

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 05/29/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

YAHYA MALIK KENYATTA,) No. 1 CA-CV 11-0093
)
Plaintiff/Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
)
CHARLES RYAN, Director of) (Not for Publication -
Arizona Department of) Rule 28, Arizona Rules of
Corrections; S. SCHAULTIL,) Civil Appellate Procedure
Arizona Department of)
Corrections,)
)
Defendants/Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. LC2010-000409-001 DT

The Honorable Paul J. McMurdie, Judge

AFFIRMED

Yahya Malik Kenyatta) Florence
Appellant *in Propria Persona*)

Thomas C. Horne, Attorney General) Phoenix
By Thomas C. Horne, Attorney General)
Attorneys for Defendants/Appellees)

T I M M E R, Judge

¶1 Yahya Kenyatta appeals a superior court order denying his petition for special action, which sought review of the

Arizona Department of Corrections Time Eligibility Unit's ("Time Unit") finding he was ineligible for sentence commutation. For the following reasons, we affirm.

BACKGROUND

¶12 Kenyatta is serving a felony sentence in state prison in Florence. In his special action petition filed with the superior court, he alleged the Arizona Board of Executive Clemency ("ABEC") notified him in 1994 that he was eligible for sentence commutation, but ABEC ultimately denied commutation after a hearing. On May 21, 2009, Kenyatta attempted to file a petition asking ABEC to reconsider commutation, but the Time Unit, which screens such petitions,¹ refused the request because it found him ineligible for sentence commutation pursuant to former Arizona Revised Statutes ("A.R.S.") section 13-604.02(A).²

¹ According to the Arizona Department of Corrections website, the Time Unit is part of its Offender Services Bureau and, among other things, "[c]ertifies eligible offenders for [ABEC] review monthly [and] [v]erifies eligibility for commutation and/or pardon and forward[s] applications to the Board of Executive Clemency." Ariz. Dep't of Corrs., *Offender Services*, http://www.azcorrections.gov/adcd/divisions/offender/Minh_Offender_Support_Services.aspx (last visited May 10, 2012).

² Since the court sentenced Kenyatta pursuant to § 13-604.02, the legislature has revised and renumbered that provision. *State v. Stine*, 184 Ariz. 1, 2, 906 P.2d 58, 59 (App. 1995) (describing revisions); A.R.S. § 13-604.02 (West 2012) (noting renumbering to § 13-708).

Although respondents did not respond to the petition,³ the superior court denied it on December 16, 2010 without explanation. This appeal followed.⁴

DISCUSSION

¶13 Because the superior court declined jurisdiction of Kenyatta's special action petition, the sole issue on appeal is whether the court abused its discretion in doing so. *Bilagody v. Thorneycroft*, 125 Ariz. 88, 92, 607 P.2d 965, 969 (App. 1979). An abuse of discretion is discretion exercised in a manner that is manifestly unreasonable or based on untenable grounds or untenable reasons. *Quigley v. City Court of Tucson*, 132 Ariz. 35, 37, 643 P.2d 738, 740 (App. 1982).

¶14 Kenyatta argues the superior court abused its discretion by denying his petition because the Time Unit was wrong in finding him ineligible for sentence commutation pursuant to former A.R.S. § 13-604.02(A) in light of ABEC's position in 1994 that he was eligible. We disagree. The superior court convicted Kenyatta of aggravated assault in

³ According to Appellees, they were never served with the petition so never appeared in the superior court proceedings. For that reason, Appellees assert they are not parties to the appeal, and they have not filed an answering brief.

⁴ The December 16 minute entry denying Kenyatta's petition was not signed. By orders dated March 4, 2011, and June 2, 2011, we suspended this appeal to allow Kenyatta to obtain a signed order from the superior court denying his petition for special action. That court entered a signed order on July 18, 2011, and this appeal was reinstated.

connection with a series of events that occurred on January 5, 1991. "A basic principle of criminal law requires that an offender be sentenced under the laws in effect at the time he committed the offense for which he is being sentenced." *State v. Newton*, 200 Ariz. 1, 2, ¶ 3, 21 P.3d 387, 388 (2001) (citing A.R.S. § 1-246). Accordingly, Kenyatta was sentenced under A.R.S. § 13-604.02(A) as it existed in 1991, which read in relevant part as follows:

Notwithstanding any provision of law to the contrary, a person convicted of any felony offense involving the use or exhibition of a . . . dangerous instrument . . . if committed while the person is on probation for a conviction of a felony offense or parole . . . shall be sentenced to life imprisonment **and is not eligible for suspension or commutation of sentence . . . until the person has served not less than twenty-five years.**

(West 1991) (emphasis added). The superior court found that Kenyatta was guilty of aggravated assault with the use of a dangerous instrument while on probation and sentenced him to life in prison pursuant to former A.R.S. § 13-604.02(A). Accordingly, under the version of § 13-604.02(A) that existed at the time Kenyatta committed his crime, he is ineligible for commutation of sentence until he has served twenty-five years, even assuming ABEC previously concluded he was eligible.⁵

⁵ At the time ABEC communicated Kenyatta's eligibility in 1994, whether prisoners sentenced under prior versions of § 13-604.02

Therefore, because Kenyatta's petition lacked merit on its face, the superior court did not abuse its discretion by denying it.

CONCLUSION

¶15 For the foregoing reasons, we affirm.

/s/
Ann A. Scott Timmer, Judge

CONCURRING:

/s/
Michael J. Brown, Presiding Judge

/s/
Margaret H. Downie, Judge

were able to seek commutation under more favorable provisions of the amended statute had not been resolved. Thereafter, this court held that these more favorable commutation provisions do not apply. *Stine*, 184 Ariz. at 2-3, 906 P.2d at 59-60.