

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Respondent*,

*v.*

PARDIS ZAINULABADIN, *Petitioner*.

No. 1 CA-CR 16-0513 PRPC  
FILED 9-14-2017

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Petition for Review from the Superior Court in Maricopa County  
No. CR2011-157682-001  
The Honorable Jo Lynn Gentry, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

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

Pardis Zainulabadin, Kingman  
*Petitioner*

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**MEMORANDUM DECISION**

Chief Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Margaret H. Downie and Judge Kenton D. Jones joined.

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**T H U M M A**, Chief Judge:

¶1 Petitioner Pardis Zainulabadin seeks review of the superior court's order denying his petition for post-conviction relief, filed pursuant to Arizona Rule of Criminal Procedure 32.1 (2017).<sup>1</sup> Absent an abuse of discretion or error of law, this court will not disturb a superior court's ruling on a petition for post-conviction relief. *State v. Gutierrez*, 229 Ariz. 573, 577 ¶ 19 (2012). Because Zainulabadin has shown no such error, this court grants review but denies relief.

¶2 In April 2012, Zainulabadin pled guilty to three counts of attempted sexual conduct with a minor under the age of 15, all Class 3 felonies and dangerous crimes against children committed in September 2011. The acts were different acts occurring on the same day with the same victim, as reflected in the factual basis supporting the plea. Consistent with the terms of the written plea agreement, Zainulabadin was sentenced to 10 years in prison on one count (a presumptive term), and concurrent lifetime probation grants upon discharge from prison on the other two counts.

¶3 Zainulabadin filed an "of right" notice of post-conviction relief and was appointed counsel, but dismissed it at his own request. He then filed his second petition for post-conviction relief claiming his sentence(s) were unlawful as a violation of double jeopardy and double punishment, checking the box under Ariz. R. Crim. P. 32.1 (e) ("newly discovered material facts") but alleging no specific facts. The superior court summarily dismissed the petition. Zainulabadin timely filed a petition for review.

¶4 Zainulabadin first alleges that the superior court issued its decision without allowing him 60 days to file a petition in accordance with Rule 32.4(c)(2), and again reiterates his claim as to double jeopardy. To avoid preclusion, a person filing a successive petition must set forth in his notice "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 a petitioner does not do this, "the notice shall be summarily dismissed." *Id.* The superior court, in summarily dismissing the notice, correctly found Zainulabadin's notice was deficient, showed no "newly discovered material facts" to fall within the Rule 32.1 (e) exception and that his claim was precluded pursuant to Rule 32.2 (a) (3). *See also State v. Harden*, 228 Ariz. 131 (App. 2011) (upholding summary dismissal of

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<sup>1</sup> Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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deficient, successive notice claiming ambiguity in probation conditions). Zainulabadin's petition for review does not show the superior court erred.

¶5 Zainulabadin's claim regarding double jeopardy/double punishment in the petition for review also is without merit. He again does not state any specific facts, other than the common date of the offenses, to support his claim. The superior court correctly concluded that, in claiming his plea/sentence was illegal, he was asserting a claim governed by Rule 32.2(a), which should have been raised in his first petition for post-conviction relief.

¶6 Double jeopardy is a personal defense that must be affirmatively asserted and that is waived by a guilty plea. *Dominguez v. Meehan*, 140 Ariz. 329, 332 (App. 1983). Zainulabadin waived this defense in his plea, and did not challenge the original plea, factual basis or sentence in a timely manner under Rule 32. *See* Ariz. R. Crim. P. 32.4(a). As such, he is precluded from raising a collateral attack in this proceeding. *Id.*; *see also State v. Shrum*, 220 Ariz. 115, 118 ¶12 (2009) (holding untimely claims regarding sentence legality are precluded).

¶7 Apart from preclusion, the record contradicts Zainulabadin's conclusory claim and clearly shows that his guilty plea and resulting consequences were for three separate incidents occurring on the same day with the same victim. It is irrelevant that the acts were committed within a relatively short time span. *State v. Griffin*, 148 Ariz. 82, 86 (1986); *State v. Boldrey*, 176 Ariz. 378 (App. 1993); *see also Blockburger v. U.S.*, 284 U.S. 299 (1932) (holding successive sales of drugs are distinct offenses, no matter how close in time).

¶8 For these reasons, this court grants review but denies relief.



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