

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ROBIN D. BOTTS, *Petitioner*.

No. 1 CA-CR 16-0268 PRPC
FILED 12-19-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2011-007896-001
The Honorable Sherry K. Stephens, Judge

REVIEW GRANTED AND RELIEF DENIED

COUNSEL

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

Robin D. Botts, 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 Robin D. Botts petitions this Court for review of the summary dismissal of his untimely notice and petition for post-conviction relief. We have considered the petition for review and for the reasons stated, grant review but deny relief.

¶2 Botts pled guilty to three counts of attempted sexual assault and one count of kidnapping. In June 2012, the trial court sentenced him in accordance with the terms of the plea agreement to a ten-year prison term on the kidnapping conviction and suspended sentencing and placed him on lifetime probation on the three attempted sexual assault convictions.

¶3 In November 2015, Botts filed a notice and petition for post-conviction relief, raising claims of lack of jurisdiction, illegal sentence, newly discovered material facts, failure to file a timely notice of post-conviction relief was without fault on his part, fundamental error, and ineffective assistance of counsel. The trial court summarily dismissed the notice and petition, ruling that the filings were untimely and that Botts failed to state a colorable claim that could be raised in an untimely post-conviction relief proceeding. This petition for review followed.

¶4 On review, Botts argues that the trial court erred by dismissing his notice and petition for post-conviction relief. We review the summary dismissal of a proceeding for post-conviction relief for abuse of discretion. *State v. Bennett*, 213 Ariz. 562, 566 ¶ 17 (2006).

¶5 The trial court did not abuse its discretion by summarily dismissing the post-conviction relief proceeding. The trial court issued a ruling that clearly identified, fully addressed, and correctly resolved the claims sought to be raised by Botts. Further, the court did so in a thorough, well-reasoned manner that will allow any future court to understand the court's ruling. Under these circumstances, "[n]o useful purpose would be served by this court rehashing the trial court's correct ruling in a written decision." *State v. Whipple*, 177 Ariz. 272, 274 (App. 1993). We therefore adopt the trial court's ruling.

¶6 We further reject Botts's argument that he is entitled to relief because the State did not respond to his petition. The State's failure to file a response "requires no explanation and the trial court is not bound to grant [relief to a petitioner] just because the state failed to respond." *State v. Cawley*, 133 Ariz. 27, 29 (App. 1982). Because Botts failed to state a claim upon which relief can be granted in an untimely post-conviction relief

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proceeding, no abuse of discretion occurred by the trial court in summarily dismissing his petition for post-conviction relief.

¶7 Accordingly, we grant review but deny relief.



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