

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

DALE MAISANO,
Appellant,

v.

WARDEN SCOTT,
Appellee.

No. 2 CA-CV 2015-0059
Filed June 15, 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NOT FOR PUBLICATION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. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pinal County
No. S1100CV201401440
The Honorable Karen J. Stillwell, Judge Pro Tempore

AFFIRMED

Dale Maisano, Florence
In Propria Persona

MEMORANDUM DECISION

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

ECKERSTROM, Chief Judge:

¶1 Appellant Dale Maisano appeals from the trial court's February 2015 order denying his petition for writ of habeas corpus. We affirm for the reasons stated below.

¶2 Maisano, a Department of Corrections (DOC) inmate, filed a petition for writ of habeas corpus in June 2014. He appealed before the trial court could rule on the petition, and this court dismissed the appeal after Maisano implicitly withdrew it when he asserted the court lacked "venue" and "moved" the case to our supreme court. *Maisano v. State*, No. 2 CA-HC 2014-0003 (order filed Sept. 12, 2014). After we issued our mandate in November 2014, the trial court ruled on the petition, first rejecting Maisano's request to transfer the case to the supreme court, stating the request was "improper and cannot be granted." Next, citing *Brown v. State*, 117 Ariz. 476, 573 P.2d 876 (1978), the court denied the petition, finding Maisano had not "allege[d] any facts showing he is entitled to immediate release," and did not specify which of the myriad documents attached to his petition supported his assertion he was entitled to habeas corpus relief. It appears Maisano did not serve the defendants with a copy of the petition.

¶3 In his one-page opening brief, Maisano contends this appeal, like another appeal pending in this court, *Maisano v. Fizer*, No. 2 CA-CV 2015-0054, involves a disciplinary action and "[t]he supreme court has ruled." He further asserts he "should be given 10 x Good Day Credits for each illegal day out of proper placement." Maisano attaches to his brief copies of two documents, both dated December 19, 2014, that apparently relate to DOC disciplinary

MAISANO v. SCOTT
Decision of the Court

proceedings; one reflects he forfeited ninety days of earned release credits, and the other shows he forfeited thirty days of credits.¹

¶4 This court reviews for an abuse of discretion a trial court's ruling on a petition for writ of habeas corpus. *See State v. Cowles*, 207 Ariz. 8, ¶ 3, 82 P.3d 369, 370 (App. 2004). To warrant the grant of such relief, the petition must show "upon its face that the petitioner is entitled to be discharged." *State v. Superior Court of Pinal Cnty.*, 22 Ariz. 452, 459, 197 P. 537, 539 (1921); *see also Brown*, 117 Ariz. at 477, 573 P.2d at 877 (finding "petitioner is not entitled to habeas corpus relief because he does not allege any facts which show that he is entitled to immediate release from custody"). Maisano has not sustained his burden on appeal of establishing the court abused its discretion in finding he had not shown he was entitled to immediate release from prison.

¶5 We affirm the trial court's order denying Maisano's petition.

¹ Neither document appears to have been among those attached to his petition for writ of habeas corpus. Therefore, even if we were able to determine their significance, we would not consider them. *See In re 6757 S. Burcham Ave.*, 204 Ariz. 401, ¶ 11, 64 P.3d 843, 846-47 (App. 2003); *State v. Flowers*, 9 Ariz. App. 440, 442, 453 P.2d 536, 538 (1969).