

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

SAMA YEGAN, *Petitioner*.

No. 1 CA-CR 15-0609 PRPC  
FILED 6-22-2017

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Petition for Review from the Superior Court in Maricopa County  
No. CR2006-009116-001 DT  
The Honorable Jay R. Adleman, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Maricopa County Attorney's Office, Phoenix  
By Amanda M. Parker  
*Counsel for Respondent*

Maricopa County Public Defender's Office, Phoenix  
By Tennie B. Martin  
*Counsel for Petitioner*

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**MEMORANDUM DECISION**

Judge Donn Kessler delivered the decision of the Court, in which Presiding Judge Margaret H. Downie and Judge Kenton D. Jones joined.

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**K E S S L E R**, Judge:

¶1 Sama Yegan petitions this Court for review from the dismissal of his petition for post-conviction relief pursuant to Arizona Rule of Criminal Procedure (“Rule”) 32. For the reasons discussed below, we grant review but deny relief.

¶2 In 2008, a jury convicted Yegan on four counts of luring a minor for sexual exploitation. The superior court sentenced Yegan to four terms of lifetime probation. On appeal, this Court affirmed the conviction and sentence but found error in the court’s jury instruction on the definition of “sexual conduct.” *State v. Yegan*, 223 Ariz. 213 (App. 2009). However, because we concluded Yegan invited the error, we did not decide whether the error was fundamental. *Id.* at ¶ 20. We also held that the evidence was sufficient to convict Yegan on all four counts of luring a minor.<sup>1</sup> *Id.* at 222, ¶ 34.

¶3 Yegan filed a timely petition for post-conviction relief raising the following claims: (1) ineffective assistance of trial counsel for failing to request the correct jury instruction and for failing to object to the imposition of an illegal sentence, and (2) ineffective assistance of appellate counsel for failing to raise the issue of illegal sentencing on appeal. The superior court dismissed the petition for failing to state a colorable claim for relief

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<sup>1</sup> Instead of using the Arizona Revised Statute (“A.R.S.”) section 13-3551(9) (Supp. 2009) definition of “sexual conduct” for offenses related to sexual exploitation of children, the superior court instructed the jury under A.R.S. § 13-3501(7) (2001), which defines “sexual conduct” for crimes related to obscenity. *Yegan*, 223 Ariz. at 217-18, ¶ 16. When comparing the two definitions, we held the court instructed the jury on a less stringent standard for sexual conduct than what is required for the crime of luring. *Id.* at 218, ¶ 16. Section 13-3551(9), the correct statutory definition, does not criminalize soliciting or offering to touch genitalia or the female breast, whereas A.R.S. § 13-3501(7) does include such touching as an element for obscenity.

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regarding the jury instruction because, although counsel was ineffective, Yegan could not show that such conduct prejudiced him. However, the court vacated the convictions as to the designation of each offense as a “dangerous crime against children” and ordered that Yegan be resentenced.

¶4 Thus, the only issue before us is Yegan’s argument the superior court erred by finding trial counsel’s ineffectiveness in requesting an incorrect jury instruction did not affect the outcome of the trial. To prove he was prejudiced by the instruction, Yegan must show that a “reasonable, properly instructed jury could have reached a different verdict.” *State v. Dickinson*, 233 Ariz. 527, 531, ¶ 13 (App. 2013) (internal quotations and citation omitted). In determining whether a defendant has shown prejudice, we consider the parties’ theories, the evidence received at trial, and the parties’ arguments to the jury. *Id.* (citation omitted).

¶5 We conclude the superior court did not err. First, this Court has already determined that sufficient evidence supported the convictions for luring a child for sexual exploitation. *Yegan*, 223 Ariz. at 222, ¶ 34. Upon further review of the record, we again find the evidence was sufficient for a reasonable jury to convict Yegan of luring a minor for sexual exploitation, utilizing the proper definition of “sexual conduct” under A.R.S. § 13-3551(9).

¶6 Second, although Yegan argues this Court held on direct appeal that the erroneous jury instruction could have misled the jury, *id.* at 218, ¶ 17, the State correctly points out that on each of the counts there was evidence that Yegan solicited the undercover officer for sexual intercourse. Thus, there was no showing that the erroneous instruction, which included touching genitalia or the female breast, prejudiced Yegan.

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



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