

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ALEJANDRO LEYVA LOPEZ, *Petitioner*.

No. 1 CA-CR 15-0155 PRPC
FILED 4-25-2017

Petition for Review from the Superior Court in Maricopa County
No. CR 1998-008706
The Honorable David B. Gass, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Alejandro Leyva Lopez, Florence
Petitioner

MEMORANDUM DECISION

Judge Patricia K. Norris delivered the decision of the Court, in which
Presiding Judge Diane M. Johnsen and Judge Michael J. Brown joined.

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NORRIS, Judge:

¶1 Alejandro Leyva Lopez petitions this court for review from the summary dismissal of a petition for writ of habeas corpus which the superior court treated as Lopez's second proceeding for post-conviction relief under Arizona Rule of Criminal Procedure 32. We grant review, but deny relief.

¶2 In 1999, Lopez pleaded guilty to second degree murder and attempted murder, and the superior court sentenced him to concurrent terms of 18 years' imprisonment followed by a term of community supervision.¹ In October 2013, Lopez filed a "Petition for Writ of Habeas Corpus" challenging the superior court's imposition of a sentence to a term of calendar years, or "flat time," as well as its imposition of a term of community supervision. Because the petition challenged Lopez's sentence, the superior court treated the petition as a notice of post-conviction relief under Rule 32.3 (superior court shall treat writ of habeas corpus challenging sentence as a Rule 32 proceeding). The superior court dismissed the petition, explaining Lopez had received a "flat time sentence or calendar year sentence for" second degree murder, and noting Lopez had not demonstrated the Arizona Department of Corrections ("ADC") was holding him in custody beyond the expiration of his sentence under Rule 32.1(d).

¶3 In his petition for review, Lopez argues, first, he is eligible for release after serving 85% of his term and, second, the ADC should not have imposed a post-release supervisory term. We reject these arguments.

¶4 First, the superior court was required under the sentencing statutes in effect when Lopez pleaded guilty to second degree murder to sentence Lopez to a term of calendar years, or "flat-time." Ariz. Rev. Stat. ("A.R.S.") § 13-710(A) (1998) (sentence for second degree murder as a term of calendar years); see *State v. Rodriguez*, 153 Ariz. 182, 185, 735 P.2d 792, 795 (1987) (a "calendar years" sentence is a "flat time" sentence) (citation omitted). Further, Lopez's plea agreement also reflected his sentence for second degree murder would be "flat" time. Therefore, Lopez is not entitled to a release date after serving 85% of his sentence for second degree murder.

¹In the minute entry that dismissed the petition for post-conviction relief, the superior court incorrectly stated the sentences were consecutive.

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¶5 Second, the superior court was required to impose a term of community supervision in sentencing Lopez. A.R.S. § 13-603(I) (1998) (court shall impose a term of community supervision to be served consecutive to actual period of imprisonment; term equal to one day for every seven days of sentence imposed); *see also State v. Jenkins*, 193 Ariz. 115, 119, ¶¶ 11-12, 970 P.2d 947, 951 (App. 1998) (sentencing court must impose community supervision term after “flat-time” sentence for second degree murder). Further, Lopez also agreed to the imposition of community supervision in his plea agreement. Thus, the ADC is authorized to calculate a term of community supervision consistent with the sentence imposed by the superior court.

¶6 For the foregoing reasons, although we grant review, we deny relief.



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