

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

DAVID ELI HUTCHINSON, *Petitioner*.

No. 1 CA-CR 15-0537 PRPC
FILED 3-2-2017

Petition for Review from the Superior Court in Yavapai County

Nos. P1300CR201101083

P1300CR201300574

P1300CR201301054

The Honorable Tina R. Ainley, Judge

REVIEW GRANTED; RELIEF DENIED

APPEARANCES

Yavapai County Attorney's Office, Prescott

By Steven J. Sisneros

Counsel for Respondent

David Eli Hutchinson, San Luis

Petitioner

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MEMORANDUM DECISION

Chief Judge Michael J. Brown delivered the decision of the court, in which Presiding Judge Samuel A. Thumma and Judge Patricia A. Orozco¹ joined.

B R O W N, Chief Judge:

¶1 David Eli Hutchinson petitions this court for review from the superior court's dismissal of his notice for post-conviction relief. We have considered the petition and, for the reasons stated, grant review and deny relief.

¶2 In March 2012, Hutchinson pled guilty to disorderly conduct with a dangerous instrument, resisting arrest, attempted aggravated assault, and aggravated assault in cause number CR201101083. The superior court sentenced Hutchinson to concurrent terms of one year imprisonment to be followed by three years of supervised probation upon release.

¶3 After Hutchinson was released and began serving probation, he was arrested on June 4, 2013, and subsequently charged in cause number CR201300574 with the following felony offenses: three counts of aggravated assault, one count of resisting arrest, two counts of disorderly conduct, two counts of threatening or intimidating, and one count of interfering with judicial proceedings. In October 2013, the State charged Hutchinson with three counts of forgery and one count of theft in cause number CR201301054.

¶4 Based on the June 4 arrest, the State sought to revoke Hutchinson's probation in the 2011 case. Hutchinson subsequently pled guilty to some of the 2013 offenses either as charged or as amended in return for dismissal of the remaining charges. On January 21, 2014, the court considered all three cases at a sentencing hearing, revoked probation, and imposed concurrent prison terms, the longest of which was four-and-one-half years.

¹ The Honorable Patricia A. Orozco, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

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¶5 Over 18 months later, Hutchinson filed an untimely of-right notice of post-conviction relief, asserting he was denied access to legal materials, and the factual basis of his guilty plea did not satisfy the elements of the offenses to which he pled. Hutchinson also claimed the prosecutor, defense counsel, and the superior court conspired to delay sentencing so that he “would be sentenced under the 2014 laws instead of the 2013 ARS [sic] laws.” The superior court summarily dismissed the untimely notice, and this timely petition for review followed.

¶6 In his petition, Hutchinson repeats his claims regarding insufficiency of the factual basis, lack of access to the 2013 Arizona criminal statutes, and the purported conspiracy to delay sentencing to 2014. Hutchinson also argues for the first time that (1) his notice was untimely filed because it was difficult to process information because he suffers from a mental disability, and (2) his trial counsel was ineffective. Both arguments are waived because Hutchinson did not substantively raise them in the superior court. *See State v. Vera*, 235 Ariz. 571, 573, ¶ 8 (App. 2014) (“[W]e ordinarily do not consider issues on review that have not been considered and decided by the trial court; this is particularly true when we are reviewing a court’s decision to grant or deny post-conviction relief under Rule 32.”).

¶7 “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, 393, ¶ 4 (App. 2007). We are obliged to uphold the trial court if the result is legally correct for any reason. *See State v. Perez*, 141 Ariz. 459, 464 (1984); *State v. Cantu*, 116 Ariz. 356, 358 (1977). A petitioner must strictly comply with Rule 32 or be denied relief. *Canion v. Cole*, 210 Ariz. 598, 600, ¶ 11 (2005).

¶8 When filing an untimely notice of post-conviction relief, the petitioner must provide “meritorious . . . reasons for not raising the claim in . . . a timely manner.” Ariz. R. Crim. P. 32.2(b). If a petitioner fails to do so, the superior court is required to summarily dismiss the notice. *Id.*; *see State v. Bortz*, 169 Ariz. 575, 577 (App. 1991) (denying relief upon review of the trial court’s denial of post-conviction relief where petitioner failed to meet the “heavy burden in showing the court why the non-compliance [with the timelines set forth in Rule 32.9] should be excused”) (citing *State v. Pope*, 130 Ariz. 253, 255 (1981)); *see also State v. Peek*, 219 Ariz. 182, 183, ¶ 4 (2008) (claim of illegal sentence must be timely presented).

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¶9 Hutchinson failed to provide any reasons, let alone meritorious reasons, for filing an untimely notice of post-conviction relief. Although Hutchinson mentioned his lack of access to the 2013 statutes, he did so in the context of his purportedly illegal sentence. He did not claim that the notice's untimeliness was due to his inability to review those statutes. Although he does raise the argument in his petition for review, a petition for review may not present issues that were not first presented to the superior court. Ariz. R. Crim. P. 32.9(c)(1)(ii); *Bortz*, 169 Ariz. at 577. Accordingly, the superior court did not abuse its discretion in dismissing the petition.

¶10 Based on the foregoing, we grant review and deny relief.



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