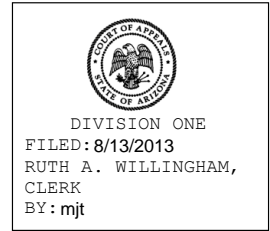


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-HC 13-0001  
)  
Appellee, ) DEPARTMENT A  
)  
v. ) **MEMORANDUM DECISION**  
) Not for Publication  
LARRY JOSEPH PRINCE, ) (Rule 28, Arizona Rules  
) of Civil Appellate Procedure  
Appellant. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR0000-151033

The Honorable Daniel G. Martin, Judge

**AFFIRMED**

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William G. Montgomery, Maricopa County Attorney Phoenix  
By Diane Meloche, Deputy County Attorney  
Attorneys for Plaintiffs/Appellants

Larry Joe Prince Phoenix  
In *Propria Persona* Appellant

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G E M M I L L, Judge

¶1 Larry Joseph Prince appeals from the trial court's order denying his petition for a writ of habeas corpus. For the following reasons, we affirm.

**BACKGROUND**

¶2 In April 1986, following a thirteen-day trial, a jury

convicted Prince of first degree murder, and in May 1986, the court sentenced Prince to death. Prince filed a direct appeal and on April 6, 1989, the Arizona Supreme Court affirmed Prince's conviction but modified his sentence to "life imprisonment without possibility of parole for twenty-five years . . . ." *State v. Prince*, 160 Ariz. 268, 276, 772 P.2d 1121, 1129 (1989). Further, the supreme court noted that because Prince had been previously sentenced to death, the trial court had not considered whether Prince's "sentence on the murder charge should be concurrent with or consecutive to" an earlier sentence imposed on him for a drug charge. *Id.* at 277, 772 P.2d at 1130. The supreme court thus remanded to the trial court "for the sole purpose of determining whether [Prince's] sentences should be concurrent or consecutive." *Id.*

¶3 On August 22, 1989, the trial court held a hearing and issued a minute entry referring to the supreme court "mandate" and listing Prince's sentence as "[l]ife imprisonment without the possibility of parole for 25 calendar years." The court also ruled that Prince's life sentence was to run concurrently with his sentence on the drug charge.

¶4 On October 24, 2012, Prince filed a writ of habeas corpus with the trial court alleging that his sentence had expired and he was being held in custody illegally. Prince alleges that during the hearing on August 22, 1989, the trial

court verbally pronounced that he was to serve a life sentence, but described "life" as meaning that Prince would "be released from custody upon serving 25 calendar years imprisonment."

¶15 The trial court denied Prince's petition for habeas corpus relief without a hearing. The court stated that the supreme court in *State v. Prince* did not "remand for resentencing," as Prince alleges in his petition, but rather modified his sentence to life without the possibility of parole for twenty-five years and remanded solely for resolution of the issue of whether his sentences should run concurrently or consecutively. The trial court further stated that "nothing the trial court may subsequently have said (even accepting [Prince's] assertions as true) changed that ruling" because the court lacked the authority to do so. Prince timely appeals and we have jurisdiction pursuant to A.R.S. § 12-2101(A)(11) (Supp. 2012). See also Ariz. Const. art 2, § 14.

#### **ANALYSIS**

¶16 In reviewing an appeal from the denial of a petition for a writ of habeas corpus, our review is limited to determining whether the trial court abused its discretion. *Salstrom v. State*, 148 Ariz. 382, 384, 714 P.2d 875, 877 (App. 1986). "An abuse of discretion includes an error of law." *State v. Burgett*, 226 Ariz. 85, 86, ¶ 1, 244 P.3d 89, 90 (App. 2010). We review issues of law de novo. *State v. Smith*, 215

Ariz. 221, 227, ¶ 14, 159 P.3d 531, 537 (2007).

