

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

TOMMY LEE LAWRENCE,
Petitioner.

No. 2 CA-CR 2016-0080-PR
Filed June 10, 2016

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NOT FOR PUBLICATION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. CR20021589
The Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Tommy L. Lawrence, Florence
In Propria Persona

STATE v. LAWRENCE
Decision of the Court

MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

¶1 Tommy Lawrence seeks review of the trial court’s summary dismissal of his untimely, successive notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., and the denial of his motion for rehearing.¹ Although we grant review, we deny relief.

¶2 Pursuant to a 2003 plea agreement, Lawrence was convicted of sexual conduct with a minor under the age of fifteen and sentenced to an aggravated prison term of twenty-seven years. The trial court subsequently granted a post-conviction relief petition in which Lawrence had alleged sentencing error pursuant to *Blakely v. Washington*, 542 U.S. 296 (2004), and the court resentenced him to a presumptive, twenty-year prison term. Lawrence has since filed multiple notices of post-conviction relief, all of which have been successive and untimely.

¶3 In January 2016, Lawrence filed a Rule 32 notice alleging his conviction and sentence were illegal, entered without jurisdiction, and entered in violation of his constitutional rights, because his plea agreement had not been reduced to writing and the indictment had not been amended to reflect “the amended charged

¹Although the trial court’s order refers to its dismissal of Lawrence’s petition for post-conviction relief pursuant to Rule 32.6(c), no petition had yet been filed. Accordingly, we construe the order as a dismissal of Lawrence’s notice of post-conviction relief pursuant to Rule 32.2(b).

STATE v. LAWRENCE
Decision of the Court

crime.”² The trial court summarily dismissed the post-conviction proceeding and subsequently denied Lawrence’s motion for rehearing. This petition for review followed.

¶4 On review, Lawrence again maintains that absent a written plea agreement, the trial court “did not have subject matter jurisdiction for final rendering of conviction and sentencing.” He asks that we find his conviction and sentence “null and void” and order his release from prison or, in the alternative, order an evidentiary hearing on his claim.

¶5 We review a trial court’s summary dismissal of a Rule 32 proceeding for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006) (dismissal of petition for lack of colorable claim); *State v. Harden*, 228 Ariz. 131, ¶ 3, 263 P.3d 680, 681 (App. 2011) (dismissal of notice pursuant to Rule 32.2(b)). We find none here.

¶6 Apparently considering the merits of Lawrence’s claim, the trial court correctly found Lawrence failed to state a “material issue of fact or law which would entitle [him] to relief.” Ariz. R. Crim. P. 32.6(c) (petition subjected to dismissal when no non-precluded claim affords basis for relief); *see also State v. Morris*, 115 Ariz. 127, 127, 564 P.2d 78, 78 (1977) (conviction and sentence affirmed where defendant’s “only contention” was absence of written plea agreement pursuant to Rule 17.4, Ariz. R. Crim. P.). Although the court mistakenly referred to Rule 32.6(c), which applies to the dismissal of a post-conviction petition, rather than the post-conviction notice at issue here, the court’s dismissal of the proceeding was nonetheless proper. *See State v. Lopez*, 234 Ariz. 513, ¶ 10, 323 P.3d 1164, 1166 (App. 2014) (appellate court will uphold Rule 32 ruling if correct for any reason). Based on his notice alone,

²We are unable to determine Lawrence’s meaning here, as he was convicted of sexual conduct with a minor under the age of fifteen, as charged in the indictment, with other counts of the indictment dismissed.

STATE v. LAWRENCE
Decision of the Court

Lawrence's claim is not only without merit, but it is also precluded, and his notice was subject to summary dismissal under Rule 32.2(b).

¶7 Claims that a conviction or sentence is unconstitutional, illegal, or entered without jurisdiction are grounded in Rule 32.1(a), (b), or (c), and generally may not be raised in an untimely or successive proceeding like this one. *See* Ariz. R. Crim. P. 32.2(a), 32.4(a). "Because the general rule of preclusion serves important societal interests, Rule 32 recognizes few exceptions." *State v. Shrum*, 220 Ariz. 115, ¶ 13, 203 P.3d 1175, 1178 (2009). But under Rule 32.2(b), a defendant may avoid preclusion by showing, for example, that his claim is based on newly discovered material facts, *see* Ariz. R. Crim. P. 32.1(e), or a significant change in the law, *see* Ariz. R. Crim. P. 32.1(g), or that he was not at fault for failing to file a timely, of-right notice of post-conviction relief, *see* Ariz. R. Crim. P. 32.1(f).

¶8 Rule 32.2(b) also provides that when a defendant claims one of these exceptions to preclusion, "the notice of post-conviction relief must set forth the substance of the specific exception and the reasons for not raising the claim in the previous petition or in a timely manner." Further, "If the specific exception and meritorious reasons do not appear substantiating the claim and indicating why the claim was not stated in the previous petition or in a timely manner, the notice shall be summarily dismissed." Ariz. R. Crim. P. 32.2(b).

¶9 Although Lawrence checked boxes on his notice form to indicate his claims were based on one or more of the above exceptions, nothing in his notice identifies any newly discovered material facts or a significant change in the law that would provide an exception for his otherwise precluded claims.³ Nor does the notice include any explanation for his failure to raise the claim in his previous post-conviction proceedings.

³Although Lawrence also indicated, without explanation, that he was not at fault for failing to file a timely notice, Rule 32.1(f) applies only to "of-right" proceedings. Ariz. R. Crim. P. 32.1(f). Lawrence's first, of-right proceeding was timely filed in 2003.

STATE v. LAWRENCE
Decision of the Court

¶10 In his motion for rehearing, and in his petition for review, Lawrence attempts to excuse his delay, asserting “it was not until years” after his sentencing that he discovered “the court lacked jurisdiction of subject matter to lawfully institute a conviction or sentence” because his plea agreement was not in writing. But, as addressed above, Lawrence’s understanding of the law is mistaken. *See Morris*, 115 Ariz. at 127, 564 P.2d at 78. Moreover, a defendant’s recent discovery of a legal principle—even a correct one—does not constitute a meritorious reason substantiating a claim of newly discovered material facts or a significant change in the law. *See Ariz. R. Crim. P. 32.1(e), (g), 32.2(b)*.

¶11 The trial court properly dismissed Lawrence’s notice pursuant to Rule 32.2(b), and did not abuse its discretion in denying relief. Accordingly, although we grant review, we deny relief.