

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

SEP 13 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2012-0295-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
CHARLES WILLIAM SCHAAF,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF YAVAPAI COUNTY

Cause No. P1300CR20090703

Honorable Celé Hancock, Judge

REVIEW DENIED

Sheila Sullivan Polk, Yavapai County Attorney  
By Steven J. Sisneros

Prescott  
Attorneys for Respondent

Charles William Schaaf

Florence  
In Propria Persona

ESPINOSA, Judge.

¶1 Charles Schaaf seeks review pursuant to Rule 32.9(c), Ariz. R. Crim. P., of the trial court's order denying his motion seeking a reduction of his sentence. For the reasons that follow, we deny review.

¶2 Schaaf pled guilty to failure to report a reportable sexual conduct offense, attempted transfer of marijuana to a minor under the age of fifteen, and child abuse. Pursuant to that plea agreement, on August 30, 2010, the trial court sentenced Schaaf to a five-year prison term for attempted transfer of marijuana, with a concurrent three-year prison term for child abuse and, for Schaaf's conviction of failure to report, the court suspended the imposition of sentence and placed him on a three-year term of probation to follow completion of his prison sentences.

¶3 In August 2011, Schaaf filed a motion seeking reduction of his sentence, arguing it was "disproportionate" and violated the prohibition against cruel and unusual punishment. The trial court summarily denied that motion on September 16, concluding Schaaf had entered his plea knowingly, intelligently, and voluntarily, and had been sentenced in accordance with his plea agreement. On October 5, Schaaf filed a motion seeking reconsideration of that ruling, which the court denied on October 11. Schaaf then filed this petition for review.

¶4 Rule 32.9(c) provides that a defendant may seek review of "the final decision of the trial court on the petition for post-conviction relief or the motion for rehearing." But Schaaf did not file a notice or petition of post-conviction relief, instead filing what he described as a "Motion for Reduction of Sentence." He did not cite Rule 32 in his motion, and the trial court did not construe his motion as a petition for post-conviction relief pursuant to Rule 32.3. Nor was it required to do so; although that rule states that a Rule 32 proceeding "displaces and incorporates all trial court post-trial remedies," it expressly excludes "post-trial motions." Ariz. R. Crim. P. 32.3. Thus,

because there is no ruling on a petition for post-conviction relief for us to review pursuant to Rule 32.9(c), we deny review.<sup>1</sup>

¶5 Nor can we exercise jurisdiction by construing Schaaf’s petition for review as an attempt to appeal the trial court’s ruling. Schaaf’s motion below is most reasonably construed as a motion to modify his sentence pursuant to Rule 24.3, Ariz. R. Crim. P., which permits a trial court to “correct any unlawful sentence or one imposed in an unlawful manner.” But, because Schaaf pled guilty, he has waived his right to appeal,<sup>2</sup> A.R.S. § 13-4033(B), which he acknowledged in his plea agreement and during the plea colloquy. He cannot reacquire that right by filing a post-judgment motion. *See State v. Baca*, 187 Ariz. 61, 66, 926 P.2d 528, 533 (App. 1996) (direct appeal of Rule 24.3 motion to modify sentence imposed pursuant to probation violation agreement precluded by § 13-4033(B)).<sup>3</sup>

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<sup>1</sup>Even if we construed Schaaf’s motion as attempting to begin a post-conviction proceeding under Rule 32, it was patently untimely, and absent any claim pursuant to Rule 32.1(f), the trial court had no discretion to consider its merits. Ariz. R. Crim. P. 32.2, 32.4(a).

<sup>2</sup>Indeed, pursuant to his plea agreement, Schaaf also waived “any and all motions, defenses, objections, or requests which he[] . . . could assert hereafter, to the . . . imposition of a sentence upon him[] consistent with this Plea Agreement.”

<sup>3</sup>Furthermore, Schaaf’s motion was untimely; a Rule 24.3 motion must be filed within sixty days of judgment. And, even if he had not waived his right to appeal, if construed as an attempt to appeal, his petition was not timely because it was not filed within twenty days of the trial court’s ruling and his motion for reconsideration would not have extended the time for appeal. *See* § 13-4033(A) (listing appealable orders); Ariz. R. Crim. P. 31.3 (notice of appeal must be filed within twenty days after entry of sentence); *State v. Berry*, 133 Ariz. 264, 267, 650 P.2d 1246, 1249 (App. 1982) (motion for reconsideration does not extend time for appeal). Thus, we would lack jurisdiction to review the court’s ruling on appeal. *See State v. Limon*, 229 Ariz. 22, ¶ 3, 270 P.3d 849,

Review denied.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge

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850 (App. 2011) (“When a notice of appeal is untimely, we lack jurisdiction over the appeal.”).