

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ANTHONY TERRELL MURRELL JR.,  
*Petitioner.*

No. 2 CA-CR 2016-0089-PR  
Filed April 27, 2016

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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NOT FOR PUBLICATION  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)(1); Ariz. R. Crim. P. 31.24.*

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Petition for Review from the Superior Court in Maricopa County  
No. CR2012008400001DT  
The Honorable Bruce R. Cohen, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Anthony T. Murrell, Tucson  
*In Propria Persona*

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**MEMORANDUM DECISION**

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Staring concurred.

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ESPINOSA, Judge:

¶1 Anthony Murrell Jr. seeks review of the trial court’s ruling summarily dismissing his petition for writ of habeas corpus, which the trial court treated as a petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Murrell has not met his burden of demonstrating such abuse here.

¶2 Murrell pled guilty to possession of marijuana for sale and was sentenced to a 3.25-year prison term. Nearly a year later, he filed a petition for writ of habeas corpus and an “amended writ of habeas corpus” arguing his trial counsel had been ineffective, his speedy trial rights had been violated, the judge had committed misconduct and was biased, and the prosecutor had committed misconduct and was “vindictive[.]” Treating Murrell’s filings as a petition for post-conviction relief pursuant to Rule 32.3, the trial court summarily dismissed the proceeding, concluding Murrell’s claims could not be raised in an untimely proceeding. This petition for review followed.

¶3 On review, Murrell claims for the first time that he is entitled to file an untimely petition pursuant to Rule 32.1(f) because he “has never had a Rule 32 proceeding.” Even if that fact would permit relief under Rule 32.1(f), we do not address claims not raised in the trial court. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *see also* Ariz. R. Crim. P. 32.1(f) (permitting relief if the “failure to file a notice of post-conviction relief of-right . . . within the prescribed time was without fault on the defendant’s part”).

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¶4 Murrell also asserts that he is entitled to raise his claims in an untimely proceeding because he did not knowingly or voluntarily waive them, citing *Stewart v. Smith*, 202 Ariz. 446, 46 P.3d 1067 (2002). But the waiver principles discussed in *Stewart* do not apply to an untimely proceeding like this one. See *State v. Lopez*, 234 Ariz. 513, ¶¶ 7-8, 323 P.3d 1164, 1166 (App. 2014); see also Ariz. R. Crim. P. 32.4(a).

¶5 Finally, Murrell asserts the trial court violated the Arizona Constitution by treating his habeas petition as a Rule 32 petition pursuant to Rule 32.3. That rule states that, “[i]f a defendant applies for a writ of habeas corpus. . . attacking the validity of his or her conviction or sentence,” the action shall be transferred to the court of conviction, and that “court shall treat it as a petition for relief under this rule and the procedures of this rule shall govern.” Ariz. R. Crim. P. 32.3. Article VI, § 18 of the Arizona Constitution provides that a superior court “may issue . . . writs of habeas corpus.” And article II, § 14 provides that “[t]he privilege of the writ of habeas corpus shall not be suspended by the authorities of the state.”

¶6 There is no conflict between Rule 32.3 and our constitution. The trial court correctly characterized Murrell’s petitions as seeking to raise claims under Rule 32.1. See Ariz. R. Crim. P. 32.3. Rule 32 is “not derived from the constitution,” and is designed “to provide a unified procedure for the various avenues for postconviction relief”; it “does not displace habeas corpus.” *Floyd v. Superior Court*, 134 Ariz. 472, 473-74, 657 P.2d 885, 886-87 (App. 1982). “In Arizona, the writ of habeas corpus may be used only to review matters affecting a court’s jurisdiction.” *In re Oppenheimer*, 95 Ariz. 292, 297, 389 P.2d 696, 700 (1964). Thus, “[t]he writ of habeas corpus is not the appropriate remedy to review irregularities or mistakes in a lower court unless they pertain to jurisdiction.” *State v. Court of Appeals*, 101 Ariz. 166, 168, 416 P.2d 599, 601 (1966). Instead, such claims must be raised pursuant to Rule 32. See generally Ariz. R. Crim. P. 32.1.

¶7 Although we grant review, relief is denied.