

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

ANTONNEO R. BOYCE, *Petitioner*.

No. 1 CA-CR 16-0125 PRPC
FILED 12-28-2017

Petition for Review from the Superior Court in Yavapai County
No. P1300CR201301294
The Honorable Tina R. Ainley, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Yavapai County Attorney's Office, Prescott
By Robert J. Johnson
Counsel for Respondent

Antonneo R. Boyce, Yarnell
Petitioner

MEMORANDUM DECISION

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

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C A T T A N I, Judge:

¶1 Antonneo R. Boyce petitions for review of the superior court's summary dismissal of his second petition for post-conviction relief. For reasons that follow, we grant review but deny relief.

¶2 Boyce pleaded guilty to one count of misconduct involving weapons and two counts of driving under the influence ("DUI") in violation of A.R.S. § 28-1381(A)(1). The superior court sentenced him to 2.5 years' imprisonment for misconduct involving weapons and concurrent 10-day jail terms for the DUI offenses.

¶3 Boyce filed a timely petition for post-conviction relief alleging claims of due process violations, illegal search and seizure, and breach of the plea agreement. The superior court summarily dismissed this petition in January 2015, finding no colorable claims for relief.

¶4 In December 2015, Boyce filed a motion to vacate one of his two DUI convictions, arguing that the court lacked subject matter jurisdiction. The superior court treated the motion as a petition for post-conviction relief and summarily denied it. This petition for review followed.

¶5 On review, Boyce argues that the superior court erred by treating his motion to vacate the DUI conviction as a petition for post-conviction relief under Rule 32 and by denying his subject-matter-jurisdiction claim. Because the motion raised a claim challenging the validity of a conviction, the superior court correctly treated it as a petition for post-conviction relief under Rule 32. *See* Ariz. R. Crim. P. 32.3. Boyce's argument that the motion should have been considered under either Rule 16 or Rule 24 rather than Rule 32 is without merit. By its terms, Rule 16 governs "the procedure to be followed in cases between arraignment and trial." Ariz. R. Crim. P. 16.1(a). Boyce's motion seeks relief after conviction, which falls squarely within the scope of Rule 32. Ariz. R. Crim. P. 32.1 & cmt. (including motions to vacate judgment among the avenues for post-conviction relief consolidated into Rule 32). Boyce's reliance on Rule 24 is similarly unavailing because Rule 24.2(a) expressly limits the time in which relief may be sought under that rule to no later than 60 days after entry of judgment and sentence. Boyce filed the motion to vacate two years after the superior court entered judgment and sentence. After expiration of the 60-day limit, "the defendant may only petition for relief under Rule 32." Ariz. R. Crim. P. 24.2(a) cmt.

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¶6 Moreover, the superior court correctly rejected Boyce’s subject-matter-jurisdiction claim. The DUI charge for the conviction Boyce challenges was originally filed in the Yarnell Precinct Justice Court. But as part of an agreement to resolve other charges pending against him in Yavapai County Superior Court, Boyce agreed to include the charge as an additional count in the superior court case “by Stipulation of the Parties.” To this end, the plea agreement expressly provided that the “Plea Agreement . . . serves to amend the complaint, indictment, or information to charge the offense to which Defendant pleads, without the filing of any additional pleading.” Accordingly, the DUI charge at issue was properly before the superior court for adjudication as part of the change of plea proceeding, *see State v. Wilson*, 126 Ariz. 348, 352 (1980), and the superior court properly rejected Boyce’s subject-matter-jurisdiction claim.

¶7 Accordingly, we grant review but deny relief.



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