IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RALPH VER HAGE,
Petitioner.

No. 2 CA-CR 2014-0004-PR
Filed April 28, 2014

Petition for Review from the Superior Court in Pima County
No. CR024667
The Honorable Richard E. Gordon, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Ralph Ver Hage, Florence
In Propria Persona

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Chief Judge Howard and Presiding Judge Vásquez concurred.

M I L L E R, Judge:

¶1 Ralph Ver Hage petitions for review of the trial court's summary dismissal of his untimely, successive notice of and petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We grant review, but we deny relief.

¶2 After a jury trial that concluded in March 1989, Ver Hage was convicted of one count of child molestation and four counts of sexual conduct with a minor under the age of fifteen. The trial court imposed a combination of concurrent and consecutive, mitigated sentences totaling forty-two years' imprisonment. We confirmed Ver Hage's convictions and sentences on appeal. *State v. Ver Hage*, No. 2 CA-CR 89-0226 (memorandum decision filed Nov. 7, 1989).

¶3 In 1999, Ver Hage filed a Rule 32 petition in which he alleged the trial court had improperly enhanced his sentences on four of the five counts by considering his convictions on other counts of the same indictment as prior convictions, as permitted by the sentencing statutes in effect when Ver Hage committed his offenses. The court denied relief on the merits of the petition, and this court denied relief on review.[1] *State v. Ver Hage*, 2 CA-CR 00-0213-PR (memorandum decision filed Oct. 5, 2000).

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[1]According to the trial court's ruling in Ver Hage's current proceeding, Ver Hage had previously filed, and then withdrawn, a pro se petition for post-conviction relief in 1992.

¶4 In September 2013, Ver Hage filed a successive, untimely petition for post-conviction relief, in which he alleged essentially the same claim raised in his 1999 petition. The trial court dismissed the proceeding, finding Ver Hage's claim precluded pursuant to Rule 32.2(a)(2), because it had already been decided on the merits. The court further noted that any "difference in the precise legal underpinnings" for Ver Hage's claim would not change the analysis, because such arguments, which could have been raised in Ver Hage's previous petition or on appeal, are precluded by Rule 32.2(a)(3). The court also concluded the claim had no merit. This petition for review followed.

¶5 On review, Ver Hage raises the same arguments he made below. He relies on *State v. Bouchier*, 159 Ariz. 346, 767 P.2d 233 (App. 1989), and *State v. Pyeatt*, 135 Ariz. 141, 659 P.2d 1286 (App. 1982), to argue his sentence was an illegal enhancement, but implies they are "[n]ewly [d]iscovered [m]aterial facts" under Rule 32.1(e) and, therefore, not subject to preclusion under Rule 32.2(b). We review a trial court's summary denial of post-conviction relief for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find none here.

¶6 With respect to Ver Hage's argument that his claim is excepted from preclusion under Rule 32.1(e), we conclude legal opinions are not "facts" encompassed by that rule, regardless of how recently a petitioner may have "discovered" the decisions; the decisions Ver Hage cites—which appear to have little relevance to his claim—are no exception. We therefore adopt the trial court's ruling, which clearly identified Ver Hage's claims and resolved them correctly based on thorough, well-reasoned analysis. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing" that analysis).

¶7 Accordingly, we grant review, but we deny relief.