

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

SAMUEL JORDAN ORONA-HARDEE,
Petitioner.

No. 2 CA-CR 2017-0114-PR
Filed April 24, 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NOT FOR PUBLICATION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 Maricopa County
No. CR2009007721001DT
The Honorable Roger E. Brodman, Judge

REVIEW GRANTED; RELIEF DENIED

Samuel Jordan Orona-Hardee, Eloy
In Propria Persona

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MEMORANDUM DECISION

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

S T A R I N G, Presiding Judge:

¶1 Samuel Orona-Hardee seeks review of the trial court's order summarily dismissing his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We grant review, but we deny relief.

¶2 In 2010, pursuant to a plea agreement, Orona-Hardee was convicted of one count of aggravated domestic violence. The trial court suspended the imposition of sentence and placed him on a three-year term of probation, with the condition that he serve four months in the Maricopa County Jail. In 2011, after his conviction for aggravated domestic violence in Maricopa County Cause No. CR2011117751001DT, his probation was revoked, and the court sentenced him to two years' imprisonment, consecutive to the sentence imposed in the 2011 case. In November 2012, the court dismissed the first petition for post-conviction relief Orona-Hardee had filed after revocation of his probation in the instant matter.

¶3 In July 2015, Orona-Hardee filed a successive notice of and petition for post-conviction relief in which he alleged the trial court had erred at sentencing by awarding only 192 days of pre-sentence incarceration credit against his probation revocation sentence, instead of the 327 days it had awarded in No. CR2011117751001DT. The court summarily dismissed the petition, concluding Orona-Hardee was precluded from raising a claim of sentencing error in a successive, untimely petition. In addition, the court found, as a separate, independent ground for the dismissal, that Orona-Hardee had failed to state a legal basis for relief. This petition for review followed.

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¶4 On review, Orona-Hardee contends the trial court abused its discretion in dismissing his petition. Asserting the same claim raised below, he cites Rule 32.1(a) and maintains the court’s “failure to grant [him] full credit for presentence incarceration credits constitutes fundamental error” in violation of his constitutional rights. We review a trial court’s summary dismissal for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find none here.

¶5 Orona-Hardee fails to address the trial court’s correct conclusion that his claim cannot be raised in this untimely proceeding. As the court explained, under Rule 32.4(a), “[t]he only claims available” in this untimely proceeding “are those that can be brought pursuant to Rule 32.1(d), (e), (f), (g), or (h).” Thus, Orona-Hardee’s claim is precluded, regardless of whether it is a claim of an illegal sentence under Rule 32.1(c), as it was characterized by the court, or a claim of an unconstitutional sentence, under Rule 32.1(a), as Orona-Hardee characterizes it on review. The court did not abuse its discretion in dismissing the petition based on preclusion. *See* Ariz. R. Crim. P. 32.6(c).

¶6 Likewise, we find no abuse of discretion in the trial court’s analysis of the claim, or its alternative, independent conclusion that Orona-Hardee failed to state a legally cognizable claim for relief. As in his petition below, Orona-Hardee mistakenly relies on *State v. Seay* for the proposition that “an individual may be entitled to credit when held in custody both due to a new criminal charge and a petition to revoke probation or other criminal charge,” 232 Ariz. 146, ¶ 6, 302 P.3d 671, 673 (App. 2013). Unlike Orona-Hardee, however, Seay’s prison terms were all to run concurrently, *see id.* ¶ 2. In contrast, Orona-Hardee was sentenced to consecutive terms of imprisonment. *Compare State v. Cruz-Mata*, 138 Ariz. 370, 375, 674 P.2d 1368, 1373 (1983) (defendant sentenced to concurrent terms entitled to have presentence incarceration credit applied to each) *with State v. McClure*, 189 Ariz. 55, 57, 938 P.2d 104, 106 (App. 1997) (“When consecutive sentences are imposed, a defendant is not entitled to presentence incarceration credit on more than one of those sentences . . .”).

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¶7

Accordingly, although we grant review, relief is denied.