

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

GRANT REY DECKER,
Petitioner.

No. 2 CA-CR 2014-0123-PR
Filed July 2, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Navajo County

No. S0900CR20090642

The Honorable Robert J. Higgins, Judge

PETITION DISMISSED

COUNSEL

Brad Carlyon, Navajo County Attorney
By Galen H. Wilkes, Deputy County Attorney, Holbrook
Counsel for Respondent

Grant Rey Decker, Eloy
In Propria Persona

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Judge Kelly and Judge Espinosa concurred.

ECKERSTROM, Chief Judge:

¶1 Grant Decker has filed a “petition for review” challenging the trial court’s order dismissing his criminal case without, rather than with, prejudice. For the reasons that follow, we dismiss the petition and decline to exercise special action jurisdiction.

¶2 On April 1, 2011, Decker notified the trial court and the Navajo County Attorney’s Office that, as an inmate of the Arizona Department of Corrections, he was “requesting disposition of the untried charges filed against him in your jurisdiction” pursuant to Rule 8.3(b), Ariz. R. Crim. P. On April 15, 2011, the court granted the state’s motion to dismiss the case without prejudice, in which the state had argued, “The interests of justice do not require [the case] to be pursued further in light of the significant prison sentence received by the defendant in a closely-related Mohave County case.” The court later denied Decker’s motion for dismissal with prejudice, filed in early 2013, on grounds it was untimely and failed to provide “a basis to support a claim” that the court’s earlier dismissal without prejudice had been an abuse of discretion. Decker has filed a “petition for review” of that order, in which he appears to argue dismissal with prejudice is required because the court’s ruling has deprived him of his right to a speedy trial and final disposition of the charges pursuant to Rule 8.3.

¶3 In documents filed with this court, both the state and Decker refer to Rule 32, Ariz. R. Crim. P. But Decker has not been convicted under this cause number, and there is no basis for considering this a post-conviction proceeding pursuant to Rule 32. In addition, appellate review of a dismissal of charges without

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prejudice cannot be obtained by direct appeal, although a defendant may seek review of the dismissal by special action. *State v. Alvarez*, 210 Ariz. 24, ¶ 23, 107 P.3d 350, 356 (App. 2005), *vacated in part on other grounds*, 213 Ariz. 467, ¶ 2, 143 P.3d 668, 669 (App. 2006). Accordingly, we may construe Decker’s petition for review as a petition for special action relief. *See State v. Wilson*, 207 Ariz. 12, ¶ 7, 82 P.3d 797, 799 (App. 2004) (unauthorized appeal may be treated as special action).

¶4 This court generally does not accept special action review of a denial of a motion to dismiss, *Maricopa County v. Superior Court*, 170 Ariz. 248, 250-51, 823 P.2d 696, 698-99 (App. 1991), and we decline to do so in this case. *See State v. Wills*, 177 Ariz. 592, 594, 870 P.2d 410, 412 (App. 1993) (dismissal with prejudice inappropriate where defendant fails to show he “would [suffer] some articulable harm” other than facing same criminal charges); *cf. Ariz. R. Crim. P. 8.6* (dismissal for violation of Rule 8.3(b)(3) may be “with or without prejudice”); *State v. Estrada*, 187 Ariz. 490, 492, 930 P.2d 1004, 1006 (App. 1996) (dismissal with prejudice may be required for failure to try out-of-state prisoners before deadline, but not when defendant imprisoned within state); *Snow v. Superior Court*, 183 Ariz. 320, 325, 903 P.2d 628, 633 (App. 1995) (dismissal without prejudice for speedy trial violation appropriate when petitioner “has not identified any actual prejudice”).

¶5 The trial court order challenged here is neither subject to appeal, *see* A.R.S. § 13-4033, nor post-conviction review pursuant to Rule 32. We therefore lack appellate jurisdiction to consider Decker’s petition for review. And construing Decker’s petition for review as a petition for special action, we decline jurisdiction in the exercise of our discretion. *See* A.R.S. § 12-120.21(A)(4); *Catalina Foothills Unified Sch. Dist. No. 16 v. La Paloma Prop. Owners Ass’n*, 229 Ariz. 525, ¶ 20, 278 P.3d 303, 309 (App. 2012). Accordingly, the petition is dismissed.