action. Qualls subsequently filed an amended petition for writ of habeas corpus, which was essentially a duplicate of his August 2012 petition. He also filed various supporting documents, including

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exhibits, his affidavit, and a notice of filing of the petition for writ of habeas corpus, as well as a clarification of the issues in which he opposed characterization of the proceeding as one for post-conviction relief.

¶4 Relying on Rule 32.3, the trial court treated the November 2012 amended petition for writ of habeas corpus as a notice of post-conviction relief. The court observed this was Qualls's fifth post-conviction proceeding, four prior proceedings having been dismissed in January 2006, July 2009, January 2010, and August 2010. The court stated that because this was a successive proceeding, Qualls could only raise claims that fell within Rule 32.1(d), (e), (f), (g) and (h). Implicitly finding Qualls had failed to assert a claim that was cognizable under any of these subsections of the rule, the court dismissed the proceeding.

¶5 Qualls filed a petition for review on December 10, 2012, and another one on December 24, 2012. He also filed a notice of appeal. He maintains the trial court erred when it treated the petition for writ of habeas corpus as a notice of post-conviction relief; proceeded with the prosecution "without proof of subject matter jurisdiction"; "failed to conce[*d*][*e*] to United States supreme court holding, concerning subject matter jurisdiction"; applied the incorrect standard in determining whether it had subject matter jurisdiction; and "rule[*d*] without subject matter jurisdiction." In both petitions for review, he challenges the trial court's summary dismissal of the proceeding.

¶6 Qualls has not sustained his burden on review of establishing the trial court abused its discretion. The court did not err in treating the petition as a notice of post-conviction relief pursuant to Rule 32. Rule 32.3 states that the rule "displaces and incorporates all trial court post-trial remedies except post-trial motions and habeas corpus." But with respect to the latter, the rule further states that when, as here, the defendant is challenging the validity of his conviction or sentence, the case must be transferred to the court in which the conviction was obtained and that court must "treat it as a petition for relief under this rule and the procedures of

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this rule shall govern.” Because Qualls challenges the validity of his convictions, the court’s ruling is consistent with this provision.

¶7 Nor has Qualls sustained his burden of establishing the trial court abused its discretion by finding he had not set forth a claim that fell within any of the subsections of Rule 32.1 that are expressly excepted from the preclusive effect of Rule 32.2. *See also* Ariz. R. Crim. P. 32.4 (limiting claims raisable in untimely post-conviction proceeding to those set forth in Rule 32.1(d), (e), (f), (g), and (h)). His claims appear, instead, to fall within Rule 32.1(a) or (b).<sup>1</sup>

¶8 We grant Qualls’s petitions for review. But for the reasons stated, we deny relief.

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<sup>1</sup>Qualls raised this claim previously and, treating the habeas petition as one for post-conviction relief, the trial court found in its January 2010 and August 2010 minute entry rulings that the challenge to subject matter jurisdiction was precluded for the same reason it did in this proceeding.