

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

JOSH ALLEN HARDWICK, *Petitioner*.

No. 1 CA-CR 15-0389 PRPC  
FILED 8-17-2017

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Petition for Review from the Superior Court in Yavapai County  
No. P1300CR20041036  
The Honorable Jennifer B. Campbell, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Yavapai County Attorney's Office, Prescott  
By Bill R. Hughes  
*Counsel for Respondent*

Josh Allen Hardwick, Florence  
*Petitioner*

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**MEMORANDUM DECISION**

Presiding Judge Kent E. Cattani delivered the decision of the Court, in  
which Judge Jon W. Thompson and Judge Paul J. McMurdie joined.

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C A T T A N I, Judge:

¶1 Josh Allen Hardwick petitions for review from the superior court's orders dismissing his petition for post-conviction relief and denying his motion for rehearing. For reasons that follow, we grant review but deny relief.

¶2 Hardwick pleaded guilty in 2005 to two counts of sexual exploitation of a minor, two counts of attempted sexual exploitation of a minor, and one count of possession of drug paraphernalia. The superior court sentenced him to two consecutive 10-year prison terms followed by lifetime probation.

¶3 In November 2014, Hardwick filed a petition for post-conviction relief under Arizona Rule of Criminal Procedure 32.1(h), raising a claim of actual innocence with respect to the exploitation and attempted exploitation convictions. Specifically, Hardwick argued he was entitled to relief because the State had failed to specifically identify any "actual minor" victims in the images of child pornography. The superior court found Hardwick had failed to present a colorable claim for relief, summarily dismissed the petition, and later denied his motion for rehearing. This petition for review followed.

¶4 Hardwick reurges his claim that he is innocent of the exploitation offenses because the State failed to specifically prove the identity and age of actual minor victims depicted in the child pornography. To warrant relief on a post-conviction claim of actual innocence, the defendant must show "by clear and convincing evidence that . . . no reasonable fact-finder would have found [the] defendant guilty of the underlying offense beyond a reasonable doubt." Ariz. R. Crim. P. 32.1(h).

¶5 Contrary to Hardwick's contention, the offenses of which he was convicted do not require the State to prove the "actual identity" (*i.e.*, name and specific age) of the minor victim in the visual depiction that is the subject of the offense, although the minor victim must be an actual human being. *See* Ariz. Rev. Stat. ("A.R.S.") § 13-3553(A)(2) ("A person commits sexual exploitation of a minor by knowingly . . . possessing . . . any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct.");<sup>1</sup> *State v. Hazlett*, 205 Ariz. 523, 526-27, ¶¶ 7, 11 (App. 2003) (holding that A.R.S. § 13-3553 "is limited to visual depictions of

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<sup>1</sup> Absent material revisions after the relevant date, we cite a statute's current version.

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‘actual minors’ actually engaged in real or simulated exploitative exhibition or sexual conduct,” not images that merely appear to depict minors). Rather, the offense only requires a visual depiction of a “minor,” defined as “a person or persons who were under eighteen years of age at the time a visual depiction was created, adapted or modified.” A.R.S. § 13-3551(5).

¶6 At the change of plea hearing, Hardwick’s counsel informed the court that the visual depiction for each count depicted a minor under the age of 15 and that investigation confirmed that the minor was an actual human being; Hardwick expressly confirmed this factual basis for the plea. Defense counsel’s description of the images – which Hardwick did not and does not challenge – was sufficient to support the convictions under A.R.S. § 13-3553. Thus, Hardwick’s claim of actual innocence under Rule 32.1(h) fails.

¶7 Accordingly, we grant review but deny relief.



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