

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JAMES JOHN GENTILE,
Petitioner.

No. 2 CA-CR 2017-0069-PR
Filed April 25, 2017

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NOT FOR PUBLICATION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 Pima County
No. CR20142660001
The Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

James John Gentile, Tucson
In Propria Persona

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MEMORANDUM DECISION

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

ECKERSTROM, Chief Judge:

¶1 Petitioner James Gentile seeks review of the trial court’s order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Gentile has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Gentile was convicted of fraudulent scheme and artifice, possession of drug paraphernalia, and aggravated identity theft. The trial court sentenced him to concurrent prison terms, the longest of which is 6.5 years. On appeal, this court vacated his conviction and sentence for fraudulent scheme and artifice, but otherwise affirmed his convictions and sentences. *State v. Gentile*, No. 2 CA-CR 2015-0223 (Ariz. App. Jan. 7, 2016) (mem. decision).

¶3 Gentile thereafter initiated a proceeding for post-conviction relief, arguing in his petition that “[t]he findings that warranted reduced sentences for Counts 1 and 2 also warranted a reduced sentence for Count 3.” He noted that because his conviction and sentence for fraudulent scheme and artifice, Count 1, had been vacated, and because the trial court had ordered the sentences to be served concurrently, a reduced sentence on Count 3 would “impact” his incarceration. The court summarily denied relief.

¶4 On review Gentile again contends the trial court should have imposed a mitigated sentence on Count 3 as it did on the other convictions. A claim that the court had improperly imposed a

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presumptive sentence on Count 3, however, could have been raised on appeal, regardless of the disposition of Count 1. Any such claim is therefore precluded. *See* Ariz. R. Crim. P. 32.2(a)(3), (c). We therefore cannot say the court abused its discretion in denying relief. *Cf. State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984) (appellate court may affirm trial court's ruling for any legally correct reason).

¶5 Although we grant the petition for review, we deny relief.