

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

NOV 26 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0357-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ROBERT DALE BLANCHARD,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20043355

Honorable Richard E. Gordon, Judge

REVIEW GRANTED; RELIEF DENIED

Thomas C. Horne, Arizona Attorney General
By Kimberly H. Ortiz

Tucson
Attorneys for Respondent

The Law Office of Ronald Zack
By Ronald Zack

Tucson
Attorneys for Petitioner

K E L L Y, Judge.

¶1 Petitioner Robert Blanchard seeks review of the trial court’s summary dismissal of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. In 2005, Blanchard was convicted of luring a minor for sexual exploitation, which had been charged in his indictment and plea agreement as a dangerous crime against children subject to sentence enhancement under former A.R.S. § 13-604.01. *See* 2001 Ariz. Sess. Laws, ch. 334, § 7. The court suspended his sentence and placed him on lifetime probation. In 2006, Blanchard admitted violating conditions of his probation, and the court revoked it, sentencing him to an enhanced, presumptive, ten-year prison term. Blanchard filed his first, untimely notice of post-conviction relief in April 2011, nearly five years after he was sentenced. *See* Ariz. R. Crim. P. 32.4(a) (Rule 32 “notice must be filed within ninety days after the entry of judgment and sentence . . .”).

¶2 In his petition for post-conviction relief filed by appointed counsel, Blanchard relied on *State v. Hazlett*, 205 Ariz. 523, ¶ 12, 73 P.3d 1258, 1263 (App. 2003), and *State v. Regenold*, 227 Ariz. 224, ¶¶ 3-10, 255 P.3d 1028, 1029-31 (App. 2011), to argue he had been sentenced illegally to an enhanced term of imprisonment. He also argued trial counsel had been ineffective in failing to object to the enhanced sentence imposed.

¶3 To avoid the preclusive effect of Rule 32.4(a), which limits claims in an untimely notice to those grounded in Rule 32.1(d), (e), (f), (g) or (h), Blanchard

maintained his illegal sentence claim—ordinarily cognizable under Rule 32.1(c)¹—also was cognizable under Rule 32.1(d), which provides a ground for relief when “[t]he person is being held in custody after the sentence imposed has expired.” According to Blanchard, this ground applied because, had he been sentenced pursuant to a general sentencing statute instead of former § 13-604.01, “his sentence would have already expired, which means he is being illegally held in custody.” Similarly, he relied on *Stewart v. Smith*, 202 Ariz. 446, ¶¶ 9-12, 46 P.3d 1067, 1070-71 (2002), to argue his Rule 32.1(a) claim of ineffective assistance of counsel² was of sufficient constitutional magnitude to require personal waiver and, therefore, should not be precluded.

¶4 The trial court summarily denied relief and dismissed Blanchard’s petition, finding his claims “untimely and thus precluded pursuant to Ariz. R. Crim. P. 32.4(a) and 32.6(c).” In this petition for review that followed, Blanchard restates the arguments he raised below and contends the court erred in finding his claims precluded.

¶5 We find no error and no abuse of discretion. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006) (summary denial of post-conviction relief reviewed for abuse of discretion). Rather, in its thorough ruling, the trial court clearly identified, addressed, and correctly resolved Blanchard’s claims and arguments in a manner

¹Rule 32.1(c) permits relief where “[t]he sentence imposed exceeded the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law.”

²Rule 32.1(a) provides a ground for relief if “[t]he conviction or the sentence was in violation of the Constitution of the United States or of the State of Arizona.” *See also State v. Petty*, 225 Ariz. 369, ¶ 11, 238 P.3d 637, 641 (App. 2010) (ineffective assistance of counsel “cognizable under Rule 32.1(a)”).

sufficient to permit this or any other court to conduct a meaningful review. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Accordingly, no purpose would be served by repeating the court's analysis here; instead, we adopt it. *See id.*

¶6 Because the trial court correctly found Blanchard's claims precluded by his untimely filing, we grant review, but deny relief.

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

CONCURRING:

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

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

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed August 15, 2012.