¶7 Prince argues the trial court erred in rejecting his petition. He asserts that the twenty-five calendar year sentence he alleges the trial court pronounced was an "illegal sentence" because it conflicted with the sentence that the supreme court had imposed upon him and with the statute in effect at the time, which defined a life sentence as imprisonment "without possibility of parole until the completion of the service of twenty-five calendar years. . . ." A.R.S. § 13-703(A) (Supp. 1983-84). Prince argues that his understanding of his sentence is nonetheless effective because an oral pronouncement is controlling over a written minute entry and because the State did not appeal from it.<sup>1</sup> We disagree that the alleged oral description of the sentence is effective because, even if we assume the trial court did make the oral pronouncement that Prince alleges, such a sentence would be void as a matter of law.

¶8 "An order is void if the court entering it lacked jurisdiction . . . to render the particular judgment or order entered." *State v. Bryant*, 219 Ariz. 514, 517, ¶ 13, 200 P.3d 1011, 1014 (App. 2008). An order that is void may be vacated at any time. *Id.* at 518, ¶ 14, 200 P.3d at 1015. Here, the trial

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<sup>1</sup> No transcript is available to establish the trial court's oral pronouncement. The record reveals unsuccessful attempts to locate the court reporter or court reporter's notes.

court did not have jurisdiction to modify the sentence the supreme court imposed on Prince. The supreme court has statutory authority to reduce a defendant's sentence when it finds that the sentence given by the trial court is excessive. A.R.S. 13-4037(B) (2010). The statute does not, however, provide authority for a trial court to further reduce or otherwise modify a sentence imposed by the supreme court. To the contrary, the statute states that when the supreme court reduces a sentence, it "shall be enforced by the court from which the appeal was taken." *Id.* (emphasis added). Moreover, A.R.S. § 13-4040 (2010) states that after receiving a decision from the supreme court, the trial court is to make those "orders which may be necessary to carry the decision of the supreme court into effect . . . ." The statutes do not give the trial court authority to change the effect of the supreme court's decision.

¶19 Further, it is well established that a trial court does not have inherent authority to modify a lawfully imposed sentence. *State v. Falkner*, 112 Ariz. 372, 374, 542 P.2d 404, 406 (1975) (vacating modified sentence where trial court lacked jurisdiction to modify it and reinstating original sentence); *State v. House*, 169 Ariz. 572, 573, 821 P.2d 233, 234 (App. 1991) (same). While Rule of Criminal Procedure 24.3 does give the trial court authority to modify a sentence, this authority

is effective only when the sentence has been "imposed in an unlawful manner" and the defendant has not yet taken a direct appeal. This rule is inapplicable here because the trial court had no jurisdiction to modify the sentence lawfully imposed by the supreme court. Further, given that a court may not amend a lawful sentence in favor of another lawful sentence, it would be illogical to allow a court to turn a lawful sentence issued by the supreme court into an unlawful one, as Prince claims was done here.

¶10 The trial court's jurisdiction in 1989 was limited to the mandate of the supreme court. See *Harbel Oil Co. v. Superior Court of Maricopa County*, 86 Ariz. 303, 306, 345 P.2d 427, 429 (1959) (trial court's jurisdiction on remand is delimited by the terms of the mandate); *Vargas v. Superior Court of Apache County*, 60 Ariz. 395, 397, 138 P.2d 287, 288 (1943) (stating supreme court mandate must be strictly followed). Therefore, even assuming that Prince's allegations are true, the trial court would have exceeded its jurisdiction and the amended sentence would be void and could be vacated at any time, regardless of whether the State appealed the sentence at the time it was allegedly pronounced. See *Bryant*, at 518, ¶ 14, 200 P.3d at 1015; see also *State v. Hill*, 85 Ariz. 49, 53-54, 330 P.2d 1088, 1090-91 (1958) (holding trial court's order granting new trial was void for lack of jurisdiction where court did not

comply with Criminal Rule provisions). We therefore find the trial court did not abuse its discretion in denying Prince's petition for a writ of habeas corpus.

**CONCLUSION**

¶11 For the foregoing reasons, we affirm the trial court's denial of Prince's petition for a writ of habeas corpus.

/s/

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JOHN C. GEMMILL, Judge

CONCURRING:

/s/

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PETER B. SWANN, Presiding Judge

/s/

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PATRICIA A. OROZCO, Judge