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

FILED BY CLERK
JUL 27 2012
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DUSTIN JAY JOHNSON,
Petitioner.

2 CA-CR 2012-0202-PR
DEPARTMENT A

MEMORANDUM DECISION
Not for Publication
Rule 111, Rules of
the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF YAVAPAI COUNTY

Cause No. P1300CR200901048

Honorable Celé Hancock, Judge

REVIEW GRANTED; RELIEF DENIED

Sheila Polk, Yavapai County Attorney
By Bill R. Hughes — Prescott

David Goldberg — Fort Collins, CO
Attorney for Petitioner

H O W A R D, Chief Judge.

¶1 Pursuant to a plea agreement, petitioner Dustin Johnson was convicted of sexual conduct with a minor and attempted aggravated luring a minor, a dangerous crime against children. Pursuant to the plea agreement, the trial court suspended the imposition of sentence[1] and placed Johnson on probation for ten years, ordering the imposition of "GPS [global positioning system] monitoring during probation." Johnson filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., arguing the court incorrectly had believed GPS monitoring was mandatory and asking that the condition be removed. The court dismissed his petition without holding an evidentiary hearing, and this petition for review followed. We review the court's summary denial of post-conviction relief for an abuse of discretion. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find no abuse here.

¶2 On review, Johnson argues, as he did in his petition below, that the sentencing judge erroneously had believed the imposition of GPS monitoring was mandatory. He further maintains that the Rule 32 judge, who was different than the sentencing judge, erred by not correcting this error. The plea agreement provided, "Pursuant to A.R.S. § 13-902(G), if a term of probation is imposed for a crime under A.R.S. § 13-705, the Court shall require global position system monitoring of Defendant for the duration of the term of probation." At the change-of-plea hearing, the trial court stated, "I believe under [§] 13-902(g) [sic], that if I put you on probation under [§] 13-

[1]The sentencing order also provided for possible incarceration for 365 days "commencing upon application of the Adult Probation Department and further order of the Court."

705, I must require you to be monitored with GPS monitoring for the duration of the term of probation."

¶3 When Johnson committed the underlying offenses "on or about May 5, 2009," and "on or between April 20, 2009 and May 4, 2009," the relevant portion of § 13-902(G) provided, "After conviction of a dangerous crime against children as defined in [§] 13-705, if a term of probation is imposed, the court shall require global position system monitoring for the duration of the term of probation." 2008 Ariz. Sess. Laws. ch. 301, § 43. However, effective July 13, 2009, the statute was amended to read as follows:

> After conviction of a dangerous crime against children as defined in [§] 13-705, if a term of probation is imposed, the person is required to register pursuant to [A.R.S. §] 13-3821 and the person is classified as a level three offender . . . , the court shall require global position system or electronic monitoring for the duration of the term of probation . . . . This subsection does not preclude global position system or electronic monitoring of any other person who is serving a term of probation.

2009 Ariz. Sess. Laws, ch. 125, § 2.

¶4 Relying on the amended version of § 13-902(G), Johnson contends that, unless he was classified as a level three offender, which he asserts he was not, the trial court was not required to impose GPS monitoring and was mistaken in believing it was. He also asserts that the parties were operating under a mutual misunderstanding of the law, and that the Rule 32 judge abused her discretion by ruling without the benefit of an evidentiary hearing to understand "what was going through the minds of the prosecutor, defendant and [the judge] at the time of the change of plea." In its ruling dismissing Johnson's petition, the court correctly concluded "GPS monitoring . . . is clearly lawful

pursuant to A.R.S. § 13-902(G)." Although we pursue a different analysis in reaching this conclusion as set forth below, we nonetheless find the court reached the right result and also deny relief. *State v. Oakley*, 180 Ariz. 34, 36, 881 P.2d 366, 368 (App. 1994) (appellate court "will affirm the trial court when it reaches the correct result even though it does so for the wrong reasons").

¶5 Johnson has not provided any basis to apply to him the amended version of the statute, which took effect after he committed the offenses. "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, ¶ 3, 21 P.3d 387, 388 (2001); *see also O'Brien v. Escher*, 204 Ariz. 459, ¶ 16, 65 P.3d 107, 111 (App. 2003) (version of statute in effect when defendant committed offense determines appropriate sanctions); A.R.S. § 1-246 (notwithstanding subsequent statutory amendment, "offender shall be punished under the law in force when the offense was committed); 1993 Ariz. Sess. Laws, ch. 255, §§ 7-8, 99 (revised sentencing statutes "apply only to persons who commit a felony offense after the effective date of this act"); *State v. Stine*, 184 Ariz. 1, 3, 906 P.2d 58, 60 (App. 1995) ("[P]ersons convicted of crimes in Arizona generally do not benefit from subsequent changes of the statutory sentencing provisions."). Further, our supreme court has acknowledged the punitive nature of certain conditions of probation, even though probation is not technically a sentence. *State v. Mendivil*, 121 Ariz. 600, 602, 592 P.2d 1256, 1258 (1979). Accordingly, because GPS monitoring was mandatory in this case, the sentencing judge

imposed it correctly, and the Rule 32 judge correctly dismissed the petition for post-conviction relief.

¶6 Therefore, although we grant the petition for review, we deny relief.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge