

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

ROBERT E. MARTIN,
Petitioner/Appellant,

v.

JAMES MACDONALD, WARDEN, AND CORRECTIONS CORPORATION OF
AMERICA/LA PALMA CORRECTIONAL CENTER,
Respondents/Appellees.

No. 2 CA-HC 2015-0002
Filed June 8, 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NOT FOR PUBLICATION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. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pinal County
No. S1100CV201500891
The Honorable Gilberto V. Figueroa, Judge

AFFIRMED

COUNSEL

Robert E. Martin, Adelanto, California
In Propria Persona

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Struck Wieneke & Love, P.L.C., Chandler
By Rachel Love and Kevin L. Nguyen
*Counsel for Appellees MacDonald and
CCA/La Palma Correctional Center*

MEMORANDUM DECISION

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

ECKERSTROM, Chief Judge:

¶1 Appellant Robert Martin appeals from the trial court's order dismissing with prejudice his petition for injunctive relief and a writ of habeas corpus. We affirm for the reasons stated below.

¶2 In 1993, Martin was convicted in California of multiple counts of lewd and lascivious acts involving a child under the age of fourteen and apparently sentenced to a prison term of more than fifty years. Pursuant to a correctional services agreement between the California Department of Corrections and Rehabilitation (CDCR) and Corrections Corporation of America (CCA), Martin was transferred to La Palma Correctional Center (LPCC) in Eloy, Arizona. It appears Martin unsuccessfully challenged the convictions and sentences in a variety of proceedings in California.

¶3 In May 2015, Martin filed a "First Amended Petition for Injunction and Writ of Habeas Corpus" (Petition), challenging the validity of his convictions and therefore his incarceration. Martin argued, *inter alia*, evidence was obtained from an illegal wiretapping of his telephone call and he was improperly extradited from Nevada to California. In its May 2015 order, the trial court observed that challenges to the California convictions had to be pursued in California. Directing service of the Petition upon the defendants, the court observed that once responsive pleadings were filed, it would consider whether the issues raised "may actually be

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more appropriately pursued as a Petition for Post-Conviction Relief, pursuant to Arizona Rules of Criminal Procedure.”

¶4 The defendants, the warden of LPCC and CCA/LPCC, filed a response to the Petition, requesting that the trial court dismiss it pursuant to Rule 12(b)(6), Ariz. R. Civ. P. The court found Martin had presented no basis upon which the court could grant him any relief. Finding further that Martin had failed to state a claim upon which relief could be granted, and noting that any relief potentially available to Martin could only be obtained through the California courts, the court dismissed the Petition with prejudice. This appeal followed.¹

¶5 We review the trial court’s denial of a petition for writ of habeas corpus for an abuse of discretion. *See State v. Cowles*, 207 Ariz. 8, ¶ 3, 82 P.3d 369, 370 (App. 2004). We also review an order granting a motion to dismiss pursuant to Rule 12(b)(6) for abuse of discretion. *See Dressler v. Morrison*, 212 Ariz. 279, ¶ 11, 130 P.3d 978, 980 (2006). Accepting the allegations in the complaint as true, we will uphold the dismissal only if the plaintiff would not be entitled to relief under any facts that may be proven under the claims alleged. *Phelps Dodge Corp. v. El Paso Corp.*, 213 Ariz. 400, ¶ 8, 142 P.3d 708, 710-11 (App. 2006).

¹In its answering brief, the appellees contend, because this appeal was taken from an order that lacked the requisite finality language required by Rule 54(c), Ariz. R. Civ. P., and was not, therefore, a final order, we lack jurisdiction. But we stayed this appeal and revested jurisdiction in the trial court to permit Martin to apply for a final judgment. The court entered a final order on May 16, 2016. Nor was the notice of appeal late, as appellees contend. The notice of appeal, filed on October 22, 2015, was filed seventy-eight days after the initial order, filed on August 5, 2015. Again, the notice of appeal was premature, not late, and that infirmity was cured by the entry of the final order. *See Ariz. R. Civ. App. P. 9(c)* (notice of appeal filed before entry of final, appealable judgment treated as filed on date of, after entry of, said judgment).

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¶6 A prisoner “is not entitled to habeas corpus relief [when] he does not allege any facts which show that he is entitled to immediate release from custody.” *Brown v. State*, 117 Ariz. 476, 477, 573 P.2d 876, 877 (1978). Martin has not persuaded this court that the trial court abused its discretion by dismissing his Petition and finding he had failed to state a claim for relief that could be characterized as the proper subject of a petition for a writ of habeas corpus, which is distinct from claims for relief pursuant to Rule 32, Ariz. R. Crim. P. See *Floyd v. Superior Court*, 134 Ariz. 472, 473-74, 657 P.2d 885, 886-87 (App. 1982) (Rule 32 is “not derived from the constitution,” is designed “to provide a unified procedure for the various avenues for post[-]conviction relief,” and “does not displace habeas corpus.”). Moreover, as the trial court correctly observed, these were California convictions and, because Martin appears to be challenging the validity of those convictions, such challenges must be brought in the courts of California, not Arizona. See *State v. Simmons*, 131 Ariz. 482, 483-84, 642 P.2d 479, 480-81 (App. 1982). Thus, even if the Petition were to be construed as presenting claims pursuant to Rule 32, the court did not abuse its discretion in dismissing it summarily; Martin did not raise a colorable claim for relief that could be brought in this state pursuant to the rule. See *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007) (appellate court will not disturb trial court’s ruling in post-conviction proceeding absent clear abuse of discretion).

¶7 We affirm the trial court’s order dismissing Martin’s Petition with prejudice.