

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ANANT KUMAR TRIPATI, *Petitioner*.

No. 1 CA-CR 16-0291 PRPC
FILED 6-29-2017

Petition for Review from the Superior Court in Maricopa County
Nos. CR 1992-008576
CR 1992-009620
The Honorable Jay R. Adleman, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Anant Kumar Tripathi, Florence
Petitioner

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MEMORANDUM DECISION

Judge Jennifer B. Campbell delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Patricia K. Norris joined.

CAMPBELL, Judge:

¶1 Petitioner Anant Kumar Tripathi petitions this court for review from the dismissal of his petition for post-conviction relief. We have considered the petition for review and, for the reasons stated, grant review but deny relief.

¶2 A jury convicted Tripathi of fraudulent schemes and artifices, a class 2 felony, attempt to commit fraudulent schemes and artifices, a class 3 felony, and false swearing, a class 6 felony, in Maricopa County, Cause No. CR92-08576. A jury also convicted Tripathi of attempted fraudulent schemes and artifices, a class 3 felony, in Maricopa County, Cause No. CR92-09620. At sentencing in both cases, the superior court found he had been on parole at the time of the offenses and, based on Tripathi's previous admission to prior felony convictions, found he had two prior felony convictions and sentenced him as a repetitive offender to 52.5 years' imprisonment.

¶3 Tripathi filed a notice and petition for post-conviction relief with the superior court requesting relief due to a "substantial" change in law. Ariz. R. Crim. P. 32.1(g) (relief appropriate if significant change of law applicable to defendant would overturn defendant's sentence). He noted that when the Legislature amended and renumbered former Arizona Revised Statutes ("A.R.S.") section 13-604(H), it abolished use of "*Hannah* priors," see *State v. Ofstedahl*, 208 Ariz. 406, 407-08, ¶ 5 (App. 2004), for sentencing; *State v. Hannah*, 126 Ariz. 575 (1980). He argued that under the current law, he had only one, not two, historical prior felony convictions. Citing *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), he reasoned the abolishment of *Hannah* priors applied retroactively. The superior court summarily dismissed his petition and subsequently denied Tripathi's motion to reconsider.

¶4 On review, Tripathi raises the same arguments. As the superior court pointed out, however, Tripathi does not argue that he was a juvenile offender; at the time of his offenses and convictions Tripathi was over the

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age of 18. For that reason, he is not entitled to *Montgomery's* retroactive relief. *Id.* at 732-36 (prohibition on mandatory life sentences without parole for juveniles was a substantive rule that must be given retroactive effect on state collateral review).

¶5 Additionally, we further agree with the superior court that the elimination of “*Hannah* prior language” in A.R.S. § 13-604(H) does not support Tripati’s claim for relief. Tripati committed the offenses before January 1, 1994, the effective date of the amendments to A.R.S. § 13-604(H). 1993 Ariz. Sess. Laws, ch. 225, § 7 (1st Reg. Sess.). He was thus sentenced accordingly. *See State v. Newton*, 200 Ariz. 1, 2, ¶ 3 (2001) (a basic principle of criminal law is the defendant must be sentenced under the laws in effect at the time the defendant committed the offense for which the defendant is being sentenced) (citation omitted); *See also In re Shane B.*, 198 Ariz. 85, 87-88, ¶¶ 8-11 (2000).

¶6 For the foregoing reasons, although we grant review, we deny relief.



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