

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

DARREN ODOM, *Petitioner*.

No. 1 CA-CR 15-0807 PRPC
FILED 6-22-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2010-157731-001
The Honorable Sherry K. Stephens, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Darren Odom, Florence
Petitioner

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 Darren Odom petitions for review from the superior court's dismissal of his untimely petition for post-conviction relief. For reasons that follow, we grant review but deny relief.

¶2 Odom pleaded guilty to two counts of attempted molestation of a child under Arizona Revised Statutes ("A.R.S.") § 13-1410 and one count of sexual abuse under A.R.S. § 13-1404, all class 3 felonies and dangerous crimes against children.¹ In accordance with the plea agreement, the superior court sentenced him in February 2012 to 7.5 years' incarceration for one attempted molestation count, and placed him on lifetime probation for each of the other two offenses.

¶3 Odom filed this petition for post-conviction relief in September 2015, over three and a half years after sentencing.² He claimed that the court had imposed an illegal sentence by placing him on lifetime probation, arguing that under A.R.S. § 13-902, the maximum probationary term for a class 3 felony is five years. The superior court dismissed the petition both as untimely and on the merits.

¶4 We deny relief. Odom's petition was filed more than three years late. *See* Ariz. R. Crim. P. 32.4(a). Although this is arguably Odom's first of-right petition, he failed to allege or support any claim that his untimely filing was without fault and thus excusable. *See* Ariz. R. Crim. P. 32.1(f) ("The defendant's failure to file a notice of post-conviction relief of-right . . . within the prescribed time was without fault on the defendant's part."). Thus, the superior court properly rejected the petition as untimely.

¶5 Moreover, Odom's claim fails on the merits. Although class 3 felonies in general are subject to a maximum probationary term of five years, *see* A.R.S. § 13-902(A)(2), the same statute specifies a probationary term "not less than the term that is specified in subsection A of this section up to and including life" for conviction of an attempt or a completed offense from Title 13, Chapter 14 ("Sexual Offenses"). A.R.S. § 13-902(E). Both

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

² Odom had previously filed a request for "Permission To File Delayed / Untimely Post-Conviction Relief" in June 2015, which the superior court denied for failure to state and support any claims amenable to consideration in an untimely petition.

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attempted molestation under § 13-1410 and sexual abuse under § 13-1404 are Chapter 14 offenses. Thus, lifetime probation is an authorized probationary term for those two offenses.

¶6 Accordingly, we grant review but deny relief.



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