

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MICHAEL WAYNE SPROUSE, *Petitioner*.

No. 1 CA-CR 15-0690 PRPC
FILED 7-20-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2003-012716-001 DT
The Honorable Warren J. Granville, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Michael Wayne Sprouse, Florence
Petitioner

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MEMORANDUM DECISION

Presiding Judge Margaret H. Downie delivered the decision of the Court, in which Judge Kenton D. Jones and Judge Donn Kessler¹ joined.

D O W N I E, Judge:

¶1 Michael Wayne Sprouse petitions for review from the dismissal of his petition for post-conviction relief, filed pursuant to Arizona Rule of Criminal Procedure (“Rule”) 32. For the reasons stated, we grant review but deny relief.

¶2 A jury found Sprouse guilty of two counts of molestation of a child, class 2 felonies and dangerous crimes against children; four counts of sexual assault, class 2 felonies; three counts of sexual conduct with a minor, class 2 felonies and dangerous crimes against children; one count of sexual exploitation of a minor, a class 2 felony and dangerous crime against children; and three counts of sexual abuse, class 3 felonies and dangerous crimes against children. The trial court imposed presumptive prison sentences totaling 127 years, followed by lifetime probation. On direct appeal, this Court affirmed, *see State v. Sprouse*, 1 CA-CR 08-0481, 2009 WL 2581374, at *1, ¶ 3 (Aug. 20, 2009) (mem. decision), and the mandate issued on May 6, 2010.

¶3 On July 20, 2015, Sprouse filed an untimely notice of, and petition for, post-conviction relief, challenging the lawfulness of his sentences. *See* Rule 32.4(a) (requiring notice of post-conviction relief to be filed in superior court within 30 days after issuance of this Court’s mandate). The superior court summarily dismissed the Rule 32 proceedings, and Sprouse timely sought review.

¶4 An appellate court will reverse the summary dismissal of a petition for post-conviction relief “only if an abuse of discretion affirmatively appears.” *State v. Bowers*, 192 Ariz. 419, 422, ¶ 10 (App. 1998).

¹ The Honorable Donn Kessler, Retired Judge of the Arizona 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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“[C]ompliance with Rule 32 is not a mere formality.” *Canion v. Cole*, 210 Ariz. 598, 600, ¶ 11 (2005). A petitioner must “strictly comply” with Rule 32 to be entitled to relief. *Id.*

¶5 Sprouse’s petition was filed more than five years late, and he failed to allege or support any claim that the untimely filing was excusable. The time limits for filing a notice and petition for post-conviction relief “are jurisdictional, and an untimely filed notice or petition shall be dismissed with prejudice.” *State v. Lopez*, 234 Ariz. 513, 515, ¶ 8 (App. 2014); *see also* Ariz. Rev. Stat. § 13-4234(G). The jurisdictional bar applies regardless of the magnitude of the claim involved. *Lopez*, 234 Ariz. at 515, ¶ 8; *see also State v. Shrum*, 220 Ariz. 115, 117–20, ¶¶ 3–23 (2009) (issue regarding legality of sentence precluded as untimely despite lack of lawful authority for sentence imposed). Moreover, Sprouse could have raised the sentencing issue in his direct appeal. Any claim a defendant raised or could have raised on direct appeal or in an earlier post-conviction relief proceeding is precluded. Rule 32.2(a). None of the exceptions enumerated in Rule 32.2(b) apply here.

¶6 The superior court properly dismissed Sprouse’s petition as untimely. Accordingly, although we grant review, we deny relief.



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