

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Respondent*,

*v.*

GERALD CHARLES SOUCH, *Petitioner*.

No. 1 CA-CR 15-0008 PRPC  
FILED 4-6-2017

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Petition for Review from the Superior Court in Maricopa County  
No. CR 0000-159749  
The Honorable Robert E. Miles, Judge *Retired*

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

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

Gerald Charles Souch, Kingman  
*Petitioner*

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**MEMORANDUM DECISION**

Presiding Judge Peter B. Swann delivered the decision of the court, in which  
Judge Kent E. Cattani and Judge Donn Kessler joined.

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STATE v. SOUCH  
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S W A N N, Judge:

¶1 In 1987, Gerald Charles Souch pled guilty to five felony offenses pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). The superior court sentenced Souch to an aggregate term of fifty-eight years of imprisonment, and this court affirmed his convictions and sentences on direct appeal. Souch now petitions this court for review from the superior court's dismissal of pleadings that the court treated as a successive petition for post-conviction relief. We grant review but deny relief.

¶2 Souch contends that the court erred when it (1) considered "catch-all" aggravating circumstances for sentencing purposes; (2) imposed consecutive rather than concurrent sentences; (3) imposed "flat-time" sentences; and (4) increased each of his sentences by twenty-five percent. Souch contends that his claim regarding the court's consideration of "catch-all" circumstances is timely because *State v. Schmidt*, 220 Ariz. 563 (2009); *State v. Perrin*, 222 Ariz. 375 (App. 2009), and *State v. Zinsmeyer*, 222 Ariz. 612 (App. 2009), constitute a significant change in the law. Souch further contends that all of his claims are otherwise timely because Ariz. R. Evid. 103(e) allows him to raise claims of "fundamental error" at any time in a post-conviction relief proceeding. Souch finally contends that the superior court erred when it considered his pleadings as a successive petition for post-conviction relief rather than as a petition for writ of habeas corpus.

¶3 We deny relief. As an initial matter, Ariz. R. Crim. P. 32.3 provides that if a defendant applies for a writ of habeas corpus in a superior court that has jurisdiction over the defendant and the defendant raises any claim that attacks the validity of the conviction or sentence, the court "shall" treat the matter as a petition for post-conviction relief under Rule 32. Next, Souch could have raised all of the sentencing issues in a prior post-conviction relief proceeding. Though Souch contends that *Schmidt*, *Perrin*, and *Zinsmeyer* constitute a significant change in the law, Souch has filed many post-conviction relief petitions since those opinions were published. Souch's claims therefore are precluded under Ariz. R. Crim. P. 32.2(a) and (b). Further, Ariz. R. Evid. 103(c) offers no basis upon which a defendant can initiate post-conviction relief proceedings of any sort, timely or otherwise.

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¶4

For the foregoing reasons, we grant review but deny relief.



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