

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

ANTONIO AGUILAR, *Petitioner*.

No. 1 CA-CR 14-0777 PRPC
FILED 11-29-2016

Petition for Review from the Superior Court in Maricopa County
No. CR2005-008712-001
The Honorable M. Scott McCoy, Judge

REVIEW GRANTED; RELIEF DENIED

APPEARANCES

Maricopa County Attorney's Office, Phoenix
By Diane Meloche
Counsel for Respondent

Antonio Aguilar, Phoenix
Petitioner Pro Se

MEMORANDUM DECISION

Judge Patricia A. Orozco delivered the decision of the Court in which
Presiding Judge Andrew W. Gould and Judge Peter B. Swann joined.

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O R O Z C O, Judge:

¶1 Antonio Aguilar petitions for review of the summary dismissal of his second notice of post-conviction relief and his motion for rehearing. We have considered the petition for review and, for the reasons stated, grant review and deny relief.

¶2 A jury convicted Aguilar of theft of means of transportation, and he was sentenced as a repetitive offender to a prison term of 11.25 years. This court affirmed his conviction and sentence on appeal. *State v. Aguilar*, 1 CA-CR 06-0175 (Ariz. App. Jan. 25, 2007) (mem. decision).

¶3 The superior court dismissed Aguilar's first petition for post-conviction relief in 2008. In 2014, Aguilar filed an untimely and successive notice of post-conviction relief indicating intent to raise a claim of newly discovered evidence with respect to a violation of his right against double jeopardy. Finding Aguilar failed to state a claim for which relief could be granted in an untimely and successive post-conviction relief proceeding, the superior court summarily dismissed the notice.

¶4 We review the summary dismissal of a post-conviction relief proceeding for abuse of discretion. *State v. Bennett*, 213 Ariz. 562, 566, ¶ 17 (2006). Furthermore, we may affirm the superior court's ruling "on any basis supported by the record." *State v. Robinson*, 153 Ariz. 191, 199 (1987).

¶5 The superior court properly dismissed Aguilar's notice of post-conviction relief. Although a claim of newly discovered material facts is one that can be raised in an untimely or successive post-conviction relief proceeding, Ariz. R. Crim. P. 32.2(b), Aguilar's factual allegations fail to meet the requirements for a claim of newly discovered material facts. *See* Ariz. R. Crim. P. 32.1(e). Specifically, the alleged fact that he was previously indicted and arraigned on the same offense was undisputedly within his knowledge when he was re-indicted on that offense. Consequently, under no circumstances can it be said to be a fact that was only "discovered after the trial." *See* Ariz. R. Crim. P. 32.1(e)(1). And because the notice of post-conviction relief was properly dismissed, no basis for relief exists for the manner in which the superior court addressed Aguilar's motion for rehearing.

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¶6

Accordingly, although we grant review, we deny relief.



AMY M. WOOD • Clerk of the Court
FILED: AA