

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ROBERT DENNIS BIXLER, *Petitioner*.

No. 1 CA-CR 15-0180 PRPC
FILED 6-8-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2004-134166-001 DT
The Honorable Robert L. Gottsfield, Judge *Retired*

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Robert Dennis Bixler, Kingman
Petitioner

MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding
Judge Randall M. Howe and Judge Maria Elena Cruz joined.

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S W A N N, Judge:

¶1 Robert Dennis Bixler petitions this court for review from the summary dismissal of his third petition for post-conviction relief. In 2006, Bixler pled guilty to sexual exploitation of a minor and luring a minor for sexual exploitation, both dangerous crimes against children. The superior court sentenced him to seventeen years' imprisonment for sexual exploitation of a minor and placed him on lifetime probation for luring a minor for sexual exploitation. For reasons that follow, we grant review but deny relief.

¶2 In his petition for review, Bixler argues there was an insufficient factual basis to support his plea to sexual exploitation of a minor and that this renders him "actually innocent" of the charge. As charged in this case, a person commits sexual exploitation of a minor if the person knowingly distributes; transports; exhibits; receives; sells; purchases; or electronically transmits, possesses, or exchanges "any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct." A.R.S. § 13-3553(A)(2). The State further alleged the offense was a dangerous crime against children because the minor depicted in the image was under the age of fifteen. A.R.S. §§ 13-604.01(L)(1)(g) (recodified as amended at § 13-705(P)(1)(g)), -3553(C). Bixler argues there was no evidence of the identity of the person depicted in the image at issue; no evidence the person was an actual minor under the age of fifteen; and no evidence Bixler knew the person was a minor under the age of fifteen. Bixler further contends he can raise these issues in a successive post-conviction relief proceeding because he only recently learned about the issues and the applicable law from a "newly transferred inmate."

¶3 We deny relief because Bixler could have raised these issues in a prior post-conviction relief proceeding. Generally, claims that could have been raised in earlier post-conviction relief proceedings are precluded. Ariz. R. Crim. P. ("Rule") 32.2(a). But a defendant may present, in subsequent proceedings, "clear and convincing evidence that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would have found defendant guilty of the underlying offense beyond a reasonable doubt." Rule 32.1(h). And the defendant must provide the "reasons for not raising the claim in the previous petition or in a timely manner." Rule 32.2(B). Bixler's lack of familiarity with the applicable law is insufficient justification for raising an otherwise untimely issue. In any event, his attorney provided the adequate factual basis by stating that the person depicted in the image "was definitely a minor under the age of 15" and sent to someone he believed to be 13 to suggest things

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they might do together. This was sufficient factual basis for the entry of the plea agreement.

¶4 Accordingly, we grant review but deny relief.



AMY M. WOOD • Clerk of the Court
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