

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

MICHAEL HALE, *Petitioner*.

No. 1 CA-CR 15-0576 PRPC
FILED 5-9-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2011-117389-001 DT
The Honorable Karen L. O'Connor, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Diane Meloche
Counsel for Respondent

Michael Hale, Florence
Petitioner

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MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Jon W. Thompson joined.

M c M U R D I E, Judge:

¶1 Michael Hale petitions this court for review from the summary dismissal of his second petition for post-conviction relief. Hale pled guilty to three counts of attempted sexual exploitation of a minor, all dangerous crimes against children, and one count of possession of drug paraphernalia. The charges of attempted sexual exploitation were based on Hale's possession of videos of adults engaged in various sexual acts with children under the age of fifteen. The superior court sentenced Hale to nine years' imprisonment for one count of attempted sexual exploitation of a minor, placed him on lifetime probation for the other two counts of attempted sexual exploitation, and placed him on two years' probation for possession of drug paraphernalia concurrent with the other counts.

¶2 Hale argues there was an insufficient factual basis to support his guilty pleas to the counts of attempted sexual exploitation because there was no evidence of the identities of the minors depicted in the videos nor was there any evidence the images depicted actual minors under the age of fifteen. We deny relief because Hale could have raised this issue in his petition for post-conviction relief of-right. *See* Ariz. R. Crim. P. 32.2(a) (any claim a defendant raised or could have raised in an earlier post-conviction relief proceeding is precluded).¹

¶3 Hale argues the issue is not precluded because he presents it pursuant to Arizona Rule of Criminal Procedure 32.1(h), frequently referred to as a claim of "actual innocence." *See State v. Gutierrez*, 229 Ariz. 573, 580, ¶ 34 (2012). Hale is correct that the rule of preclusion generally does not apply to a claim brought pursuant to Rule 32.1(h). Ariz. R. Crim. P. 32.2(b). But, even if we assume *arguendo* that Hale properly invoked Rule 32.1(h) rather than Rule 32.1(a), we would deny relief.

¹ Absent material revision after the date of an alleged offense, we cite a statute's or rule's current version.

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¶4 Before a petitioner may obtain relief pursuant to Rule 32.1(h), the petitioner “must set forth the substance of the specific exception and the reasons for not raising the claim in the previous petition or in a timely manner.” Ariz. R. Crim. P. 32.2(b). If the petitioner does not provide meritorious reasons for why the petitioner did not present the claim in a previous petition or in a timely manner, the superior court must summarily dismiss the proceedings. *Id.* Hale’s only argument for why he did not raise this issue in his first post-conviction relief proceeding is that he did not know he could raise the issue until a newly transferred fellow prisoner told him he could. Hale’s lack of familiarity with the applicable law is not a meritorious reason that would allow him to raise an issue in an untimely, successive post-conviction relief proceeding. Moreover, by pleading guilty, Hale stipulated to the elements of the offenses, and his current allegations are not ones that call into question whether he committed those offenses.

¶5 We grant review and deny relief.



AMY M. WOOD • Clerk of the Court
FILED: AA