

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

DAVID HARTNETT, *Petitioner*.

No. 1 CA-CR 16-0243 PRPC
FILED 12-19-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2008-170485-001
The Honorable Michael W. Kemp, Judge

REVIEW GRANTED AND RELIEF DENIED

COUNSEL

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

David Hartnett, Florence
Petitioner Pro Se

MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in
which Judge Peter B. Swann and Judge Maria Elena Cruz joined.

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HOWE, Judge:

¶1 David Hartnett petitions this Court for review of the summary dismissal of his third petition for post-conviction relief proceeding. We have considered the petition for review and for the reasons stated, grant review but deny relief.

¶2 Hartnett pled guilty to one count of sexual conduct with a minor, a class 2 felony and dangerous crime against children, and two counts of attempted molestation of a child, class 3 felonies and dangerous crimes against children. In May 2009, the trial court sentenced Hartnett to an aggravated 25-year prison term on the sexual conduct with a minor conviction and placed him on lifetime probation on the two attempted molestation of a child convictions.

¶3 Hartnett commenced proceedings for post-conviction relief in 2009 and 2011, both of which were unsuccessful. In February 2016, Hartnett moved for clarification and correction of an unlawful sentence. The trial court summarily denied the motion for clarification and correction without comment. This petition for review followed.

¶4 Hartnett's motion for clarification and correction consists of an attack on the validity of his sentence and therefore is properly treated as a petition for post-conviction relief under Arizona Rule of Criminal Procedure 32. *See* Ariz. R. Crim. P. 32.3. We review the summary dismissal of a petition for post-conviction relief for abuse of discretion. *State v. Bennett*, 213 Ariz. 562, 566 ¶ 17 (2006). Furthermore, we may affirm the trial court's ruling "on any basis supported by the record." *State v. Robinson*, 153 Ariz. 191, 199 (1987).

¶5 Because Hartnett's motion for clarification and correction of an unlawful sentence was filed more than 90 days after entry of judgment and sentence, it was untimely. *See* Ariz. R. Crim. P. 32.4. An untimely petition for post-conviction relief may only raise claims pursuant to Rule 32.1(d), (e), (f), (g), or (h). *Id.*; *see also State v. Shrum*, 220 Ariz. 115, 118 ¶ 13 (2009) (noting "few exceptions" to the "general rule of preclusion" for claims in untimely or successive petitions). Claims of an illegal sentence do not fall within Rule 32.1(d), (e), (f), (g), or (h) because they are encompassed within Rule 32.1(c). *State v. Cazares*, 205 Ariz. 425, 426 ¶ 4 (App. 2003). Thus, the trial court did not abuse its discretion by summarily dismissing Hartnett's untimely challenge to his sentence.

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Accordingly, we grant review but deny relief.



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