

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

SAMUEL LOUIS FULLER, *Petitioner*.

No. 1 CA-CR 16-0538 PRPC  
FILED 8-22-2017

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Petition for Review from the Superior Court in Maricopa County  
No. CR2012-006837-001  
The Honorable Hugh E. Hegyi, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

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

Samuel Louis Fuller, Phoenix  
*Petitioner*

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**MEMORANDUM DECISION**

Chief Judge Samuel A. Thumma delivered the decision of the Court, in  
which Judge Lawrence F. Winthrop and Judge James P. Beene joined.

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

¶1 Petitioner Samuel Louis Fuller 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 Fuller has shown no such error, this court grants review but denies relief.

¶2 In April 2014, Fuller pled no contest to attempted aggravated assault of a law enforcement officer, a Class 4 felony committed in October 2011. At that time, Fuller was self-represented but had advisory counsel. After waiving a pre-sentence report, Fuller was sentenced to 2.5 years in prison, the term stipulated in the written plea agreement, with 919 days of incarceration credit. Before entering into the plea agreement, Fuller had participated in competency proceedings and was found competent to proceed.

¶3 In May 2016, Fuller filed this third untimely and successive petition for post-conviction relief alleging that his conviction/sentence was in violation of the United States and Arizona Constitutions; that his plea was involuntary due to his mental illness/incompetency and duress/abuse allegedly arising from his conditions of incarceration; that he was not competent to be sentenced; that he was detained for a period of time exceeding the maximum sentence; and issues of error related to his self-representation. The superior court summarily dismissed his petition.

¶4 Fuller then filed this petition for review reiterating the claims before the superior court and seeking to raise additional claims and providing this court documents not presented to the superior court. This court declines to consider issues and evidence not properly presented to the superior court. Ariz. R. Crim. P. 32.9(c)(1); *State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980).

¶5 For the claims Fuller raised with the superior court, that court did not err in finding the claims were precluded, or otherwise without merit. Fuller pled guilty while self-represented and, as a result, waived all non-jurisdictional defects. *State v. Moreno*, 134 Ariz. 199, 200 (App. 1982). In addition, Fuller's claims are precluded under Rule 32.2(a). They are

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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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untimely and successive. He attempts to circumvent preclusion by alleging “newly discovered material facts” but does not present any such facts. Fuller failed to timely file his “of-right” petition for post-conviction relief, and his proceeding was dismissed. He then sought review with this court, which dismissed as untimely. Claims that his plea was involuntary and his sentence was illegal due to incompetency should have been raised in his “of-right” proceeding. Because he failed to do so in a timely fashion, such claims are precluded.

¶6 Likewise, Fuller’s attempt to assert his mental health as “newly discovered evidence” fails. Fuller’s filings and documentation show that his mental health diagnosis was known from at least 2010. He was found competent, pled guilty and was sentenced in 2012. As a result, his mental health diagnosis is neither a “newly discovered material fact,” nor presented to the court in a diligent fashion. *See State v. Dogan*, 150 Ariz. 595, 600 (App. 1986) (“Newly-discovered material facts alleged as grounds for post-conviction relief are facts which come to light after the trial and which could not have been discovered and produced at trial through reasonable diligence.”). The claim falls under Rule 32.2(a) and is precluded.<sup>2</sup>

¶7 The superior court did not abuse its discretion in dismissing Fuller’s petition for post-conviction relief. Accordingly, this court grants review but denies relief.



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

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<sup>2</sup> Although Fuller raises pre-trial credit and the duration of his sentence, his filings do not state what resulting relief is requested. Moreover, the issue is moot because he is no longer incarcerated in this matter. *See State v. Hartford*, 145 Ariz. 403, 405 (App. 1985).