

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JONATHON DEWAYNE PETERSON,
Petitioner.

No. 2 CA-CR 2015-0167-PR
Filed August 18, 2015

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NOT FOR PUBLICATION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)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County

No. CR20131307001

The Honorable Jane L. Eikleberry, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Jonathon Dewayne Peterson, Florence
In Propria Persona

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MEMORANDUM DECISION

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

ESPINOSA, Judge:

¶1 Jonathon Peterson seeks review of the trial court's orders summarily dismissing his untimely notice of post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., and his subsequent motion for reconsideration or to amend that notice. We will not disturb those rulings unless the court abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Peterson has not met his burden of demonstrating such abuse here.

¶2 Peterson pled guilty to sexual abuse of a minor under the age of fifteen, luring a minor under the age of fifteen for sexual exploitation, and sexual exploitation of a minor under the age of fifteen. The trial court sentenced him to a ten-year prison term for sexual exploitation of a minor and suspended the imposition of sentence on the other counts, imposing concurrent twenty-five year terms of probation. Peterson filed a notice of post-conviction relief and appointed counsel filed a notice stating he had reviewed the record but found no claims to raise pursuant to Rule 32. The court dismissed the proceeding in January 2014 after Peterson failed to timely file a pro se petition for post-conviction relief.

¶3 In March 2015, Peterson filed a notice of post-conviction relief asserting various aspects of the trial court's sentencing order were illegal and that the sentence enhancement for dangerous crimes against children "violates double jeopardy's protection against multiple punishments for the same offense when conjoined with [A.R.S.] § 13-603." The trial court summarily dismissed that notice, noting Peterson's claims could not be raised in a successive proceeding.

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¶4 Peterson then filed a motion requesting the trial court reconsider its ruling and “accept this instant pleading as an Amended Notice of Post-Conviction Relief.” He argued the court lacked “subject matter jurisdiction to impose an illegal sentence” and claimed, for the first time, that he was entitled to raise a claim of ineffective assistance of Rule 32 counsel. The court denied the motion, rejecting Peterson’s sentencing claims on their merits. It further observed Peterson had provided no reason for his failure to raise his claim of ineffective assistance of Rule 32 counsel in his second notice and that the underlying claims were, in any event, without merit. This petition for review followed.

¶5 On review,¹ Peterson first repeats his sentencing claims. We agree with the trial court that these claims cannot be raised in an untimely post-conviction proceeding. *See* Ariz. R. Crim. P. 32.2(a), (c), 32.4(a). Peterson appears to assert, however, that he is entitled to raise these claims because they involve the court’s jurisdiction. Even if we agreed Peterson’s sentencing claims had a jurisdictional component, such claims nonetheless cannot be raised in an untimely proceeding. *See* Ariz. R. Crim. P. 32.1(b), 32.4(a).

¶6 Finally, Peterson is correct that, as a pleading defendant, he was entitled to raise a claim of ineffective assistance of post-conviction counsel. *See State v. Pruett*, 185 Ariz. 128, 130-31, 912 P.2d 1357, 1359-60 (App. 1995). But he did not timely file his second notice of post-conviction relief or claim his failure to do so was without fault on his part. *See* Ariz. R. Crim. P. 32.1(f), 32.2(a). Thus, we can find no abuse of discretion in the court’s denial of his motion to amend that notice to include a claim of ineffective assistance.

¶7 Although we grant review, relief is denied.

¹We construe Peterson’s motion for reconsideration as a motion for rehearing filed pursuant to Rule 32.9(a) and thus conclude his petition for review was timely filed under Rule 32.9(c).