

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DANIEL LUJAN,
Petitioner.

Nos. 2 CA-CR 2016-0348-PR and 2 CA-CR 2016-0351-PR (Consolidated)
Filed December 12, 2016

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NOT FOR PUBLICATION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.

Petition for Review from the Superior Court in Pinal County
Nos. S1100CR96021084 and S1100CR99025800
The Honorable Joseph R. Georgini, Judge

REVIEW GRANTED; RELIEF DENIED

M. Lando Voyles, Pinal County Attorney
By Wade C. Tanner, Deputy County Attorney, Florence
Counsel for Respondent

Daniel Lujan, Florence
In Propria Persona

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MEMORANDUM DECISION

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

M I L L E R, Judge:

¶1 Daniel Lujan seeks review of the trial court’s orders rejecting his requests in two cause numbers, made pursuant to Rule 24.4, Ariz. R. Crim. P., that presentence incarceration credit be applied to his sentences. We grant review but deny relief.

¶2 In 1996, Lujan pled guilty to aggravated assault and was sentenced to a 3.75-year prison term, to be served consecutively to an aggregate twenty-one-year prison term imposed in previous cases. *See State v. Lujan*, 184 Ariz. 556, 558, 911 P.2d 562, 564 (App. 1995). The sentencing minute entry stated he would receive no presentence incarceration credit. In 2000, he pled guilty to promoting prison contraband and was sentenced to a five-year prison term, to be served consecutively to his previously imposed terms. The sentencing minute entry stated he was not entitled to presentence incarceration credit.

¶3 In 2016, Lujan filed identical “Motion[s] to Correct Record” in each cause number citing Rule 24.4 and asserting he was entitled to presentence incarceration credit because he had been in custody at the time he was indicted in each case. The trial court, construing Lujan’s filing as seeking relief pursuant to Rule 32, Ariz. R. Crim. P., summarily denied relief as well as Lujan’s subsequent motions for rehearing.

¶4 On review, Lujan argues the trial court erred by addressing his claims pursuant to Rule 32, asserting the court had authority under Rule 24.4 to modify his sentence to reflect presentence incarceration credit. He additionally contends the court improperly denied him the “opportunity to then submit a notice of

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post-conviction relief . . . once adopting Rule 32 jurisdiction” and erred by “[m]aking conclusions of fact unsupported by the record.”

¶5 Rule 24.4 permits a trial court, “at any time,” to correct “[c]lerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission.” The failure to award presentence incarceration credit cannot reasonably be characterized as a clerical error or error in the record that may be corrected pursuant to Rule 24.4. Orders entered pursuant to Rule 24.4 serve only “to make the record reflect the intention of the parties or the court at the time the record was made, not to cause an order or judgment that was never previously made or rendered to be placed upon the record of the court.” *State v. Pyeatt*, 135 Ariz. 141, 143, 659 P.2d 1286, 1288 (App. 1982). Curing the purported error about which Lujan complains would substantively alter his sentence. Thus, he was required to raise this claim in a timely Rule 32 proceeding. *See* Ariz. R. Crim. P. 32.1(c). We therefore find no error in the court’s decision to construe Lujan’s request as seeking Rule 32 relief. *See* Ariz. R. Crim. P. 32.3.

¶6 Lujan argues, however, that the trial court was required to allow him to file a notice of post-conviction relief so he could identify reasons his untimely claim should be considered on its merits. *See* Ariz. R. Crim. P. 32.4(a). But, even if we agreed the court was required to give him that opportunity, he has not identified in his petitions for review any exception to the timeliness requirements of Rule 32.4(a) that could apply to this claim.

¶7 In his motions for rehearing below, however, Lujan contended he should be permitted to raise this claim pursuant to Rule 32.1(f) because his counsel and the court had misinformed him about his eligibility for presentence incarceration credit. But Rule 32.1(f) does not permit an untimely petition based on Lujan’s later discovery of what he believes to be a viable claim. It permits relief only when a defendant “was unaware of his right to petition for post-conviction relief or of the time within which a notice of post-conviction relief must be filed or that he intended to challenge the court’s decision but his attorney or someone else interfered with his timely filing of a notice.” *State v. Poblete*, 227 Ariz. 537, ¶ 7, 260 P.3d

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1102, 1104-05 (App. 2011). And, although Lujan suggests the court erred by making factual findings, he has identified no improper findings.

¶8 Based on the forgoing, we conclude the court did not abuse its discretion in summarily rejecting Lujan's untimely challenges to his sentences. We grant review but deny relief.