

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

SHELDON ROY HANSHAW,
Petitioner.

No. 2 CA-CR 2014-0080-PR
Filed May 7, 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NOT FOR PUBLICATION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 Maricopa County

No. CR2008005997001DT

The Honorable Michael W. Kemp, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Sheldon R. Hanshaw, Buckeye
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.

M I L L E R, Judge:

¶1 Petitioner Sheldon Hanshaw seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Hanshaw has not sustained his burden of establishing such abuse here.

¶2 After pleading guilty to the indictment, Hanshaw was convicted of misconduct involving weapons and three counts of aggravated assault. The trial court imposed a combination of enhanced, aggravated, consecutive and concurrent sentences, totaling thirty-three years' imprisonment. Hanshaw thereafter sought and was denied post-conviction relief in November 2009.

¶3 In November 2012, Hanshaw filed a "Motion for Correction of Error," citing Rule 24.4, Ariz. R. Crim. P., in which he claimed (1) the Arizona Department of Corrections (ADOC) was incorrectly interpreting his sentencing order as requiring he serve "flat time," (2) the trial court failed to "orally impose community supervision," (3) the court improperly found two prior felony convictions for sentence enhancement purposes, (4) the court had not stated its reasons for imposing a consecutive sentence on one count, and (5) the court did not advise him of the minimum sentence at the change of plea hearing. The trial court treated the motion as a notice of or petition for post-conviction relief and summarily denied relief, concluding the claims were precluded and untimely.

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¶4 On review, Hanshaw asserts his claims are not subject to preclusion because they may be brought pursuant to Rule 24.4, and claims the trial court should not have ruled on them pursuant to Rule 32. We disagree.

¶5 Rule 24.4 allows for corrections of “[c]lerical mistakes in judgments, orders, or other parts of the record.” Such *nunc pro tunc* orders serve only “to make the record reflect the intention of the parties or the court at the time the record was made, not to cause an order or judgment that was never previously made or rendered to be placed upon the record of the court.” *State v. Pyeatt*, 135 Ariz. 141, 143, 659 P.2d 1286, 1288 (App. 1982). Thus, an order pursuant to Rule 24.4 does not “supply judicial action.” *Id.* Hanshaw’s claims extended beyond correction of clerical mistakes; therefore, the trial court correctly addressed his motion as a petition for post-conviction relief. *See* Ariz. R. Crim. P. 32.3 (proceeding incorporates all trial court post-trial remedies).

¶6 Because this proceeding is successive and untimely, any claim other than one pursuant to Rule 32.1(d), (e), (f), (g), or (h), is barred or precluded. *See* Ariz. R. Crim. P. 32.2(b) and 32.4(a). Hanshaw has not established that any of his claims fall into the above exceptions. Indeed, the only claim that could arguably be within the scope of the exceptions is his claim that ADOC has incorrectly interpreted his sentencing minute entry, as such a claim if true could, under some circumstances, arguably support a claim under Rule 32.1(d), that a “person is being held in custody after the sentence imposed has expired.” But, Hanshaw has not asserted he is currently entitled to release, so any such claim cannot lie in this case.

¶7 For these reasons, although we grant the petition for review, we deny relief.