

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

WILLIAM ERIC STOKES SR.,
Petitioner.

No. 2 CA-CR 2014-0090-PR
Filed July 16, 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NOT FOR PUBLICATION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 Pinal County

No. S1100CR15700

The Honorable Robert C. Brown, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

William Eric Stokes Sr., Buckeye
In Propria Persona

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Miller and Judge Espinosa concurred.

ECKERSTROM, Chief Judge:

¶1 Petitioner William Stokes Sr. seeks review of the trial court's summary denial of his successive, untimely petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We grant review and, for the following reasons, deny relief.

¶2 After a jury trial, Stokes was convicted of second-degree murder for killing his wife's eighteen-month-old daughter. He was sentenced to a term of life imprisonment pursuant to former A.R.S. § 13-604.02(A), 1987 Ariz. Sess. Laws, ch. 307, § 5. This court affirmed his conviction and sentence on appeal and denied relief on review of the trial court's denial of his first Rule 32 petition. *State v. Stokes*, Nos. 2 CA-CR 91-0045, 2 CA-CR 92-0010-PR (consolidated) (memorandum decision filed June 23, 1992). Stokes previously has filed two successive petitions for post-conviction relief which were denied by the trial court; this court also denied relief on review of those decisions. *See State v. Stokes*, No. 2 CA-CR 2007-0165-PR (memorandum decision filed Oct. 16, 2007); *State v. Stokes*, No. 2 CA-CR 2003-0073-PR (decision order filed May 21, 2004).

¶3 In August 2012, Stokes filed a petition for post-conviction relief asserting his sentence was illegal because the original indictment against him had not included a reference to § 13-604.02(A). He also claimed he received ineffective assistance from trial and appellate counsel based on their failure to raise this issue. The trial court summarily denied relief, finding Stokes's claims precluded because they "could have been raised in his prior Petition for Post-Conviction Relief or in his appeal." *See* Ariz. R. Crim. P. 32.2(a)(3). The court further observed Stokes's argument "is without merit as the indictment was amended on May 29, 1990" – apparently

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well before trial – “to include this section.” This petition for review followed.

¶4 On review, Stokes suggests his claim is based on Rule 32.1(e), which provides a non-precluded ground for relief when “[n]ewly discovered material facts probably exist and such facts probably would have changed the verdict or sentence.” Citing *State v. Espinosa*, he also appears to argue his claim of an illegal sentence is of “sufficient constitutional magnitude” that “preclusion does not apply.” 200 Ariz. 503, ¶ 7, 29 P.3d 278, 280 (App. 2001) (“preclusion does not apply to claims involving certain constitutional rights,” including the right to counsel and the right to a jury trial, “unless the record shows that the defendant knowingly, voluntarily, and intelligently waived the right”). Thus, he argues his claim “should not be subject to preclusion” because he “filed [it] under Rule 32.1(e) and raised constitutional issues.” (Emphasis deleted.)

¶5 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. In his petition below, Stokes did not assert that his claim was based on “newly discovered material facts” as defined in Rule 32.1(e). Nor does he explain on review why Rule 32.1(e) would apply to this claim of sentencing error, which he did not raise until more than two decades after his sentence had been imposed. See Ariz. R. Crim. P. 32.1(e)(2) (“Newly discovered material facts exist if: The defendant exercised due diligence in securing the newly discovered material facts.”) And, although “[i]mposition of an illegal sentence constitutes fundamental error,” *State v. Thues*, 203 Ariz. 339, ¶ 4, 54 P.3d 368, 369 (App. 2002), Stokes is mistaken that his challenge to the legality of his sentence is not subject to preclusion by waiver. See *State v. Shrum*, 220 Ariz. 115, ¶¶ 6-7, 23, 203 P.3d 1175, 1177, 1180 (2009) (holding illegal sentence claim precluded by waiver); *State v. Swoopes*, 216 Ariz. 390, ¶ 42, 166 P.3d 945, 958 (App. 2007) (fundamental error not excepted from preclusion).

¶6 Finally, we note that Stokes has failed to address the trial court’s ruling, as an alternative basis for dismissal, that Stokes’s claim had no colorable merit in light of an amended indictment that

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included a citation to § 13-604.02(A). *See State v. Paredes*, 181 Ariz. 47, 51, 887 P.2d 577, 581 (App. 1994) (“timely addendum to the information” provided sufficient notice of sentence enhancement pursuant to § 13-604.02(A); statute did not require “that such notice must be included in the indictment or information”). He has therefore waived review of the court’s ruling on the merits. *See Ariz. R. Crim. P. 32.9(c)(1)* (“Failure to raise any issue that could be raised in the petition or the cross-petition for review shall constitute waiver of appellate review of that issue.”).

¶7 For the foregoing reasons, we grant review but deny relief.