

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ALLAN KENNETH MORGAL, *Petitioner*.

No. 1 CA-CR 16-0251 PRPC
FILED 6-29-2017

Appeal from the Superior Court in Maricopa County
No. CR2005-012359-001 DT
The Honorable Roland J. Steinle, III, Judge *Retired*

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Allan Kenneth Morgal, Tucson
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 Allan Kenneth Morgal petitions this Court for review from the dismissal of his petition for post-conviction relief. For the reasons stated below, we grant review but deny relief.

¶2 In 2006, a jury found Morgal guilty of one count of fraudulent schemes and artifices, two counts of theft, and one count of money laundering. The jury also found Morgal guilty of three aggravating circumstances, including causing financial harm. Morgal was sentenced to concurrent sentences of 22, 15.75, 15.75, and 10.5 years' imprisonment. The court noted financial harm and Morgal's extensive criminal history as substantial aggravating factors in issuing the twenty-two-year sentence on the fraudulent schemes and artifices charge.

¶3 The superior court ordered Morgal to pay \$189,094.12 in restitution. Prior to this order, the parties briefed the issue of restitution. The record reflects that at sentencing, neither party had requested a restitution hearing in lieu of or in addition to what had already been presented in the trial and through briefing, including attached documentation. In fact, Morgal stipulated at sentencing to the amounts in dispute, but not their validity as restitution. Morgal's counsel agreed that the court could read the briefs and issue a separate minute entry on restitution. Morgal was present at this hearing.

¶4 Morgal filed a motion for new trial pursuant to Arizona Rule of Criminal Procedure ("Rule") 24.1, and it was denied as untimely. In 2008, this Court affirmed Morgal's convictions and sentences. *State v. Morgal*, 1 CA-CR 06-0988, 2008 WL 3864070 (Ariz. App. Apr. 3, 2008) (mem. decision). This Court noted the factors considered by the trial court in its sentence. *Id.* at *3, ¶ 14.

¶5 Morgal has filed seven notices requesting relief under Rule 32, in addition to two petitions. In his 2009 petition, one of Morgal's claims was a due process violation because a restitution hearing was not held. The

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superior court dismissed the petition as both untimely and for failing to present a colorable claim. Morgal did not seek review.

¶6 In 2016, Morgal filed a second petition raising issues relating to the portion of his trial on the aggravating factors, and again raising issues regarding the lack of a restitution hearing and his lack of presence at such a hearing. The superior court dismissed the petition as barred by his failure to raise the issues on appeal, as untimely, and as failing to state a colorable claim under Rule 32.1(e).

¶7 If an untimely notice of post-conviction relief does not present meritorious, substantiated claims and does not indicate why the defendant failed to raise the claim in a timely manner, “the notice shall be summarily dismissed.” Ariz. R. Crim. P. 32.2(b). As noted by the superior court, Morgal’s claims related to the trial on the aggravators should have been raised in the motion for new trial, direct appeal, or the first post-conviction petition. They were not. Therefore, Morgal waived these issues and is precluded from asserting them under Rule 32.2(a).

¶8 Similarly, Morgal’s arguments regarding a restitution hearing were raised in a previous petition. Morgal is precluded from relief for any ground “[f]inally adjudicated on the merits on appeal or in any previous collateral proceeding.” Ariz. R. Crim. P. 32.2(a)(2). The superior court dismissed Morgal’s of-right petition for failing to state a colorable claim. Therefore, the claim is precluded.

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



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