

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

SHAWN RANDAL BORSE, *Petitioner*.

No. 1 CA-CR 15-0623 PRPC
FILED 6-22-2017

Appeal from the Superior Court in Maricopa County
No. CR2005-034561-001 DT
The Honorable Brian K. Ishikawa, Judge *Retired*

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Shawn Randal Borse, Kingman
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.

K E S S L E R, Judge:

¶1 Petitioner Shawn Randal Borse petitions this Court for review from the summary dismissal of his untimely first petition for post-conviction relief (“PCR”). In 2007, Borse pled guilty to two counts of sexual exploitation of a minor and one count of attempted sexual exploitation of a minor, all dangerous crimes against children and all concerning videos of minors under fifteen years of age engaged in exploitive exhibition or other sexual conduct. The superior court sentenced Borse to consecutive terms of thirteen years’ imprisonment for the two counts of sexual exploitation and placed him on lifetime probation for the count of attempted sexual exploitation. Borse did not file a PCR within ninety days of his conviction, but waited more than seven years to file the petition at issue here. The superior court dismissed it as untimely.

¶2 In his petition for review, Borse argues there was an insufficient factual basis to support his guilty pleas because there was no evidence of the identities of the minors depicted in the videos at issue nor was there any evidence the images depicted actual human beings under the age of fifteen. He also argues the superior court erred in denying his petition as untimely.

¶3 We deny relief because Borse could have raised this issue in a timely PCR. Any claim a defendant raised or could have raised in an earlier or timely PCR proceeding is precluded. Ariz. R. Crim. P. 32.2(a)-(b).

¶4 Borse argues the issue is not precluded because he presents it pursuant to Arizona Rule of Criminal Procedure (“Rule”) 32.1(h) (granting relief if the defendant can demonstrate that no reasonable jury would have found him guilty beyond a reasonable doubt). Borse is correct that the rule of preclusion generally does not apply to a claim brought pursuant to Rule 32.1(h). Ariz. R. Crim. P. 32.2(b). However, even if we assume that Borse properly invoked Rule 32.1(h) rather than Rule 32.1(a) (granting relief if the conviction was unconstitutional), we would deny relief. Before a petitioner may obtain relief pursuant to Rule 32.1(h), the petitioner “must set forth the

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substance of the specific exception and the reasons for not raising the claim in the previous petition or in a timely manner.” Ariz. R. Crim. P. 32.2(b). If the petitioner does not provide a specific exception and meritorious reasons for why the petitioner did not present the claim in a previous petition or in a timely manner, the superior court shall summarily dismiss the proceedings. *Id.*

¶5 Borse’s only argument for why he did not raise this issue in a timely manner is that he did not know he could raise the issue until a newly-transferred fellow prisoner told him he could. However, Borse signed a notice detailing his right to appeal and for PCR, reflecting that he could lose all rights to relief if he failed to file a PCR petition within ninety days of his sentencing. His lack of familiarity with the applicable law is neither an exception nor a meritorious reason that allows him to raise an issue in an untimely PCR proceeding. *See State v. Littleton*, 1 CA-CR 13-0925 PRPC, 2015 WL 3537136, at *1, ¶ 4 (Ariz. App. June 2, 2015) (mem. decision) (“Lack of knowledge of the law is not sufficient to present a colorable claim that the failure to file a timely petition for post-conviction relief was not the petitioner’s fault.”); Ariz. R. Crim. P. 32.1(f).

¶6 For the reasons stated above, we grant review but deny relief.



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